Land Tenure Security

# Land tenure and economic development

There is a body of academic opinion and evidence that land tenure is essential for economic and agricultural development. If a farmer or entrepreneur does not have confidence in his/her legal ownership of the land, they will be less likely to invest.

*“Tenure security rather than just property rights is the linchpin to rural economic development. Obtaining secure property rights is critical to smallholder development and equitable growth. To achieve tenure security, however, property rights are only effective when combined with other measures, such as affordable access to legal services, trustworthy land administration, and honest, fair, and gender-neutral enforcement and judicial systems. Without these additional conditions, property rights alone have minimal impact on land tenure security and the commitment of smallholders, particularly women, to invest in improvements or innovations”*. Centre for Strategic and International Studies 2012, Washington DC

# Land tenure and peace & stability

Land is contested when:

* Neighbours disagree on the limits of their land sometimes resulting in land not be cultivate
* Internal family disputes especially in polygamous families, or after divorce or after death of the male “owner” when the law in succession is unclear or non-existent
* Refugees return to reclaim their land
* Land tenure is not clear and the powerful grab land

# Legal systems

In the absence of written statutory law, land is usually governed by customary law

* Customary law
  + Often verbal law, rarely written down, therefore, fluid and flexible
  + Administered by traditional leaders and chiefs or a traditional council elders
  + May be recognised by statutory law
  + Usually superseded by statutory law
* Statutory law
  + Written law accepted by the national courts
  + Not always known by administrators
  + May not be adapted to the current reality (eg post conflict, repatriates)
  + Requires technical competence of national structures to validate the true owner and accurately map limits

Women’s land rights v traditional culture

* Many traditional cultures do not allow women to own or inherit land
* Land tenure according to statutory law may remove the traditional rights of women to exploit the land (usufruct) (There are 3 types of land rights; usus: to enjoy land without altering it; fructus: to profit from land such as by agriculture; abusus: to modify the land or sell it). Land tenure documents and certificates may not allow for the recording of traditional rights

# Land tenure skills and knowledge

* Legal: a good understanding of laws affecting land ownership and use: rules and regulations covering land, agriculture, mining, water, natural parks, environment (and others) may affect land. The regulations are often flawed and contradictory.
* Technical: how to gather accurate GPS coordinates and produce accurate digital maps (GIS), database management when 100,000s of properties have to be recorded and retrieved
* Maintenance of the register: archiving of documents, how to ensure change of owner ship and division of land is recorded
* Peacebuilding: land is often a source of conflict between individuals and families, within families, between people of power and people of less power and between the state the private owner. Agreement on ownership and boundaries often requires conflict resolution and peacebuilding skills. In Burundi a collective approach is taken in which a whole village agrees to a process of identification of boundaries and establishment of ownership.

# ZOA’s experience

**Burundi**

Context: Land code 2011, no customary land law

Under MFSII, worked with 1350 farming households who were in dispute with 1350 returnee households to establish amicable agreements over land sharing. Supporting 2 districts to establish district land tenure services according to the Burundi Land Code 2011. The 2 districts cover about 60,000 properties. Project completion in September 2016.

**DR Congo**

Context:Poorly known and poorly implemented statutory law from 1973. Parallel customary law

Under MFSII, 56 community-based organisations trained in peaceful land conflict resolution leading to a 27% reduction in land conflict. In 2016 projects financed by Min BuZa in selected areas of S.Kivu and N.Kivu will include, informing local communities on prevailing land laws, supporting communities to document land claims and resolve land disputes, promotion and protection of women’s property interests, participatory mapping of plots of land, creation of land registries, facilitating access to land, supporting the creation of local land governance councils, advocacy to promote negotiations or discussions, to denounce unethical practices, or to hold leaders accountable

**Uganda**

Context:statutory law that recognises customary law**.**

Supporting one district administration in systematic community-led registration of farmers’ land and administration of customary land tenure. Support the district in establishing a participative customary land tenure registration service

# Policy Recommendations

* Mainstream land tenure security in all development proposals including inward investments. Require all projects that involve or require a change of land use or ownership to seek the permission of the local land users
* Encourage embassies to engage with national governments to ensure that there are statutory instruments to protect land tenure
* Promote protection of women’s customary property rights