



*An Association for the Improvement of  
Land, Water and Natural Resource Governance*

45 bis Av. de la Belle Gabrielle, 94736 Nogent sur Marne, Cedex, FRANCE  
Tel: 33 (0)1 43 94 72 59, Tel/Fax: 33 (0)1 43 94 72 74

## *Proposal Paper*

# *LAND POLICIES AND AGRARIAN REFORMS*

**English Version**

**November 2007**

Michel Merlet

[agter@agter.org](mailto:agter@agter.org)

<http://www.agter.asso.fr>

## **AGTER. An Association for the Improvement of Land, Water and Natural Resource Governance**

AGTER association was created in March 2005 to contribute to the improvement of land, water and natural resource governance worldwide, and to assist with the application of new forms of land and natural resource management, in line with what is at stake in the 21<sup>st</sup> century. Therefore, AGTER aims to promote a permanent, thought-provoking and instructive process with the collaboration of farmers' organisations, civil society groups and other interested actors.

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Tel: 33 (0)1 43 94 72 59

Tel/Fax: 33 (0)1 43 94 72 74

Email: [agter@agter.org](mailto:agter@agter.org)

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**IRAM** Institut de Recherches et d'Applications des Méthodes de Développement, 49 rue de la Glacière, 75013 Paris, France.

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<sup>1</sup> The APM network brought together 600 people from NGOs, think tanks and farmers' organisations in fifty countries. With the support of the Charles Leopold Mayer Foundation, they have been working for more than 10 years on several strategic subjects (land policies and agrarian reforms, farmers' and indigenous peoples' organisations, training union leaders, sustainable agricultural development, fishing, genetically modified organisms and "patenting" life, food and nutritional rights, regional integration, the World Trade Organisation and world governance, assisting local decision-making bodies). Furthermore, several continental networks were set up: APM-Africa, RIAD Latin America and the Agriculture Forum of Central and Eastern Europe. The network operated in a flexible and often informal way.

The **Proposal paper on land policies and agrarian reforms** is based on discussions with researchers, development workers and representatives of farmers' organisations.

The main questions were grouped together on four occasions: during a workshop at the World Social Forum organised with CONTAG at Porto Alegre (Brazil) in January 2001, in Spain during the meeting of the APM network in May 2001 at Castelfabib, at Havana (Cuba), in September 2001 during the World Forum on Food Sovereignty and during the workshop organised during the World Social Forum of February 2002 by IRAM with the participation of VIA CAMPESINA.

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The responsibility for the shortcomings and mistakes in this paper is wholly our own and we thank our readers in advance for sending their observations to us, so that we may take them into account for future versions.

The paper is divided into three parts:

1. an **analytical part**, which considers the **main current debates** on the issue of land in rural regions, and presents the **major proposals** stemming from them.
2. **support documents: experience records and interviews** with resource persons about situations illustrating several key issues.
3. **appendices**: website references on the issue of land, and several DPH (Dialogues for the Progress of Humankind) records directly related to the subject.

This paper was designed to help small farmers' organisations and people working on this issue around the world gain an overall view of the problems involved and identify rewarding experiences in contexts that may be very different from their own, and for which information is not readily available. This paper certainly does not provide procedures or ready-made solutions. Rather, its purpose is to contribute to the development of original strategies for managing land resources adapted to each situation.

The complexity of the issue at hand and the diversity of situations worldwide are such that this document can be neither exhaustive nor definitive. Consequently, it has been designed as a working document in several steps. It is to be completed and enhanced by the inclusion of new experience records covering situations and subjects that could not be included in this edition. These texts will be accessible in several languages on AGTER's website [<http://www.agter.asso.fr> and <http://www.agter.org>], within an interactive interface permitting periodic adaptations and updates in accordance with the needs of its users.

Paris, November 2007

## **General contents**

Part I. ISSUES, DEBATES AND PROPOSALS.

Part II. DOCUMENTS FOR DISCUSSION.  
Experience records

Part III. APPENDICES.  
INTERNET SITES  
DPH Records  
References.

# PART I

## ISSUES, DEBATES AND PROPOSALS

(Michel Merlet)

<b>OBSERVATIONS AND GENERAL REFLECTIONS BY WAY OF AN INTRODUCTION.....</b>	<b>7</b>
<b>A. Land remains a major cause of conflicts and problems.....</b>	<b>7</b>
<b>B. Is land a commodity?.....</b>	<b>7</b>
1. Land, a good unlike others .....	7
2. Absolute ownership of the ground, a myth without innocence .....	8
3. "The satanic mill" .....	8
<b>C. The administration of property rights and the arbitration of conflicts.....</b>	<b>9</b>
<b>THE ISSUES DEBATED TODAY .....</b>	<b>12</b>
<b>A. First Question: how might the rights of land users be secured?.....</b>	<b>13</b>
1. Origins and grounds of rights .....	13
2. The different systems of recording and validating rights .....	14
3. Building local management mechanisms in order to empower rural populations .....	24
4. A critique of key concepts pertaining to land rights is now necessary .....	28
1. A prerequisite: the advantages of family farming .....	29
2. Can the market alone ensure an optimal reallocation of land? .....	30
3. Access to property by colonising virgin land .....	32
4. Agrarian reforms .....	33
5. Agricultural policies for optimising agrarian structures .....	37
<b>B. Question Three: the recognition of cultural and historic diversity and territorial management .....</b>	<b>40</b>
<b>PROPOSALS.....</b>	<b>42</b>
<b>A. 4 elementary proposals.....</b>	<b>42</b>
1. Rehabilitating agrarian reform in the case of very inequitable access to land.....	42
2. Regulating land markets and managing land structures .....	44
3. Thoroughly decentralise the mechanisms for administering individual property rights.....	45
4. Set up decision-making bodies for managing common resources at the territorial level .....	45
<b>B. What should be done to ensure that these policies are applied?.....</b>	<b>46</b>
1. Set up an experience exchange network between farmers' organisations.....	46
2. Education and research-action on land issues with farmers and rural inhabitants.....	46
3. Lobbying to influence financiers and decision-makers .....	46
4. Build new alliances.....	46
5. Link land issues and the fight against poverty and inequalities.....	47

## LIST OF BOXES

<i>Box # 1 The world as merchandise, a dangerous fiction. Extracts from The Great Transformation, Karl Polanyi. 1944.....</i>	<i>10</i>
<i>Box # 2 An example of the insufficiency of customary laws regarding changes in the economic context of the Ifugao, an indigenous community (Luzon, Philippines) .....</i>	<i>12</i>
<i>Box # 3 Two examples of information systems on tenure rights.....</i>	<i>15</i>
<i>Box # 4 The TORRENS system and its variants (from J. Comby and J. Gastaldi ) .....</i>	<i>16</i>
<i>Box # 5 The Rural Land Plan in Ivory Coast. Interest and limitations (1/2) .....</i>	<i>18</i>
<i>Box # 6 The Rural Land Plan in Ivory Coast. Interest and limitations. (2/2).....</i>	<i>19</i>
<i>Box # 7 Two opposing approaches to the recognition of rights in the former French and British colonial empires in Africa. ....</i>	<i>20</i>
<i>Box # 8 The extent of tenant farming in selected countries on three continents .....</i>	<i>23</i>
<i>Box # 9 The status of tenant farming in France.....</i>	<i>22</i>
<i>Box # 10 Women's rights to land in Central America and the Caribbean: Honduras, Nicaragua and the Dominican Republic .....</i>	<i>24</i>
<i>Box # 11 An original way of managing land ownership in Mexico: the ejido. Origins and operation.....</i>	<i>26</i>
<i>Box # 12 Farm size, production and productivity in the United States of America, 1992. ....</i>	<i>30</i>
<i>Box # 13 The superiority of family farming in developing countries.....</i>	<i>30</i>
<i>Box # 14 New procedures of land concentration in Argentina (from Jorge Eduardo Rulli, April 2002) .....</i>	<i>32</i>
<i>Box # 15 A few examples of land policies in Western Europe .....</i>	<i>39</i>

## Observations and general reflections by way of an introduction

### A. Land remains a major cause of conflicts and problems

Links can often be made between the land tenure situation, economic well-being and governance: countries that have undergone sustainable economic development and which are the most democratic are also the countries that have a relatively egalitarian distribution of land. As in the past, many of the world's conflicts are still more or less directly related to land issues.

In a general way, these conflicts can be grouped into three related types:

- very unequal distribution of land, leading to the implementation of agrarian reforms;
- insecure access to land or resources: non-recognition of customary rights, lack of guarantees for tenant farmers<sup>2</sup>, share-croppers, insecure rights of natural resource users, etc.;
- social and ethnic groups' claims for the right to exercise power over a territory. This is the typical case of territorial claims made by indigenous peoples, and also of claims with historical roots and sometimes religious and cultural connotations.

These issues have given rise to a large number of works, though the reflections and proposals resulting from them generally remain quite segmented. Our purpose is to align diverse situations on different continents and to assemble subjects that are usually treated separately. Thereby, together we can formulate innovative proposals that not only move the debate forward, but more importantly increase the capacity for proposal held by the organisations representing the farmers and communities concerned, in order to contribute to speedy and sustainable solutions for a number of land-related conflicts today.

The sole aim of this paper is to contribute toward furthering this cause.

### B. Is land a commodity?

*"What we call land is an element of nature inextricably interwoven with man's institutions. To isolate it and form a market for it was perhaps the weirdest of all the undertakings of our ancestors."*

Karl Polanyi, The Great Transformation, 1944.

#### 1. Land, a good unlike others

Land has at least two specificities:

1. Rights to land refer to a space, to a "territory". A piece of the Earth's crust cannot be destroyed or moved. Therefore "ownership" of land cannot be assimilated with ownership of just any object. Rights over a territory refer to the relations with other human beings liable to travel over this space or to use the resources it contains.
2. Land has the particularity of containing natural resources that are not the fruit of human labour. Thus, for example, natural fertility is not the same everywhere; "spontaneous" plant cover can also be used; the earth itself can contain water, minerals and so forth. This remains true nonetheless when another part of these resources may also result from

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<sup>2</sup> And sometimes also owners transferring rented land, cf. below.

the accumulated work of generations of farmers (fertility is not only a "natural" state).

Land rights therefore refer to relations with other humans who might travel over this space or use its resources. Thus the relationship between human beings and land is essentially a *social relationship*, a relationship between human beings based on land. For this reason, land was a primary focus of early political economists as they elaborated different theories of unearned income coming from land tenure<sup>3</sup>.

However, land rights are now bought and sold in many parts of the world. In this sense, land has become a saleable good, though one that cannot be assimilated with goods that have been manufactured for sale. This is why, as early as 1944, Karl Polanyi spoke of fictional merchandise. (cf. box #1)

## **2. Absolute ownership of the ground, a myth without innocence**

In "*La Gestation de Propriété*"<sup>4</sup>, Joseph Comby explains that land ownership can never be absolute: a simple idea whose implications are extremely important. Even in countries that have invented the right of "absolute" ownership, the latter cannot apply to the ground. (See, for example, the right in France to hunt on private property, and the myriad restrictions imposed on construction by local regulations, etc.).

As far as land is concerned, property is actually a bundle of rights. In other words, land ownership is nothing but the ownership of one or more rights and thus a landowner is merely he or she that has the most rights among all others. This leads to many possibilities; rights can overlap without causing problems, or be in contradiction with one another. This is the case in Africa, in most "indigenous" societies and even in less obvious but nonetheless concrete ways in places where private property predominates such as Europe and Latin America. Although property title deeds are often used to set the boundaries of a plot, it is the tenure rights signified rather than the surface area of the land that endows a possible exchange value.

If absolute ownership does not exist, we must therefore speak of the transformation of some tenure rights into commodities, and not of the land itself as a commodity.

## **3. "The satanic mill"<sup>5</sup>**

These preliminary observations allow us to better understand why the market and capitalist development cannot "solve" land problems alone in the interest of the greatest number of people. This leads to several consequences that although obvious are nonetheless fundamental.

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<sup>3</sup> The importance of unearned income coming from land tenure for the classical economists (especially Ricardo), reviewed and modified by Marx, is well known. The following is a brief reminder of the essential definitions of two key concepts, *differential rent* and *absolute rent*. Differential rent springs from the sale on the same market at the same price of productions from plots of land that, for the same area and with the same quantities of labour, do not all produce the same wealth. Part of these differences stem from the natural fertility of the soil, climate, and another part from the investments used in the environment, drainage, irrigation, soil improvement, etc. An owner can therefore collect this surplus by making the farmer pay a rent. The farmer will accept such rent as long as the profit he makes matches what he could obtain elsewhere. The reasoning behind absolute rent is totally different: a landowner can, due to the balance of power in his favour, demand the farmer to pay a rent, theoretically even on the poorest land, containing no differential component. Neoclassical and institutional economics have distinct approaches to land. Record # 13 of the second part of this paper provides additional elements on this subject [O. Delahaye, USA. Farm land and the law in the United States of America at the basis of the positions of the Washington Consensus].

<sup>4</sup> This article explains how the idea of land ownership has been constructed historically. In (dir. Philippe Lavigne Delville) Quelles politiques foncières pour l'Afrique rurale? Réconcilier pratiques, légitimité et légalité, Paris : Karthala, Coopération française, 1998.

<sup>5</sup> The expression is from Polanyi in The Great Transformation. Cf. box 1.



Like land and the rights associated with it, many other goods, especially those related to living organisms, are not genuine goods according to Polanyi's definition of the term since the market is unable to regulate the good's price. Likewise, goods other than land can be the sources of unearned income. Moreover, the prices of goods are not only set by markets, but also are affected by social conflicts. Therefore, prices may reflect the balance of power.

The temptation to consider economic phenomena independently from society, thereby constituting distinct systems to which the latter is subjected, is just an illusion. The dramatic consequences and dangers that this illusion entails were already blatant fifty years ago, but now they appear in new and more worrisome forms in the present era of neo-liberal dogma and globalisation.

According to Polanyi's analysis, this madness, which he thought had ended, was the cause of the profound economic and social disorder of the first half of the 20<sup>th</sup> century, including the Great Depression and the rise of fascism. It has now returned to centre stage to cover the entire world, casting a growing shadow over the future of humankind<sup>6</sup>.

### C. The administration of property rights and the arbitration of conflicts

Since the relations binding people to the land are essentially social in nature, it is logical that contradictions and conflicts occur through time between people and social groups. Since no social system is static forever, conflicts are inevitable in a social system, but rather in constant flux. They can even be *salutary and necessary*, as emphasised by Etienne Le Roy, who insists on the fact that "*what is serious in a conflict ... is the failure to resolve it, making it worsen into dispute and then drama, with tragic consequences*"<sup>7</sup>.

Therefore, in order to go beyond the basics, our reflections must constantly attempt to link together our understanding of "forms of social organisation at the local level" and land matters. Thus, it is impossible to conceive of a land tenure system in abstract form; the decision-making bodies responsible for modifying and updating land rights and those called to settle conflicts must also be taken into consideration.

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<sup>6</sup> Read Susan George on this subject in [A Short History of Neoliberalism - Twenty Years of Elite Economics and Emerging Opportunities for Structural Change](#). Bangkok: Conference On Economic Sovereignty In A Globalising World, 24-26 March 1999

<sup>7</sup> Etienne Le Roy, [La sécurisation foncière en Afrique](#). Paris: Karthala, 1996, pp. 280.

**Box # 1 The world as a commodity, a dangerous fiction. Excerpts from The Great Transformation by Karl Polanyi, 1944.<sup>8</sup>**

Here, goods are empirically defined as objects produced for sale on the market; and markets are also empirically defined as actual contacts between buyers and sellers. Accordingly, every element of industry is regarded as having been produced for sale, as then and then only will it be subject to the supply-and-demand mechanism interacting with price. (...)

The crucial point is this: labour, land and money are essential elements of industry; they must also be organised in markets; in fact, these markets form an absolutely vital part of the economic system. But labour, land and money are obviously *not* commodities. The postulate that anything that is bought and sold must have been produced for sale is emphatically untrue in regard to them. (...) None of them is produced for sale. The commodity description of labour, land and money is entirely fictitious.

Nevertheless, it is with the help of this fiction that the actual markets for labour, land and money are organized; they are being actually bought and sold on the market; their demand and supply are real magnitudes; and any measures or policies that would inhibit the formation of such markets would ipso facto endanger the self-regulation of the system. The commodity fiction, therefore, supplies a vital organizing principle in regard to the whole of society affecting almost all its institutions in the most varied ways, namely, the principle according to which no arrangement or behaviour should be allowed to exist that might prevent the actual functioning of the market mechanism on the lines of the commodity fiction.

Now, in regard with labour, land and money, such a postulate cannot be upheld. To allow the market mechanism to be sole director of the fate of human beings and their natural environment, indeed, even of the amount and use of purchasing power, would result in the demolition of society. For the alleged commodity "labour power" cannot be shoved about, used indiscriminately, or even left unused, without affecting also the human individual who happens to be the bearer of this peculiar commodity. In disposing of a man's labour power the system would, incidentally, dispose of the physical, psychological and moral entity "man" attached to that tag. Robbed of the protective covering of cultural institutions, human beings would perish from the effects of social exposure; they would die as the victims of acute social dislocation through vice, perversion, crime and starvation. Nature would be reduced to its elements, neighbourhoods and landscapes defiled, rivers polluted, military safety jeopardized, the power to produce food and raw materials destroyed. Finally, the market administration of purchasing power would periodically liquidate business enterprise, for shortages and surfeits of money would prove as disastrous to business as floods and droughts in primitive society. Undoubtedly, labour, land, and money markets *are* essential to a market economy. But no society could stand the effects of such a system if crude fictions even for the shortest stretch of time unless its human and natural substance, as well as its business organization, was protected against the ravages of this satanic mill.

Diverse land tenure administration systems exist around the world. They are related to specific historic processes. Procedures of inheritance, mechanisms for the periodic redistribution of land and wealth, the existence of bundles of rights, etc. have given rise to centralised land and wealth management systems whose foundations differ across cultures and time periods. Such differences can also be found within developed countries, and therefore do not correspond in any way to a demarcation between developed and underdeveloped societies, or between modernity and archaism. For example, in Europe, different land registers and several different ways to provide public notice of tenure rights coexist without raising irresolvable problems<sup>9</sup>.

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<sup>8</sup> New York and Toronto: Farrar & Rinhart, inc., 1944.

<sup>9</sup> Mention should be made of the example of the German Land Book in which rights are verified by a judge before being registered and the French system, which, on the contrary, is based on the strong presumption that rights result from a successive social validation of contracts between individuals. These two systems coexist in France, the first in the eastern *départements* while the second predominates elsewhere. Source: a lecture given by Joseph Comby and Jacques Gastaldi, "Les systèmes d'information foncière" in (dir. Philippe Lavigne Delville) Quelles politiques foncières pour l'Afrique rurale? Réconcilier pratiques, légitimité et légalité, Paris : Karthala, Coopération française. 1998.

Different societies also have very different dispute settlement systems. Four major types of situations can be distinguished<sup>10</sup>. In the first two cases, only the parties in conflict are involved:

- the parties can reach agreement without the dispute becoming an open conflict, each of the parties making the necessary concessions;
- they can confront each other, with the stronger overcoming the weaker.

Two other situations exist between these two extreme cases:

- the required intervention of a third party, who abides by socially accepted legal standards, and arbitrates for a settlement between the two parties.
- The intervention of a judge, who applies the existing law coercively.

As stated by E. Le Roy, *"Whereas modern Western legal and judicial culture exclusively considers the imposed order to settle disputes as soon as they reach a certain stage, Africans prefer to settle conflicts within the group from which it sprang, cii biir u deuk, or in the belly of the village as the Wolofs of Senegal told me."*<sup>11</sup>

Contrary to what is all too often accepted, there is no single, standard worldwide solution for information systems on tenure rights<sup>12</sup>, nor is there one for conflict resolution.

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<sup>10</sup> We use the classification of N. Rouland in his *Anthropologie juridique* (quoted by E. Le Roy, *La sécurisation foncière en Afrique*, Paris : Karthala, 1996, pp. 209), which distinguishes respectively *the accepted order, the contested order, the negotiated order, and the imposed order*.

<sup>11</sup> E. Le Roy, op cit. pp. 210.

<sup>12</sup> We return to this subject later on in this paper.

## The issues debated today

The contemporary rural world is characterised by several new elements:

- the international character of issues and matters,
- the speed of changes.

The globalisation of trade leads to a differentiation of types of agriculture that now occurs immediately on a large scale. The changes incurred are often irreversible. Putting farmers with very different productivity levels into competition with one another implies the ruin of entire sectors of farming around the world and growing inequality<sup>13</sup>.

The last few decades have seen a radical redistribution of land in the countries of the former socialist bloc, with the decollectivisation and privatisation of State and cooperative farms. The lack of transparency and democracy in this process raises questions. What is more, this phenomenon has occurred within a very short time and on a large scale.

Whether in Africa, Asia, Eastern Europe or elsewhere, societies no longer have the time to adapt to these changes and develop adequate regulation mechanisms. Box # 2 illustrates this phenomenon, whose consequences are often disastrous, using an Asian example.

### **Box # 2 An example of the insufficiency of customary laws regarding changes in the economic context of the Ifugao, an indigenous community (Luzon, Philippines) <sup>14</sup>**

The Ifugao are an indigenous people known for their remarkable terraced rice fields sculpted several hundred metres high into the slopes of the mountains in the north of the island of Luzon. They have developed an efficient agrarian system based exclusively on manual farming under extremely difficult ecological conditions.

A traditional practice among the Ifugaos is a sharecropping system known as "kinapiá" which permits adjustments to land access. In order to avoid dividing up the paddy field, custom states that only the two eldest sons (or daughters) may inherit their parent's plots when they marry. In return, they must ensure the subsistence of their parents.

Today, however, the eldest children are the first to leave to study and work outside the community, and most of them do not return to work in the fields. Thus, they cede their land to their younger brothers and sisters on a sharecropping basis. This is the reason why the percentage of sharecroppers in Ifugao villages is so high (often about 50%).

Given the low productivity of labour in this mountainous environment, the economic impact of sharecropping and subsequent difficulties such as in obtaining loans, are making this system unbearable for the farmers.

Since they had not adapted quickly enough, customary rules have become completely inappropriate. The processes that we have described accelerate the ruin of these growers as well as their disappearance.

Similar situations, in which customary rules and forms of social organisation are outpaced by new economic conditions, can be found on different continents, and not only in so-called "indigenous" societies.

It has become increasingly difficult for rural populations to handle the consequences of

<sup>13</sup> Cf. Marcel Mazoyer and Laurence Roudart, Histoire des agricultures du monde, Paris : Le Seuil. 1997. See also the speeches of M. Mazoyer at the World Social Forum 2001, during the plenary session and workshops.

<sup>14</sup> Cf. Michel Merlet, Land tenure and production systems in the Cordillera. Mission report for the FAO and the Ministry of Agrarian Reform of the Philippines (DAR), March 1996.

globalised trade. Furthermore, problems and conflicts related to land resources are increasing and worsening.

Two alternatives now play an essential role in the debates:

- the opposition between *private ownership* and *common property* on the one hand, and
- the opposition between *free market* and *government management* on the other.

We feel it necessary to surpass this simplistic and dichotomous vision in order to make progress in the form of useful proposals. To go further down this path, we shall examine three distinct but central questions that are nonetheless related:

- How might the rights of land users be secured?
- How might access to resources be guaranteed so as to attain the economic and social optimum for the majority?
- How might cultural and historic diversity be given recognition and territories be managed?

## A. First Question: how might the rights of land users be secured?

From the outset, we shall avoid limiting our reflection to “owners”, by attempting to take into account all the beneficiaries and users. This will allow us to highlight the points in common between different situations and treat “ownership”<sup>15</sup> as one case among others.

### 1. *Origins and grounds of rights*

The first problem that we must address is that of the origin of the rights of individuals and social groups to land. This problem in turn raises that of the recognition of actors, taking into account the different perceptions that each may have of the others and the legitimacy of different forms of organisation and action<sup>16</sup>. It is impossible to recognise the rights of groups if their identities and essential natures are ignored: therefore it is not only a legal problem, but a social one too.

Despite the risk of simplification, we distinguish two major families of grounds for land rights<sup>17</sup>:

- *Rights acquired through time*, often by the social validation within a power struggle. On the legal level, the mechanism of *adverse possession*<sup>18</sup>, (*usucapion* in Latin) is used in

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<sup>15</sup> Absolute ownership is a myth as far as land is concerned. One should speak of distinct kinds of property rights. The first draft of the universal declaration of human rights used the plural; “properties” are a right. It was changed later for the singular “property” with a completely different meaning. For a historic analysis of the genesis of this fiction during the French revolution refer to J. Comby, “L'impossible propriété absolue”, in the collective work of ADEF, Un droit inviolable et sacré, la propriété, Paris, 1989.

<sup>16</sup> Cf. André Marty, “Un impératif: la réinvention du lien social au sortir de la turbulence. Expérience du Nord Mali, approches théoriques et problèmes pratiques”, IRAM, 1997. unpublished, 33 pp.

