



ARD WEEK 2009

AGRICULTURE IN A CHANGING WORLD

KEY ASPECTS OF LAND SECTOR GOVERNANCE

MONDAY, MARCH 2
3:30 – 5:00



ARD WEEK 2009
AGRICULTURE IN A CHANGING WORLD

ARD
AGRICULTURE
AND RURAL
DEVELOPMENT

Indicators for Good Governance in the Land Sector

Assessing Land Governance across countries

T. Burns, K. Dalrymple, K. Deininger, D. Monchuk, H. Selod

with inputs from

V. Endo, L. Kironde, T. Moeliono, A. Undeland



ARD WEEK 2009
AGRICULTURE IN A CHANGING WORLD

ARD
AGRICULTURE
AND RURAL
DEVELOPMENT

Outline

- What is land Sector Governance?
- Why are we monitoring it?
- The Methodology used
- Results from pilot countries
- Implications and next steps



Elements of land sector governance

- How property rights to land (for groups or individuals) are defined, can be exchanged, and transformed
- The way in which public oversight over land use, management, and taxation, is exercised
- What type of land is state owned and how it is acquired or disposed of
- The nature and quality of land ownership information available to the public and the ease with which it can be accessed or modified
- The way in which disputes are resolved and conflict is managed



Why monitor it?

- Serious issue; far-reaching economic & social consequences
 - Importance of property rights for investment, poverty reduction & growth
 - Bad land governance gives rise to long-standing & deep-rooted conflicts
 - Petty corruption in service delivery can be costly (US \$ 700 mn./a in India)
 - High profile land grabs & corruption spill over to other sectors (Kenya)
- A number of factors are likely to push up land values
 - Population growth, urbanization
 - New land uses (e.g. biofuels) increase land demand
 - Payments for environmental services (REDD)
- Changing environment & need for Bank support
 - Orientation towards outcomes, country ownership, budget support
 - Towards e-governance & beyond 'traditional' land investments (NRM)
 - Implies a need to transcend traditional divisions/silos



How to monitor it?

- Build on **Public Expenditure & Financial Accountability Framework (PEFA)**
 - Coordinated among donors (EU, IMF, bilaterals, WB as secretariat)
 - Goals: Country ownership, donor harmonization, progress monitoring
 - Reports (based on joint missions) for >40 countries since 2006: www.pefa.org
 - Avoid duplication; establish basis for policy dialogue & policy-based support
- Adjustments in the methodology
 - 5 broad areas, 24 indicators, some 80 dimensions of good governance
 - Provide basic background information (tenure typology, data)
 - Panels score each dimension (A - D based on text), justify, recommend how to improve
 - Supplemented by surveys (court & registry records, awareness)
 - Panel summaries -> country reports -> Synthesis & manual
- Potential advantages
 - Sector-wide approach focused on outcomes rather than existing institutions
 - Feed into country strategy; identify areas for more attention & admin. data need
 - Cross-country comparison to identify best practice
 - Link to other mechanisms (APRM) to gain legitimacy
 - Assessments can be repeated at 2-3 year intervals to assess progress



Area I - Legal & institutional framework

- The continuum of rights under which land is held is recognized by law
- The recognized land rights are actually enforced
- If records differ from reality they can be made consistent at low cost; not conditional on unrealistic regulations
- Land rights holders are aware of their rights & obligations and the ways to exercise them
- Institutional mandates are clear, non-overlapping, information is shared
- Policy is formulated through a legitimate & inclusive decision-making process, incorporates equity; implementation meaningfully tracked



Area II - Land use planning, management, & taxation

- Changes in land use are made in a transparent fashion; benefit society as a whole
- Land use regulations are affordable & justified to ensure cost-effective public good provision
- Permissions for restricted land use granted promptly and predictably
- Tax valuations clear, uniformly applied, regularly updated, publicly available
- Land & property taxes are collected; generate positive yield



Area III: Public land - acquisition, management, disposal

- A geographic inventory of public land is available
- The state expropriates/holds land only for the public good
- Expropriation procedures clear & transparent; compensation includes unregistered claims and is fair and quick
- Expropriation and compensation can be contested
- Transfer of public land to private users follows transparent, competitive processes generates resources



Areas IV & V - Land information & dispute resolution

Land information

- Land registry is complete, relevant, and up to date
- Registry information sufficient for inferences on ownership
- Registry managed transparently, sustainably, cost-effectively

