



Simon Degelo September 2016

Inclusive land governance – Road to a better live

Synthesis

Land governance is at the core of development, be it rural, urban or peri-urban. Therefore, SDC (Swiss Agency for Development and Cooperation) has decided to set off for a learning journey to allow its professionals to gather new knowledge, exchange and learn mutually.

Land literally is the fundament of all human activity and development: Be it agriculture, pastoralism, extraction of natural resources or the building of homes and factories. At the same time, insecure ownership impedes the willingness to invest into the sustainable use of land. Even worse, contesting claims for land are a frequent source of conflicts.

Therefore, the ways in which people organise themselves to manage land resources highly depends on social and cultural rules, economic development and the history of a country or region. In this view, land governance is a topic that should not be neglected when working for any development project, most notably when it comes to rural development, food security and good governance. So, two of SDC's thematic networks for institutional learning have joined forces: The Network for Agriculture and Food Security together with the Network for Democratisation, Decentralisation and Local Governance have set sails to embark for a learning journey on land governance, directly including around 100 professionals.

As a first step, case studies were conducted in three countries (Brazil, Mozambique and Cambodia) to give in depth insight into the situation and recent developments regarding land rights (see page xy). Subsequent to the studies, validation workshops have been conducted in each of the countries with professionals from public, private and civil sector.

To facilitate the organisation-wide learning on land governance, a face to face (f2f) meeting was held in Switzerland, gathering collaborators of SDC and partner NGOs, who are confronted with the topic in their daily work in headquarter and county offices, complemented by the study authors and other experts. The three day meeting included excursions to different regions of Switzerland, allowing the participants to learn how conflicting interests of land use are balanced here. 8 studies were written of different cases of interest and participants had the chance to visit them.

In the f2f meeting over 60 participants have contributed with their experience in land governance from numerous countries, which allowed for very specific and valuable discussions. Even though, land issues are highly context specific, a range of typical patterns appeared across SDC's partner countries.

Rule of law

One of the salient issues was the insufficient implementation of land legislation. Some countries, in particular amongst the Least Developed ones, have recently put into force some progressive land right legislation. In practice exemplary land legislation often is contrasting with weak government institutions. As a consequence, the empowering aspects are not properly implemented. This has been

discussed to be the result of largely externally driven design of law, limited local ownership and the lack of a well informed and organised civil society that could enforce an appropriate implementation.

In other countries some progress has been achieved through an engaged civil society and a favourable political environment, but changes have not been incorporated into the law. This bears the risk that the progress will be reversed in case of a change of political majorities, as it is currently happening in the case of Brazil.

An aspect, that often is neglected, is the lack of capacity of the authorities to implement the legislation. As a participant stated, much has been invested into the capacities of CSOs, but little into the ones who effectively have to do the job.

Participants agreed that appropriate and inclusive legislation, capacities of CSOs to advocate for the needs of smallholders as well as minorities, and the capacities of the authorities to implement the laws are equally important. They all need to be strengthened. An important means to facilitate the exchange and the inclusiveness, can be multi stakeholder dialogues where authorities, civil society and private sector should be represented.

A topic that has been extensively discussed was the process of first registration of land: The standards of this process are crucial for the functionality and the inclusiveness of the land governance system. Generally, land surveying is a precondition when requesting for registration. As this is an expensive process, it can restrict smallholders' access and favour large land owners, what can aggravate the situation in land policies. Instead, strengthening customary land rights and collective land use has been proposed and implemented in some countries. Even though a promising alternative, this is no magic bullet: in practice it is hard to make communities land rights work. Often, it is not clearly defined what a community is, who its members are, how decisions are taken and who is legitimate to represent it.

Another problem with formalising land rights is the risk of excluding women and minorities. As in many countries women are responsible for agricultural activities, they de facto decide about land use. However, when it comes to the contact with authorities, men often are the ones who represent the families. Therefore, the titling process can even reduce women's control of land.

Below the line, formal and customary land property systems both have their advantages and disadvantages. As they often coexist in developing countries, land legislations need to recognize both systems and protect all legitimate claims for land. Whether formalisation of land rights is advantageous for a society as a whole, remains an ambiguous question. When this process is implemented it should be done with cautiousness and low-threshold, inclusive processes for acquiring titles should be assured. While facilitating this processes, one should be aware that land governance is never purely technical but highly political.

Spatial planning

One of the excursions studied the spatial planning of a medium size municipality. It demonstrated the importance of planning instruments to balance public and private interests when it comes to land use: While land owners have an interest in intense land use to maximise their profit, this conflicts with the public interests to maintain ecosystem services, to protect agricultural production and to have aesthetical and functional settlements and landscapes.

The special status of farmland and its protection in Switzerland has been enlightened in several excursions focusing on a range of aspects. The legislation to protect farmland has been put in place in the 1990ies as a reaction to speculative acquisition of agricultural land that had been threatening smallholder's access to land – a situation that can be seen in some developing countries at present.

How to balance public and private interests in land use, is a fundamental question in all countries. In some states – predominantly such with a socialist history – all land is owned by the state and only leased to users, while others have property rights. However, the discussions during the f2f meeting revealed that it also depends on the details: to what degree landholders' rights are guaranteed and under which conditions they can be restricted when it comes to granting public interests. Only when a good balance between public and private interests is assured, sustainable development in favour of the whole population can be facilitated.

Conflict resolution

Under the term of land grabbing, large scale land acquisition has caught some public attention. In fragile contexts, land acquisition by large foreign direct investors often bears a threat for smallholders' livelihoods and food security. In many of these countries investments are protected through international treaties, which limit the possibilities of governments to react. While there is a trend to include precautionary measures in regard to environment and labour, the problem of land grabbing has not yet been addressed in the negotiation of new international investment treaties.

In one of the excursions, the participants visited the 900 year old land corporation "Oberallmeindkorporation Schwyz", which holds 24'000 ha of land and has 18'500 members. Its eventful history demonstrates that communal landownership can be a powerful instrument to assure smallholders' access to land, even though it did not pass without internal conflicts.

The expropriation of a farmer's land for the protection of a source of drinking water was the topic of another excursion. This shows that even in a liberal system, the rights of land owners can be limited for the sake of public interest. Some of the participants remarked how well documented the case was, which contrasts with the reality in the countries where they work.

As a conclusion, the excursions demonstrated that Switzerland has gone through many of the conflicts and problems currently observed in developing countries. And even though the gravest of them have been solved centuries to decades ago, land governance remains a source of dispute and constantly has to adapt to changing conditions.

To achieve inclusive land rights, all stakeholders need to have the capacities and the chance to influence land governance and to develop a common vision of the goals of land use. Establishing such a common vision is a delicate and lengthy process, which is closely linked with the development of a functional democratic culture, and can only succeed when stakeholders from all sectors actively participate in the dialogue. This is hard work but the only way to pave the rocky road of land governance to better lives.



A+FS Network
With family farmers towards
a world without hunger



SDC NETWORK
**Democratisation, Decentralisation
and Local Governance**