<sup>17</sup> On this subject, refer to Joseph Comby, “La Gestation de la propriété” in Lavigne Delville, Quelles politiques foncières pour l'Afrique rurale? Paris : Karthala, Coopération française, 1998. This only concerns a right's original grounds, since a right can then be transferred by different types of transactions (purchase, gift, succession, etc.).

<sup>18</sup> Adverse possession (usucapion): it is a rule by which long-term, peaceful occupancy of a plot for a certain amount of time grants ownership rights to the occupant. Two kinds of mechanisms are frequent, an ordinary one, which requires occupancy in good faith and documentation to prove it, and the extraordinary one, which does not need to fulfil those conditions, but however requires a longer period of occupancy.

this case: under certain conditions, previous rights cease to be valid at the end of a period whose span can vary considerably depending on the country. These rights are often, though not always, in relation with the labour invested, as an extension of the right to the fruit of such labour.

- *Rights granted by the government* (title deeds, sales, donations, etc.). This case is typical of colonial situations, where the legal system seeks to institute this sort of right independently from the first case, even though the government's power to grant such rights comes under its colonial domination that was acquired through force. The basic instruments in this case are therefore the *title deed*, which serves as the grounds for the right, and the *cadastre* (land register)<sup>19</sup>.

This description would not be complete without mentioning the *ideological justifications* that can be presented as grounds for rights: thus the invocation of divine rights can take on a variety of forms. According to the solitary doctrine that is now spreading all over the planet, the universal nature of private property and ownership is asserted in a way that recalls the avowal of divine rights.

## **2. The different systems of recording and validating rights**

### Recording property rights and information related to them

Different systems for recording property rights, with and without *cadastres* or land registries, exist around the world. These systems are quite dissimilar and their differences are rooted in history (cf. box 3 and box 4).

In France, the land tenure system does not establish rights in an absolute way. Rather, it is based on a very strong presumption concerning the existence of such rights. In Germany, rights are validated beforehand by judges and are recorded in the land register. In both cases, these rights were constituted progressively through history, balances of power, trials of strength and laws, though they do not stem in the main from the handing over of title deeds by the government.

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<sup>19</sup> A *cadastre*, coming from the Greek word for list, *katastikon*, is defined by the International Federation of Surveyors (FIG) as follows: "A cadastre is normally a parcel [plot] based and up-to-date land information system containing a record of interests in land (i.e. rights, restrictions and responsibilities). It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, and ownership or control of those interests, and often the value of the parcel and its improvements. It may be established for fiscal purposes (e.g. valuation and equitable taxation), legal purposes (conveyancing), to assist in the management of land and land use (e.g. for planning and other administrative purpose), and enables sustainable development and environmental protection." FIG, 1991, cited in (editor C. Parisse) Multilingual Thesaurus on Land Tenure, Rome: FAO, 2003.

### **Box # 3 Two examples of information systems on tenure rights<sup>20</sup>**

#### The French system of information on land tenure rights<sup>21</sup>

This is based on the *cadastre* and on the mortgage registry office. These two institutions operate under the aegis of the Ministry of Finance (Tax Division). It has three basic missions: fiscal (evaluation of real estate and calculating tax bases), legal (identification of estates, owners and their rights) and technical (coordination and verification by large scale maps).

The *cadastre* was first used during the Napoleonic era for purely fiscal reasons. It simply recorded apparent owners who are liable to pay taxes. Although cadastral documents (maps and plot owners' records) do not have any official and legal force as such, their progressive involvement in the public announcement of land rights (extracts from the *cadastre* and plot numbers for spatial identification) has caused jurisprudence to concede that they have some probative value.

The French way to provide public notice of land holdings is done through the registration of deeds granting real (immovable property) rights and their transcription into public records within the local institutions responsible for recording mortgages. According to French law, the basis of a right is the succession of publicly recognised and acknowledged contracts between parties. The contracts are drawn up by notaries (deeds of sales and purchase, and other deeds related to real (immovable property) rights), and filed in the mortgage register.

#### The German system

The German land registry (Land Book) has a legal role above all else because it is where rights are validated, registered, and made available as public knowledge. The Ministry of Justice is in charge of it.

The Land Book is managed by land magistrates, who examine the substance and form of the rights before registering them. These rights cover all the existing rights within a territory, which are transcribed after having been validated in the registry<sup>22</sup>. For this reason, reference to the land registry has absolute probative force. The act of registration generates both the deed and the proof of the existence of rights before the parties concerned and third parties.

Estates are subject to obligatory demarcation of boundaries upon the initiative of public decision-making bodies. The land registry is complemented by the *cadastre*, which describes and identifies the properties. The same ministry or another may be in charge of the *cadastre*, and it also may be used for tax purposes.

This system certainly provides great security, but it is long and expensive to set into motion.

On the contrary, the Torrens system and the registration systems stemming from it were established in colonial contexts. They still differ from the land registration systems used in the colonising country: the land awarded by the colonial power (and the subsequent issuing of title deeds) constitutes the only acknowledged grounds for rights.

In Latin America, the land tenure regime established by the Spanish and the Portuguese is based on the same reasoning<sup>23</sup>, which was also that of the colonies of the Roman Empire, as

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<sup>20</sup> Cf. Jacques Gastaldi, "Les systèmes d'information foncière", in Lavigne Delville, Quelles politiques foncières pour l'Afrique rurale ? Paris : Karthala, Coopération française, 1998. pp. 449-460.

<sup>21</sup> This is the system employed in France, except for Alsace and Moselle, where the German land registry system remains for historic reasons.

<sup>22</sup> Cf. J. Comby, "La Gestation de la propriété", in Lavigne Delville, Quelles politiques foncières pour l'Afrique rurale ? Paris : Karthala, Coopération française, 1998. pp. 701.

<sup>23</sup> On 3 and 4 May 1493, only two months after Christopher Columbus' return from his first voyage, Pope Alexander VI issued two bulls by which the crowns of Spain and Portugal were accorded ownership of the lands discovered or to be discovered, to the West of a determined line. These papal decrees determined once and for all the conditions of land ownership in Latin America: the land belongs to the government (first colonial, then republican), which in turn assigns it to individuals according to its own criteria. Cf. Olivier Delahaye, "Des bulles papales à la réforme agraire : la fabrication de la propriété foncière agricole en Amérique latine", Revue Etudes Foncières # 89, January-February 2001.

emphasised by J. Comby. The same difficulties are encountered today when recognising the existence of rights that predate colonial occupation in Latin America, Africa, Asia (for example in the Philippines<sup>24</sup>) and in Oceania.

**Box # 4 The TORRENS system and its variants (from J. Comby<sup>25</sup> and J. Gastaldi<sup>26</sup>)**

Colonel Robert Torrens developed his system for Australia, at that time part of the British Empire (adoption of the Torrens Act in 1858). It was particularly easy to eliminate any prior occupation right because the Australian Aborigines were not recognised as Australian citizens until 1967. The Supreme Court of this country did not recognise them as being the "first inhabitants" of Australia until December 1993!

In a general way, common colonial practice was as such: after having discovered "virgin" land, the colonial power distributed land plots among the new arrivals. This is what happened in North America after the land was "cleared" of the Indians. Cartographic demarcations were the work of the cadastral survey, the colonial authorities awarded a unit of land to each arrival, and registration in the land registry was equivalent to possession of a title deed. Subsequent transfers of property rights were recorded in the registry. The Torrens system clarified these practices in most colonies.

Although registration is not obligatory, the Torrens system only guarantees rights to registered land. Superficially, it seems to be similar to the German land registry, since once registration has taken place, it is definitive and enjoys absolute probative force. There is no separation between the *cadastre* and the land registry, and any person requiring registration is bound to carry out a demarcation of boundaries and have surveyors draw up a map. However, this similarity is not deep-set, since the system only recognises the validity of rights granted by the government.

Other registration systems derived from the Torrens system and similar modalities exist. Some of them attempt to take into account certain customary rights, though all of them ultimately follow colonial logic.

The Torrens system perpetuates and institutionalises colonial despoilment. Nevertheless, this is the system that has been used most often as the model for international institutions in their land regularisation programmes. Thus it is easy to understand why such programmes tend to exacerbate conflicts rather than limit them.

Confronted by the evidence (particularly that of the African context), the World Bank had to recognise that private property was not always the best solution for achieving land tenure security. Although it recommended abandoning common tenure systems, dividing common land and distributing plots to private individuals (*freehold titles*) in 1975, Binswanger and Deininger reported in 1999 that the Bank henceforth recognised that certain forms of common tenure could increase land security and reduce transaction costs<sup>27</sup>. It also recognised that customary tenure arrangements were changing, that they were not necessarily archaic and that it was advisable to deal with each case individually in order to decide which form of tenure, private ownership or common property, would be the most appropriate<sup>28</sup>.

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<sup>24</sup> Cf. debate on the indigenous lands of the Cordillera (Luzon) and the legal disputes related to the recognition of the rights of indigenous communities. Merlet Michel, Land tenure and production systems in the Cordillera, Mission report for the FAO, March 1996.

<sup>25</sup> Cf. Joseph Comby, 1998, *ibid*.

<sup>26</sup> Cf. Jacques Gastaldi, "Land tenure information systems", in Lavigne Delville, Quelles politiques foncières pour l'Afrique rurale ? Paris : Karthala, Coopération française, 1998, pp. 449-460.

<sup>27</sup> Deininger, Klaus and Hans Binswanger, "The Evolution of the World Bank's Land Policy: Principles, Experience, and Future Challenges", The World Bank Research Observer, vol. 14, # 2. August 1999, pp. 247-276.

<sup>28</sup> On this subject, refer to the text published on the World Bank site dedicated to land issues called, "Questions & Answers on Land Issues at the World Bank", a document prepared for the annual meetings of the Councils of Governors of the World Bank and International Monetary Fund Group.



### Recording multiple land rights and looking for security of land rights. A few African examples

It is impossible to describe the different land rights in use in Africa on the basis of concepts stemming from Western law<sup>29</sup>. Very frequently, there are more or less exclusive rights of use that belong to distinct social groups and individuals, and which may vary during the year. In southern Mozambique, for example, land is considered to belong to the village or tribal community. Cashew trees belong to certain individuals whereas others have the right to till a field, and a distinct social group may have the right to hunt. These different rights can be transferred in diverse and relatively independent ways.

Etienne Le Roy's theory of land tenure<sup>30</sup>, which continues from research done by others<sup>31</sup>, sets out the different possible ways of regulating man's relations with land by combining different types of rights (access, extraction, management, exclusion, alienation) and different types of management of these rights (specific to a person, public, common to one or more groups as a function of procedures that can change). André Marty takes a similar perspective when defining priority but non-exclusive rights to water and grazing resources of a tribe of nomadic herders on their home grazing territory. Usually located near a water source, the home grazing territory is developed and maintained by the tribe. It is also a place where they stay regularly at certain times of the year, and which they consider as being their "country". However, other nomadic groups can also have access to the resources within a tribe's home grazing territory when passing through, just as a tribe can have reciprocal and temporary access to the homelands of other groups. (cf. record on the specific characteristics of pastoral communities in the Sahel in part 2 of this paper)

Innovative attempts have been made to comprehend such realities made up of bundles of rights. The Rural Land Plans in Ivory Coast, Benin, Guinea and Burkina Faso are illustrations. However, these approaches are complex and difficult. The example of the Rural Land Plan in Ivory Coast is exemplary. (cf. box 5 and box 6)

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Washington, D.C.: 29-30 September 2001. The Bank recognises the failure of some of its previous programmes, such as that of assigning title deeds to land in Kenya. This text is an answer to the main questions asked at the World Bank on its actions related to land. Even though the practices of this institution do not always match its declarations on paper, it is interesting to observe the changes in its discourse, which would have been unimaginable ten years ago. A more recent World Bank Policy Research Report, "Land Policies for Growth and Poverty Reduction" written by Klaus Deininger confirms this. World Bank and Oxford University Press, 2003.

<sup>29</sup> Etienne Le Roy explains in La sécurisation foncière en Afrique that the French civil code defines four statuses for land (public land, communal land, private domain, and private property). They are organised as a function of two oppositions between *thing* and *good* (non liable or liable to be converted into a commodity) and *public* and *private* (as a function of socially recognised use).

<sup>30</sup> Etienne Le Roy, "La théorie des maîtrises foncières", in E. Le Roy, A. Karsenty, A. Bernard, La sécurisation foncière en Afrique. Pour une gestion viable des ressources naturelles, Paris: Karthala, 1996. pp. 59-76.

<sup>31</sup> Including Elinor Ostrom and E. Schlager "Property Rights Regimes and Natural Resources. A Conceptual Analysis," Land Economics, August 1992.

**Box # 5 The Rural Land Plan in Ivory Coast. Interest and limitations (1/2)** <sup>32</sup>

The implementation of the Rural Land Plan in Ivory Coast started with a pilot project (1989-96). The pragmatic and prudent method used is novel insofar as it is a bottom up method, contrary to usual normative approaches. The Plan aims to record existing rural land rights, by fixing boundaries on a map scaled to 1/10,000<sup>th</sup> and by filing a description in a register for each plot. All the rights as perceived by villagers, the administration and customary authorities are recorded, from use rights to ownership rights, with the agreement and active participation of the parties involved, and without modifying, simplifying or standardising the content. The surveyors record land disputes and simply designate the areas in dispute on the map. They do not attempt to solve any disputes.

The field surveys of property rights are public and contradictory, with minutes being written and signed by the farmer concerned as well as by his neighbours. The results of the surveys are made available during public village meetings, followed by an announcement period lasting three months, during which the results of the surveys are open to objection or correction. The definitive documents are drawn up only after the period of announcement. Their application and maintenance must be effectuated by village committees that are created for this purpose.

In practice, a certain number of technical and linguistic problems arose. For example, the terms for local rights and rules are often difficult to translate into French. Further problems came about because of the administrative procedures inherent to statutory concession; the land requests that could be made on the basis of the land surveys and the certificates issued to the bearers of rights. Recording was done on a plot basis instead of a whole "farm" basis. This made it difficult to take into account the full spectrum of arrangements related to land (delegated rights, rights of non-natives possibly transferable by inheritance, sometimes combined with temporary access in the form of sharecropping to native beneficiaries, temporary transfers, security use, tenancy, etc.).

Nonetheless, the project's philosophy, which questioned the State' ownership of unclaimed lands, generated much opposition. As a result, the rights that had been recognised officially were considered above other rights during the registration process. Another substantial concession was that the Ministry of Agriculture was in charge of keeping and implementing the land tenure maps.

The Ivory Coast Rural Land Plan not only showed that it was technically possible to take into account bundles of rights in the constitution of what could be called a "customary *cadastre*", but also demonstrated that the real problem was in local governance and the social capacity to manage land and resources. We shall return to this subject further on.

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<sup>32</sup> Sources: J. Gastaldi, "Les plans fonciers ruraux en Côte d'Ivoire, au Bénin et en Guinée"; J.P. Chauveau, PM. Bosc, M. Pescay, "Le plan foncier rural en Côte d'Ivoire", in Quelles politiques foncières pour l'Afrique rurale? Paris : Karthala, 1998 ; V. Basserie, KK Bini, G. Paillat, K. Yeo, "Le plan foncier rural: la Côte d'Ivoire innove ..." Intercoopérants, Agridoc # 12.

**Box # 6 The Rural Land Plan in Ivory Coast. Interest and limitations (2/2)**

Even though the administration expressed some reservations, individual users were issued receipts and then extracts of the survey once the Pilot Plan was implemented. However, no comprehensive document confirming land rights was issued to the villages. The failure to set up a local authority responsible for permanently updating the land files was another considerable problem because without one, the system was nearly impossible to manage. Furthermore, the lack of such a local authority signed away any possibility to improve local governance over land management.

Although the project showed that it was technically possible to inventory plots and their associated rights at a relatively low cost (estimated at \$6-15 US per ha or 25-58¢ per 100 acres) if the plan is implemented nationally), it also showed that this type of operation can be a hollow affair without clear political backing.

The Rural Land Law voted in 1998 (*Loi sur le domaine foncier rural*) was a victory for the supporters of centralised government land management and privatisation of land resources according to Western conceptions of ownership. It entailed a generalised land registration system. Registration must be demanded no later than three years after the handing over of land right certificates. Land access was limited to the State, local authorities and persons of Ivory Coast nationality, leaving unsecured use rights only to non-naturalised residents of foreign origin, who have not yet obtained the Ivory Coast nationality<sup>33 34</sup>.

Using distinct methods, the Niger's Rural Code as well as the GELOSE project with the Relative Land Security program in Madagascar also attempted to allow for secure and multiple rights (bundles of rights) over the same land.

Begun in the 1990s, the approach developed for the Rural Code in Niger required much discussion between different social groups. Land Commissions apply this policy through a gradual process entailing the recording, making public, and updating of the different rights of users at the local level. The commissions are made up of customary authorities who play an important role in land management, as well as members of various administrative departments and the representatives of different users. Since they operate on a larger geographic base, the commissions involve a collaboration of neighbouring chiefdoms. The process is far from being complete: the recognition of nomadic herdsman's rights is not yet definitive, even though new concepts were included in the Rural Code's legal texts. Positive progress has been observed in some areas, showing that this method can be efficient, especially when supported by persons not directly involved in the stakes at hand locally<sup>35</sup>. In a certain way, having started with an approach based on French legal tradition, this process in Niger is moving towards mechanisms that are closer to those of British common law (see box 7).

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<sup>33</sup> A certain number of conditions lead to the privatisation of land, on the behalf of individuals and local authorities. Lands deemed ownerless are put under state ownership. Any land not registered after a certain period of time (3 years if there has been no temporary franchise, 10 years in the case of land over which customary rights are exercised peacefully) is deemed ownerless, and is thus taken over by the State. Owners are obliged to exploit their land, or else they risk losing their tenure rights.

<sup>34</sup> This is a major political problem that goes beyond the framework of land security and illustrates a situation that often arises when land interventions get caught up in serious ethnic or political conflicts.

<sup>35</sup> This appears to be the case at Mirriah, near Zinder, where the Land Commission was decentralised into a hundred Basic Land Commissions that work to recognise land rights shared by pastoralists, herdsman-farmers and farmers. This authority has benefited from Danish and European cooperation for many years. In other regions however, establishing Land Commissions can provoke serious problems, and the effects depend on the current power play in the area and the possibility of changing it without too many conflicts, with or without external aid.

**Box # 7 Two opposing approaches to the recognition of rights in the former French and British colonial empires in Africa**<sup>36</sup>

British colonial administration in West Africa made significant use of local power structures to mete out justice, maintain order and raise taxes. With the exception of a few plantation and urban areas, most of the land was governed by indirect administration and customary law, via local courts and according to principles based on the British tradition of common law. Founded on jurisprudence, common law procedures are very flexible and permit new interpretations in the face of changing circumstances. It therefore upholds close relations with the values of the social group concerned. However, it is also liable to result in violations profiting powerful local interests, and can therefore run counter to the principles of fairness.

The legal system is very different from a coded system that defines from a central position all the rules that must be applied uniformly throughout a country.

The *common law* and *coded law* systems result from the last three or four centuries of experience in France and Britain, and cannot be understood without reference to discords originating in the 17th century English Civil War and the French Revolution of 1789.

The types of relationship between the government and the citizens, products of these countries' revolutionary histories, continue to be expressed within their own legal systems as well as within the administrative and legal systems introduced in the countries they colonised.<sup>37</sup>

In Madagascar, the Relative Land Security program deserves a closer examination for several reasons<sup>38</sup>. Christophe Maldidier's analysis reveals that this program is merely an intermediate step prior to the issuance of genuine property titles.

While steps forward have been taken in Madagascar, Ivory Coast and Niger, the ideological framework, of which absolute ownership is an integral part, endures. A more radical break from this ideology would be necessary. Consequently, systems for recording different types of rights are still far from taking into full account the complex realities of multiple rights found in many African and indigenous societies. Nevertheless, the implementation of diverse new approaches indicates that numerous obstacles have been overcome. There is clearly a real interest in this kind of system, which empowers rural societies to manage their land and natural resources.

Therefore, it is vital to continue these practices while being aware that the process is long, and requires the acquisition of a genuine social capital<sup>39</sup> adapted to the present context. The enduring security of rights for the different uses of land and natural resources can be guaranteed only through lasting efforts to establish local democratic institutions capable of ensuring the sustainable management of these rights in the interest of the majority<sup>40</sup>. (See

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<sup>36</sup> Sources: M. Mortimore quoted in P. Lavigne Delville, Rural land, renewable resources and development in Africa (bilingual French-English), Paris: Ministry of Foreign Affairs - French Cooperation, 1998.

<sup>37</sup> Differences of this type are not limited to Africa alone. Similar contradictions exist in Central America between the land administration system set up by Spain and the one established in British protectorates. This is the case of Nicaragua, where the British protectorates on the Atlantic coast and the Kingdom of Mosquitia differ from the western part colonised by the Spanish. See M. Merlet, D.Pommier et al. IRAM. Estudios sobre la tenencia de la tierra au Nicaragua, a report done for the Oficina de Titulación Rural and the World Bank in 2000. See also the two experience records by Olivier Delahaye on the approaches to land in Venezuela and the USA in part II of this chapter.

<sup>38</sup> See record # 3, part II of the paper.

<sup>39</sup> The concept of "social capital" is often used today in discourses on poverty, to refer to standards, networks and institutions that enable community action. In other words, it describes the level of organisation of a society. The French term "*capital social*" has a different meaning, since it refers to a commercial or civil company's property.

<sup>40</sup> In the recent World Bank Policy Report Land Policies for Growth and Poverty Reduction, Klaus Deininger stresses that "building local capacities is essential". He notes that "tenure security can be achieved under different forms of land ownership" and not only through "full ownership rights". He also explains that a greater focus on local institutions is warranted, as well as paying attention to create awareness and to help people exercise their rights. This is a significant change in the World Bank

below).

How to secure the rights of users who are not "owners": tenants, sharecroppers and beneficiaries of different derived rights?

In developing as well as developed countries, considerable areas of farmland across the planet are worked through systems operated by non-owners. For this reason, providing land tenure security for farmers who are not owners is a highly important matter that concerns millions of people<sup>41</sup>.

Tenant farming in its different forms (free and temporary allocation, hire, sharecropping, with infinite alterations) is practised in different situations as a function of prevailing land systems. Such practices allow for both the elasticity of tenure and adjustments that would be impossible via sales of land ownership rights<sup>42</sup>.

Continental Europe provides different and interesting examples of how the tenure of farmers and share-croppers might be secured. Denmark was at the forefront in this area when, in 1786, it adopted a modern tenant farming statute<sup>43</sup>. Legislation protecting farmers exists in most European countries, where family commercial farm production predominates. Recourse to tenancy generally tends to occur between the members of the same family, and does not play the same role or have the same implications depending on how they are affected by inheritance rules and other laws (there are two main situations which result from the legal system in place: 1) equitable inheritance between brothers and sisters, implying shared property rights among each generation, and 2) the possibility that the farm is not divided through inheritances, i.e. a sort of eldest's birthright system.

Although the historical inception of the concept of absolute ownership was in France, it is nonetheless in France where the most radical examples of tenure security for tenants and sharecroppers can be found. Adopted in the middle of the 20th century, these policies made it possible to modernise family farming in regions where tenant farming and sharecropping were common practice (see box 9).

	% farmland	Year	Source
<b>EUROPE</b>			
▪ Belgium	67	1995	1
▪ France	63	1995	1
▪ Germany	62	1995	1
▪ Sweden	45	1995	1
▪ Netherlands	30	1995	1
▪ Denmark	23	1995	1
<b>NORTH AMERICA</b>			
▪ USA	41	1997	3
▪ Canada	37	1991	4
<b>ASIA</b>			
▪ Pakistan	46	1970	2
▪ Iraq	41	1970	2
▪ Philippines	33	1970	2
▪ Indonesia	24	1970	2

Sources: 1: Ravenscroft et al. (1999); 2: FAO (1981); 3: USDA (2000); 4: FAO (2001). Quoted by A. de Janvry, K. Macours and E. Sadoulet. [El acceso a tierras](#)

analysis, as Deininger notes: "While the earlier report did not deal with institutions, it is now recognised that failure to do so can jeopardise implementation and should therefore be avoided." (K. Deininger, *ibid*, pp. 186)

<sup>41</sup> According to the FAO, the proportion of farmland under tenancy in 1970 (single and mixed: indirect and direct for the same farm) was 63% in North America, 41% in Europe, 32% in Africa, 16% in Asia and only 12% in Latin America. Source: A. de Janvry, K. Macours and E. Sadoulet, "El acceso a tierras a través del arrendamiento" in [El acceso a la tierra en la agenda de desarrollo rural](#). Banco Interamericano de Desarrollo (Sustainable Development Department Technical papers series, RUR-108), 2002.

<sup>42</sup> This procedure is essential for peasant economics, due to the variation through time of the availability of labour in a family farm (see the works of Chayanov)

<sup>43</sup> See record # 14, part II of the Paper, C. Servolin, "DENMARK. Pioneer in peasant farming in Western Europe"

### **Box # 9 The status of tenant farming in France.** <sup>44</sup>

The laws on the status of tenant farming date from the forties (amendments of 04/09/43 and 17/10/45 to the French Civil Code, with the inclusion of sharecropping in 1946). At this time, French farming needed to modernise its production techniques. The texts concerning the status of tenant farmers are now incorporated in the Rural Code.

