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DECENTRALIZATION, LAND TENURE REFORMS AND LOCAL INSTITUTIONAL ACTORS
Building partnerships for equitable and sustainable land governance in Africa

DÉCENTRALISATION, RÉFORMES DES RÉGIMES FONCIERS ET ACTEURS INSTITUTIONNELS LOCAUX
Construire des partenariats pour une gouvernance foncière équitable et durable en Afrique

DESCENTRALIZACIÓN, REFORMAS DE LA TENENCIA DE LA TIERRA Y AGENTES INSTITUCIONALES LOCALES
Establecimiento de asociaciones para lograr una gobernanza equitativa y sostenible de la tierra en África

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ABSTRACT

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Greater formalization of access to land tenure and natural resources may assist the rural poor in protecting their assets, improve tenure security, and reduce land-related conflict. The land administration services on offer need to be appropriate, accessible and available on a massive scale. Achieving this level of availability requires subsidiarity and localization of service delivery. This paper explores ways of engaging rural local governments in land administration. Several new land policies propose the creation of committees (often voluntarily) at the community or local government level, which would facilitate the inventory of rights and registration, to record transactions and even reconciliation. Attention

Une plus grande formalisation des régimes fonciers et des ressources naturelles peut aider les personnes pauvres vivant en milieu rural à protéger leurs biens, à améliorer leur sécurité foncière et à limiter les conflits fonciers. Les services d'administration foncière proposés doivent être adaptés, accessibles et disponibles à grande échelle. Pour atteindre ce niveau de disponibilité, il est nécessaire d'y intégrer une dimension de subsidiarité et de localisation. Le présent document expose les différentes manières d'engager les autorités rurales dans l'administration foncière. De nouvelles politiques foncières prévoient la création de comités (souvent volontaires) au niveau des villages ou des autorités locales,

Una mayor formalización del acceso a la tenencia de la tierra y los recursos naturales podría ayudar a los pobres de las zonas rurales a proteger sus activos, mejorar la seguridad de la tenencia y reducir los conflictos relacionados con la tierra. Los servicios de administración de tierras que se ofrezcan deben ser apropiados y accesibles y estar disponibles en gran escala. Para lograr este nivel de disponibilidad son precisas la subsidiariedad y la localización de la prestación de servicios. En el presente estudio se exploran formas de lograr la participación de las administraciones locales de las zonas rurales en la administración de tierras. Varias nuevas políticas agrarias proponen la creación de comités (a menudo con carácter voluntario) en el plano de la

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needs to be paid to mandate, composition, accountability and oversight. Responsible land governance is a challenge also at the local level. One method of achieving this is to build on ongoing initiatives to support local governments in improving governance, via better communications, transparency and accountability, and by promoting citizens' rights to voice their concerns and scrutinize processes.

qui faciliteraient l'inventaire des droits et l'enregistrement, afin de conserver la trace des transactions et même de favoriser la conciliation. La détermination du mandat, de la composition, de la responsabilité et des modalités de surveillance de tels comités doit faire l'objet d'une attention particulière. La gouvernance foncière responsable constitue également un défi au niveau local. L'une des façons de le relever est de s'appuyer sur les initiatives déjà en place afin d'aider les autorités à améliorer la gouvernance – grâce à de meilleures communications, ainsi qu'à une transparence et une responsabilisation plus grandes – et la promotion du droit des citoyens d'exprimer leurs préoccupations et d'examiner les processus entrepris.

comunidad o de la administración local, lo que facilitaría el inventario de derechos y el registro, a fin de documentar las transacciones e incluso la reconciliación. Debe prestarse atención al mandato, la composición, la rendición de cuentas y la supervisión. La gobernanza responsable de la tierra constituye un desafío también en el plano local. Un método para conseguirla es aprovechar iniciativas ya en marcha con objeto de ayudar a las administraciones locales a perfeccionar la gobernanza, mejorando las comunicaciones, aumentando la transparencia y la responsabilidad y promoviendo el derecho de los ciudadanos a manifestar sus preocupaciones y examinar los procesos.