Dispute resolution

- Conflict resolution responsibility clearly assigned between formal & informal fora; transition possible
- Low level of & expeditious resolution of pending conflicts



Progress and piloting thus far

- Development of framework
- 4 pilot countries to account for diversity of situations
 - Indonesia
 - Kyrgyz Republic
 - Peru
 - Tanzania
- Trial run & refinement of framework
- Obtain basic information & conduct panels
- Some more work to be done on quantitative data gathering



Key results in area I (legal & institutional framework)

- Recognition of existing land tenure arrangements does not imply recording
 - Failure to recognize group tenure results in conflict (IDN)
 - Low-cost recognition of rural group tenure (village land); but unclear recording (TZN)
 - Group & women's rights well recognized but little registration of communal land (PER)
 - Transition among tenure regimes generally difficult or non-existent
- Institutional responsibilities often unclear; limited information sharing
 - Local governments & central Ministry, centralization stymies local initiative (TZN)
 - Forest and agricultural land (IDN)
 - Efforts at pulling things together (PER)
- Participatory policy formulation won't guarantee regular reporting
 - Reporting haphazard if it exists, not linked to policy goals
 - Numbers often unclear on input as well as output side
 - Significant scope for quick improvement & scrutiny of policy implementation



Key results area II (land use planning, management, tax)

- Differences in land use planning provisions
 - Highly participatory rural plans but easy to override/change (TZN)
 - Actual not always consistent with planned use
 - Public notice of changes & surplus capture varies widely
 - Planned urban development often constitutes islands only
- Existing standards often unaffordable
 - Plot size & building standards not affordable (except KYR)
 - Time to review applications varies (KYR-PER)
 - Enforcement discretionary in many cases
- Improvements in valuation can help local governments
 - Significant progress in tax retention
 - But capacity for collection (TZN) or clarity of valuation (PER) unclear
 - This can be a point of entry for capacity building if there is interest



Results III (public land acquisition, management, disposal)

- Limited identification of public land constrains effective management
 - Even in cases where management responsibility clearly assigned (PER)
 - Exacerbated by unclear or overlapping assignment of responsibility
 - If registry exists, it is not public or has major holes (KYR)
- Major differences in speed, transparency, contestability of expropriations
 - Quick transfer & relatively fair compensation in Peru; delays everywhere else
 - Even where transfer quick, promptness of compensation limited
 - Limited compensation of non-recorded rights
 - Land use change a (undesirable) way of regulatory taking
- Wide variation in openness of public land disposal
 - All land auctioned off; prompt collection of lease payments (PER)
 - Major losses of fiscal revenue due to give-away at low prices (TZN, KYR)



Results IV & V (land info; dispute resolution)

- Coverage, currency, and benefits from registry differ
 - Limited outreach & centralized, supply-driven process (TZN)
 - Major differences in cost-effectiveness & sustainability (KYR, PER vs. TZN)
 - Even if cost is low, have to be compared to benefits (low in PER)
 - Incentives for 2nd registration after titling depend on benefit/cost
- Public service standards almost universal but quality, enforcement vary
 - Basis for service standards not always clear
 - May not extend to informal payments for service
- Conflict resolution is a problem virtually everywhere
 - Even if accessible, informal institutions not always empowered to resolve
 - Weak/non-existent formal - informal links encourage forum shopping
 - This disadvantages the poor & clogs up the system (increasing backlogs)
 - Considerable scope for policy action



Lessons learned

- A land governance framework is feasible and meaningful
 - Can serve as a diagnostic tool/organizing framework for sector-wide approach
 - Expert panels plus quantitative information are appropriate
 - Can serve as a basis for policy options & priorities at country level
 - Plus identification of best practice based on variation across countries
- Doing it in practice is an iterative process
 - Requires clearly formulated manual & definitions for rankings to be meaningful
 - Identification of reasons for low rankings to generate policy options
 - Should lead to formulation/monitoring of improved admin. data
- Complementarity to global & regional initiatives
 - FAO's 'voluntary guidelines on responsible governance of land & NR tenure'
 - AU land policy initiative
 - Can provide legitimacy for first assessment & follow-up indicators
 - Provide capacity for in-depth analysis & policy/institutional adjustments