#### Guaranteed lasting land access for the farmer:

The contracts are written. The minimum legal leasehold is for nine years. Long term leases of 18 to 25 years as well as career leases (whose term is set until the retirement age of the tenant farmer) are also possible.

The tenant is entitled to renew the lease for nine years, except in the case of cancellation for serious reasons or repossession [the lessor can repossess the rented farmland only if it is to be worked by himself or his wife or by a descendant of age or an unconstrained minor, who must both partake in agricultural work (effectively and permanently) and live in the dwellings on the repossessed property].

If the tenant should die, the lease continues for his/her spouse, descendants and ascendants, who partake in farm work or have effectively partaken during the five years prior to the decease.

A tenant that has improved the rented property (through work or investment) is entitled to compensation from the lessor upon expiry of the lease.

The tenant must be given priority in purchasing the land if the owner wishes to sell it, on the condition that the tenant has worked as a farmer for at least three years and has farmed himself the property on sale, as well as on certain conditions related to the "control of farm structures", (pre-emptive rights).

#### Land rent controlled by the government

The minima and maxima between which the rent can vary are set by the prefecture per agricultural region, for both the land and the farm buildings.

#### A specific procedure for settling disputes

A specific jurisdiction has been created to deal efficiently with disputes between owners and tenants to ensure that the law is executed effectively. Rural lease courts give primary hearings to disputes involving tenant farming and share cropping statuses. These courts are composed of two owner-lessors, two tenant farmers and a presiding judge.

#### Working in conjunction with other development policies

The lease contract is subject to "structures control", a policy that aims to avoid an over-concentration of land and to maintain viable farms. The contract's validity is bound by these regulations and by the tenant's need to obtain a farming permit.

The French system affords considerable tenure security to farmers due to the existence of powerful farmers' organisations and a favourable balance of power at the national level. This policy has not led to a reduction in the amount of land leased out and the original goal to modernise farming has been reached. Landowners have been deprived of much of their rights without the need for an agrarian reform. Furthermore, land rentals for farmland have been cut to a symbolic minimum and farmers have obtained the guarantees necessary to make long-term investments<sup>45</sup>.

On the contrary, the application of this policy in Spain has led landowners to refuse to rent their land to tenant farmers. The relative weakness of Spanish farmers' organisations in comparison with French ones is probably one of the main reasons for this policy's failure in Spain.

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<sup>44</sup> Main source: Rivera, Marie-Christine. « Le Foncier en Europe. Politiques des structures au Danemark, en France et au Portugal », (Land Issues in Europe. Policies and farm structures in Denmark, France and Portugal), Cahiers Options Méditerranéennes, vol. 36, 1996.

<sup>45</sup> However, this kind of policy can now cause problems in regions where farm modernisation has led to the creation of large farms that rent land from a quantity of small landowners, who are actually bankrupted farmers.

Obviously, the scope of this discussion is not limited to Europe. Reflection on the nature of conceded or derived rights and the ways in which they can be secured is also on the West African agenda. The importance of bundles of rights in African land ownership systems raises a number of insoluble problems when use rights are to be secured solely by the granting of ownership title deeds. For a few years now, promising work has been accomplished as far as establishing more secure contracts for delegating use rights between different actors<sup>46</sup>.

Tenancy is least common in Latin America, whereas the development of rental markets on this continent would be an effective means for poverty reduction by increasing secured land access<sup>47</sup>. This can be explained by this continent's particular agrarian history, by the impact of the agrarian reform and by the fact that land was procured mainly through the colonisation of virgin territory. In such a context, landowners fear that if they were to lease their land to tenant farmers over long periods of time, they would lose their land rights to their tenants. Their strategy is therefore to keep their tenants in a precarious state through short leases of one year or even as short as a crop cycle, in spite of the disadvantages this represents for the development of economically sustainable and efficient forms of farm production. Such situations, which often go against the greater good, can continue for decades because family farming is more or less ignored by government strategies and farmers' movements remain unaware of how similar problems are dealt with in other parts of the world.

In fact, several countries around the world have passed legislation aiming to regulate the situations faced by tenant farmers and sharecroppers. For example, there is the legal prohibition of sharecropping in Mali and Cape Verde, as well as in Honduras in a completely different context. Not only were these laws generally not implemented, but also they often backfired when they were applied, frequently resulting in worsened working conditions for poor farmers. Far from condemning any new attempt to give tenant farmers greater tenure security in similar circumstances, these failures once again emphasise that laws merely reflect the political climate at a given time. Significant changes cannot be made simply by passing legislation. Rather, the mobilisation of active and involved farmers and the creation of farmers' interest groups are essential.

### Women's rights to land

Assuring land use rights turns out to be even more difficult when it involves groups whose rights are not fully acknowledged in general.

Such is the case of women in many regions of the world, in different ways and at different levels. The example given in box 10 provides an illustration.

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<sup>46</sup> See P. Lavigne Delville, C. Toulmin, J.P. Colin and J.P. Chauveau, Negotiating Access to Land in West Africa : A Synthesis of Findings from Research on Derived Rights to Land, London: IIED, GRET, IRD, 2002. 128p.

<sup>47</sup> See Alain de Janvry, Karen Macours and Elisabeth Sadoulet, "El acceso a tierras a través del arrendamiento", in El acceso a la tierra en la agenda de desarrollo rural, Banco Interamericano de Desarrollo. (Sustainable Development Department Technical papers series; RUR-108), 2002.

**Box # 10 Women's rights to land in Central America and the Caribbean: Honduras, Nicaragua and the Dominican Republic <sup>48</sup>**

The recognition of women's land rights is limited by legal, institutional and cultural obstacles that are difficult to overcome even after radical political changes.

In these three countries, the prevailing cultural conceptions of rural societies assign women to domestic chores and reproduction while men do the farming. The direct participation of women in farm production, though considerable, is not given the recognition that it deserves. Although their constitutions declare that all people are equal regardless of their sex, certain agrarian laws and certain underpinnings of civil law discriminate against women.

In Honduras until 1992, the agrarian reform laws recognised solely the male head of household as eligible for land allocations, and thus women were excluded. This was still the case in the Dominican Republic in 1998, with even severer restrictions. In Nicaragua, although the agrarian reform of 1981 recognised a woman's right to be awarded land directly, by 1990 only 10% of those who received land were female.

Women's rights to land are often limited by legislation related to the family and couple. The lack of full legal recognition of the union between spouses (Dominican Republic) and the fact that the man is legally defined as the head of household directly effect the recognition of women's rights to land, as well as their rights in other areas such as access to loans. Lastly, inheritance legislation and customs are so that the sons tend to inherit the land while the daughters inherit other kinds of goods (e.g. cattle).

Improved recognition of women's land rights demands radical social and cultural changes; modifying the laws is insufficient. The changes underway in certain countries nonetheless demonstrate that things can evolve rapidly, when different policies are applied. This is the case of the land ownership legislation process in some Central American countries. For example, in Nicaragua from 1997 to 2000, 40% of those who had obtained a title deed from the rural land registration office were women, either alone or as explicitly recognised joint owners.

### ***3. Building local management mechanisms in order to empower rural populations***

Recording tenure rights is not enough in itself. Rights are in a constant state of change: they are modified by sales, tenancy agreements, inheritances, etc. Their very nature can be changed little by little through the development of social relationships.

- Hence land tenure rights must be updated all the time, otherwise it would be necessary after a certain length of time to repeat the costly task of creating a land register (*cadastre*).
- Gradual social changes must influence the evolution of both legal concepts and ways to make tenure official. Laws often make use of terms stemming from distinct realities, referring to times and places different from those to which they apply, thereby sometimes leading to considerable distortions.

The usual land and property registration systems can function fairly well for relatively large properties and for the well-off. The costs of surveyors, solicitors and the registration of transfers, inheritances, etc., do not amount to an excessive proportion of the value of real estate. The opposite is true for poor growers' small plots, as well as for farmers living in areas far from administrative centres. In both cases, transaction costs are prohibitive and the users have no other choice but to remain or return to unofficial management, subject to partial or inexistent legal recognition. The costs of remedying this situation by a centralised system are very high and, if combined with the huge diversity of local situations, it becomes obvious that decentralised devices for updating land ownership rights are of inevitable

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<sup>48</sup> Sources: Beatriz B. Galán, Aspectos jurídicos en el acceso de la mujer rural a la tierra en Cuba, Honduras, Nicaragua y República Dominicana, FAO, 1998. and Sara Ceci, Women's land rights: lessons learned from Nicaragua, December 2000.



necessity. However, at present very little effort and few resources are devoted to bringing about such changes within national governments and international development organisations.

This is undoubtedly because the type of work required to achieve such a goal is much more complicated than what is involved in ordinary development projects. Developing local apparatuses for managing rights cannot be limited to mechanical registration operations and often demands competency in the political management of rights. This supposes that the society concerned is adequately organised at the local level, or in other words, enough social capital must exist in order to settle conflicts, mediate and arbitrate without having to systematically resort to ordinary courts<sup>49</sup>. Generally, the latter do not present a just forum for conflict resolution since different classes of populations often have very unequal access to legal information and procedures. The poorest can only rely on themselves to defend their rights.

Managing rights is often done according to unwritten rules, known and accepted by all the stakeholders at the local level, and which can be very different from one place to another. In addition to these local rules, common legal principles having a wider scope of application, i.e. customary law, need to be taken into account. So-called modern law in many developing countries is often a vestige from the colonial era, which constitutes a distinct entity often in contradiction with customary law. Customary law and modern law are in a constant state of change, though at varying speeds.

Very few national policies have explicitly sought to strengthen the capacities of local governance and the management of common property. An exception to this tendency is Mexico's innovative form of land management, known as *ejido* (see box 11). Having originated as a means to manage farmland during the agrarian reform within the peasant revolution of the early 20th century, this system employs a device for managing common property that had been used in indigenous communities<sup>50</sup>.

The marked intervention of the State within Mexico's extraordinary political setting, with the Institutional Revolutionary Party, is another key aspect of this original design.

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<sup>49</sup> Ordinary courts are the British equivalent of what would be called "law courts" in the U.S.

<sup>50</sup> In Mexico, indigenous communities' land tenure systems are generally characterised by collective tenure with recognition of the right of individual benefits for community members over the section they cultivate. These rights are usually transferred to children, but can be transferred or sold to another member of the community. Upholding rights implies that each "*comunero*" (the beneficiary, generally the head of the family) accept of a certain number of personal obligations: providing a certain number of workdays for the community (*tequio*) and completing tasks carried out in the general interest of the community (*cargos*), which are assigned periodically by the Assembly. The community is governed by a sovereign Assembly of "*Comuneros*", alongside which reside important consultative bodies (the elders' council or the honoured persons' council). There is an executive structure known as the "*Comisariado de Bienes Comunes*", which, as its name implies, is responsible for managing common property, and there are also supervisory bodies.

**Box # 11 An original way of managing land ownership in Mexico: the *ejido*. Origins and operation<sup>51</sup>**

At the beginning of the 20th century, agrarian affairs were a central issue in the Mexican revolution against the dictatorship of Porfirio Diaz. The unequal access to land inherited from the past had increased considerably and huge *latifundia* were created from the commons. In 1905, 0.2% of owners possessed 87% of the land! The forces led by Emiliano Zapata and other peasant movements wanted to return the lands seized from the villages peopled by *mestisos* and Indian communities, and limit the size of landed estates (Zapatist Agrarian Law of 1915).

The Mexican agrarian reform, as conceived and practised by the farmers, set up a property management scheme in which farmers' individual rights were linked with the collective management of the territory, the *ejido*. Although this entailed a certain continuation of methods used by indigenous communities, it is quite original as compared to procedures applied during later agrarian reforms. The 1917 Constitution (article 27) not only recognised common ownership, but also declared that villages without land must be given land expropriated from large farms. The system used by indigenous communities was recognised and legalised in the territories controlled by the Indians. In other cases, a new land ownership system was set up: the *ejido*<sup>52</sup>. Its role was strengthened by the agrarian reform implemented under the government of Lazaro Cardenas. From 1930 to 1940, half of the arable land became "*ejidales*", contributing to a little more than 50% of the nation's total production.

The *ejido* land tenure system is characterised by the fact that its members are entitled to use the plots they cultivate on an individual basis<sup>53</sup>. They can bequeath them to their descendants and may lose their plots if they abandon them for more than two years. The *ejido*'s common plots and shared companies contribute to a common fund, which cannot in principle be distributed individually or be used toward political or religious ends. The highest decision-making level of the *ejido* is the general assembly of the ex-officio members. It elects a *comisariado ejidal*, which is responsible for managing the common property, and a supervisory board. The *comisariado ejidal* is also invested with the power to settle internal land disputes and is authorised to make sanctions when the rules are not applied.

The industrialisation of Mexico in the forties was to a great extent based on the expansion of the internal market, a result of the improved living conditions of the farmers who had benefited from this type of land distribution.

However, the *ejido* system is not flawless. Supervising government agencies' considerable interference has turned the *ejido* into a hybrid apparatus between local management and national dependence. Internal differentiation within the *ejido* has often been substantial, and was facilitated by the formation of financial institutions that benefited only a minority of the *ejido* members (*ejidatarios*). In some cases where many inhabitants did not have formal rights, *ejidatarios* converted themselves into powerful and wealthy elites (*caciques*). As a result, the authorities responsible for exerting social control were unable to prevent the development of a static, inelastic land access system. Rules were bypassed through more or less illicit arrangements wherever good economic prospects were at stake. The division of farms has become common. In 1988, 49% of *ejidal* plots had a surface area of less than 5 ha (12.4 acres).

The modification in 1992 of article 27 of the Constitution, which had established the *ejido* system and had served as the basis of the agrarian reform, stirred a heated national debate. It led to the recognition and registration of individual rights within the *ejidos*, as well as their conversion under certain conditions into private property rights. The corresponding process known as PROCEDE (*ejidal* rights certification procedure) acknowledged to a great extent the changes that had started in many *ejidos* well before the 1992 law even though the apparatuses for social control had not yet caught up to these changes. For example, property rights were being transformed into commodities even though there was no legal

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<sup>51</sup> From La transformación agraria. Origen, evoluciones, retos. Ed Sec de Reforma Agraria, 1997. See also Laura Randall (Ed.), Reformando la Reforma Agraria Mexicana, UAM, 1999.

<sup>52</sup> Although the name comes from the Spanish and colonial agrarian past, it designates a new and original way to manage land tenure.

<sup>53</sup> The work was wholly collective only in a very small number of *ejidos*.

framework to accommodate this sort of transaction. The PROCEDE does not entail the total disappearance of common land management; rather it aims to modernise its regulatory devices. It has been applied in different ways depending on the region and, generally, has not induced massive privatisation of land during the first ten years of its application.

It is a great challenge to modify the *ejido* system without returning to a system of absolute ownership, thereby defeating the *ejido's* original purpose of supporting common property management.

Some international development institutions now refer to experiences intended to rebuild or found a local capacity to manage natural resources. Record # 1 in the second part of this paper on the experience of Mayo-Kebbi in Chad is a sub-Saharan African illustration<sup>54</sup>.

A similar need, though in a very different context, has led to the constitution of the Larzac Lands Civil Society Group in France, which is the subject of record # 17<sup>55</sup>.

A certain number of tools now exist that strengthen land resource management capacities. For example, *participatory mapping* of land and its resources illuminates complicated spatial holdings in terms that persons outside the local environment are able to understand.

Thus participatory mapping is a means of communication, but it is also an instrument capable of increasing transparency and making land tenure rights clear in a rapidly changing context. It requires local actors to have access to modern means of cartographic representation and remote sensing<sup>56</sup>. The feasibility of such actions has been demonstrated by pilot experiments<sup>57</sup>.

Some additional tools, although they may not be directly related to land matters, can help to improve *social capital*. In particular, different ways of learning how to manage common property<sup>58</sup> come to mind, as do, on a wider level, the means to strengthen the organisation and capacity of populations to control their own destinies (*empowerment*), based on social innovation, experimentation and learning by doing.

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<sup>54</sup> See record # 1 of part 2. Bernard Bonnet. "Concerted management of common land and resources in Mayo-Kebbi, Chad", IRAM - GTZ.

<sup>55</sup> See record # 17 of part 2. José Bové, "The SCTL (Larzac Land Trust), an innovative and original approach to rural land management. France."

<sup>56</sup> It is advisable to not limit oneself to the use of simple tools such as *participatory rural appraisals*, a cursory device that was very popular during the previous decade. It was erroneously applied in order to induce participation and was employed mechanically for a large number of projects in developing countries.

<sup>57</sup> See for example the mapping experiments carried out by the *mestizos* and indigenous peoples in the Farm Frontiers Project (EU) in Central America, directed by Michel Laforge and Pablo Torrealba.

<sup>58</sup> See for example the experience of IRAM in Mali, with the Local Investment Fund of Sikasso. One of the fund's aims was to ensure better management of subsidies, by limiting their negative and adverse effects as much as possible, and increasing social capital through improved rural organisation. This was done by increasing rural populations' control over their environments, and their capacities for collective management of common problems arising in their territory. The three basic principles of their method were: 1) to recognise the existence of local dynamics with the goal of allowing excluded social groups to build their own institutions and their own futures; 2) to empower farmers and other local actors to make decisions, by placing them in the position of resource-owners and getting them to act as project managers; 3) to train actors on the job, allowing them to learn through their mistakes. This implies making a distinction between technical and financial functions. Also, it entails providing specific support to project management and service providers, implementing a progressive approach to the amount of funding assigned to projects, setting up checks and balances and systematic cross checking to increase accountability and avoid self-serving attitudes and corruption, seeking sustainable investments and a satisfactory period of action, during which the mechanisms and community authorities responsible for talking decisions can be established.

#### **4. A critique of key concepts pertaining to land rights is now necessary**

The "Tragedy of the Commons", an essay published in 1968 by G. Hardin, has often been evoked to justify the need for the privatisation of natural resources. According to this author, all collectively owned limited resources tend to be managed in a non-sustainable way until exhaustion, each person seeking to profit as much as possible before someone else does in their place. However, the problem is not so much the existence of common property as that of the lack of rules and mechanisms to ensure that management is carried out in the interest of most people.

This reflection on the management of common property has to be carried out on different levels: local, regional and national. However, it is now obvious that it must be extended to regions covering several countries and even the entire world. In view of this, the issue of land is a major global problem, since many of the world's resources are increasingly considered as being the common property and heritage of humanity.

The issue of sustainable management of natural resources goes beyond the scope of land tenure matters, though it is intrinsically related to them. Debates on the common management of resources in developing countries with rural populations (hence unable to limit themselves to conservation policies based on reserves and national parks that exclude human beings), and debates on the multi-purpose role of farming in European countries point to the fact that we are looking for new methods and rules such as the concept of heritage management<sup>59</sup>, among other things.

Better land tenure security requires the creation of new social capacities, better organisation of rural societies and the development of renewed institutions; it cannot be achieved solely by technological improvements in the field of land registers. Given the experiences mentioned above and the changes in progress, we need a fundamental overhaul of the prevailing values and concepts related to property in order to progress and overcome the obstacles formed by their inadequacy vis-à-vis the current situation. As already seen, this involves giving up the illusion of absolute ownership and recognising that in whatever circumstances, land incorporates an element of common property that ought to be managed by the appropriate bodies.

This conceptual evolution is far from over, as shown by the violent debates and struggles around the world between civil society, multinational corporations, governments and international institutions. Major private interests will continue to put up violent resistance for a long time to come and progress cannot be made without powerful, representative and democratic farmers' organisations. Consequently, the debate on land property rights is an integral part of the quest for genuine world governance.

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<sup>59</sup> The concept of heritage or patrimony management proposes a way to move away from the notion of state ownership and management of resources. If all natural resources are the heritage of all citizens, then these persons are in turn endowed with a legitimate right to manage the resource (R. Leonard and J. Longbottom, A Glossary of Terms from English and French Speaking West Africa, London: IIED, 2000.) Also see the texts by Jacques Weber, Alain Karsenty and Etienne Le Roy in Quelles politiques foncières pour l'Afrique rurale ? Paris : Karthala, 1998.

Second Question: how might access to land be guaranteed in conformity with the interests of the majority of the population?

This second question on the distribution of land access is one of the key elements of any agricultural policy. However, the way land is distributed has a far-reaching impact: it affects not only agriculture, but also the entire range of possibilities for economic and social development.

This has been the subject of much controversy over several decades and different policies have been implemented in an attempt to solve the problem of optimising the distribution of land resources.

Today, the debate focuses on two main notions that are often expressed simplistically and dogmatically: government action to correct unequal access to land (agrarian reforms) and the role of the market. We will see the advantage and need for considering land policies that surpass this dichotomous vision.

### 1. *A prerequisite: the advantages of family farming*

Before addressing the conditions and policies that permit an optimal distribution of land, we must first recall that small, family farms that employ little or no salaried labour are generally the most efficient economically speaking, and are a fruitful basis for the growth of democratic political systems. Although this assertion was far from being agreed upon in the 19th and early 20th centuries<sup>60</sup>, it is now widely accepted regardless of the political context.

Small family farms not only possess advantages for the environment and the maintenance of the rural social fabric, they are also generally more productive than capitalist companies. Box 12 illustrates the situation in the USA. Similar situations can be found in most countries, in both hemispheres<sup>61</sup>.

The experts of the World Bank, Binswanger, Deininger and Feder came to the same basic conclusion in their work on land policies<sup>62</sup>. See box # 13.

**Box # 12 Farm size, production and productivity in the United States of America, 1992.**

<i>Category of farms median surface area in acres</i>	<i>Gross average production in US\$ per acre</i>	<i>Net average productivity in US\$ per acre</i>
4	7424	1400
27	1050	139
58	552	82
82	396	60
116	322	53
158	299	55
198	269	53
238	274	56
359	270	54
694	249	51
1364	191	39
6709	63	12

Source: USA Farm Survey 1992 Vol 1, part 51, pages 89-96, cited by Peter Rosset in Food First, Policy Brief # 4.

<sup>60</sup> See especially La question agraire by Karl Kautsky regarding Marxist thinking on the subject.

<sup>61</sup> See, among others, Peter M. ROSSET, The Multiple Functions and Benefits of Small Farm Agriculture In the Context of Global Trade Negotiations. Food First, policy brief # 4. September 1999

<sup>62</sup> Binswanger P. Hans, Klaus Deininger and Gershon Feder, Power, Distortions, Revolt, and Reform in Agricultural Land Relations, Working Paper, The World Bank, July 1993. published in its final form in 1995 in J. Behrman and T.N. Srinivasan (eds), Handbook of Development Economics, Volume III, Elsevier Science B.V. A Portuguese translation of this very interesting paper is available in electronic form on the NEAD Website, under the heading Dataterra.

### Box # 13 The superiority of family farming in developing countries<sup>63</sup>

In the conclusion of the chapter devoted to discussing the competitiveness of small farms in their working document written for the World Bank, Binswanger, Deininger and Feder observe that although many empirical studies on the relationship between farm size and productivity lead to methodological problems, those that genuinely consider variations of productivity rather than those of production show that small farms have higher productivity levels than large farms, even in relatively mechanised and developed regions of developing countries.

They use the table below to illustrate their demonstration.

**Farm-size productivity differences<sup>a</sup> in selected countries.**

Farm size	Northeast Brazil <sup>b</sup>	Punjab, Pakistan <sup>c</sup>	Muda, Malaysia <sup>d</sup>
<b>small farm</b> (hectares)	563 (10.0 - 49.9)	274 (5.1 - 10.1)	148 (0.7 - 1.0)
<b>large farm</b> (hectares)	100 (500 +)	100 (20 +)	100 (5.7 - 11.3)

Source: Berry and Clime, 1978, cited by Binswanger, et al, 1993.

<sup>a</sup> 100 = largest farm size compared with second smallest farm size. Second smallest farm size used in calculations to avoid abnormal productivity results often recorded for the smallest plots.

<sup>b</sup> 1973, without taking into account the area of sugar cane and cocoa plantations, <sup>c</sup> 1968-69, <sup>d</sup> 1972-73

In most farms, there are no economies of scale. On the other hand, economic activity is more rational when production is managed at family farm level, especially if the small farms are equipped with machinery.

Nonetheless, small family farms are not always the most efficient and not all of them ensure the sustainable use of resources<sup>64</sup>. To do this, they must be able to count on sufficient means and an adequate agricultural policy. This is the case under certain conditions in most of the developed countries.

Thus, the modern family farm is also the result of public policies which allow it to express its potential.<sup>65</sup>

## ***2. Can the market alone ensure an optimal reallocation of land?***

Reading the agrarian history of most of the world's regions reveals that market growth very often leads to the concentration of land in fewer hands. When high, this concentration becomes a serious barrier to economic development, due to the low productivity of large farms and because it drastically reduces the purchasing power of most of the population.

K. Deininger in Land Policies for Growth and Poverty Reduction (World Bank, 2003) shows that the initial distribution of land affects the nature and rate of long-term economic growth and that land concentration reduces the efficiency of resource use.