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INTRODUCTION

The livelihoods of the rural poor in Africa rely on secure rights to land and natural resources. Secure rights are a critical factor to conditioning how the rural poor in developing countries can benefit from markets. Resource tenure systems set the arrangements for rights, rules, structures and processes that regulate access to land and its use. These formal or informal systems influence who controls land, and who can use land resources for how long and under what conditions. Tenure security and insecurity are relative concepts. They refer to a bundle of rights held by one or more persons. These rights are described in several dimensions, such as type, breadth, duration and certainty of exercise (Place, 2009). Tenure security can be defined as the degree of reasonable confidence not to be deprived arbitrarily of the land rights enjoyed, or of the economic benefits deriving from them (Cotula *et al.*, 2006).[1]

Resource tenure systems are embedded in societal values, norms and relations, and as such they reflect power structures. They will evolve in response to changes in social, cultural, economic or political structures. When there is an increase in competition over land and natural resources, or growing fear of expropriation, social demand for better boundary security, land transaction processes and rights tends to augment. There have been numerous local responses towards greater tenure security, such as the '*petits papiers*', which are written contracts prepared in presence of a witness to record sales and leases (Lavigne Delville & Mathieu, 1999; Mathieu, 2001). Often these informal measures provide sufficient security for land users to continue working the land and invest.

When local resource tenure institutions are breaking down and land-related conflict within families and between neighbours is rising, some kind of formalization of tenure rights may be helpful. The search for greater legal or official protection of local rights will also grow when claims to land

Tenure systems are embedded in societal values, norms and relations, and as such they reflect power structures

and resources are being staked by actors who do not feel bound by local institutions[2], or who prefer formal procedures for securing property rights and transactions. Such formalization would result in greater support from the state for local land tenure systems and would better guarantee rights of marginalized groups.

This paper explores approaches for formal land administration services that are appropriate and accessible to the rural poor, and which will better protect their assets, improve perceptions of tenure security, and reduce land-related conflict (Sjaastad & Cousins, 2008). To make a difference, for the rural poor these services need to be accessible on a very large scale, since building systems that are accessible only to well-informed and affluent investors will not materially improve local tenure insecurity. 'Going for scale' is feasible only when administration of land and natural resources is localized. Subsidiarity is necessary to increase uptake, reduce costs and improve accountability. It requires the engagement of local institutional actors such as local governments (Alden Wiley, 2008; Place, 2009).

The latest wave of democratic decentralization (or devolution) starting in the 1990s[3] resulted in the establishment of thousands of new local governments in rural areas of Africa. Devolution may create an enabling environment for greater subsidiarity in land governance. Opportunities for more robust local resource tenure systems are explored, by linking the implementation of 'new' land policies to devolved public administration. This paper will look particularly into reform that allows at least some degree of discretion and freedom of action on the part of local institutional actors. It also assesses the requirements for ensuring responsible governance at the local level. The focus will be on countries where elected local governments are present in rural areas and where land policy is being reviewed.

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2   Often these actors are external to local society, but they also include members of the diaspora who have left for urban areas or abroad.

3   A commitment to decentralization and devolution can also be regarded as a recognition of limits to state intervention (Place, 2009).

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EXPERIENCES WITH FORMALIZING DECENTRALIZED MANAGEMENT OF THE COMMONS

Before delving into localized land administration, this paper will first look into previous experiences with formalizing decentralized management of natural resources in the common lands, such as forests, grazing lands, and water bodies. Although these natural resources are de facto used as common heritage, they are formally often considered to be state land.

Decentralized resource management of the commons allows for adaptive and flexible decision-making in response to seasonal and annual variations. Local level institutional structures, which supervised and managed these common lands, existed everywhere and were rooted in customary authority systems. Over time they have weakened, caused partly by the expansion of formal resource tenure systems involving centralized management[4]. The capacity of these local institutions is also affected by growing pressures on natural resources and the unravelling of social capital.

Towards the end of the 1980s, initiatives by projects and NGOs to promote participatory natural resource management emerged in order to reverse the disempowerment of local resource users. Examples include '*gestion de terroir*', local conventions, community-based natural resource management, community forestry, and participatory forest management. In countries such as Mali, these Community Based Natural Resource Management (CBNRM) initiatives facilitated the production of locally-accepted agreements on regulating resource use (Djiré & Dicko, 2007).

In countries where local governments existed and could make bye laws, such as Tanzania, it was possible to formalize these agreements. Elsewhere, formalizing agreements proved to be more difficult and these were, at best, tolerated by governments. This was the case in francophone West Africa at a time when elected local governments were not yet in place. The implication is that local regulations on resource use can be ignored by

Decentralized resource management of the commons allows for adaptive and flexible decision making in response to seasonal and annual variation

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4   To complicate matters even further, these laws may be perceived locally as unjust and inappropriate from an ecological point of view.

outsiders when they are able to make their case to official authorities, such as the forestry department. Some of these outsiders have even called for support from these formal agencies to exercise their 'formal rights' to use natural resources.