Next steps

- Finalization of country studies; adjustments in methodology
 - Policy recommendations & justifications from panel reports for comparability
 - Complement with quantitative information (court, registry documents)
 - Discuss results with government representatives in pilot countries
 - Revise manual in light of experience
 - Country and synthesis report to identify broad lessons
- General lessons to be drawn from pilot countries
 - Standardized formats for reporting of admin. data
 - Broad areas for more in-depth work on best practice (e.g. decentralization)
 - Screening of Bank involvement in other countries
- Country level scale-up
 - Initially in Africa to follow up on AU land policy initiative; joint with others
 - Jump-start policy dialogue, identify priority needs for analytical study & support



Appendix: detailed LGAF



ARD WEEK 2009
AGRICULTURE IN A CHANGING WORLD

ARD
AGRICULTURE
AND RURAL
DEVELOPMENT

LGAF I - Legal & institutional framework (1/3)

■ LGI 1 - The continuum of rights actually held is recognized by the law

- Main types of existing (customary & individual) tenure regimes in rural and urban areas are recognized (4 sub-indicators)
- Group rights & procedures for groups' legal representation/management exist (rural groups, urban in informal areas, condominiums)
- Transition to more individualized tenures are possible with proper safeguards

■ LGI 2 - The recognized land rights are actually enforced

- Boundaries to communal land are surveyed & associated claims registered
- A majority of individual properties is formally registered
- Women's rights are recognized
- Compensation of primary and secondary rights due to land use changes is consistently implemented

■ LGI 3 – The definition, assignment and recording of rights are consistent with practice (or can be made consistent at a low cost)

- Non documentary evidence can be used to establish property claims
- The formal recognition of long-term unchallenged possession (adverse possession) is possible
- Upgrading-on-demand processes are not restricted by ability to pay
- Urban upgrading is feasible and affordable
- The process to formally recognize possession is efficient and transparent



LGAF I - Legal & institutional framework (2/3)

- LGI 4 – Land rights holders are aware of their rights and obligations and the ways to exercise them
 - Individuals know how to obtain formal recognition of land rights
 - Individuals are aware of their rights and obligations
 - Individuals know the options for resolving land disputes with other land holders and with government agencies (2 sub-indicators)
- LGI 5 – Land rights are not conditional on unrealistic regulations driving the population into informality
 - Existence and enforcement of restrictions on ownership and transferability in urban and rural areas are reasonable (2 sub-indicators)



LGAF I - Legal & institutional framework (3/3)

- LGI 6 - Institutional mandates are clear, non-overlapping, info is shared
 - Institutional roles are separated for acquisition, management, regulations, arbitration
 - No sectoral or geographic overlap between institutions with land responsibilities (2 sub-indicators)
 - Land information maintained uniformly across domains and easily accessible
- LGI 7 - Policies are formulated via legitimate & inclusive decision-making
 - A clear land policy is developed in a participatory manner
 - Equity goals are incorporated
 - Implementation of policy is costed, matched with resources and adequately resourced
 - Regular public reports indicate progress in policy implementation



LGAF II - Land use planning, management, taxation (1/3)

- LGI 8 - Changes in land use are transparent and benefits society as a whole
 - Changes in land used are based on public input
 - There is sufficient public notice of land use changes
 - There are mechanisms for the public to capture share of surplus
- LGI 9 - Land use regulations help ensure cost-effective public goods in urban areas
 - A process for planned urban development is followed
 - Urban land delivery is in line with demand
 - Land use plans and regulations are implemented in a non-discretionary manner
 - Plot size requirements are met



LGAF II - Land use planning, management, taxation (2/3)

- LGI 10 – Land use regulations ensure cost-effective public goods in rural areas.
 - Imposition of land use restrictions is justified by provision of public goods at the appropriate level
 - Actual land use is in line with designated land use
 - Land use restrictions can be unambiguously determined and are known by the population
 - A fair and affordable process for addressing misclassification of land use is available and applied

- LGI 11 – **Permissions for restricted land uses are granted promptly and predictably**
 - Requirements for building permits are justified in terms of public goods, clearly communicated and affordable
 - The time needed to obtain a building permit is low
 - There is little discretion in granting building permits

- LGI 12 – **Tax valuations are clear, uniformly applied, regularly updated, and publicly available**
 - Property valuation is based largely on market prices and regularly updated
 - Valuation roles are publicly available