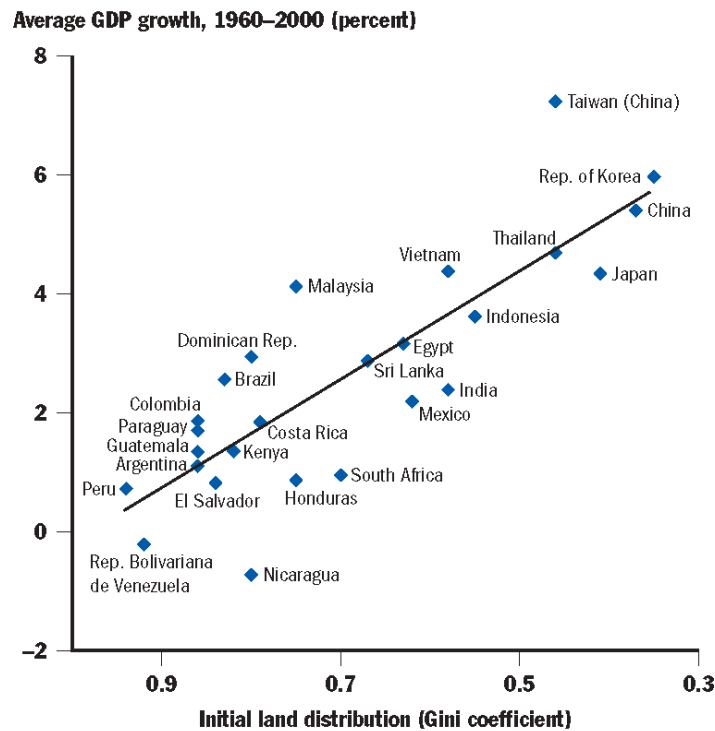
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<sup>63</sup> From Binswanger, P. Hans, Klaus Deininger and Gershon Feder, *ibid* 1993. Portuguese version.

<sup>64</sup> The "minifundistas" of Latin America, for example, are often obliged to overexploit natural resources to survive on a daily basis.

<sup>65</sup> See especially the analysis for European countries of the genesis of modern family farm production by Claude Servolin, L'agriculture moderne, Paris: Editions du Seuil, February 1989. See also record # 14 - Part II of the paper. C. Servolin, "Denmark. Pioneer in small farming in Western Europe"

**Figure 2.1 Initial land distribution and economic growth, selected countries**



*Note:* The Gini coefficient measures the degree of concentration (inequality) of a variable in a distribution of its elements. It compares the Lorenz curve of a ranked empirical distribution with the line of perfect equality. This line assumes that each element has the same contribution to the total summation of the values of a variable. The Gini coefficient ranges between 0, where there is no concentration (perfect equality) and 1, where there is total concentration (perfect inequality).

*Source:* Authors' calculations based on Deininger and Squire (1997); World Bank data (for 2002 from the Statistical Information Management and Analysis database).

**Figure 1. Initial land distribution and economic growth, selected countries.**

From K. Deininger, *Land Policies for Growth and Poverty Reduction* (World Bank, 2003)

"If the efficiency of the large commercial farm is a myth, why do markets for the rental and sale of agricultural land rarely reallocate land to the most efficient uses and users (family farmers)?" This is the question asked by Binswanger, Deininger and Feder in their report<sup>66</sup>. They answer it by affirming that not only are land markets imperfect, so are the other markets for capital and machinery. They analyse the different actions taken by governments that, in one way or another, have promoted large farms.

We saw in the introduction that the imperfect functioning of land markets is in some way inherent to the nature of land, i.e. it is not an ordinary good. Improving market functioning under these conditions may be useful, but in no way would it be enough. Other types of measure are required. We will examine successively policies for pushing back the agricultural frontier, agrarian reforms and land market interventions.

For several years, the dynamics of land markets have taken on new dimensions: there is now competition between farming systems with increasingly different levels of competitiveness as well as the liberalisation of world markets. Very large farms have been developed in Eastern Europe, benefiting from the privatisation of former State farms, very low labour costs and the biotechnologies promoted by several multinationals (see record # 11 on Poland in part two of

<sup>66</sup> See also on this subject the introduction of the paper written by Michael Carter and Dina Mesbah, "State-Mandated and Market-Mediated Land Reform in Latin America", published by the World Bank in *Including the Poor*, Washington, 1993, (pp. 278-305).

this paper). Similar phenomena can be found in certain countries in the Southern hemisphere, such as Argentina (see box # 14).

These new *latifundia* have nothing in common with the large, extensive farms of times gone by. They appear to have very high productivity levels, though in truth production costs are lowered due to extremely low labour costs and very low land prices. They undercut prices, leading to the ruin of most of the farmers in developing countries and, to a great extent, those in developed regions, too. This apparent productivity is also achieved by techniques that endanger ecological balances.

Today, it is not possible to analyse agricultural production without referring to the effects of globalisation on world prices<sup>67</sup>. Neither is it possible to continue using agrarian reforms as correction mechanisms in the same way as before.

**Box # 14 New procedures of land concentration in Argentina (from Jorge Eduardo Rulli, April 2002) <sup>68</sup>**

The current crisis in Argentina is total. As the very foundations of our identity collapse, the real reasons for this disaster remain in the shadows.

The rural system that was imposed upon us is designed to export commodities, concentrate land ownership and exclude the people.

20 million hectares of the best farmland are now in the hands of 2,000 companies. It was in the 90s that the largest transfer of farmland in the history of the country occurred, with the supplanting of the old oligarchy by a new class of businessmen. To compensate unpaid debts, 300,000 farmers were expelled and 13 million hectares were seized.

This social disaster was further worsened by massive immigration by farm workers. A machine replaced 500 workers in the Chaco. Ruined landowners rented their lands to big businessmen who used new technological packages incorporating transgenic soy and herbicides from Monsanto.

The countryside was transformed with the installation of agriculture without farmers. More than 500 villages were abandoned. Our country resembles a laboratory where experiments are carried out in order to eliminate rural life. Occupied by the multinational seed corporations of Cargill, Nidera and Monsanto, our countryside has become unliveable as ecological and climatic disasters occur more and more frequently.

Aid was considered as a means to offset these transformations' effects on the living conditions of the Argentine population, half of which is now living below the poverty level: five million people are suffering from hunger. However, the scope of the urban Left does stop at the shantytowns located on the outskirts of the cities. The impoverishing machine keeps on operating unseen in the countryside.

### **3. Access to property by colonising virgin land**

In all of the countries that still possess virgin land, the extension of the agricultural frontier into forested regions is a major way for people to gain access to land. This has been the case in most Latin American countries, where the amount of cultivated land and pastures is constantly increasing. The decline in the extent of this type of access to land is recent, due to the reduction of forested areas and conservation of what remains.

There is a great deal of documentation on the dynamics underlying these pioneer fringes and frontiers, where small farmers cut down the forest, and/or lumber companies exploit the most sought-after trees. Land is frequently converted into extensive grazing areas owned by *latifundistas* that buy the plots cleared by small pioneer farmers, thus obliging them to

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<sup>67</sup> See Marcel Mazoyer and Laurence Roudart, *ibid.* and Mazoyer, Marcel, Protecting small farmers and the rural poor in the context of globalization, FAO, 2001.

<sup>68</sup> Jorge Eduardo Rulli, Rel-Uita, La biotecnología y el modelo rural en los orígenes de la catástrofe argentina Uruguay, April 2002. (<http://www.rel-uita.org/>)



advance ever deeper into the forest to clear new areas. This situation is different when growers are able to set up sustainable farming systems, especially with the planting of perennial crops such as coffee.

Conflicts are common in these agricultural borderlands and violence is rife. The confrontations between social groups and individuals are part and parcel of gaining possession of natural wealth, wood and fertile land through a process of primitive accumulation occurring in places far from any central authority. Those who suffer the most are the indigenous populations that often inhabit the forests. Violence increases with the problems raised by the cultivation and processing of illegal drugs, an activity commonly hidden away in such remote areas. In addition, certain spots are also home to conflicts between guerrillas, regular armies and paramilitary groups.

Agricultural frontier expansion is a process that is either spontaneous or state-directed to a certain extent. State-directed colonisation projects often foster confusion between frontier expansion and agrarian reform because, in theory, all virgin territory belongs to the government since the colonial era (see records # 7 and # 8 on this subject in part two of this paper<sup>69</sup>). The economic, social and ecological cost of the permanent migratory flux of pioneer farmers on the frontier is very high, even though this sort of land use has served as a safety valve for agrarian structures overtaxed by a concentration of land in the pioneer-sending areas. Several countries have tried to promote viable, market-based family farming from the outset on the pioneer frontier, but generally the rule is to allow the strongest to win and leave the market as it is, with the results mentioned above.

One claim made by the peasants on the pioneer frontier, as clearly stated by a Colombian farmer during the workshop organised by IRAM and APM at the World Social Forum of 2002, is the need to set aside new frontier lands exclusively for use by pioneer farmers (« *reservas campesinas* »). This would involve the necessity to control land markets and manage territories, as dealt with earlier in this paper. Specific problems are raised by frontier farms' social contexts: the migrants who occupy new frontier lands have little experience farming in such environments and have distinct social and ethnic backgrounds. For these reasons, it will take time for such a society to structure itself. Experience has shown that new social rules and ways of managing resources are set up quite quickly, often with the help of the Church.

#### **4. Agrarian reforms**

Very unfair distribution of land inevitably leads to negative consequences. On the one hand, both socially and politically as it leads to poverty and rebellions, and on the other hand, economically<sup>70</sup>. In such a case, not only is the use of land resources far from optimum, but the internal market is blocked by the very low living standards of the *minifundistas*, tenants and sharecroppers. Rapid and substantial redistribution of land is therefore necessary before everything else, in order to create smaller units better able to exploit the land and/or limit the cost of the land rent paid by farmers. This is in fact exactly what agrarian reform is.

Many agrarian reforms have been implemented throughout history, each one differing according to the era and region. At the same time, very different types of action in which the redistribution of land to small farmers have not been of central importance and which have nothing to do with the concept of agrarian reform as such, have been called "agrarian reforms".

- thus the process of colonising virgin land has often been misleadingly called "agrarian reform"<sup>71</sup>;

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<sup>69</sup> Record # 7. Delahaye, Olivier, "Venezuela: between the market and "agrarian reform", the colonisation of 'virgin' land," Record # 8 and Merlet, Michel, Central America. Fragility and limits of agrarian reforms -1/3- Honduras.

<sup>70</sup> See, among other papers, Stiglitz, Joseph, Distribution, Efficiency and Voice: Designing the Second Generation of Reforms, World Bank, 1998.

<sup>71</sup> See the examples of Venezuela and Honduras. Records # 7 and # 8. Part two of this paper.

- the socialist agrarian reforms in the Soviet Union and most Eastern European countries began with the redistribution of land that belonged to big landowners followed by more or less intensive collectivisation. Another misleading use of the term appeared at this moment. Agrarian reform was still spoken of when the redistribution phase had ended, that is, when State farms were being created out of expropriated land. However, this simple change of ownership occurred without any basic change in the organisation of production. Also, the economic and political implications were quite different to those involved in a genuine agrarian reform that effectively redistributes land.

Once this essential point has been clarified, we can examine the difficulties encountered and conditions required for a successful agrarian reform.

The different sorts of failures of many agrarian reforms now lead some analysts to conclude that such interventions are unjustified due to their high social, economic and political cost, and their meagre results.

We do not share this opinion: it is easy to demonstrate that genuine land reforms have induced radical changes in countries where they have been implemented and they have been the source of vigorous development. This was the case in Mexico, and to a lesser degree in Bolivia, and also in Southern Europe, China and Vietnam, in particular due to the recent policies in favour of family farming in these countries<sup>72</sup>.

A lot has been written about agrarian reform, though curiously, there is little that could provide lessons from past experience. Detailing all of the situations that have led to agrarian reforms would go beyond the scope of this paper given the multifaceted differences between Taiwan's agrarian reform and Nicaragua's one; between Mexico's and Zimbabwe's!

Nevertheless, agrarian reforms may be characterised in many different ways<sup>73</sup>, for example:

- as a function of the type of agrarian structure they modify. For example, *latifundio / minifundio* in Latin America, or large farms worked by sharecroppers and tenant farmers as in South East Asia. Deininger highlights that "land reform was relatively simple in tenancy systems, but much more difficult where haciendas prevailed"<sup>74</sup>
- as a function of their origin. Thus, in Latin America, a distinction must be made between the agrarian reforms that occurred before the Cuban revolution, such as Mexico's, which was the result of a powerful peasant movement, and those impelled by the Alliance for Progress with the aim of containing the development of revolutionary groups on the continent, like in Honduras and many other countries. Or, in a single country such as Poland, several successive agrarian reforms have occurred each with completely different objectives and contents<sup>75</sup>.
- they can also be differentiated as a function of the compensation paid to the owners, which varies from nothing (in the case of Cuban agrarian reform) to sums exceeding the land's market value (as recently in Brazil).

As in the other parts of the paper, here we seek to initiate an analytical process that may be useful for those concerned by land matters, particularly farmers' organisations. In this way, our objective is to contribute to the implementation of effective land policies.

We shall rely on several examples dealt with by detailed records in part two of this paper (Taiwan, Poland, Albania, Zimbabwe), and particularly the comparison between the agrarian

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<sup>72</sup> See record # 6. Dao The Thuan, [Vietnam. réformes agraires successives et succès de l'agriculture familiale](#). See also DPH records 2029 and 2040 written by Sylvie Dideron in part three of this paper. [China. Souvenirs du vieux Li, paysan pauvre du nord de la Chine](#). and [Tenure foncière et système des contrats de production entre l'Etat et les paysans en Chine: exemple de Bozhou, canton de la plaine du Nord](#).

<sup>73</sup> Marc Dufumier's book [Les politiques agraires](#), Paris: PUF, 1986 provides a good idea of the diversity of agrarian reforms.

<sup>74</sup> Deininger, 2003. *ibid.* pp. 16.

<sup>75</sup> See the corresponding record in part two of the paper.

reforms of Honduras and Nicaragua (records # 8, 9 and 10)

One question is obvious straightaway to whoever has observed the recent changes in these two Central American countries: how can the fruits of the agrarian reforms implemented after decades of struggle and effort be forgotten after only a few years of changing policies and the application of neo-liberal ideas?

Without going into detail about the elements addressed in record # 10, the following lessons can be drawn from these experiences.

- Many agrarian reforms did not take into account the fact that agrarian structures are in a constant state of change and therefore property requires a certain amount of elasticity concerning the land tenure of family farms and cooperatives so that they may remain viable.
- The reforms attempted to impose collective production systems that did not correspond to the demands made by the rural poor and which did not encourage them to have faith in the advantages of family farms.
- They were decreed from above by governments, which used farmers' organisations as instruments for applying systems that did not originate from peasants' struggles.
- They treated the reformed sector separately, endowing it with state protection, with a specific property system and by specialising the farmers' organisations that worked in it. By doing so they failed to allow the collective learning process to take place regarding land management. This learning process would have been necessary in the future in order to preserve the benefits won. They also provoked division among the farmers' movements.
- Lastly, there was no coherence between agrarian reform policies and economic policies. When the constraints affecting organisation methods were eliminated, and when the cooperatives' lands were divided into individual plots in Nicaragua, for example, the sudden interruption of subsidies and loans were tantamount to economic strangulation of those who had benefited from the agrarian reform.

Therefore, the agrarian reforms in Nicaragua and Honduras were radically different from Mexico's early 20th century reform.

The case of Taiwan is particularly instructive in comparison with the previous example cited: agrarian reform in this country was able to link economic policy with agrarian changes. New landowners were protected at least temporarily from the effects of the world market and intensive mechanisation was delayed in order to make the work invested by the farmers more profitable (see the corresponding record in part two).

The mechanisms used to set up agrarian reforms, the place and role of peasant organisations and the State and, lastly, the link forged between agrarian reform and public agricultural policies were essential components of their success.

Examination of past changes affecting the "reformed sectors", trends and the risks of "counter-reforms" will give us a better understanding of agrarian reforms as processes that function in dynamic and unbalanced political contexts. As a result, they must anticipate the advent of changes such as when the State is no longer as powerful. An agrarian reform is always a political action. Whether the changes are rapid or slow, what is important is the profound transformation of the farming sector. The more difficult the situation, the more reform is necessary (see record # 4 on Zimbabwe, in part two of paper), and the more these strategies are important.

Brazil's Landless Workers' Movement (MST) is an example of this aspect pertaining to strategic struggle. This movement owes its success to its organisation, its pugnacity, and its strategy of ensuring that the agrarian reform appeared on Brazil's political agenda by driving agrarian reform from the bottom upward. Since it was founded in 1985, 250,000 families have obtained secured use rights over more than 7 million hectares by occupations of land

encouraged by the Landless Workers' Movement<sup>76</sup>. It has also shown the need today for forging alliances with urban movements in order to make progress. Progress was made in both the organisation of agrarian reform settlements, the *asentamientos*, for which more space for family farming was granted and in renouncing collectivist dogma<sup>77</sup>.

These examples show that in order to transform durably the way land ownership is structured, it is necessary to avoid denying the existence of land markets and, on the contrary, to work to set up devices that control market development.

In recent years, the World Bank has offered an alternative to the agrarian reforms of the past: "market assisted agrarian reform" and "community based agrarian reform"<sup>78</sup>. By wishing to link "agrarian reform" and markets, these proposals seem to take into account one of the weaknesses of the agrarian reforms analysed previously. However, they restrict their actions to operations requiring the mutual agreement of parties (willing seller, willing buyer scheme).

Below is a reproduction of a recent World Bank text on agrarian reform:

*"key principles for successful land reform, namely (i) to be voluntary and based on the decentralized decisions of land owners and potential beneficiaries with a mechanism in place to ensure that land prices are not artificially inflated as a result of the program; (ii) to incorporate a limited grant element that is fungible and can be used for acquisition of land as well as associated investment; (iii) to be associated with a business and investment plan that is economically and financially feasible before moving on to the land; (iv) to be linked to a strong element of training and capacity building; and (v) to be cheap enough to be replicable under the fiscal conditions of the country (or be financed through taxation)."*<sup>79</sup>

This is no longer a question of agrarian reform, but of intervention on land markets. Furthermore, it is only a relatively minor intervention since it goes no further than proposing a loan to finance the purchase and subsidise the installation of the beneficiaries.

Hence "La Via Campesina" International Peasant Movement in the Philippines, Brazil, Honduras and elsewhere quite rightly rose up against this new and abusive utilisation of the term agrarian reform and against the intention to replace genuine agrarian reforms by a quite different system. Moreover, it now seems increasingly clear that the actions begun will not produce the results expected<sup>80</sup>.

Agrarian reform is not constant intervention on land markets with the intention of making them less segmented. It is an exceptional measure answering a situation to which no satisfactory solution can be found through the market alone. Although mechanisms such as those promoted by the World Bank may be of interest in that they allow peasant organisations or governments to learn how to manage their land markets better, in no way could they replace actual agrarian reforms when the agrarian structure demands radical intervention, such as in Brazil's case.

It is interesting to note the evolution of the discourse on land issues held by the World Bank's

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<sup>76</sup> Figures supplied by Peter Rosset in "Acceso a la tierra: reforma agraria y seguridad de la presencia. Cumbre Mundial sobre la Alimentación: cinco años después. Aportaciones de la sociedad civil/estudios monográficos", Discussion document, October 2001.

<sup>77</sup> Nonetheless, coordinating and relating movements with CONTAG, the other major movement mobilising Brazil's small farmers still remains very difficult. This can be seen as a vestige of the ideological oppositions between the market and agrarian reform, and between collective production and peasant production.

<sup>78</sup> Deininger Klaus, Making negotiated land reform work: Initial experience from Colombia, Brazil, and South Africa, World Bank, 1999.

<sup>79</sup> Land institutions and land policy. Creating and sustaining synergies between state, community, and market, A policy research report, World Bank, 2001.

<sup>80</sup> Borras, Saturnino Jr, Questioning Market-Led Agrarian Reform: Experiences from Brazil, Colombia and South Africa. Journal of Agrarian Change, Vol. 3 No. 3, July 2003, pp. 367–394.

research team. The 2003 Policy Report acknowledges that "land markets will not equalize a highly skewed land ownership distribution".

*"(...) it is unrealistic to assume that restrictions on the functioning of markets will lead to significant and quick redistribution of land and other productive assets to the poor. Where a strong social, political, and economic case for such redistribution exists, other mechanisms will need to be adopted. There is considerable potential for such mechanisms to draw on market outcomes in more imaginative ways than in the past, for example, to facilitate targeting and the acquisition of managerial experience by potential beneficiaries. Relying on markets alone will, however, not be sufficient."*<sup>81</sup>

## **5. Agricultural policies for optimising agrarian structures**

Although agrarian reforms are often inevitable once the agrarian structure has become strongly polarised, they cannot become a permanent mechanism for intervention due to their economic and political cost.

Other types of land policies are needed, such as policies of permanent regulation of land markets aiming at optimising land resources distribution through time and preventing undesirable processes of concentration<sup>82</sup>. These land policies must also permit the agrarian structure to develop by modernising family farms.

This type of policy has been decisive in most developed countries, especially in Western Europe. Whereas a few years ago, the historic paths of developed countries were unavoidable references for people curious about the development process in developing countries<sup>83</sup>, they have now been erased from most of the reference works of economists working for international organisations and development agencies<sup>84</sup>. Neo-liberal dogma is so efficiently pervasive that even mentioning market regulation today has become blasphemous. Even in the European Community, very few voices raise to assert the advantages of land policies that nonetheless considerably contributed to creating conditions for economic development in Europe.

These policies can be of different kinds:

- Corrective interventions on land markets. The example of the SAFER in France is the subject of a specific record in volume 2 of the paper<sup>85</sup>.
- Land consolidation, i.e. regrouping and recomposing plots that have been divided generation after generation and which have become too small or narrow to permit the use of modern farming techniques. In order to be carried out at a reasonable cost and without too many legal problems, land consolidation demands strong participation from farmers who must agree to exchange parcels of land amicably in order to permit the constitution of viable farms.

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<sup>81</sup> Deininger, PRR 2003, World Bank, op cit. pp. 131

<sup>82</sup> Which would lead in time to carrying out an agrarian reform!

<sup>83</sup> See record # 5. Taiwan in part 2 of the paper, C. Servolin, from E. Thorbecke, "An example where agrarian reform, agricultural policy and economic development are coherent with each other". See also M. Merlet, « L'optimisation de l'utilisation des ressources foncières: une question stratégique de gouvernance, qui n'est plus seulement nationale, mais aussi locale, et mondiale » in Un agronome dans son siècle. Actualité de René Dumont, Paris : Karthala, June 2002.

<sup>84</sup> There was nothing, for example, on this subject in the introduction of the international teleconference organised by the World Bank in March 2001 on land policies (except for two contributions from O. Delahaye and M. Merlet), or in its conclusions. See Deininger, Land Policy and Administration: Lessons learned and new challenges for the Bank's development agenda. Preliminary Draft. 2001 and Land institutions and land policy. Creating and sustaining synergies between state, community, and market. A policy research report, World Bank, 2001.

<sup>85</sup> See record # 16, France: The SAFERs, an original land market regulation mechanism that is operated by the State and farmers' organisations. By Michel Merlet and Robert Levesque.

- Interventions on other markets and in particular, the financial market. The most important of these and that is linked most directly to our subject is land credit, which is a vital addition to most mechanisms intended to eliminate the segmentation of land markets. If farmers have no access to financing, the land for sale can be purchased only by the wealthiest and largest land owners, hence leading to the concentration of property<sup>86</sup>.
- Tax policy incorporating land taxation, which eventually is the only way of offsetting the effects of unearned income.
- Regulation of successions, and tax incentive systems that tend to orient inheritances towards a single heir<sup>87</sup>
- A number of specific aids related to structural policies, the installation of young farmers, early retirement of elderly farmers, though these measures imply that the government has the means to carry out such a policy.
- And the authorisation to produce in conformity with a structural policy.

Policies related to forms of tenant farming, as mentioned earlier on the subject of securing farmers' use rights (regulation of tenant farming which exists in most European countries) should not be forgotten either.

A clear separation between the status of the productive farm and that of the legal ownership of real estate can be another way of managing land. This helps correcting problems related to transfers of land from one generation to another<sup>88</sup>.

Lastly, aid given to disadvantaged regions is nearly always necessary in order to achieve uniform development of a country's territory. In this respect, the example of the Netherlands is particularly interesting. Its land management system has been subject to considerable State intervention alongside farm unions. The Dutch agricultural sector has become one of the most productive in Europe. The Netherlands' agricultural policy established and maintained until only recently a regional price system intended to offset the inequalities of regional production<sup>89</sup>.

Although these policies have above all been implemented by developed countries, they could also be important for developing countries. It appears clear that Albania, after a radical redistribution of land that approaches collectivisation, now requires a policy to set up viable farm structures<sup>90</sup>. Structural policy is also vital for other Mediterranean countries<sup>91</sup>.

In Brazil, the implementation of several similar policies has begun with the participation of the powerful farmers' organisation CONTAG (Confederação Nacional dos Trabalhadores na Agricultura, Brasil) and the government. These include among other things setting up land credit systems<sup>92</sup>. These projects, which have received support from the World Bank, have

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<sup>86</sup> Dividing estates through inheritances constitutes an opposite phenomenon that often has a less significant impact.