Decentralized management of common pool resources received support via legislation in several countries. Examples are laws and policies related to community forestry and participatory forest management, fisheries, hunting, and pastoral resources. Implementation is lagging behind, however. For example, framework laws have not always been accompanied by the required decrees and procedures and thus not applied (on pastoral legislation, see Hesse & Thébaud, 2006). Moreover, governments continue to appropriate increasingly valuable local commonage and lease these lands to investors for farming, logging, mining, ecotourism and carbon credits compensation schemes. Rural peoples' access and control over common lands is therefore the area most at risk of being interfered with and reallocated to investors (Alden Wiley, 2008).

GROWING NUMBERS OF RURAL LOCAL GOVERNMENTS

Institutional reform towards devolution

Since the 1990s, there has been a new wave of institutional reform towards greater devolution[5] in a number of African countries. Devolution creates possibilities for more autonomous decision-making in response to local needs and circumstances, more room for citizen participation, and encourages downward accountability[6]. A tangible result is the spread of elected local governments in rural areas. Some local governments are new

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5   Democratic decentralization (or devolution) is defined as the transfer of a sphere of decision-making from the central state apparatus to elected sub-national government, which is downwardly accountable to citizens. In the case of *deconcentration*, only functions are transferred to a sub-national level of government that remains upwardly accountable (e.g. the departmental office of the cadastral service).

6   Objectives driving these policy agendas include supporting 'deeper' democratization, meaningful participation, downsizing the central state, improving service delivery and local economic development. Decentralization (devolution) has both passionate supporters and ardent opponents, with debates on its results tending to become normative.

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configurations (e.g. Mali), others are grafted onto existing administrative bodies (e.g. Benin, Burundi). A third feature is the expansion of authorities within existing local governments and the introduction of elections (e.g. Cameroon, Madagascar)[7].

The first round of local government elections is often the conclusion of years of extensive legal and institutional reform. Local governments are now the lowest administrative level. They are involved in the registration of births, marriages and deaths, issuing permits, and other basic administrative practices. Increasingly too, rural local governments become responsible for the management of basic service delivery, infrastructural development and economic development in their area. The next challenge is to build effective, legitimate and accountable local governments.

Devolution can be a politically-charged process. Moves towards decentralization are followed by recentralization, such as the restriction of devolved competences via the earmarking of funds and other imposed conditionalities. For devolution to work, central government needs to move away from implementation and concentrate on policy development, giving guidance and advice to local governments, and oversight and arbitration. The capacity of local governments to operate depends on the balance achieved between what is stated in the law and the mandates and resources that are actually transferred[8].

To be effective, local governments need adequate resources to carry out their duties and responsibilities. The mobilization of financial resources is therefore a concern for local governments. Sources include transfers by central government, local government development funds, or direct donor-funded projects and programmes. Often, there is only a partial transfer of human and financial resources from central to local governments. In some

For devolution to work, central government needs to move away from implementation and concentrate on policy development, giving guidance and advice to local governments, and oversight and arbitration

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7   Decentralization used to be limited mainly to urban areas, and was mostly administrative in nature (e.g. councillors were appointed). Similarly, local governments are sometimes presided over by an administrator appointed by central government, instead of an elected mayor (e.g. in Ghana).

8   A law becomes effective only when the necessary decrees and administrative procedures are in place. Fiscal decentralization, for example, can be hampered by a lack of procedures to transfer funds to the local government level and monitor them there.

countries, local governments are allocated a part of the overall budget/ investment and running costs in line with their respective mandates (e.g. Rwanda, Uganda), while in other countries they receive only a small subsidy for operational costs (e.g. Mali, Burkina Faso, Benin, Niger). Local government development funds are being set up in a number of countries (e.g. Mali, Benin, Burkina Faso).