LGAF II - Land use planning, management, taxation (3/3)

- LGI 13 – Land and property taxes are collected and their yield does not exceed the cost of collection
 - Exemptions from land and property taxes are justified, transparent and non-discretionary
 - The collected tax revenue is close to the potential
 - Property tax collection significantly exceeds the cost of collection
 - Local bodies retain a high share of collected property tax



LGAF III – Management of public land (1/2)

■ LGI 14- A geographic inventory of public land is available

- Public land ownership is justified by cost-effective provision of public goods (or avoidance of externalities)
- All public land and real estate is inventoried in a way that allows clear and unambiguous identification of boundaries
- Responsibility for managing different types of public land is clearly assigned
- Institutions responsible for managing public lands have resources available to comply with their responsibilities

■ LGI 15 - The state expropriates land only for the public good

- The share of land expropriated and then transferred to private investors is low
- Most expropriated land is transferred to its destined use within 2 years
- Most land use changes are transferred to their destined use within 2 years

■ LGI 16 - Expropriation procedures are clear and transparent and compensation is fair and quick

- In case of expropriation, fair compensation is paid
- In case of expropriation, property rights that are not formally registered are fairly compensated
- Land owners subject to expropriation receive compensation promptly



LGAF III – Management of public land (2/2)

■ LGI 17 - Expropriation and compensation can be contested

- Independent avenues for complaint exist and are accessible
- Appeals to expropriation decisions are handled within a reasonable time frame

■ LGI 18 - Transfer of public land to private use follows a clear, transparent, and competitive process

- Most state land is transferred through auction or open tender
- Lease payments are collected and similar to private market levels (2 sub-indicators)



LGAF IV – Public provision of land information (1/2)

- LGI 19 - Land registry is geographically complete
 - The land registry completely covers the legal land records to record private land rights
 - The share of registered rights readily identifiable on a map is high
 - Registry contains information on all economically relevant encumbrances
 - Info can be searched by parcel and holder & accessed readily by all parties
- LGI 20 - Registry information is sufficient for inferences on ownership
 - Registry info allows reliable inference on ownership
 - Customer service standards established and adhered to throughout the system
 - The registry and cadastre are up to date



LGAF IV – Public provision of land information (2/2)

■ LGI 21 - Cost-effectiveness of land registries

- Total cost of running the registry (per parcel or transaction) is justifiable in terms of benefits provided
- User fee for registering different interests is in line with cost
- Investment is sufficiently high to meet future demands

■ LGI 22 - Transparency

- Clear schedule of fees exists & is publicly available
- Informal payments are actively discouraged



LGAF V – Dispute resolution & conflict management (1/1)

- LGI 23 - Responsibility for conflict resolution is clearly assigned
 - Institutions to resolve conflict accessible at low cost for majority of population
 - The interaction between formal and informal systems is clearly defined
 - There are no parallel avenues for conflict resolution or responsibilities are clearly assigned (forum shopping discouraged)
 - A process and mechanism (i.e. appeals court) exist to appeal rulings on land cases at reasonable cost with disputes resolved impartially in a timely manner

- LGI 24 – Low pending conflicts
 - The share of land-related conflicts in the formal system is low
 - The majority of different types of land disputes in the formal system are resolved in less than a year
 - The share of long-standing conflicts (> 5 years) in the formal system is low
 - Land disputes are resolved in a timely manner at reasonable costs



Implementation of the framework

■ Expert panels coordinated by country consultant

- Obtain basic information & provide as a background for panels
- Country consultant selects experts (lawyers, civil servants, notaries, NGO representatives,...)
- Experts provide written background information, identify/validate typologies of situations, discuss frame for sampling & ranks for relevant dimensions
- Each panel (3 to 7) agrees on joint consensus ranking & identify areas where more info needed

■ Quantitative sampling of specific cases/processes

- Court cases at various levels: Share land-related, typology, duration,
- Expropriations & dispositions of public land
- Area sample (0.5 km² blocks) of plots for registry coverage/actualization & associated household sample for legal knowledge
- Registry user survey (based on classification of users)
- Goal is to establish & demonstrate methodology only

■ Finalization of reports & methodology

- Assess robustness/variance of rankings within & across countries
- Modalities for up-scaling with partners (AU, country departments, etc.)
- Scope for deriving a handful of quantitative cross-country indicators