<sup>87</sup> As in England.

<sup>88</sup> See the example of the Agricultural Land Trusts (*Groupements Fonciers Agricoles*) in France and record # 17 by Jose Bové on the Larzac Lands Civil Society Group in part two of the paper.

<sup>89</sup> See record # 15, S. Devienne, "Netherlands: an interventionist agricultural policy aimed at reducing regional inequalities"

<sup>90</sup> See record # 12, A. Civici, "Albania. From absolute collectivism to radical egalitarian division of land".

<sup>91</sup> On this subject, refer to the different articles in *Cahier Options Méditerranéennes # 36* published by the Institut Agronomique Méditerranéen, Montpellier, 1996. For example, Ohran Dogan and Bahri Cevik, "Les procédures du remembrement en Turquie" and by the same authors « La politique d'aménagement des structures de production en Turquie » and Négib Bouderbala, « Le morcellement de la propriété et de l'exploitation agricole au Maroc ».

<sup>92</sup> See Antônio Márcio Buainain José Maria da Silveira Edson Teófilo (NEAD), Reforma agrária, desenvolvimento e participação: uma discussão das transformações necessárias e possíveis.

been presented sometimes as projects to replace agrarian reform, which we described as “market-assisted agrarian reform”. They certainly help farmers’ organisations to acquire new and very useful experience in the field of land policy, though they in no way replace agrarian reform<sup>93</sup>.

**Box # 15 A few examples of land policies in Western Europe<sup>94</sup>**

Western European countries all have agrarian structures based on commercial family farming. How have they managed their structures so as to permit modernisation and avoid the creation of large capitalist farming structures?

Comparing the situations in Denmark, Netherlands<sup>95</sup>, France, Italy, Spain and Portugal is most interesting. The southern parts of southern European countries have a *hacienda* type agrarian structure that has required land reforms. Here we focus on the northern territories of these countries in which small farms have been predominant.

The participation of farmers’ organisations seems to have been an essential element in the success of structural policies. It was much more important in the countries of Northern Europe.

In Denmark, a policy was applied to control agrarian structures as early as the 18th century. Agricultural policy was supported by “a disciplined peasantry well organised, and managed in farmers unions (*Land-boforeniger*)”, established to fight for the political and economic freedom of the peasantry, which went on to build a powerful cooperative sector.

In the Netherlands, the Land Administration Foundation, established in 1950, above all intervenes in areas of rural development within a political framework designed to encourage the interruption of activity, though it rarely intervenes on the free market. From 1953 to 1963, sales of farmland were subject to two checks (price and purchaser). Control over tenant farming was maintained and farm policy is managed jointly by farmers’ unions and the government.

In France, structural policy, the Tenant Farming Status, and SAFER are managed jointly by the government and farmers’ unions. These were implemented thanks to the combat led by the farmers after the war.

Policies aiming at the same objectives can be found in Southern Europe as well, though the relative weakness of the farmers’ organisations, especially in Spain, did not produce the same results. Those countries have also openly sought to develop family farming. The policy of land consolidation has been applied everywhere with varying degrees of success. Also, attempts to secure farmers’ tenure rights on owner-operated farms have been effectuated.

These market and structural regulation policies are not perfect. They can give rise to corruption and different types of manipulation. The European context has certainly favoured their creation, due to the continent-specific agrarian history. More often than not, regulation functions through systems managed jointly by governments and farmers’ unions.

However, apart from these limitations, these policies are nonetheless essential for a country in which family farming plays an important role and where there is no virgin land to be exploited. However, there are a certain number of prerequisites:

- It is difficult and even impossible without strong, representative and democratic farmers’ unions.
- It is also impossible without a coherent agricultural policy that protects family farming from the dramatic effects incurred when put in competition with farms that produce the same products at incomparably lower prices, for reasons having nothing to do with economic efficiency.

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<sup>93</sup> The negative consequences of their implementation were the increase in tension between farmers’ organisations and the vigorous opposition from other organisations such as the Landless Workers’ Movement, which fears that they will divert attention from the urgent need for agrarian reform in Brazil.

<sup>94</sup> From Hernandez, Maria-Isabel, Ejemplos de políticas de tierra en varios países de Europa occidental. España, Francia, Portugal, Italia, Dinamarca, RESAL, IRAM, August 2001.

<sup>95</sup> See record # 15. Part Two.

## B. Question Three: the recognition of cultural and historic diversity and territorial management

Examination of the first two questions, that of the recognition of land rights and that of the optimisation of access to land leads us in both cases to raise the problem of *local governance*, or in other words, the capacity of populations to establish rules that allow them to manage land and natural resources in a sustainable and satisfactory way. This third question covers this subject related to governance. At the same time, it is an opportunity to widen the scope of our approach.

We feel that this issue deserves to be dealt with separately since it goes beyond the matters addressed in the first two questions. However, we can cover this subject only briefly in this paper. In fact, an extensive dealing of this question would require far more space due to its great complexity and social and political sensitivity. Therefore we shall provide a short introduction to the debate, in the hopes of going into greater depth in a supplementary report.

### Recognition and delimitation of indigenous territories

The need to recognise Indigenous Peoples and their rights over their ancestral territories has gradually won ground over the past decades. Article 14 of convention 169 of the International Labour Organisation<sup>96</sup>, adopted in June 1989 in Geneva, is very clear on this point: it obliges signatory countries to recognise and protect use and property rights of indigenous peoples over the land they have occupied for ages<sup>97</sup>.

Support has been given to projects aimed at identifying the borders of territories occupied by indigenous peoples,<sup>98</sup> and some countries have begun to recognise indigenous rights over vast tracts, along with very different procedures and degrees of autonomy<sup>99</sup>. Generally, indigenous territories still spark conflicts. Quite often, the way in which the specific land tenure systems for indigenous lands are defined do not take into account the changes and real interests of the inhabitants. The level of autonomy conferred upon the populations is often insufficient as is the support provided allowing them to better organise and modernise their methods of government.

### Recognition of cultural diversity

The link between an ethnic group and an ancestral territory is often complex. Several social and ethnic groups can have rights over the same territory.

The example of the link between the southern Saharan nomadic herdsmen (in particular the Fula and the Tuaregs) and farmers is a good illustration of this type of situation. In record # 2 of the second part of this paper, André Marty describes the difficulties for pastoral societies in gaining recognition of their specific characteristics vis-à-vis the rest of the society. A territory cannot be defined simply by drawing clear and precise lines. Circuits followed by

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<sup>96</sup> This convention had been ratified by only 14 countries in 2000.

<sup>97</sup> However, reasoning in terms of property and use rights is not really appropriate in this case. The recommendation contained in article 14 states that care must be taken to protect access by indigenous peoples to land that is not exclusively occupied by them, but which they can use for their traditional activities and subsistence, with specific mention of nomadic peoples and itinerant farmers. It does not give any elements for further action.

<sup>98</sup> The World Bank, for example, gives a large amount of space to the delimitation of indigenous land in its project on land in Nicaragua. However, the definition of the land regime governing indigenous peoples' lands in this country, as in many others, remains very unsatisfactory.

<sup>99</sup> For example, Panama has a special status for the indigenous territories it recognises (*comarcas*). Refer also to the Canadian experience. The INRA law in Bolivia recognises the rights of indigenous peoples over their original territories, though its application raises many problems.



herdsmen change according to climatic characteristics. Furthermore, rights of access to grazing resources and water are shared, and synergy with sedentary farmers must be adapted constantly.

#### A more general problem of local governance

Our reflection has led us quite naturally not to consider the territorial claims of indigenous peoples as being different from populations that do not consider themselves as indigenous.

In every case, whether the people in question is an ethnic minority, of mixed blood or belongs to a dominant majority group, we have observed the need for intermediate levels of land and resource management and therefore for effective local governance.

The basic difference is that indigenous groups have conserved, by virtue of their own culture and combat for existence, acute awareness of their differences and their own values. Also, they often have been able to conserve their own internal social rules, methods of settling conflicts, ways and customs that constitute a visible social capital that may be recognised as such not only by themselves, but also by other social groups. If, as we have emphasised, these specific systems of social organisation and thought, and traditional and original procedures of local power do not always succeed in adapting quickly enough to changes in the social and economic environment, they exist and serve as the basis for the struggle for their recognition. The situation is more complicated in the case of multiethnic societies that are unable to form links with a traditional culture and social structure.

Generalised customs and rules also exist that are accepted by everyone at local level, just as mechanisms for settling conflicts exist in peasant societies that do not claim to belong to any particular indigenous group, but recognition is even more difficult to obtain for them.

For this reason, there is a general need to establish or reinstall mechanisms of local governance at the local level. In every case we have seen, certain land tenure rights can neither be individualised nor converted into merchandise. Such a sort of commons, which varies according to each people's culture and history, forms the basis of the "territory" on which a population must exercise its authority through the implementation of specific policies. Depending on the case, this relative "autonomy" relates in different ways with higher levels: State governments, institutions and decision-making bodies within developing constitutional arrangements that group together several States (and which can even be worldwide). In all cases, some degree of autonomy is always necessary for territorial governance.

## Proposals

The following proposals are not definitive. They are dynamic and will change as a function of the contributions, comments and criticisms provoked by this paper.

Neither are they presented by order of importance, since the priorities are not the same in different regions of the world. However, they are all of interest in one way or another and should be taken into account for most situations, with slight changes and adaptations according to the specific case.

### A. 4 elementary proposals

#### *1. Rehabilitating agrarian reform in the case of very inequitable access to land*

**In every country with very unfair land distribution, agrarian reform should be rehabilitated as a necessary and essential public policy. Furthermore, efforts should be made to systematically improve the procedures for implementing agrarian reform, so that the opportunities provided by favourable contexts for their application are not lost.**

From 1960 to 1980, agrarian reform was one of the policies consistently supported by development organisations and international financial institutions. It was recognised as necessary in every country of the world with polarised agrarian structures, such as in Latin America, Southeast Asia and Southern Africa. Today, due to the limitations and cost of often poorly implemented agrarian reforms, and due to the fact that there has been a considerable decrease of rural populations in comparison to urban populations, agrarian reform is often considered as having lost its pertinence. Although the World Bank acknowledges in some of its documents that, in theory, agrarian reforms are still necessary, the programmes that it and other international financial institutions support no longer have speedy and radical change of agrarian structures as their objective.

However, every time land is distributed very unfairly (for example, in Brazil, Zimbabwe, South Africa, etc.), fast and efficient government intervention to redistribute land to small and medium sized farmers (very often the most apt at exploiting the land in the interest of the majority) is as necessary and urgent as ever. Agrarian reform therefore constitutes the first public policy to be implemented in strategies aimed at combating poverty. The vast majority of the poor is made up of peasants and former peasants who do not have enough resources to live on. Peasants facing ruin all over the world keep adding to the throngs of destitute people. Where large tracts of land are used for extensive farming, and where large numbers of peasants without access to land that would allow them to enter into a process of sustainable development exist, the first and most urgent measure to be taken is to give them land access and thereby implement agrarian reform.

However, the agrarian reform to be implemented must take into account previous experience and not simply reproduce the same systems as in the past. Political contexts favourable to the execution of an agrarian reform occur relatively rarely, since they require balances of power, internally and externally, capable of confronting the interests of the landed gentry, who often play important roles within the groups holding the power. Furthermore, when they do exist, these favourable conditions often fade away. Thus, it is vital not to miss the historic opportunities that arise. Hence the importance of systematically seeking ways to improve the agrarian reform process hinges on making the impact of land redistribution irreversible in the short term.

This improvement above all requires that **FARMERS' ORGANISATIONS PLAY THE LEADING ROLE** and implies:

- **improving the dynamics of setting up agrarian reform policies**, by seeking to progressively win support from different social classes, while sectors hostile to the reform become progressively weaker. This is an essential point without which transformations are quickly aborted.
- **revision of relations between the collective and the individual, by building mechanisms adapted to the social management of land while securing the tenure of individual farmers**

Collectivisation of production frequently impedes changes in the production system and the balance of power. Implicit acceptance of absolute ownership as the sole reference leads to thinking in terms of collective and individual, whereas the construction of viable systems depends on combinations of collective and individual rights. Tenure security for individual farmers resulting from reform and the creation of new procedures for the collective management of the commons inherent with the land are two processes that should be developed simultaneously.

- **preparation, beginning at the inception of an agrarian reform, for the "post-reform period", by avoiding the creation of a reformed sector that is cut off from the realities of other small farmers**

Agrarian reform is a public policy, requiring dynamic government intervention at a specific time. However, allowing one's future to depend only on the goodwill of successive governments would be foolish. The creation of a reformed sector with specific rules and strong dependence on paternalist government action combined with the existence of farmers' organisations that are specific to the reformed sector have always led to extremely precarious control over the advantages of agrarian changes (such as in Nicaragua and Honduras).

Although specific assistance can be fully justified for farmers benefiting from agrarian reform, the disappearance of the agrarian reform benefits in the event of a sudden change in the balance of political power can only be avoided by immediately setting up agricultural policies that are common to both the reformed sector and that of small and medium sized farmers. It is also vital to constitute farmers' organisations capable of creating a coherent link between the struggles pertaining to these sectors.

- **the creation of local capacities for land management, without waiting for the end of the reform process**

In response to the same concern, rather than completely separating the land of the reformed sector from the real estate market, it is advisable to prepare far in advance for the changes that follow agrarian reform. The farms of the reformed sector also require modifications regarding land access. Instead of these modifications being only the result of settlements managed by Agrarian Reform Institutes, it is necessary to develop local competencies and capacities to learn how to wield the different procedures for control over the real estate market (including the rental market in certain cases). Farmers' organisations must learn to conceive, develop and manage these regulation procedures, while fostering relationships with the other farmers of the area.

- **linking land reform with an agricultural policy that permits the development of peasant farming**

This is a crucial point. Although agrarian reform in terms of redistributing land is the first essential step, its success depends on the availability of economically satisfactory conditions to new farms, so that they might be productive.

We have seen that the potential for family farming can only be fulfilled if appropriate public policies permit its consolidation and modernisation. This is especially so for

fragile farms set up during a radical process of agrarian reform. The protection of key products at border areas, so as to prevent competition with farmers with far higher productivity levels, and a policy like that of Taiwan, where mechanisation and modernisation did not immediately replace human labour with machines, constitute the essential elements without which the fruit of the reform cannot be harvested. Other policies can play a major additional role, such as a product quality policy, a policy to compensate disadvantaged areas, etc.

## **2. Regulating land markets and managing land structures**

**Where the unequal distribution of land is not so serious, it is necessary to set up farm size restriction policies and mechanisms to regulate land markets.**

This proposal applies to countries that do not as such need an “agrarian reform”, i.e. the rapid redistribution of land via government intervention. This also holds for those that have just instituted an agrarian reform. In these two cases, it is advisable to manage the progression of agrarian structures so as to permit the modernisation of family farms, since we know that this cannot be achieved by the market alone.

Structural policies here are public policies intended to correct the functioning of the land market and ensure that the progression of the agrarian structure conforms to the interests of the majority. Just as much as an agrarian reform, structural policies ensure that land fulfils the social function assigned to it at a given moment. This implies that farmers and public institutions agree on the types of farms they want in each region, in terms of size and farming systems, in order to create the conditions under which the largest number can become economically viable and achieve gradual modernisation.

Here again, as with agrarian reform policies, **STRONG, DEMOCRATIC AND REPRESENTATIVE FARMERS’ ORGANISATIONS** standing for the majority of farmers is absolutely essential (see the example of the experiences of the Netherlands, Denmark, Taiwan and France).

There is a wide range of possible measures, though some are too expensive for poor countries. Mention should be made of the importance of those that can be taken almost everywhere:

- **Land taxation** that tax large estates, over-extensive use of land and destructive use of natural resources;
- **Regulation and improvement of land markets**, which can use mechanisms to control the land market managed jointly by the government and farmers’ organisations (somewhat like the SAFER in France), land banks, and land credit for those without access to long-term finance to purchase land. These interventions are complex and require constant monitoring of the land market and the capacity to adapt procedures if necessary;
- Policies that facilitate **land consolidation**, regrouping small holdings when these have been dispersed to such an extent as to impede modernisation.

However, apart from these measures aimed at adapting existing land systems into small private properties, it is also important to **guarantee the right of farmers to farm independently from ownership rights**. This is one of the only ways of solving the problems raised by equal successions between generations in the peasant economy.

- **Providing tenure security for tenants**, share croppers and all users who are not owners is a very positive land policy and has proven to be most efficient in certain contexts. Naturally, it requires adequate legislation, though in no way does this suffice. Such policies can be enforced only if strong farmers’ organisations exist that are capable of fighting to get them voted through and making sure that they are applied. Specific jurisdictions must sometimes be set up so that small farmers can have access to the law on such delicate subjects.
- The **constitution of specific landowning bodies** (whose legal status may take different

forms: land trusts, stock companies, groups of landowners, cooperatives, etc.) that rent out the land needed by farmers. This can be an interesting option provided that farmers' rights are guaranteed and that the lessees truly practice the kind of farming that is being promoted.

### ***3. Thoroughly decentralise the mechanisms for administering individual property rights***

International development programmes spend hundreds of millions of dollars setting up national cadastres and land registries, asserting that the only way to guarantee farmers' rights is to give them title deeds, and that these deeds will permit spurring investment and can be used as collaterals to obtain loans.

Most of these efforts remain in vain as far as small farmers are concerned due to high operation costs and the lack of local procedures for updating rights, since in a few years these *cadastres* (land registries) will no longer reflect the real situation vis-à-vis their rights.

But there is worse to come. We saw that the process of recognising rights is usually based on the Torrens system invented during the colonial era, and that large numbers of beneficiaries risk being despoiled when establishing *cadastres* and land registries. Although it encounters several obstacles and resistance from different areas, the implementation of new systems adapted to developing countries, such as the land plans in West Africa, is an attempt to break with this top-down registration system.

Therefore, the idea that security of rights can only occur by acquiring full ownership should be fought against vigorously.

Decentralising the administration of rights to the level of municipalities, farmers' organisations, indigenous and customary organisations, and ad-hoc commissions is a priority as well as a condition ensuring that land registries at the national level are sustainable and that the rights of all users can be updated at a reasonable cost.

It is the participation and the existence of local-level witnesses whose honesty is known to all, rather than Global Positioning Systems that should be used to establish where the boundaries of plots lie as a last resort. This requires respected local institutions able to validate the rights of each and everyone.

To avoid recourse to official justice, which is always slow, expensive, and often inefficient and corrupt, it is necessary to **combine these functions of pure administration of rights with other functions for settling conflicts and mediation**, adapted to current requirements, which can take the form of different institutions.

In some situations, according to procedures that can be adapted to each case, a very useful procedure is an initial "registration" or writing down of the rights of collective or communal bodies, and not only those of individuals. Nonetheless, these rights cannot be simplified into ownership rights in the Western meaning of the term. This leads us to the fourth proposal.

### ***4. Set up decision-making bodies for managing common resources at the territorial level***

Apart from rights over land in the strict meaning of the term, this entails managing all common property and taking into account bundles of rights over a single area. Just as agrarian reform, the sustainable management of resources (wood, water, biodiversity) cannot be ensured solely in a top-down manner through government institutions.

Setting up these participatory decision-making bodies at the level of different territories should constitute an avenue for our work in the coming years. This concerns all territories and not only so-called indigenous ones.

Today, this challenge cannot be dissociated from the implementation of land policies. In addition, it fits in with the mechanisms mentioned in the prior sections, whose aim is to empower a society to establish and apply policies of common resource management.

## **B. What should be done to ensure that these policies are applied?**

A certain number of actions must be carried out so that these proposals can come to fruition.

They are not recipes: it is not possible to implement a “good” agrarian reform simply because one “knows” how to. It requires mechanisms and strategies that, in time, aim to *change the current balance of power*. Thus from the very outset, farmers’ organisations are at the centre of these proposals. We will now detail the proposals in five points.

### **1. Set up an experience exchange network between farmers' organisations**

Setting up an experience exchange network between farmers’ and indigenous peoples’ organisations, with periodic support from researchers and experts, is essential. By means of such a network, everyone is aware of the myriad dimensions of the problems and is able to learn better from the experiences collected around the world. It entails globalising know-how in view of more efficiently globalising struggles.

### **2. Education and research-action on land issues with farmers and rural inhabitants**

It is advisable to set up education and training programmes on land issues for farmers and rural inhabitants and create conditions so that action and research on the subject helps to guide farmers to combat new challenges and develop more pertinent public policies.

➤ There is now a real need to teach farmers and rural inhabitants about the strategic importance of land issues with respect to the future of their societies as wholes, so that they become more aware of what is at stake in their struggles.

➤ The development of research-action methods in this forever politically sensitive area is an unavoidable step in the process. The struggles led by farmers, indigenous people, rural inhabitants and other allies must succeed in convincing their interlocutors of the feasibility of the alternative projects described, by making use of pilot projects and experiences where it was possible to change the balance of power and build the different structures required to create large-scale social capital.

➤ Consequently, the methods employed for the fight need to evolve, since it is no longer a question of simply demanding these things from the government, but of being able to construct alternatives together.

### **3. Lobbying to influence financiers and decision-makers**

Lobbying at international financial institutions and bilateral and multilateral development bodies is necessary in order to obtain the space and resources that spur innovation and the implementation of policies different from those promoted today.

### **4. Build new alliances**

To make progress with the previous proposals on land management, it now appears vital to build new alliances beyond peasant and indigenous circles on subjects of direct interest to urban populations, which often form the majority in many countries (food quality, the environment, rural management, the link between urban poverty and underpaid small farmers).

These proposals do not only concern farmers and rural populations, but the whole of human society as it seeks sustainable development.

## 5. *Link land issues and the fight against poverty and inequalities*<sup>100</sup>

Including the issue of land on the agendas of discussions on global problems should be done by emphasising the fundamental tie between land matters and the causes of world poverty.

Without agrarian reform and agricultural policies favourable to small farmers, it will be impossible to eradicate poverty or achieve the sustainable management of the world's natural resources.

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Since the first version of this paper was written, some progress has been made.

A **World Agrarian Reform Forum** took place in Valencia in December 2004, organised by the Spanish NGO CERAI with the support of numerous farmers' organisations, NGOs, and some governments. See the website of the Forum

<http://www.fmra.org>.

A **World Conference** was organised in March 2006 in Porto Alegre (Brazil) by the **FAO** (Food and Agriculture Organization of the United Nations) with the support of IFAD (International Fund for Agricultural Development) and of the Government of Brazil. At the same time, Civil Society Organisations and Social Movements held a **parallel forum** on the theme: **Land, Territories and Dignity**.

See the website of the **International Conference on Agrarian Reform and Rural Development**

<http://www.icarrd.org>.

AGTER prepared the second issue paper<sup>101</sup> of the conference, which has been partly based on this proposal paper.

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<sup>100</sup> The mission of the International Land Coalition (the former People's Coalition to Eliminate Hunger and Poverty), founded by the 1995 Conference on Hunger and Poverty, housed and sponsored by the International Fund for Agricultural Development (IFAD) is to remind people of the need to include measures in favour of the landless peasants in the programmes of national and international organisations. see <http://www.landcoalition.org/>

<sup>101</sup> Michel Merlet, Samuel Thirion and Vicent Garces. States and Civil Society: access to land, rural development and capacity building for new forms of governance. Issue Paper # 2 of the International Conference on Agrarian Reform and Rural Development (ICARRD). March 2006. 30 p





# **PART II**

## **DISCUSSION DOCUMENTS**

### **Experience records**

## THE EXPERIENCE RECORDS.

### *Land policies and agrarian reforms*

The 18 papers presented here illustrate some of the subjects mentioned in the proposal paper. They have all been prepared by people that have substantial experience in the subject, country and region concerned (or in certain cases, the records are based on their works).

Different opinions are expressed that do not necessarily converge.

This is not a collection of best practices or success stories. However, as much can be learned by analysing failures as successes. There is no one system that can be reproduced as it is.

This selection does not seek to be exhaustive. It attempts to deal with different types of situations (chosen from four continents) that are not subject to global analyses or comparisons in a general way.

This is the starting point of a collection of short documents. Although this database is incomplete for the moment, the following records are nonetheless sufficiently detailed for someone without prior knowledge of a particular country to make use of them in order to further his own thinking on land policies, their potentials and limits.

The fact that a certain number of situations are not yet included, despite their significance and interest (such as that of Brazil, which is one of the countries where agrarian reform and land policies are particularly important today, the Philippines, Mexico, Bolivia, etc.), should be seen as an invitation to continue this effort to build tools for creating new mechanisms for managing land.

Our goal is to make these documents available for farmers' organisations and interested people by means of multilingual, electronic publication on this website, which will be updated regularly.

We are sincerely grateful to all of the people who have participated in compiling this first set of 18 records.