Increases in the collection of local taxes are another possibility. The exploitation of firewood, timber and grazing lands can be sources of tax revenues for local governments. In some countries, local governments have begun to engage in setting up land registration, knowing that this will provide a basis for taxation (e.g. Benin, Madagascar)[9]. Giving permission for the conversion of agricultural lands into building plots can also be very profitable for local governments, but unfortunately these projects are often not a showcase for responsible land governance. These conversions can also be detrimental to rural livelihoods when farmers lose good quality land without adequate compensation (Bagré *et al.*, 2003). With respect to land administration, some rural local governments have become a repository for land transaction deeds and act as a witness to these, for which they are paid (e.g. cases in Benin, Burundi, Rwanda). Finally, the need to collect taxes locally is stimulating some councils to communicate better with citizens, and demonstrate their good performance and transparency (e.g. Mali, Benin and Niger).

Rural local governments tend to operate at the interface between formal and informal institutions. Although legal, rural municipalities are not automatically perceived as legitimate in the eyes of local people. With respect to local government staff and councillors, the former *administré* will not immediately be considered as 'citizens', while the latter may also not behave as citizens, that is acknowledging both their rights and their obligations. The establishment of local governments can

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9   The possibility of collecting fees for registration is also used as an incentive in Madagascar to engage local government. Meanwhile a new law in Burkina Faso stipulates that taxes only have to be paid to local government when the rural land is not used.

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also result in taking over responsibilities of villages, which the latter may perceive as centralization. Particularly, changes to decision-making regarding the allocation and management of land and natural resources can be sensitive.

Local governments involvement in land related issues

The emergence of rural local governments offers opportunities to strengthen the decentralized management of common lands (Ribot, 2002 and 2004). Land use planning, promoting sustainable natural resource use and environmental management are generally part of the mandate of local governments. But, these prerogatives tend to be weakly developed, both legally and with respect to capacity building and methodology. Still, the growing discretionary space for local governments may give new impetus to territorial planning, such as clarifying land use and placing local development planning in a broader spatial perspective, including rural–urban synergies (EC, 2007).

Certain local governments have prepared by-laws on land use and common pool resources may even be registered in their name (e.g. Niger, Ethiopia). In some countries, local government is also responsible for the management of small-scale irrigation schemes and drained wetlands in valley bottoms (e.g. Rwanda, Burkina Faso, Benin). Even when lacking a formal mandate, local governments are becoming involved in regulating resource use and the management of commonly-used lands, often at the request of local land users. The main reason for this is that local governments are in charge of keeping the peace and preventing conflict (Hilhorst, 2008).

Within the context of CBNRM-type initiatives, new local management structures were often set up. The emergence of local governments requires a reassessment of this approach as these may drain local government of authority and resources (Gaventa, 2002; Ribot, 2003). Like central governments, local governments are also not well placed to engage directly in natural resource management. Best practice would suggest that actual management should be delegated to users with a stake in sustaining these resources. Local governments would then be responsible for developing management agreements, ensuring that

The emergence of rural local governments offers opportunities to strengthen the decentralized management of common lands

equity principles are respected, and monitoring adherence to contracts and fulfilment of commitments[10].

NEW LAND POLICIES

Increased recognition of customary rights

Currently, a number of countries are reviewing land policies and legislation and introducing new approaches to land administration. Their aims are broadly comparable and address securing the rights of smallholders, encouraging more efficient and productive land use[11], and making land available to investors. Another general feature is a shift towards some form of legal recognition of customary rights (Bruce and Knox, 2009; Fitzpatrick, 2005).[12] With respect to land administration, the promotion of low cost and accessible forms of land administration is combined with more pragmatism and flexibility. Decentralization is often proposed (Place, 2009).

The approach chosen varies from one country to another. In new land policies, an inventory of prevailing rights is often included, followed by registration. Despite interests in uniformity, the implication is that the types of rights registered may differ from one locality to another (this is explicitly acknowledged in the land policy of Burkina Faso). These inventories may cover all rural lands or only fields, and may include rights related to ownership and occupancy rights, or address a broader set of rights. However, declaration and registration of rights entail a form of codification and fixation (Le Meur, 2006). Challenges may also emerge around the definition

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10   Experience with this type of contracting out, involving local governments and local committees (or the private sector) is developing in other sectors, such as for drinking water (e.g. Benin).

11   What 'productivity' implies depends on local development models. The question is how acknowledgment of 'rights' on the one hand and 'productivity and investment' on the other are being combined, and what the combination implies for the rights of rural poor.

12   This is possibly partly the result of the large body of research and the many international conferences that have shown that customary systems are not a source of insecurity *per se,* and actually form the basis of many land administration and dispute resolution systems in rural areas all over the world.

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of 'rightholders' and derived rights concerning access. These latter rights tend to be held by groups with a weaker status in society, like women, pastoralists, migrants, former slaves and younger brothers. Customary resource tenure systems may include forms of discrimination and exclusion. Moreover, the registration process can be associated with a reconfirmation of perceptions of long-held rights, even though society may have evolved[13]. Latent disputes will flare up when local actors realize that via registration, land rights will become definitive (Benjaminsen *et al.*, 2008).

Registration may be followed by the issuing of a certificate without costly surveying (e.g. Ethiopia, Niger), or with a lighter form of surveying (e.g. Rwanda). Some countries only register at the request of individuals (e.g. Madagascar, Burundi), or communities (e.g. Benin, Niger). Local governments can also suggest registration (Niger again). Other countries roll out programmes that aim to cover all fields (e.g. Ethiopia) or all land (e.g. Burkina Faso). Archives of land information may be kept at the village level only (e.g. Tanzania, Malawi), at the local government level (e.g. Burkina Faso, Ethiopia) or may be fed into a nationwide database (e.g. Madagascar).

Although countries follow their own path, there are also shared sources of inspiration. For example, the approach now being tested in Burundi around *guichet foncier* at the local government level is based on experience gained in Madagascar. The '*plan foncier rural*' was developed in Ivory Coast, Benin and Burkina Faso, and influenced new land policy in the latter two countries.

The challenge for more recognition of customary rights may be to mobilize political support and sufficient resources to ensure large-scale implementation of new land policies. Given the complexity and sensitivity of land policies, a progressive approach and adaptive management is required for implementation, such as using the results from pilots, and continuous dialogue and monitoring of progress, as stepping stones before going large scale. Capacity building is another key activity and should address technical

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13 AFD, GRET, Landnet, CEBEDES. Atelier d'échanges sur la gestion foncière à l'échelle communale. 20–24 October 2008, Cotonou. (Available at: http://www.foncier-developpement.org/vie-des-reseaux/le-projet-appui-a-lelaboration-des-politiques-foncieres/atelier-dechanges-sur-la-gestion-fonciere-a-lechelle-communale)

aspects of the resource tenure system as governance issues. Those concerned include professionals within the relevant ministries and services, members of commissions, local government councilors and staff, local-level courts, and (informal) mediators.

Cost efficiency and recovery need to be addressed too. Involving local institutions can be a strategy to shift some costs to communities and local governments. A related issue concerns what part of the services the users should pay for. Similarly, what will be the contribution from local and national government, including an assessment of the risks related to accessibility and continuity.

Finally, the possibility for a kind of formalization of their rights over rural lands by groups (such as clans or even communities) seems barely developed in the land policies explored for this paper[14]. Group rights may be a faster way of recognizing and securing rights, particularly where there is pressure from 'investors' or other external pressure. This is also important for compensation. Assessing the possibility of securing group rights over rural lands needs more attention (Cotula *et al.*, 2008). Most experience seems to exist with respect to collective rights for common lands[15] .

Group rights may be a faster way of recognizing and securing rights, particularly where there is pressure from 'investors' or other external pressure

Common lands

The treatment of common lands varies in the new land policies. Common lands are part of the registration process in Burkina Faso and Niger, but not included in Madagascar. However, if the registration of fields is limited to cultivated plots and not accompanied by measures to protect rights to forested land and grazing lands, degradation of natural resources may accelerate, or these resources may no longer be accessible to the landless. In

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14 Mozambique is not included in this paper because elected local governments only exist in urban areas. The members of district councils are appointed. Districts tend not to be very downwardly accountable, and they facilitate commercial interests. Communities in Mozambique can register land collectively following a participatory process often facilitated by NGOs. What constitutes a community and who its representatives are depends on local realities and institutions. Alongside communities, investors can also register land. (Wit, 2002).

15 Several countries in Latin America provide examples of collective titling of the rights of indigenous peoples.

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northern Ethiopia many collective grazing lands have been individualized; in southern Ethiopia, farmers decided to convert their forested lands into fields to secure claims over the land (DiGrazia & Dupuy, 2009).

Current linkages between these 'new land policies' and existing legislation concerning forests, grazing lands, fisheries and other natural resources, or legislation related to 'community based natural resource management', is often missing. In practice, it may be up to local governments to bring together these various strands of legislation and policy.