Michel Merlet. (Editor of the proposal paper)

## List of experience records

<b>RECORD # 1. CHAD. JOINT MANAGEMENT OF COMMON LAND AND RESOURCES IN MAYO-KEBBI. (B. BONNET).</b>	<b>5</b>
<b>RECORD # 2. SAHEL. RECOGNISING THE SPECIFIC NATURE OF PASTORAL POPULATIONS (A. MARTY)</b>	<b>8</b>
<b>RECORD # 3. MADAGASCAR. «RELATIVE LAND SECURITY». A NATIONAL EXPERIMENT TO PUT IN PLACE PROCEDURES FOR ACKNOWLEDGING RIGHTS AT THE LOCAL LEVEL. (C. MALDIDIER)</b>	<b>11</b>
<b>RECORD # 4. ZIMBABWE. THE UNDENIABLE NEED FOR AN AGRA-RIAN REFORM. (BASED ON E. TISSERAND)</b>	<b>13</b>
<b>RECORD # 5. TAIWAN. A COHERENT PACKAGE: AGRARIAN REFORM, AGRICULTURAL POLICY AND ECONOMIC DEVELOPMENT (C. SERVOLIN, BASED ON E. THORBECKE)</b>	<b>15</b>
<b>RECORD # 6. VIETNAM. CONSECUTIVE AGRARIAN REFORMS AND SUCCESS IN FAMILY FARMING. (DAO THE TUAN).</b>	<b>17</b>
<b>RECORD # 7. VENEZUELA: BETWEEN THE MARKET AND THE "AGRARIAN REFORM", THE COLONISATION OF "VIRGIN" LAND. (O. DELAHAYE)</b>	<b>21</b>
<b>RECORD # 8. CENTRAL AMERICA. THE FRAGILITY AND LIMITS OF AGRARIAN REFORMS -1/3- HONDURAS. (M. MERLET)</b>	<b>23</b>
<b>RECORD # 9. CENTRAL AMERICA. FRAGILITY AND LIMITS OF AGRARIAN REFORMS -2/3- NICARAGUA. (M. MERLET)</b>	<b>27</b>
<b>RECORD # 10. CENTRAL AMERICA. WEAKNESSES AND LIMITS OF AGRARIAN REFORMS -3/3- LESSONS FROM HONDURAS AND NICARAGUA (M. MERLET)</b>	<b>31</b>
<b>RECORD # 11. POLAND. AGRARIAN REFORMS AND FAMILY FARMING (P. DABROWSKI AND A. LIPSKI)</b>	<b>33</b>
<b>RECORD # 12. ALBANIA. FROM ABSOLUTE COLLECTIVISM TO RADICAL EGALITARIAN LAND DISTRIBUTION. (A. CIVICI)</b>	<b>35</b>
<b>RECORD # 13. USA. AGRICULTURAL LAND AND THE LAW OF THE UNITED STATES OF AMERICA, ORIGIN OF THE WASHINGTON CONSENSUS. (O. DELAHAYE)</b>	<b>39</b>
<b>RECORD # 14. DENMARK. A PIONEER FOR SMALL FARMERS IN WESTERN EUROPE. (C. SERVOLIN)</b>	<b>43</b>
<b>RECORD # 15. NETHERLANDS: AN INTERVENTIONIST AGRICULTURAL POLICY INTENDED TO REDUCE REGIONAL INEQUALITIES (S. DEVIENNE)</b>	<b>45</b>
<b>RECORD # 16. FRANCE. THE SAFERS, AN ORIGINAL LAND MARKET REGULATION MECHANISM THAT IS OPERATED BY THE STATE AND FARMERS' ORGANISATIONS (M. MERLET, R. LEVESQUE)</b>	<b>49</b>
<b>RECORD # 17. FRANCE. THE <i>SOCIÉTÉ CIVILE DES TERRES DU LARZAC</i> (LARZAC LAND TRUST), AN INNOVATIVE AND ORIGINAL APPROACH TO RURAL LAND MANAGEMENT. (J. BOVÉ)</b>	<b>53</b>
<b>RECORD # 18. FRANCE. THE «TENANT FARMING STATUTE». A SUCCESSFUL EXPERIENCE IN MAKING FARM PRODUCERS' LAND USE RIGHTS SECURE. (M. MERLET)</b>	<b>57</b>



## Record # 1. CHAD. Joint management of common land and resources in Mayo-Kebbi. (B. Bonnet).

October 2002

### Recreating local decision-making bodies for the management and planning of common resources

Management of natural resources of the South of Mayo-Kebbi (in Chad's Sudanian Savannah region) is focused on the management of community resources (grazing land, water, forests, game, wood, fish resources, etc.) by means of community-based institutions and resource management systems. It attempts to organise local environmental actions by using the traditional system of community resource management. The approach is based on the concept of **Local Decision-Making and Organisational Bodies**, characterised by three orientations, which are to:

- Begin with existing management structures and improve their capacity and efficiency by avoiding the creation of new structures that are too dependent on an ad hoc, 'project' type organisation;
- promote dialogue and negotiation between the different categories of users so that the actions carried out strengthen the links between communities;
- privilege gradual learning of new procedures for operating and making decisions within existing local structures.

The approach aims to reinforce four essential functions. Their conception, implementation and follow-up are effectuated by local natural resource management policies:

- a. General orientation for natural resource management: the definition of matters and major problems to be resolved;
- b. Formulation of precise work and management programmes, and development of effective incentive policies;
- c. Monitoring and verification of the application of community rules: monitoring and evaluating the measures' performance and results, monitoring and control of financial management;
- d. Mediation and/or arbitration between user groups: conflict prevention, sanctions in case of non-compliance with community management rules.

Village representatives, customary land managers, involved socio-professional organisations (fishermen, hunters, farmers, herders) and local resource preservation groups gather together for inter-community assemblies. These "forums" are a first step in the deliberation about existing management rules for areas between villages having one or more important resource: lakes, game reserves and forests, drainage basins (catchment

areas). The approach followed aims to develop a **management charter**, which will confirm or re-define management rules, and will establish the procedures for control, sanction and mediation.

Putting resource management in the hands of different groups of local actors, several projects have been accomplished as part of the goals defined within the local decision-making bodies<sup>1</sup>.

These projects expand the technical frames of reference used for managing the six vital resources of the local economy<sup>2</sup>.

The participants' involvement in the assemblies, the opening of genuine debates, the massive presence of village representatives and the logistical organisation taken up by the county that hosts the assemblies should be highlighted as initial successes. Note should also be taken of the advantages offered by testing analysis and planning methods in a cooperative fashion. Thereby, everyone is called to adopt new perspectives on land and resources, the consequences in terms of deterioration and the measures that may be taken to contain them.

The establishment of these local assemblies has brought the technical services of the State, the local chiefs and the socio-professional organisations closer together. The first result is improved awareness of the respective duties of these different actors. Also, progress was made in conceiving common management rules and recognising their importance. At this stage, the local managing bodies do not constitute new institutions in the sphere of local development and natural resource management. Actually, they bring together local actors involved in the sustainable use of resources (decision centres, farmers' organisations, heritage conservation associations). The main benefit above all else is learning new methods of working together, panel discussions and how to make strategic decisions about the measures that provide access to common land and resources.

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<sup>1</sup> During the first phase, implementing this approach led to 152 local projects for managing natural resources on the village and inter-village scale (42 villages and farmers' groups, 3 users' organisations and environmental protection organisations were involved).

<sup>2</sup> The land (previously untilled lands, crops in strips, compost, regeneration of *Acacia albida* parks), forest (fruit or forest tree groves, the protection of fringing forests and combating fire), grazing land (development of water points, the identification of transhumance routes), fish (regulations, protection of spawning grounds, conservation), wildlife (protection and evaluation of wildlife resources), water (protection of sources and river banks).

### The advantages and limits of this approach

This type of approach nonetheless raises a number of questions about the longevity and the checks on authority within such decision-making bodies. The first question concerns the recognition and legitimisation of the decision-making bodies and the representatives. Conflicts might be provoked because different bodies' domains of intervention overlap.

A constant quest for the greatest local democracy underpins the ways in which different groups of actors and users are represented. In a general way, the duty and power of the "representatives" and "delegates" of the villages and organisations involved remains fuzzy.

Decision-making systems and the enforcement of community rules are still crucial to the success of these experiments. Rural populations' interest in defining the main direction is evidenced by the debates held during the assemblies, but the process of making decisions continues to lack formality. Many uncertainties could arise concerning communities' actual engagement in the application of whatever decisions may be made.

The viability of such measures depends on the level of involvement of different users' groups in establishing these rules. Much work needs to be done in order to define the processes of reaching a consensus which would legitimize future rules.

One of the main difficulties in implementing systems for natural resource management also lies in the establishment of procedures for enforcing the rules. This is particularly true with regard to measures limiting users' access rights (preserves, temporary prohibition). Also, this brings out the reflex for wanting to exclude external users (migrating herdsman, fishermen and hunters from neighbouring areas, etc.). Distrust of government control has reached such levels that local people tend to take on the role of rural police themselves. The authorities' dubious capacity to demand respect for the rules established by a wide consensus is part of a larger problem. In fact, the power invested in and the duties accorded to local organisations and State representatives have yet to be rigorously defined.

The weight of external funding that supports such local dialogue also poses a few concerns. Does the motivation demonstrated by local actors simply reflect their desire to receive a grant for their projects, no matter how small it may be in this case? Consequently, more support must be given for the establishment of systems capable of

covering progressively the costs of each of these local decision-making bodies. Ensuring this is vital in order to provide for the greater autonomy of these farmers' organisations.

The possibilities for institutionalising these local decision-making bodies make up a subject that is still open for discussion. Experimenting helps to better identify the procedures that can be used to organise territorially-based renewable resource management groups. However, the long term goal of establishing an official management structure ought to include the short-term objective of appealing to those who do not yet perceive all that is entailed in cooperative management.

### Making rights secure before registering them

The kinds of farming in the Sahel region, which are on their way to economic marginalisation, necessitate the management of grazing lands, natural forests, water, and hunting ground. The approach employed for regulating the use of such resources needs to fall between two opposing extremes: absolute and exclusive property on the one hand, and totally free and deregulated access on the other. In these circumstances, the management of common resources must integrate mobility, sustainability, equity and reciprocity, while also integrating priority rights when they exist. These are all elements that contribute towards ensuring land security for farmers and which require a process of consultation-mediation-arbitration between groups of users.

Only once these prerequisites are in place will it be possible to progress towards recording rights in view of establishing a land registry to formalise boundaries and especially the diversity of individual rights and group rights, and priority and temporary rights in land and its different resources.

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Source: BONNET, Bernard. *Problématiques foncières et gestion des ressources communes. Regards sur quelques situations et expériences en Afrique de l'Ouest*. Communication. World Social Forum, Porto Alegre. January 2001.

Author of record: BONNET, Bernard. (IRAM).

For more information: BONNET, Bernard. *Gestion commune des ressources naturelles: vers un renforcement des capacités locales*, IIED, file #94, August 2000, 24 p.

Translation: Mary Rodeghier, 2007.

## Record # 2. SAHEL. Recognising the specific nature of pastoral populations (A. Marty)

October 2002

Up until the 19<sup>th</sup> century, pastoral societies played a predominant role in the economic, social and political life of the Sahel<sup>1</sup> region. Colonialism followed by the creation and development of African nation-states has brought hardship and marginalisation upon pastoralists. These societies clearly have trouble adapting to the new political climate. Are we to assume the herders' way of life is fundamentally incompatible with modernity?

Without doubt, this is an exaggerated yet unfortunately widespread point of view that has caused much misunderstanding. Rather than trying to force highly diverse rural societies to all fit one mould for a rural farming community, wouldn't it be wiser to accept that a variety of situations exists and that pastoral populations have their own specific characteristics? Moreover, rather than stigmatising singularities and oppositions, wouldn't it be better to strive for genuine unity by acknowledging diversity? To this end, we recommend here the recognition of three aspects: the *interdependency of societies*, *pastoral mobility* and the *herdsmen's rights to move around according to their own logic*.

### Interdependent societies

Pastoralism has greatly suffered due to its image as an archaic activity practised by isolated people that refuse to belong to larger groups and resist in different ways, ranging from frantic escape to open revolt. This perception stems from preconceived notions of the superiority of grain cultivation. This is why any effort to convert natural grazing land into cultivated fields is considered as a step towards a more civilised society.

In reality, we see that this is not always as simple: in certain cases, raising crops can hasten land degradation and disturb the equilibrium between farming systems, which suddenly appears more delicate than previously thought. In fact, we are looking at genuine interdependencies between neighbouring societies, between farming systems and between areas in synergy with each other. Real economic exchanges as well as matrimonial and political alliances were made between herdsmen and crop farmers, whose traces are still visible. Obviously, their world was not idyllic, neither was it bereft of various forms of domination and conflict. However, conflicts more frequently generated alliances between nomads and sedentary farmers in opposition to other nomad-farmer alliances more often than they

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<sup>1</sup> The Sahel is an immense strip of grasslands and savannah that traverses Africa, situated between the Sahara desert to the North and the more fertile regions to the South.

caused populations to enter into blatant confrontation with one another.

These interdependencies have favoured the development of complementary relationships: the weakest parts of the farmer-herdsman alliances are assisted by the strongest parts during times of hardship. Far from closing in on themselves, the herdsmen have always needed others: farmers and exchange partners near and far.

Today, rather than giving in to the sirens of simplification, which are easily manipulated and destroy the social fabric, it is better to recognise the usefulness of interdependencies. In order to reach a compromise and consensus at the local level, new forms of cooperation need to be negotiated. The best way of ensuring the security of one's own rights is to recognise those of others. Thus, it is on the basis of this mutual recognition that a new form of unity can emerge out of diversity.

### Pastoral mobility

This is an essential feature of pastoral systems. Sometimes it is the herds that dictate this movement, while at others it is dictated by both man and beast. The nomadic way of life can take many different forms, such as a group of herdsmen covering a more or less limited region, migrations along more or less regular routes that permit the use of different and complementary areas depending on the season and available resources (water, grazing fodder, salt, etc.). This mobility always relies on freedom of movement, and is an indispensable condition in regions subject to variations and fluctuations. Furthermore, mobility is related to the social relations that each group maintains with its more or less distant neighbours, keeping in mind security issues. Many observers now recognise that this is an advantage of pastoral practises, as they permit both the sustainable utilisation of scattered resources and improved animal productivity (reproduction, dairy, meat, etc.).

In many places however, this mobility is increasingly threatened. On the one hand, the reduction of pastureland, the disappearance of migration routes and stopping points and the tendency of certain groups to monopolise watering holes endanger the herders' way of life. On the other hand, it is threatened by inappropriate legislation, which is poorly adapted to herding. Consequently, this mobility now requires that specific rights to land use and rules be recognised as part of the common heritage of the peoples concerned.

### The right of nomadic herdsmen to progress

The exotic and exaggerated image of nomadic herdsmen living in symbiosis with their livestock and their natural environment, far from towns and the concerns of the modern world is tantamount to freezing them in time, keeping them in a sort of reservation, and marginalising them so completely that they will end up one day in the misery of the slum.

Fortunately, many pastoralists have realised the danger that such confining exoticism presents. They now want storage and supply warehouses, adapted means of transport, schools for their children (hitherto condemned to illiteracy) and healthcare centres. They sometimes grow crops in addition to livestock breeding, but more than ever, they want to be considered as being linked to a *home grazing territory*, where they have decided to settle and over which they are considered to have specific rights (whose nature remains to be defined). In parallel, they want to maintain the possibilities of accessing more remote grazing lands.

The above does not exactly amount to sedentarisation. They continue to practice nomadic grazing part of the year, but they are determined to leave their mark at a site selected in their former space, before they are totally pushed to the margins where life will swiftly become untenable. Thus, they seek to combine a settled home for

their families with the mobility of the major portion of their herds (leaving only a few dairy cows in the settled part). This evolution, following the droughts of the 70s and 80s is continuing. We think that it deserves to be acknowledged, since it originates with the herders themselves. It already appears to have favoured better political integration at decision-making levels, and it should also promote the development of community awareness among herdsmen.

This threefold recognition should go a long way toward improving the involvement of nomadic groups, with all of the neighbours and actors concerned, for a more pertinent definition of the rights and reciprocal obligations regarding land.

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Translation: Mary Rodeghier. 2007.



## Record # 3. MADAGASCAR. «Relative Land Security». A national experiment to put in place procedures for acknowledging rights at the local level. (C. Maldidier)

October 2002

In response to the spread of insecure land tenure, conflicts in rural areas, and miscellaneous problems (cost, rigidity, slowness, etc.) caused by traditional land registration procedures, the Madagascar government passed an interdepartmental ruling in August 1998 establishing Relative Land Security (*Sécurisation Foncière Relative* SFR). This intervention is one of many things done by the Environmental Programme, which aims to promote better natural resource management by assigning exclusive use rights to local communities, by eliminating free access to land and resources and by creating the conditions for more intensive agriculture. Thus, the SFR is very close to the Secure Local Management contracts (*Gestion Locale Sécurisée* GELOSE), and is linked with a heritage-type approach, which is, in principle, based on dialogues between different actors about long-term scenarios.

SFR is a tool that aims to strengthen the rights of local communities in their land. It has two additional facets:

- On the one hand, it constitutes State recognition of farming communities' use rights through "topographic" intervention. This amounts to official recognition of customary property, farmland, grazing land and natural resources used by or appropriated by village communities, although there are no title deeds issued. Registered plots of land are excluded from this exercise, since SFR is designed as a transitional step towards "Optimal Land Security", which incorporates land registration and a title deed, since the community and each occupant can request the registration of their plots at any time<sup>1</sup>.
- On the other hand, it provides for the creation of decision-making bodies and procedures for the local management of land, while promoting negotiation as the optimal conflict-resolution process. SFR therefore also contains a political dimension since it forestalls the transfer of government competences to the commune level as far as land management is concerned. The commune, a recently established (1995) administrative division in Madagascar, which up until now only played a minor role in

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<sup>1</sup> SFR as a means of securing tenure of land mostly concerns "traditional" and "semi-organised" communities, in other words those in which collective and community modes of land management predominate. So-called "organised" communities benefit from the Optimal Land Security system (SFO), and traditional land registration procedures.

land management, now is involved in negotiations, mediation, arbitration, settlement of disputes, and plays a preponderant role in the management and updating of SFR. The negotiation process is assisted by an *environmental mediator*; he has to reach a consensus on a village's land occupancy, among its inhabitants, as well as with its neighbouring villages and the regional technical department. Although disputes are supposed to be settled before SFR is applied, eventual conflicts that occur after its application must be dealt with by a permanent negotiating body capable of reaching *local arrangements*.

Although SFR follows the rationale that estates are a step towards the spread of private property, it nevertheless breaks away from the central government's traditional monopoly over land by means of decentralising land management. SFR strengthens local rights by issuing official documents and ensures "local" land management in the long term. Thus it aims to close in the gap between government rules and local practices.

SFR is termed "*relative*" insofar as it provides administrative rather than legal recognition. Unlike the former SFO system, SFR does not grant title deeds. In a way, it represents the first cartographic and topographic step toward classic land registration by delimiting village land and zones containing natural resources, and by surveying plots based on the administrative and public observation of the possessions owned by each person in a given territory.

This territorial approach is innovative because territory is defined as the space that a group (the basic rural community) recognises as its legitimate space, and which is recognised as such by other groups. This concept differs from classic land parcelling operations that entail carving out geographic boundaries. Rather, it takes into account ways that the land is appropriated by local populations. Furthermore, by considering cultivated and fallow lands in the same way as lands containing renewable natural resources (forests, marshes, grazing circuits), it diverges from government regulations that privileged the notion of *utilisation* when awarding properties. Thus SFR is a means of transferring private (or even sometimes public) land management from the State to local communities, including inalienable public spaces such as public and classified forests.

However, drawing the boundaries of village territories is very complicated and reflects situations that differ greatly from one region to another. There is sometimes overlap in the lands claimed by different villages as well as some persons' rights that are not clearly distinguished from those of others. Moreover, peripheral spaces exist

in which the rights of different users have not been clearly defined. As with the traditional registration system, the increased tenure security of certain persons sometimes means the infringement upon the tenure of others, which can lead to conflicts.

Some lessons have already been learned from the first SFR experiments done in Madagascar (in the Andapa region) in view to applying the rule generally. These lessons highlight the need for elastic implementation that is appropriate for the type of village territory.

A certain number of the SFR's underlying principles demonstrate a rupture with the former registration system, although the official line is that these operations are merely transitional.

It is this aspect that makes the experiment being carried out in Madagascar so interesting, since it works to set up a genuine and permanent framework for negotiating land issues at the local level, while being able to take into account the issues at hand.

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Source: MALDIDIER, Christophe. « La «SFR», une nouvelle donne pour la sécurisation foncière en milieu rural ? » Actes de l'Atelier sur le Foncier à Madagascar, Antananarivo : Ambohimambola, Republic of Madagascar, 8 and 9 April 1999.

Authors of Record: LE GAL, Morgane and MERLET Michel.

Translation: Mary Rodeghier. 2007.

## Record # 4. ZIMBABWE. The undeniable need for an agrarian reform. (based on E. Tisserand)

October 2002

The land question was one of the key issues of the war for independence, which in 1980 led to the birth of Zimbabwe from the ashes of Rhodesia. The land tenure situation was at that time typical: 6000 white landowners divided half the country's arable land and had secured 90% of the best soils, whereas the black population, 80% of whom lived in rural areas, were living on unproductive and eroded land. They were confined to reservations called the Tribal Trust Areas (TTA), which have today become the Communal Areas.

The new power<sup>1</sup> born from independence lanced an ambitious agrarian reform program in order to rectify the social imbalance and unequal land access resulting from the apartheid system, which formed the basis of the Rhodesian economy. 10% of the cultivable land occupied by commercial white-owned farms was passed through the Resettlement Schemes land regime. Each of those farms was redistributed to a few hundred families. During the ten years of the Land Resettlement Programme, the state voluntarily bought the land from landowners and then distributed it to indigenous families: 5 ha of cultivable land per family, to which pasture rights on additional surface area were added depending on the region. 58,000 families were settled on this land over the eighteen months following independence.

But this intervention remained altogether insufficient. In spite of the redistribution, the number of landless farmers has increased. New farms hadn't benefited from the supportive measures that were necessary (fertilisers and seeds, advantageous loans, extension...), nor from a coherent agricultural policy that would have permitted their development and proved the effectiveness and relevance of the reform. Big commercial farms continued to control respectively 73 and 66% of the country's best land (that of grade I and II<sup>2</sup>). The Resettlement Scheme farms controlled only 4 and 6% and the small commercial farms (the majority being indigenous producers) 1 and 4%.<sup>3</sup>

With Resettlement Schemes, the state kept the land, and granted beneficiaries of the agrarian reform usufruct rights through three kinds of permits: to cultivate, to reside and to use as pastureland. Both constricting and restrictive, the peasants could lose their permits at any

moment. Land-access insecurity, a lack of technical monitoring and the absence of investments resulted in particularly weak agricultural output, and production (wheat, corn, peanuts) was essentially used for auto-consumption and the internal market.

Although the Communal Areas were also State property, they underwent a distinct evolution. The traditional land tenure system continued to be practised: the village chief periodically divided land rights between families. They benefited from considerable subsidies and technical aid from the State. Farming was dynamic on these commons despite the narrowness of the plots (on average barely more than 1.5 ha).

When the Lancaster Agreements, which had permitted the implementation of the first stage of the agrarian reform, expired in 1990, the government lanced a new campaign denouncing the whites' control of both the economy and agricultural land. It established the New Land Policy, which authorised the requisitioning of land without financial compensation, with the exception of buildings and infrastructures. However, this measure had a limited impact because the government hesitated before the risk of interfering with the commercial farming sector, which was responsible for a large part of national production and foreign returns.<sup>4</sup> The international financial backers who were financing a large part of the land redistribution program as part of a structural adjustment plan, which maintained that the "right to private property" ought not to be disputed. At the signature of the Lancaster Agreements, the United Kingdom committed to pay 20 million British pounds to the Zimbabwean State as a contribution for an equitable redistribution of farmland and thus, in order to bring a certain compensation for the British settlers' control of farmland. Other financial backers, including the European Union, also endorsed Zimbabwe's agrarian reform program, through bilateral and multilateral agreements or through NGOs. The British contribution permitted the reinstallation of a little less than half of all the families concerned by the program over the first ten years of reform. The former colonial power then refused to accept that its nationals and descendants be expropriated, as a number of land-owning farmers from the white community had the double nationality, British and Zimbabwean.

<sup>1</sup> Led by R. Mugabe and his party, Zimbabwe African National Union – Patriotic Front ZANU-PF.

<sup>2</sup> 5 categories of land are discerned according to their agro-ecological potential, I being the highest.

<sup>3</sup> Source : Sam Moyo, in *Zimbabwe, Economie politique de la transition*, Dakar 1991.

<sup>4</sup> Zimbabwe is the third tobacco producer in the world. This cash crop represents 30% of the country's exports. It is "whites" who cultivate the largest amount of tobacco in these entirely mechanised and competitive farms. Consequentially, there was a great fear that the economy would collapse if these commercial farms had been dismantled and distributed out in small plots to landless farmers.

Starting in 1992, it set conditions on its financial aid, including more consistent compensation for expropriated farms, the right to approve or disapprove the relevance of expropriation, and the conservation of mutual agreement mechanisms between seller and buyer, until it finally stopped financing the agrarian reform.