Table 1

A comparison of the involvement of local level committees in rural land administration

| | ESTABLISHMENT OF AN ELECTED RURAL LOCAL GOVERNMENT (LG) | APPROVAL OF LAND POLICY | REGISTRATION INCLUDES COMMON LANDS | ESTABLISHMENT OF LOCAL COMMITTEES | LEVEL OF COMMITTEE | | MAIN TASKS OF COMMITTEE | | | |
					LG	community	inventory	registration	verification	mediation
Rwanda	2000	2005 OLL	N	Y		*	*	*	*	
Ethiopia	2001 (more autonomy)	1998–2005 (regional) 2005: federal	N	Y		*	*			*
Tanzania	1996 (more autonomy)	1999 Village land act	Y	Y		*		*		
Madagascar	1995	2005 PNF	N	Y	*				*	
Burundi	2005	Land policy 2008	N	Y	*				*	
Burkina Faso	2006	2009	Y	Y		*	*	*		*
Mali	1999	In preparation	?	Y	*					*
Benin	2003	2008	Y	Y	*	*	*			
Niger	2004	1993	Y –LG level	Y	*	*	*	*		

Sources: Bruce, 2007; Hilhorst, 2008; Kanji *et al.*, 2005; Le Meur, 2006; Mamalo *et al.*, 2007; Ministere de l'Agriculture, 2008; Odgaard, 2006; Sagashya and English, 2009; Teyssier *et al.*, 2009.

ENGAGING LOCAL INSTITUTIONAL ACTORS

Structures

Deconcentration and devolution is on the agenda of ministries engaged in policies related to land and natural resources. This interest is partly in response to institutional reforms and is also aimed at arriving at decision-making that is more sensitive to local needs, resulting in more efficient service delivery. Such moves towards greater decentralization are also opposed within these ministries. Staff responsible for land administration are 'entrenched stakeholders with vested interests in existing systems' (Bruce & Knox, 2009).

Deconcentration of land administration can be costly, as became clear in Uganda (Bruce & Knox, 2009). Relying mostly on an extensive network of deconcentrated land administration services is an option only when

1. these services are not too demanding of technology and skilled labour, and
2. a gradual introduction of survey and registration technology is foreseen in line with requirements for more precision (Bruce & Knox, 2009).

The role of central level land administration services will then shift away from implementation, towards overseeing and validation, developing capacity building, and providing advice.

One reason why the possibility of working with local institutional actors is explored is because of the costs and complexities of deep deconcentration. Several options are possible for engaging other kinds of local institutions, which may be chosen from:

→ Local governments
→ Local-level land committees or commissions composed of selected, elected or appointed volunteers and which are responsible for:
    → assisting with land administration
    → the management of common lands.
→ Customary authorities.
    We will consider these in turn now.

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Local governments

Where local governments exist, they tend to be increasingly formally included in the implementation structure of land administration (see Table 1). Local governments may be in charge of land registration, with support for, land administration services (e.g. Ethiopia); they may employ staff that keep records of transactions (e.g. Benin); they may host decentralized land administration services (e.g. Madagascar, Burundi, Rwanda) or they may facilitate land administration.

Depending on the options taken, the private sector or NGOs may also play a role in service delivery in relation to land registration (measurement, mapping etc.), land use planning, archiving, conflict resolution and more.

Generally, a combination of deconcentration and devolution is envisaged, with the various actors having to work in partnership (see Table 1). A number of structures and actors must therefore work together for the new land administration systems to perform well, perhaps even beyond their basic legal obligations. These include the deconcentrated agencies, local government, land committees, traditional authorities, projects and programmes, NGOs, courts, mediators and investors. A more pivotal role for local government in land policy and land administration can facilitate coordination and dialogue amongst stakeholders. Equally, local governments may have experience in establishing forums for consulting citizens; these can be used to promote dialogue around land issues.

The contribution of local governments to securing tenure rights needs not be limited to supporting land policy implementation. They may also play a role in encouraging additional local responses aimed at reducing insecurity and conflict, such as promoting the marking of boundaries using locally available materials (e.g. tree planting, stones) following transactions or an inheritance settlement. They can encourage systematic and complete recording of transactions, such as making forms available for recording transactions, acting as witnesses, and safeguarding a copy of the deed. They could assist with the functionality of local courts (providing transport etc.) or make sure that people are informed about the implications of polygamous marriages where these are not officially recognized (e.g. Burundi).

The private sector or NGOs also play a role in service delivery in relation to land registration, land use planning, archiving and conflict resolution

Around 1990, Benin, Burkina Faso, Mali and Niger all decided to introduce devolution in public administration in response to severe political crisis, which had delegitimized centralized government. Rural elected local governments were installed in Mali for the first time in 1999, in Benin in 2003, in Niger in 2004 and in Burkina Faso in 2006.

The approach towards land governance differs across these four countries, which are broadly comparable in terms of ecology, farming systems and customary tenure systems. Niger approved the *code rural* in 1993, and the establishment of local governments has given a boost to the implementation of the code. Before 2004, code rural activities were confined to some pilot areas only.

The Burkina Faso land policy was marked by a distinction between rural and urban land (*reforme agraire et foncier*); the policy was overhauled in 2009. The new policy includes a village level inventory of rights. The parliament in Benin voted a new land policy in 2007, which also foresees village level land inventories and registration. Implementation in selected communities has started. In Mali, consultations around a new land policy began in 2009 and are piloted by the Ministry in charge of urbanism and domains. Meanwhile, extensive consultation around tenure and management of rural lands already took place (2007–2008) within the context of the *loi d'orientation agricole (LOA),* and the decree for the '*commissions foncières*' is already approved.

The use of village level committees to assist with the implementation of land administration is foreseen in all four countries. They may be involved in the inventory of rights and land administration work. In Mali, conflict management seems to be the main task. In Niger, however, this task is explicitly not part of the committees' prerogatives as it may blur responsibilities.

Box 1
**Benin, Burkina Faso,
Mali and Niger:
Comparing land
governance choices**

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Community-level committees

A common trend found in all the countries analysed for this paper is the establishment of a local committee of volunteers at the village and/or local government level. These committees of volunteers will play a key role in the implementation of new land policies and make it possible for central government to achieve scale at low cost. These new structures are expected to facilitate the creation of rights inventories, the marking of boundaries, registration of land, recording transactions and safeguarding deeds. In some countries, committees are also expected to play a role in mediation and reconciliation around land-related conflicts (see Table 1). Members of these committees may be elected, proposed by the community, or appointed. In most countries, customary authorities are encouraged to become members or to collaborate with these committees. Examples of such committees are the Land Administration Committee (LAC) in Ethiopia at the *kebele* level, the *commissions foncières* at village level in Niger, the *commission de reconnaissance locale* in Madagascar and the land adjudication committees (cell level land committees and sector level land committees) in Rwanda.

The status of these committees and their relationship with local governments and the ministries responsible for land administration or with their respective judicial systems, vary across countries. Formally, these committees may be linked either to land administration agencies or to local governments. Attention needs to be paid to their status, mandate, composition, working methods, capacity building, accountability and oversight. Making sure that women are part of these committees has proven to be important for equity in Ethiopia (Askale Teklu, 2005).

Customary authorities

Traditional authorities have been, and often still are, very cost effective in delivering services around land administration (Bruce & Knox, 2009). Formally engaging customary authorities in land administration is rare, though there are a few exceptions. The position of customary chiefs is explicitly acknowledged in a few countries only (e.g. Ghana and Uganda). With respect to the common lands, however, development organizations

and also government bodies actively seek collaboration with customary authorities to regulate the use and management of natural resources.

The legitimacy of customary leaders varies from place to place and may change, particularly when land becomes a commodity. Customary authority can also be reconstructed, with chiefs changing from trustees into owners to capture benefits, or reinvented. It can become a source of abuse (Alden Wiley, 2008; Sjaastad & Cousins, 2008). However, the re-emergence of customary chiefs in land tenure systems has drawn criticism. It is argued that these institutions do not follow (formal) democratic procedures, that they may confirm the position of local elites and tend to exclude certain groups (Ribot, 2003; Whitehead & Tsikata, 2003). Therefore, engaging customary authorities is a strategy that should be pursued with caution and realism (Bruce & Knox, 2009).

LOCAL LAND GOVERNANCE

The way that land tenure systems are governed influences how benefits, costs and risks are distributed. Moreover, resource tenure institutions only enhance security when they are trusted. For formal land administration to be useful to the rural poor, services need to be appropriate, accessible, predictable and reliable. Appropriateness implies responsiveness to local requirements and circumstances. Accessibility concerns issues such as proximity, language, costs. Accessibility is also about awareness amongst potential clients of the services on offer. Rural land users therefore need to be informed about rights, responsibilities, procedures and appeal mechanisms. Information and communication campaigns that are extensive and continuous are essential (Cotula *et al.*, 2008). Regarding predictability and reliability, land users need to be sure that the application of procedures is correct, consistent, just and transparent, and that service delivery is not interrupted.