During this second phase, a few homesteaders with European origins may have been expropriated, yet masses of landless farmers were not settled on these lands. It has been proven nevertheless that small-scale farmers can be as productive as large, commercial farms when they benefit from infrastructure investments such as in roads and irrigation installations. In Zimbabwe, 70% of cotton and corn is produced on small- to medium-sized black-owned farms, which could just as easily diversify and orient themselves toward cash crops such as flowers and tobacco, as was done in Kenya and Malawi. Nevertheless, the resettlement of small farmers is expensive when combined with policies for infrastructure development, public services, and credit for beneficiaries.

No other country in Southern Africa has resettled as many families through an agrarian reform as in Zimbabwe: 70,000 families benefited from the agrarian reform. Yet the distributed farmland did not receive the infrastructures and technical support necessary to ensure its viability. Agrarian reform land registration systems and the agricultural policies failed to make the majority of these settlements viable. In 1994, only 10% of rural settlements were sustainable, whereas the remaining 90% were composed of families living below the poverty threshold.<sup>1</sup> The international financial backers denounced the absence of a global policy promoting a comprehensive resettlement project, which would specify the beneficiaries as well as the investments to be made in their land in order to ensure the viability and profit-earning capacity of small-scale farms. The government then granted this program on average only 3% of what it allocates for defence, which raises doubts about the government's political determination to establish the agrarian reform as one of its national priorities, despite President Mugabe's assertive declarations.

In 1998, 4500 large commercial farms (having an average surface area of 2300 ha) still control 37% of the nation's cultivated land and keep playing a large part in the country's economy. 500 are run by indigenous people, and the other 4000 by white farmers who have either inherited from the first settlers or belong to multinational companies. They still possess more than 80% of the irrigated land, which benefits from nearly 5700 private dams.

The production of the *Communal Areas* multiplied tenfold in 15 years, and in 1998 repre-

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<sup>1</sup> Moyo S., 1995, *The Land Question in Zimbabwe*, SARIPS, 333p.

sented close to half of the national cotton and corn production. These common areas' production was reoriented toward export products having a higher value added (flowers, citrus fruits, market-garden produce, tobacco, cotton, sugar). The State farms (in particular those of the ARDA, Agricultural and Rural Development Authority) are large commercial farms. It is difficult to know precisely how much surface area they occupy, but their presence in the agrarian structure seems relatively weak.

In 1997 and 1998, riots denouncing land tenure inequalities multiplied, and the Mugabe administration intensified pressures on commercial farmers of European origins, while again threatening to seize farms from the white community. The lack of international financial support limited the possibilities of agrarian reform. The pressure on white farmers led them to reduce their investments.

The government took a lesson from the first Resettlement Scheme, which turned out to be economically unviable. From then on, it concentrated its efforts on supporting small commercial farms, created by the division of large nationalised properties or by regrouping lands from the *Resettlement Schemes*. This new turning point in the agrarian reform is advantageous, on the one hand, for well-to-do farmers with a capacity for technological investment, and on the other hand, for the urban middle class endowed with the financial and political means to buy land and employ farm labour.

In early 2000, the opposition between the party in power, the Zanu-PF and the recently created Movement for Democratic Change, which has a more urban social base, gives agricultural occupations a more and more visible political dimension. The Zanu-PF encourages a new wave of farmland occupation, led by independence war veterans and young Zanu-PF supporters who rely on the small farmers' impatience in the face of the agrarian reform's slowness. In this way, it tries to win the rural electorate. The farmland occupations are carried out in a strong climate of violence, which still continues today, after Mugabe's victory in the elections.

Beyond the political dimension of the debate on the Zimbabwean agrarian reform, revisiting these historical facts illustrates to what extent the land question is always central to any country's development.

Main source: Tisserand, Elisabeth, « Zimbabwe, la réforme agraire détournée », Courrier de la Planète N° 47, September-October 1998.

Paper Editors: Le Gal, Morgane and Merlet, Michel

Translation: Mary Rodeghier. 2007.

## Record # 5. TAIWAN. A coherent package: agrarian reform, agricultural policy and economic development (C. Servolin, based on E. Thorbecke)

October 2002

Up until Japan's takeover of the island in 1895, Taiwan, like the rest of traditional Chinese society, had a social hierarchy based on land wealth, in which masses of peasant families worked the land according to traditional tenure systems.

During its phase of accelerated industrialisation, Japan, with its crowded, overpopulated and mainly uncultivable islands, sought to transform Taiwan into a supplier of basic agricultural products. First of all, the Japanese colonial authorities succeeded in augmenting rice, sugar and sweet potato production by both increasing farmland surface area and intensifying the labour of the 73% of the total population working in agriculture. Starting in the early 1920s, they launched a scheme for the modernisation of farming techniques and simultaneously introduced selected sowing, chemical fertilisers and irrigation, which resulted in a rapid and significant intensification of production (increased output and multiple harvests). To do this, they provide for an organised and professional farming sector, including farmers' unions, supply and credit co-operatives and technical training networks. By 1930, there was on average one technical trainer for every 32 farms, which represents the highest rate in the world at the time. Nevertheless, Taiwan remained a colonised and underdeveloped country. The traditional social hierarchy had been conserved and land ownership was held by a small elite. The peasants hardly benefited from this progress as they were heavily exploited. A net surplus, estimated at one-fifth of the value of farm production, was extorted from small farmers through income taxes, rents paid to landowners and unfair trade with Japan (Thorbecke: 137).

After the war and the Chinese Communist Party's victory on the continent, a decisive split took place. Survivors of the nationalist army and the continental bourgeoisie, assembled as the Guomindang, fled to the island, established their power and undertook the development of its economy with significant help from the United States. Right away, the new arrivals and their powerful friend set out to liberate the peasantry and get rid of the class of local landed gentry with whom they had no political connection. This was done in three phases:

- 1) forced reduction of land rent to 37.5% of the crop yield (instead of the previous 50%)
- 2) selling of small land shares seized from the Japanese;
- 3) finally, a proper agrarian reform in 1953 (Land-to-the-Tiller Program) with a 2.9 hectare limitation on the property sur-

face area, expropriation of big landowners and the redistribution of surplus farmland to small farmers.

These various measures considerably reduced the number of share-croppers, as small farmers cultivating their own land became the majority. A quarter of the farmland surface area was distributed to small farmers, thus giving the country a more egalitarian farm structure. The former landowners received small monetary compensations as well as stocks in industrial companies set up by the government at the same time, thus transforming these people into capitalists.

Agricultural development was revived along the same technical lines as what the Japanese had promoted, which sought to make use of the abundant rural workforce: high-yield seeds, fertilisation and irrigation. The use of draft animals increased from 1946 to 1958 while the amount of manpower invested in farming increased until 1968. Mechanisation, which could have substituted human labour, was not encouraged until the seventies, once industrial development was able to absorb the labour transfer. Furthermore, mechanisation was only done through forms that were compatible with peasant production methods (such as tillers and lawn tractors).

This agricultural policy was directly organised and financed by the American government through a surprising institutional arrangement. The Chinese American Joint Commission on Rural Reconstruction (JCRR) was founded in 1948 to manage American aid towards agriculture, which figured at 51% of the total development aid. For 20 years, the JCRR was a kind of super-ministry of Agriculture, totally independent from the local government who did not have access to the funds managed by the JCRR. Its policy entailed cooperating with Taiwanese professional farming organisations in order to formulate then apply development projects. In a way, the United States furnished the Taiwanese State with a supplementary State apparatus, until it acquired the level of development, efficiency and integrity inherent to a modern, industrial and middle-class state.

This policy had illustrious success: between 1946 and 1976, agricultural production quintupled and continues to diversify: animal products, fruits and vegetables, which were not very prominent early on, reached, particularly in the last years, an above-average growth rate. At the same time, the agricultural sector was able to supply the rest of the economy with a capital sum representing between 22% of the agricultural production value at the early stages, and 15% at the end, whether through taxes or, as happened at the later stages, the diversified

placement of farmers' savings. For this reason, it is safe to say that agricultural surplus played a crucial role in the constitution of industrial capital (Thorbecke: 203).

In the mid-eighties, agricultural expansion slowed down and new problems arose: drop in farmers' incomes, rice overproduction, etc. Servolin remarks that Taiwanese agriculture began to experience problems in matters of production and market regulation, or in price and income monitoring—the same problems that characterise the farming sectors of all developed countries! He emphasises that Taiwan's economic development, a success on its own terms and under special circumstances (such as the political subordination of the Taiwanese state to the USA, and the billion and a half dollars that Taiwan received from the United States between 1951 and 1965), had reproduced the features of Western agricultural policies. For example, the peasant liberation, the planned intensified production by means of institutionalised collaboration between the State and professional organisations, small farmers' participation in savings, and generalised market and price regulation (in particular, for rice and fertilisers).

#### Comments<sup>1</sup>

The experience of Taiwan, beyond its specificity, clearly illustrates a certain number of necessary conditions to be met in order to attain sustainable economic development backed by family farming. For an agrarian reform to enable farmers to profit from new possibilities due to intensified production, it must be accompanied by a coherent agricultural policy, as much at the technical level (modernisation of techniques and organisation) as at the level of political economy (market regulation). This would be impossible without solid farmers' organisations, which hence need to be developed. Furthermore, this would be impossible today when economies open completely to the global market economy.

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<sup>1</sup> By paper editor

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#### Sources:

Thorbecke, Eric. "Agricultural Development" in Walter Galeson (ed.), Economic Growth and Structural Change in Taiwan, London: Cornell University Press, 1979.

Servolin, Claude. « Les politiques agricoles » in Madeleine Grawitz and Jean Leca (ed.), Traité de Sciences Politiques, vol. 4, Paris : Presses Universitaires de France, 1985.

#### Paper Editor:

Merlet, Michel. Edited summary of Claude Servolin's paper, completed by elements taken from the Thorbecke work after discussion with C. Servolin.

Translation: Mary Rodeghier. 2007.

## Record # 6. VIETNAM. Consecutive agrarian reforms and success in family farming. (Dao The Tuan).

October 2002

### Past agrarian systems

The *Viet* tribes, ancestors of the contemporary Vietnamese, cultivated terraces, and then the delta of the North Vietnam Red River, and developed their civilisation on the basis of rice cultivation. In the XIth century, they founded the first Vietnamese hydraulic state, after several centuries of Chinese domination. In the XVIth century, the Northern deltas were not enough to feed 5-6 million inhabitants. There were waves of immigration towards the South, heading to colonise the Centre, and then South Vietnam, which were inhabited by *Chams* and *Khmers* at that time. A new State was founded in the South, with a military regime controlling the colonisation process. With the contribution of both immigrants from China and European merchants, the South was more open to the external market than the North, which remained self-sufficient and interior-oriented.

Vietnamese society, having rice production as a primary activity, consisted of two principal elements: the central State and the village community, which kept certain autonomy. Social inequalities were compensated by solidarity among the communities. Land tenure rights were a mixed system of state, communal and private property. Surprisingly, the tenure system for the commons, whose aim was to secure both growth and social security, persisted longer in Vietnam than in China or Japan. The growing privatisation of land ownership resulted in the introduction of new categories in agrarian society: landowners, small-scale farmers and landless farmers. In the North and Centre, where the common land tenure system had been better conserved<sup>1</sup> and where there was considerable demographic pressure, the farms were smaller, and differentiation was lesser: there were no landed gentry. Whereas in the South, where the land was more abundant and where there was not much common land, differentiation was greater, with the existence of large-scale farms and many landless peasants.

Before 1930, agricultural productivity was very low (1.3 ton/ha). Food production was sufficient for internal needs as the annual growth rate of the population was inferior to 1%. The farmers, particularly those without land, were living in miserable conditions.

In North Vietnam, different *cadastres* provide an understanding of the evolution of land ownership. At the beginning of the 19<sup>th</sup> century, the land owners of Ha dong and Thai binh owned re-

<sup>1</sup> In 1930, 21% of land was communal in north Vietnam, 25% in the centre and 3% in the South Y. Henry, 1932

spectively 1.9 and 7.3 ha on average; in 1931, the population had multiplied by 4, thus dropping the average land ownership to between 0.7 and 1.3 ha, respectively. It's estimated that around half of the farmers of North Vietnam were without land. In a century, the differentiation in land access became more pronounced.<sup>2</sup>

In South Vietnam, due to certain details of its prior agrarian history and the violent military-run colonisation processes that it underwent, the agrarian structure was very different from that of the North. In South Vietnam, villages and communes were founded on the basis of private land<sup>3</sup> ownership<sup>4</sup> comprised of state-owned land and large military farms, whereas in the North, they were founded on common land ownership. The land was more unequally divided in the South than in the North.<sup>5</sup>

Tab. 1. Land ownership in South and North Vietnam in 1930.

	Surface area	% landowners	% surface area
<u>North-Vietnam</u> C.Gini <b>0.43</b>	< 1.8 ha	91,5	40
	from 1.8 to 18 ha	8,4	27
	> 18 ha	0,1	16
	Common land	-	17
	Total	100	100
<u>South Viet nam</u> C.Gini <b>0.87</b>	< 5 ha	71.7	15
	from 5 to 10 ha	14.7	10
	from 10 to 50 ha	11.1	32.5
	> 50 ha	2.5	45
	Common Land	-	3
Total	100	100	

Source: Y. Henry, *Economie agricole de l'Indochine*,

<sup>2</sup> According to our calculations, the Gini coefficient moved from 0.4-0.5 to close to 0.6. The Gini coefficient is a cumulative index of inequality, which can vary from 0 (perfect equality) to 1 (perfect inequality). In countries with a high revenue inequality, this coefficient is between 0.50 and 0.70 whereas in countries with a relative equality this coefficient is between 0.20 and 0.35.

<sup>3</sup> Certain villages had, however, common land bought with communal funds.

<sup>4</sup> The Gini coefficient was from 0.6 to 0.8 for the Mekong delta and from 0.4 to 0.6 for the Red River delta. (Dao The Tuan, using the *cadastres* of 124 Cochinchine villages.)

<sup>5</sup> With 62% with less than 0.36 ha

Hanoi, 1932.

Land ownership records from the French colonial period show that the differentiation between peasants remains visibly at the same level as in the XIX<sup>th</sup> century. In 1929-30, V. Henry remarked that extensive land ownership predominated in the west of Cochinchina. However, family ownership and common land still existed. It has been calculated that 77% of rural families were landless. The predominant tenure method was indirect (tenant farming), with a few local exceptions.

Starting in 1900, demographic pressure increased. After 1930, the annual demographic growth rate exceeded 2%. With agricultural expansion on new land being limited, the food production problem became more and more acute. During this colonial period, no significant social or technical improvement had taken place, with the exception of a few irrigation projects aimed at increasing the surface area of rice cultivation. The difficulties became more pronounced during the Great Depression of the thirties.

#### This century's agrarian reforms

In 1945, after the August revolution, the Vietnamese government decided to reduce by 25% unearned income coming from land holdings. To mobilise the peasants in the struggle for independence in 1948 during the resistance war of 1946-1954, more than 250 000 ha of land belonging to the French and their Vietnamese allies was confiscated and distributed to peasants.

In 1953, when the war entered into a decisive period, the campaign for an agrarian reform began. All land belonging to landowners was confiscated and equally distributed to peasants.

Tab. 2. Land distribution before and after the agrarian reform of 1953.

	Before AR		After AR	
	% Homes	% Land	% Homes	% Land
Land-owners	1.1	18.0	2.3	1.1
Rich peasants	1.8	4.7	1.6	1.8
Middle-class peasants	41.7	39.0	36.5	11.7
Poor peasants	40.0	25.4	43.0	40.0
Landless	12.0	6.3	13.0	12.0
Others	2.6	1.0	3.60	2.6
Monasteries	0.1	1.3	-	0.1
Communal land	0.7	4.3	-	0.7

Source: Statistics General Office, Economy and Culture of Vietnam, 1930-1980, Hanoi: 1980.

But this period of return to a family-scale economy was very brief. Starting in the early sixties, agriculture began to be collectivised.

In South Vietnam, a separate state was established after 1954.

Between 1955-56, an agrarian reform was insti-

gated in South Vietnam under the regime of Ngo Dinh Diem: land unearned income was reduced by 15-25%, and maximum land ownership was fixed at 100ha. However, this reform did not visibly diminish the farm sector's deep inequalities: the Gini coefficient moved from 0.84 in 1955 to 0.80 in 1966 (see Tab.3).

Nevertheless, in South Vietnam during the war with the USA, the Nguyen Van Thieu government lanced a new program in 1970 entitled, "land for cultivators", and passed legislation limiting ownership to 15 ha in the South and 5 ha in the Centre for landowners who farmed the land themselves.

Tab.3. Land distribution in South Vietnam during the war.

Category	% landowners		% Surface area	
	1955	1966	1955	1966
0	46.7	42.0	0	0
0.1-4.9 ha	38.6	45.3	16.4	27.4
5.0-19.9	7.8	10.5	13.0	33.3
20.0-49.9	5.6	1.6	24.0	15.6
50.0-99.9	0.7	0.5	12.5	12.1
More than 100.0	0.5	0.2	34.1	11.6

Source: Callison, 1983,<sup>1</sup>

Expropriated land (with compensation) was distributed to peasants (up to 3 ha in the South and 1 ha in the Centre). The land of those who participated in the revolution was confiscated, but the landless didn't receive land.

At the same time, in regions controlled by the revolutionary government, another agrarian reform was instigated. Land belonging to big land-owners was confiscated and distributed to small farmers. After the liberation of South Vietnam, an agrarian reform with a re-allocation of land between peasants was effectuated. People with a lot of land voluntarily shared it with others. Collectivisation began in 1978, but it was followed by a de-collectivisation in 1981 with Decree No. 100, which applied to the whole country.

If much is said today about the negative side of collective agriculture, it must be mentioned that this system was accepted favourably by peasants in certain regions of Vietnam. Specifically, it was appreciated where the demographic pressure was strong and where there was a high percentage of common land, as in the low delta of the Red River and in the South of Central Vietnam, and also where there was not yet private property, as in the mountains of the North-west.

However, in the late seventies, the system of centralised planning and collectivisation posed

<sup>1</sup> Callison C.S., Land to the tiller in the Mekong delta, University Press of America, New York London , 1983.



problems for both the Vietnamese economy and agriculture. A process of economic reform was therefore initiated to eliminate constraints on development. The economic reform in Vietnam in the eighties and early nineties was based on the double transition from centralised planning to a market economy system, and from collective agriculture to an economy composed of small family farms.

#### A progressive and effective process of de-collectivisation

During the period of collective ventures (agricultural co-operatives), only the collectivisation of rice production (main production of the Vietnamese agricultural economy) was successful. Attempts to collectivise food production other than rice farming and livestock breeding failed. Peasants were then allowed to increase their economic activities outside of co-operatives and were given access to a supplementary surface area for family farm use, in addition to a family plot covering 5% of the total surface area and family orchards.

Under these conditions, small farming activities have been making up a larger and larger portion of a peasant's total income since the seventies and have exceeded that of co-operatives. For this reason, some co-operatives used a type of contract, called a *clandestine contract*, to rent out a certain surface area of their rice plantations to small farmers. This system improved farmers' motivations, and had positive effects on production. Directive #100 (1981) legalised this system, which was invented by the peasants themselves, and gave them the right to decide on their work and its results. However, the small farmers weren't altogether satisfied with this new system. To simplify and optimise resource management, a "complete contract" was then established. By leasing land to farmers, this contract allowed them to invest while paying a low rent. The resolution #10 of 1998 gave farmers the right to decide how to use their capital. With the abolishment of both the system of State product delivery and the State subsidy system, the economy based on small family farming was finally restored. After this resolution, some land was still controlled by the co-operatives. This land was distributed to peasant households according to labour capacities for a 5 year period. Although the households were not obliged to pay rent to the co-operatives, their land holdings were taxed by the government.

Although the 1987 land law forbade the selling of land, an illegal land market had been established. The 1993 Land Law decided that land belonging to the state would be distributed to peasants for cultivation in correspondence with the number of people in each household, for a period of 20 years for annual crops and 50 years for perennial crops. Furthermore, land use rights may be exchanged, transferred, rented, inherited and pawned. The maximum limit of "ownership" is 3 ha. Forested land was also distributed for reforestation or management.

Tab.4. Estimation of land ownership in the Mekong Delta after 1975.

	Landowners (%)	Surface area (%)
Rich peasants	20	10-12
Middle-class peasants	12-17	20-27
Poor peasants	50-60	50-60
Landless	20-30	0

Source: Agrarian reform committee, 1978

After these three consecutive institutional changes, all rights over production input were given back to peasant households and the collective system of agriculture was abolished. Other transformations also took place in the industrial and service sectors. In 1979, the central committee of the Vietnamese Communist Party recognised the role of the market and the private sector as principal components of the economic system. The 1980 reforms of the planning system permitted both economic activities outside of the State's plan for government companies and complementary activities for state employees and workers whose salary was not sufficient for their subsistence. The double price system (State price and free market price) as well as the planned subvention system were abolished in 1985 on account of bureaucratic corruption and scandal-provoking errors during the price, salary, and currency reforms.

#### The effects of the revival of an economy based on small family farming

Socialist agriculture had not succeeded in resolving the food production problem: at the end of the eighties, Vietnam had to import food every year. It was the peasants who led the way. Today, Vietnam has become one of the world's biggest exporters of rice and several other food products. Cashew nuts, coffee and yams, which were less controlled by the State, underwent the most radical development. Vietnam has become the world's second cashew nut exporter and the third coffee exporter (first of the Robusta variety).

The restoration of the small family farming economy had a great impact on agricultural production. Peasants, who in the past were hardly integrated in the market, progressively became commercial family producers. However, farm size (0.7 ha inland, 0.3 ha for the Red River delta) represents a constraint on agricultural development. The growth of the active rural population tends to reduce the size of the farms and leads to under-employment. In South Vietnam, the number of landless farmers augments, and in the North, the peasants who have abandoned agriculture do not yield their land to others. The reform process is not finished: new institutional arrangements are necessary. This implies a certain redefinition of the respective roles of the government, the market and the civil society (which is not officially acknowledged). In addition, new land policies that are adapted to the

new context need to be created.

The revival of family farming, after diverse agrarian reforms which established a relatively egalitarian structuring of the farming sector, constitutes an undeniable success. Vietnam's history illustrates that peasants, with the might of their knowledge accumulated through the centuries, are capable of very dynamic evolutions, but need adapted agrarian and land policies in order to express their full potential.

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Source and author:

DAO THE TUAN, Director of research, Head of the Department of Agrarian systems, National Institute of Agronomic Sciences, written and oral expressions from the peasant agriculture and agrarian reforms workshop of the World Social Forum. IRAM - APM - CONTAG, Porto Alegre. January 2001.

Translation: Mary Rodeghier. 2007.

## Record # 7. VENEZUELA: between the market and the "agrarian reform", the colonisation of "virgin" land. (O. Delahaye)

October 2002

### Two ways of accessing land ownership

The inception of the land tenure system in Venezuela, as in the rest of Latin America, was the papal bulls of 1493, which transferred land ownership, "discovered or to be discovered" to the Spanish Crown, without mentioning the tenure rights of its occupants.

Since then, tenure and private property were established from this public land through two channels and controlled by groups close to the central and regional powers (royal first, then republican):

A formal legal channel (colonial *merced*, sale of public land in the 19th Century, "agrarian reform" allocations since 1960, etc.) ;

An informal illegal channel (by occupation, usurpation or land invasion), generally regularised later (it was *composición* under the colonial rule, and was regularised through the "agrarian reform" tenure presently). This informal channel seems to have always affected a larger surface area than the formal channel.

### Distinct phenomena. Colonisation, redistribution, legalisation.

From the Spanish conquest until 1958, only a small number of plots were transformed into private properties annually. As a result, the majority of the land was held by only a few people (in 1961, 1.4% of farms controlled 71.7% of the agricultural surface area). This was a tenuous situation because tenure was mostly accorded in an informal way. The tenure system came to have this form by responding to the necessities of historical forms of farm production: *hato*, extensive livestock raising, and *hacienda*, which produced for the export market and started to decline in 1930 in favour of oil drilling.

Beginning in 1950, the internal market was expanding as cities were growing larger. Medium-sized farms were set up on public land in order to feed the growing urban population. Since these new farms were generally not established on historically cultivated lands, we can call this a process of "agricultural colonisation" by which the surface area of the country's cultivated land increased.

The "agrarian reform" of 1958 affected around 200 000 peasants. However, the reform dealt primarily with public land, which constituted more than 80% of the land in question. Therefore, what is here called an agrarian reform is in fact, as often in Latin America, more like an expansion of the pioneer frontier onto so-called

"virgin" land<sup>1</sup>, more or less supported by the State, rather than a redistribution of land from large-scale farms for the creation of smaller ones.

Nevertheless, this policy permitted a democratisation of land tenure (the annual number of property deeds handed over by the state varied between 2,800 and 11,400) as well as its devolution. (The Gini index—with the value of 1 indicating the most unequal distribution—decreased from 0.85 in 1958 to 0.73 in 1997).