Weak land governance can discourage investments in land and sustainable resource use, and may contribute to the emergence of conflict, ultimately affecting broad-based economic growth (FAO, 2007). Occurrences of weak

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land governance may involve administrative negligence, abuse of authority, and corruption, all of which may contribute to inequity (see also World Bank, 2010). The more marginal and vulnerable groups in society are most at risk, even so far as losing their rights[16]. Given that control over land and natural resources is a source of wealth and power, attempts to 'grab' land occur at all levels. One of the challenges for land administration is where the elite takes undue advantage of the system or uses political interference to improve its land holding position.

Promoting responsible governance of land and natural resources is therefore also a challenge at the local level. In order to strengthen local institutions engaged in land governance, the following aspects need to be kept in mind (see also Hilhorst & Guijt, 2006):
→ performance, efficiency and effectiveness of service delivery
→ transparency, checks and balances
→ equity
→ coordination and collaboration.

Strong and robust institutions, mechanisms and procedures that enhance transparency and accountability should be at the core of land administration systems. Multiple oversight systems –internal and external, formal and informal – need to be in place. Mechanisms should include systematic oversight, regular inspections and audits, and complaints and appeals procedures that are known to potential users, accessible and relatively fast. Engagement of users, organizations in civil society and the media in monitoring local land administration should be an intrinsic part of the approach (Hilhorst & Guijt, 2006).

With respect to responsible land administration, initiatives to support and enhance well-governed land administration institutions can build on

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16 Responsible land governance is an important element underlying social and economic developments in both urban and rural areas, and is also a condition for achieving the Millennium Development Goals (MDGs). Therefore, UN agencies, civil society organizations and individual countries proposed in 2008 to develop voluntary guidelines on responsible governance of land tenure. These set out principles and internationally accepted standards for responsible practices, as has already been promulgated for the 'right to food'.

ongoing initiatives towards improving local governance in general. These initiatives engage local governments, citizens, service providers, community-based associations and customary authorities, and operate in the wider context of devolution[17] programmes. Councillors and staff are assisted in improving coordination, information, communications, transparency and citizens' involvement, and promote the voice of citizens and their organizations. Transparency of financial management is promoted as are service level agreements, participatory monitoring, public hearings, budget tracking, and performance assessment via citizen score cards (Ackerman, 2005). Experience with using the range of approaches and instruments can also be applied to improving the governance of land administration institutions and service delivery.

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17 Numerous programmes supported by the United Nations, multilateral/bilateral donors and NGOs, focus on improving transparency and accountability.

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CONCLUSION

New policies around land and natural resources can provide openings for the decentralized administration of land and natural resources, contribute to stronger formal recognition of existing resource tenure systems, and enhance legal protection of local land rights. However, other components of these new land policies emphasize productive use of land and the importance also of promoting investment in land by new actors such the business sector, which can result in the over-ruling of local rights. Therefore these two aspects of new land policies need to be balanced and progress together, to enhance tenure security and ensure that investments are also to the benefit of the majority of the local population. The challenge will be in mobilizing political support and sufficient resources to ensure a balanced implementation of new land policies.

Enhancing local tenure security on a massive scale requires the engagement of local institutional actors. Particularly, rural local governments can play an important role. Sections of this paper have addressed the potential contributions of local government in enhancing the accessibility and appropriateness of land-related services. However, in reality the track records both of staff and councillors are more ambiguous with respect to the allocation of public land[18].

Building sustainable institutions and mechanisms takes time. But time tends to run out in those areas where perceptions of insecurity are increasing fast. The prospect of (or rumours about) large-scale land acquisitions can erode tenure security. 'Half-way house' approaches, which can be applied rapidly but which may not yet provide ideal security, may nevertheless be required[19]. A 'group rights' approach is one example. Whichever approach is chosen, protection of the position of marginal groups needs special attention to ensure pro-poor outcomes in land registration processes.

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18 Trust is affected by a lack of transparency around the conversion of rural lands into residential plots, and misuse of public lands.

19 They may even ensure that present land holders and users are properly compensated.

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