In practice, it was mostly middle-sized commercial farms that benefited from it because of the existing balances of power:

- Small farms (<50ha) went from only 8 to 10.7% of the Agricultural Farms Surface Area (AFSA),
- Average cultivations (50-100 ha) increased from 20.3% to 42.9% of the AFSA, and
- Large farms (>1000 ha) decreased from 71.7% to 46.4%.

### Agrarian reform and/or market

These results did not correspond to the publicised objectives of the agrarian reform. In fact, such growth of medium-size farms resulted from market transactions, whether formal or informal.

The real estate market has both a formal modality (primarily on private land), and an informal one on public land, and particularly on the land affected by the agrarian reform (which represented more than 50% of the AFSA). The real estate market is highly active (more than 4% of the AFSA is exchanged on the market annually, whereas the agrarian reform never affected more than 2% annually).

### Regional differences

At the regional level, the types of agriculture and tenure systems are more varied. The "agrarian reform" dealt more with previously uncultivated public lands than with areas historically occupied by *hatos* or *haciendas*. In particular, 40% of uncultivated public land was affected by the agrarian reform, either through the regularisation of occupied areas or through the officially illegal purchase of agrarian reform lands. At the same time, only less than 20% of the historically used *hatos* or *haciendas* were af-

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<sup>1</sup> Occupation by indigenous populations has almost always been disregarded in such frontier situations in Latin America (ndlr).

ected by the agrarian reform. Essentially, the groups affected by the agrarian reform are the following:

- Medium size commercial producers having farms made up of public lands or lands acquired on the formal, or more often informal, market. They are often of an urban origin (or are foreigners).
- Livestock breeders: the *hatos* were slowly modernised, as much by the evolution of existing farms as by the emergence of new producers (they, too are often from the city).
- The former *haciendas* disappeared: weakened by the 1930s' crisis, their former landowners often converted to activities related to the development of the oil-producing industry (sale of drilling rights, importation commerce, real-estate, etc...); their *haciendas* were seized by the agrarian reform or were fragmented into average-sized farms.
- In mountainous areas, small and medium-sized traditional farms developed their commercial market production (coffee, market-garden produce, flowers).

Currently, small farmers are asking for land awards under essentially two situations:

- In areas recently where the production value was recently enhanced (like the states of Zulia, Barinas, Portuguesa), where landless farmers claim a part of the public land occupied since the 1960's by medium-sized commercial producers.

We can make the connection between this situation and the 1960-1980 land policy debate in Venezuela. The confusion between an agrarian reform and the extension of the pioneer frontier onto virgin land is very common in Latin America. For the «agrarias», the agrarian reform should have been executed exclusively on private land, and not on public land. In addition to the necessary land redistribution that one expects from an agrarian reform, the way that new lands were incorporated into the frontier poses another problem. The colonisation of virgin lands played a determinant role in structuring the farming sector (50% of the Area of Cultivated Lands). Such confusion rendered the State incapable of organising a process by which the pioneer frontier could be extended by small farmers.

- For a few years now, the inhabitants of peri-urban zones have become important actors on the agrarian scene: they demand land for their dwellings. In particular, their demands concern areas that have been affected by the agrarian reform twenty or thirty years ago.

#### The current perspective

Discussions are currently centred on a new agrarian reform, but the different actors con-

cerned do not seem likely to reach an agreement in the near future. It is probable that this legal text will be reformulated: since the "*ley de tierra*" (land legislation) does not take into consideration the past 40 years of agrarian reform and colonisation of virgin land, it is not surprising that its goals are inappropriate and its application poses all sorts of problems.

#### What to learn from this experience?<sup>1</sup>

This rapid survey of the way land issues in Venezuela were handled illustrates an aspect of a situation frequently found in Latin America.

Very unequal land distribution often calls for a process of redistribution, which would be a genuine agrarian reform.

However, the existence of a vast farming frontier and the constant expansion of cultivated surface areas are very important for a nation's agricultural economy. In such a context, the market shapes the future landscape of the farming sector in ways that are not always optimal. Public policies including state intervention are often necessary to ensure that the expansion of the pioneer frontier goes hand in hand with the creation of viable small farms.

Moreover, pioneer frontiers are often the theatre of serious conflicts about the appropriation of resources, wood, land, water, or about the cultivation or transformation of illicit products. Violence and human rights violations occur frequently.<sup>2</sup>

Classic agrarian reform mechanisms are thus not appropriate; it is a question of avoiding the development of new *latifundia*, not of remedying their existence.

What is needed then are "restrictions on farm size"<sup>3</sup>, in the sense this term is used in Europe: a public policy for the award of plots on newly settled lands, with possible intervention on the real estate market or other markets, as a way to establish settlements of small farmers, permitting the modernisation of commercial family farming together with the use of natural spaces and the preservation of biodiversity.

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#### Paper editor:

DELAHAYE, Olivier, Department of Agronomy, Central University of Venezuela.

#### For more information:

DELAHAYE, Olivier. 2001. Políticas de tierras en Venezuela en el siglo XX. Caracas, Tropykos.

Editing and commentary: MERLET, Michel

Translation: Mary Rodeghier. 2007.

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<sup>1</sup> Note from the editorial team

<sup>2</sup> See the situation in Colombia and the Bolivian, Peruvian and Brazilian Amazon.

<sup>3</sup> Called "*Politique des structures*" in France.

## Record # 8. CENTRAL AMERICA. The fragility and limits of agrarian reforms -1/3- HONDURAS. (M. Merlet)

October 2002

### The antecedents

Honduras is the archetypal banana republic due to the importance of its foreign-owned mines and plantations. The interests of the nation's dominant social strata have been focused in the North, particularly on the plantations where there has been a very high level of 'proletarianisation'. Successive military regimes have been in power until recent times.

The colonial history of Honduras is similar to that of Nicaragua. However, it was not until after World War II that the mestizo<sup>1</sup> farmers silently started growing coffee by investing their own labour. Due to the weight of the mining and banana enclaves, this coffee production did not stir violent conflict with the dominant class, as was the case in Nicaragua.

### Honduran agrarian reform

This began in 1962, a few years after the Cuban revolution, with the support of the Alliance for Progress. The first aim was to avoid the contagion of revolution.

After the 1954 general strike, conflicts over farmland multiplied in the North where the labour unions were powerful. Mass layoffs had forced workers to switch to small farming, which implied the need to obtain land most often in the hands of the big cattle breeders. This is the context in which the first federative farmers' organisation<sup>2</sup> came into being. It organised the first invasions on land belonging to multinational banana corporations. It was never accorded legal status and, accused of being communist, it suffered violent repression.

In order to carry out a moderate agrarian reform, the government needed farmers' organisations that it could control. ANACH<sup>3</sup> was founded in this aim and it was the start, via successive divisions, of a large number of farmers' organisations working with the reformed sector.

The first agrarian reform law (Decree #2 of 29/09/62) provided for the redistribution of individual plots of land subject to different legal statuses (national, communal and private) that

<sup>1</sup> Mestizo, meaning of mixed stock in Spanish, is a term used to refer to a person of mixed ethnic background, usually for persons of both European and Native American ancestry.

<sup>2</sup> the Central Committee of Unificación Campesina, that was transformed into FENACH [Fédération Nationale de Campesinos de Honduras] in 1962.

<sup>3</sup> Asociación Nacional de Campesinos de Honduras

were assigned because they were either untilled or had been occupied illegally. This initial attempt did not give any results due to its slowness and the fact that the peasant movement was repressed.

During this period, a collective organisation model was successfully tested by the Guanchías cooperative, made up of former banana plantation workers, who cultivated the land abandoned by Tela RR Co. Decree #8, which was passed in 1972, led to the distribution of national and communal land, while supporting this collective option. The peasant movement demanded the acceleration of the agrarian reform process, which had been organised by ANACH and was often repressed. This led to the adoption of a second agrarian reform bill in January 1975 under the reformist regime of General López Arellano. This time, priority was given to the redistribution of land to collective work units, either cooperatives or businesses.

The arguments used were economic (the need to modernise farming, to use inputs and machines) and moral (the fight against selfishness and individualism). The documents used to train the farmers' leaders seem at first sight to be modernist and progressive; however, they displayed a total misunderstanding of small family farming and a deep-rooted disdain for the peasant population, which was considered backward and uncouth<sup>4</sup>. In these documents, there is a mix of the Israeli kibbutz approach and the aspirations of "socialist" intellectuals and activists<sup>5</sup>. The State systematically played an ambiguous role: depending on the circumstances, either it backed those who promoted the agrarian reform or it accused them of being communists.

#### Theoretical aims of the Honduran agrarian reform law of 1975

- limit sales of national land to private persons (200 ha)
- limit the extension of farmland (100 to 2,000 ha according to the zone).
- no legalisation of ownership of any plot less than 5 ha in order to "eradicate the minifundio"
- ban on renting and sharecropping land.

The farmers' organisations<sup>6</sup> restricted themselves

<sup>4</sup> Cf. "Teoría de la organización", C. Santos de Moraís.

<sup>5</sup> In a country where the "modern" plantations managed by multinational corporations operate alongside that of poor Indian and mestizo populations that had never been recognised by the Spanish colonisers, and where the most combative farmers have often been salaried workers over long periods, it is easy to understand the strength of such language.

<sup>6</sup> Even the most radical among them were often heavily repressed by successive governments.

to the role of promoting the cooperatives and associative companies set up as part of the Agrarian Reform, which was intended to put an end to the obscurantism and technological lag of individual workers, allowing them to attain the mythical ideal of the entrepreneur. Since the agrarian reform institutions endorsed the majority of the farmers' organisations, often by funding them under the pretext of training programs, the farmers' movement became increasingly more dependent on State Institutions. This in turn has engendered real corruption problems.

Although the 1975 law established the possibility for the agrarian reform to affect private properties whose use did not conform to its "social function", the agrarian reform process basically boiled down to the reclamation of national land on the new frontier that had been seized illegally by big cattle breeders<sup>1</sup>. The law failed to eliminate forms of share-cropping and created additional constraints for small farmers.

The struggle for land is monopolised by farmers' organisations involved in the management of the agrarian reform. In order to have land access, it is necessary to join a group of landless farmers at the "grassroots" level of an organisation, participate in taking over land, get the National Agrarian Institute to authorise the use of this land and then wait a long while for legislation concerning collective ownership.

Although "ownership" and formal rights in land remained at the collective level in all cases, farming in grassroots groups was far from being wholly collective, even on the Atlantic coastal plains<sup>2</sup>. The farmers preferred having individual plots rather than working cooperatively. Furthermore, working on individual plots appealed to farmers producing for export (bananas), or when the surface area per cooperative worker was large<sup>3</sup>.

More than thirty years of agrarian reform programmes have not allowed Honduras to solve

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<sup>1</sup> In the 60s and 70, a large part of Honduran territory was still covered by forest. According to Honduran legislation, land for which no title deed has been issued is considered as "national". The frontier farming process, which comprises the movement of poor peasants and the installation of large farms practising extensive grazing does not give rise to the issue of title deeds.

<sup>2</sup> In 1989, in the North of Honduras, only 9% of the agrarian reform groups organised collectively almost all farming activities. 44% of these groups had individual plots but maintained at least one parcel in common. 47% of them had divided the whole land into individual plots. Among those, 17% maintained some cooperative organisation for services and 30% worked only as individual producers.

<sup>3</sup> The added value per ha was very often much less (e.g. with single crops) than what it would have been with peasant farming methods, i.e. different crops and livestock.

the problem of unequal land distribution. In 1993, the number of farmers that were landless or possessed less than one hectare was estimated at over 200,000, i.e. 44% of rural families. Overall, the Honduran agrarian reform has led to the redistribution of about 380,000 ha, that is to say 14% of all cultivated land, or 4% of the country's territory<sup>4</sup>.

#### The 1990s: calling the traditional systems of agrarian reform into question

The *law for the modernisation and development of the agricultural sector* (1992)<sup>5</sup> is the keystone of a system that uses new foundations to review the whole of the country's agricultural development, as part of the implementation of structural adjustment policies. Defined with the help of international evaluators<sup>6</sup>, it modified previous laws in many areas, giving them a blatant neo-conservative ideological slant.

The law intends to accelerate the process of formally transferring State properties to private persons. The minimum amount of time a person must occupy national land in order to qualify for a title deed has been reduced to three years. The law also aims to reincorporate land used by the reformed sector in the general property registration system through issuing title deeds and recording properties more quickly. Regarding the agrarian reform, the law calls into question the precedence given to collective ownership. The beneficiaries can now opt for the assignment of individual plots and members of the cooperatives and community companies have been issued equity security, which represents their share of the total capital. Furthermore, the law decreases the minimum legal farm surface area from 5 ha to 1 ha, thereby legalising smaller minifundia. Lastly, it authorises the sale of land by the beneficiaries of the agrarian reform, provided that the plots in question have been legalised.

At the same time, the law erases the legal means for continuing a genuine agrarian reform, which would redistribute land evenly:

- it permits the existence of properties exceeding the limits set by the 1975 law as long as they have been the subject of major investment projects;
- it does away with the idea that tenant farming is a type of occupancy that calls for an agrarian reform;
- uncultivated land remains theoretically liable to be expropriated . . . unless it is woodland.

The modernisation law grants tree ownership to the holders of title deeds to land<sup>7</sup>. It seeks to

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<sup>4</sup> 70% of the land, which is covered by forest or designated for forestry, belongs to the "public domain".

<sup>5</sup> Voted under the government of R. Callejas.

<sup>6</sup> Mainly USAID.

<sup>7</sup> Since the 70s until 1992, the forests of Honduras belonged to the government, even though the soil belonged to the private sector.

spread market practices, as well as to promote land rentals and joint investment in farm production.

Furthermore, the modernisation law sets up mechanisms intended to help small farmers become more competitive via:

- special financial assistance for settling in aimed at beneficiaries of both the agrarian reform and programmes that issue title deeds,
- the establishment of a network of savings and rural credit banks that are to work with farmers' organisations
- putting mechanisms into place that increase the number of farmers who gain land access by means of the land market<sup>1</sup>

The implementation of the law was less complete than foreseen. None of the three proposals for the increased market integration of farmers, for the settling aid and land funds, were put into effect in the least bit.

The "privatisation" of forests created some serious problems. It revived old title deeds issued during the colonial period or after independence, which are held by joint owners who have never legally divided their lands (*sitios proindivisos*). Since small farmers without title deeds have been occupying these lands for generations in most cases, their owners had stopped using them entirely. Instead of making land tenure more secure, this law increased the precariousness of the tenure situation for usufructuary producers who did not already have title deeds.

Lastly, and this is undoubtedly one of the most significant elements, the law led to a boom in the sale of lands coming from cooperatives and employee-owned companies.

The process of selling off lands belonging to the reformed sector began even before this law was publicised, when the members of the flagship collective company "Isletas" sold it to the Standard Fruit Company in 1990 for an estimated quarter of its worth. Although this sale was theoretically illegal on account of the agrarian reform, the National Agrarian Institute overlooked it. Land sales, especially for fertile land on which bananas or palm trees could be grown, multiplied after the law was publicised. Given the devaluation of Honduran currency and the expanding banana market, an enticing investment opportunity presented itself here to multinational corporations and a few big Honduran entrepreneurs.

In May 1994, just two years after the law was passed, the farmers' groups of the reformed sector had sold more than 30,000 ha of land, i.e. just over 7% of all reformed land. The impact on the sector is greater in certain regions

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<sup>1</sup> Specific additional laws were voted including that concerning the "fondo de tierras".

with strong agricultural potential, such as the Northern coast where more than 80% of these sales have occurred.

The magnitude of the phenomenon is a clear sign of the fragility of many employee-owned companies and cooperatives founded by the agrarian reform, since they often face financial hardships and are wrought with corruption. This process has continued afterwards in every case where the reformed land was of good quality and well located, though we do not have the most recent figures on this subject.

Other trends such as renting land to farmers or companies, or the establishment of joint-ventures with national or foreign capitalists have also developed in the reformed sector. The conditions of these contracts vary, but the growers generally lose control of the production process. They become labourers who continue to assume part of the risk even though they are no longer capable of working on the land they bring to the table.

The farmers' organisations have had great trouble designing a common strategy allying them for the defence and promotion of their kind of farming<sup>2</sup>. The main organisation representing individual people unites small- and medium-sized coffee growers<sup>3</sup>. However, its activities remain closely linked to the product, and although it is now present almost everywhere in the country, this organisation is not much involved in land politics.

Under these conditions, it has taken only a few years to seriously undermine the effects of land redistribution through agrarian reform. New struggles for land access, along with violence and repression, are beginning to come about, particularly in the North.

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Source:

MERLET, Michel. Réformes agraires, marchés fonciers, organisations paysannes: échecs et défis. Les cas du Nicaragua et du Honduras. Communication at the International Seminar on Land Transitions and Social Changes. CIESAS - IRD. Mexico. March 1999.

Author of Record: MERLET, Michel.

Translation: Mary Rodeghier. 2007.

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<sup>2</sup> Some of them, gathered in COCOCH and traditionally mostly linked to agrarian reform, are very active at national and international level, with VIA CAMPESINA.

<sup>3</sup> AHPROCAFE. This sector has benefited from very different support from that contributed to the agrarian reform, with the constitution of a coffee institute, a Coffee Bank and a farmers union, all financed by the farmers from levies on exports. The sector has become one of the pillars of the national economy.





## Record # 9. CENTRAL AMERICA. Fragility and limits of agrarian reforms -2/3- NICARAGUA. (M. Merlet)

October 2002

### The antecedents

During the colonial period, a small social group made up of *mestizos* began to form, although the laws in place only recognised "Spanish" and "Indian" members of the population. However, this new group was to make up the greater part of Nicaragua's peasantry. After the country's independence (1821), the only way the oligarchy in place and the new dominant classes could maintain their control was to gain possession of most of the land. They achieved this by developing coffee plantations, privatising virgin land in their favour and by putting a halt to the pioneer frontier<sup>1</sup>. The rebellion led by A. C. Sandino in the thirties expressed the peasants of the North's reaction to this process and the forced introduction of capitalist farming. The revolt was crushed, auguring a long period of dictatorship<sup>2</sup> that lasted until the Sandinista National Liberation Front (FSLN) came to power in 1979.

### Nicaraguan agrarian reform

Like many Latin American countries, Nicaragua had an early "agrarian reform" in the 60s. Heavy crackdowns prevented any sort of rural unionisation. The reform had basically zero impact, if we set aside the projects for extending the farming frontier onto virgin lands, which had been misnamed as agrarian reform projects.

When the Sandinista Front took over in 1979, there was no national farmers' organisation capable of representing small farmers. The ATC<sup>3</sup>, a recently founded association for poor peasants and farm workers, took advantage of the prevailing mood and political context to extend its influence over the entire country, although it remained weak. Instead of supporting farmers' movements and land invasions, the revolutionary government confiscated lands held by the Somozists and turned them into government farms, thereby forcing the poor farmers who had taken them over to become, or return to being, farm workers. Only the small groups succeeded in keeping control of their land by adopting the status of cooperative farms. In 1981, fearing that the wealthy peasants would turn to the opposition, the FSLN backed the creation of the UNAG<sup>4</sup>, which united small- and medium-sized farmers

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<sup>1</sup> Late 19th and early 20th centuries

<sup>2</sup> Somoza father and son.

<sup>3</sup> Asociación de Trabajadores del Campo. In 1979, it existed in only a localised form.

<sup>4</sup> National Union of Farmers and Livestock Breeders

with part of the pro-Sandinista rural middle class. The ATC therefore only represented the farm workers and the poor peasants, whose belligerence and demands were considered as incompatible with national unity and defence. For this reason, they had no more room for real organisation of the civil society. Therefore, it was the government that directed the agrarian reform via the INRA and then the MIDINRA<sup>5</sup>.

The agrarian reform law (1981) allowed for the gradual allocation of insufficiently exploited land that is part of big estates. The beneficiaries were State companies and cooperative farms. Farmers must agree to work on these cooperative farms in order to have access to the land affected by the agrarian reform.

The State sector quickly grew to represent 20% of the country's agricultural production. An interventionist policy gave absolute priority to a few major agro-industrial projects with the aim of fulfilling a macroeconomic scheme to meet the immediate needs of the urban population. From 1981 to 1984, the UNAG took no initiative to further the agrarian reform<sup>6</sup>. The government managed the technical support, finance, technical assistance and cooperatives management training. Whereas the State took care of "organising", it did not have the means to question the form it had inherited. Different types of farming were set up in the cooperative farms, but the farmers themselves could not become landowners nor ensure the security of their tenure. While the FSLN was in power, the agrarian reform beneficiaries were not allowed to sell the land they had received at no cost.

This division of tasks hindered the emergence of a genuine peasant movement. The cooperative movement did not structure itself into a Cooperative Federation until 1990, after the electoral demise of the FSLN. Peasant resistance began to materialise in the face of unfavourable economic and agrarian policies (1980-1984: priority given to government farms, price controls, disorganisa-

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<sup>5</sup> Nicaraguan Institute of Agrarian Reform then the Ministry of Agricultural Development and Agrarian Reform.

<sup>6</sup> Its leaders, whose interests were often contrary to those of the poor peasants, did not claim more equal access to land.

tion of commercial channels)<sup>1</sup>.

The political and military situation became critical at the end of 1984. In order to rebuild the alliance with the peasantry, the revolutionary government reintroduced the right to trade, improved the conditions of exchange between urban areas and the countryside and modified its agrarian policy<sup>2</sup>. Land redistribution increased and the beneficiaries were left to organise themselves as they pleased. The number of individual plots assigned increased, though the title deeds issued through the agrarian reform were non-negotiable and were more than often assigned collectively. From 1985 to 1987, nearly half the State sector had been redistributed to cooperatives and small farmers. These measures helped the government to regain control of the situation. Food production increased and the advance of the "Contras" was stopped, but the rift in the peasantry remained. Softening the agrarian policy from 1984 onwards did not bring about any radical revision. Once the country had emerged from its crisis, the FSLN stopped agrarian reform from going further.

#### Changes in the structuring of the farm sector in the late 1980s

By 1988, the way land was organised had been transformed, albeit in a limited way. The large farms (over 350 ha) only represented 19% of cultivated farm surface area (7% private, 12% government farms), instead of 36% in 1978. The cooperative farms occupied 12% of the land while the rest remained in the hands of individual peasant farmers and the lower middle classes of the countryside. Land was given to 70,000 peasant families, about one peasant family out of two. However, the portion of land given for individual use only amounted to 5% of the country's cultivated land.

The political context changed radically in 1990 when the opposition won the elections. Under pressure from the farm workers, the lands occupied by cooperative farms were divided up and individual farms became the rule in only a few years<sup>3</sup>. The organisation of the farm sector had been radically modified by successive and often contradictory reforms before the changes desired by previous governments came to fruition. Nicaragua had become initially one of the

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<sup>1</sup> In the central region of the country, unable to find channels for expression in recognised organisations, the peasant opposition was recruited by the counter-revolution, which received massive financial and military assistance from the USA. In the Pacific region, peasant resistance took other forms: resorting to the black market, setting up rather secretly individual plots or herds within the farm cooperatives, demanding land from service cooperatives, joining protests linked to the Catholic Church.

<sup>2</sup> Here again, the role of the UNAG in applying these measures was only secondary.

<sup>3</sup> By 1994, 80% of the cooperatives had been parcelled out.

Latin American countries with the least unequally distributed land tenure systems. 70% of the country's farmland was occupied by farms smaller than 140 ha as opposed to 47% in 1979, whereas farms over 350 ha decreased from 36% to 17%. However, the situation remained very fragile.

#### The 1990s: insecurity and concentration of land ownership

Violeta Chamorro's government began to work for national reconciliation. The return to peace revived farming on the pioneer frontier, which had declined during the armed conflict. Regarding land, the new administration set up compensatory mechanisms for former owners affected by the agrarian reform, and started revising reform-period title deeds.

It privatised the State farms to the benefit of both sides' soldiers<sup>4</sup>, former owners and private purchasers. After having fought for it, State farms' workers earned the right to continue farming part of the land. Workers' companies were established, which were supposed to buy the land after several years.

From 1990 to 2000, a series of laws were passed to deal with what is known as the "ownership problem". However, these laws have been applied only partially. By creating or maintaining maximum land insecurity for those who use the reformed land, as well as through discourses about the supreme respect of the law, the successive governments actually promoted a restructuring of the national agricultural landscape that privileges the strongest.

In addition, there was a situation of economic insecurity: the structural adjustment policy<sup>5</sup> has led to a brutal change of rules by eliminating a large number of subsidies for farmers.

Because of high tenure insecurity resulting from pending legal problems, the people who work on the new small farms or for recently privatised former State companies suffered from pressures coming from former landowners and the police. Also, both the reduced possibilities for obtaining credit and the shortcomings in the processes of renegotiating prior debts incurred by the companies or cooperatives were economically suffocating. Under these conditions, the advantages of more equal distribution of property as a means for increased economic development were rather difficult to see.

At the same time, the compensations of former owners<sup>6</sup> were reaching exorbitant amounts that

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<sup>4</sup> The officers received much more than the ordinary soldiers.

<sup>5</sup> Started by the Sandanisto government and continued by its successor.

<sup>6</sup> Often immigrants to the USA during the revolution and having acquired American nationality, which "justified" the pressure exerted by the American government and the blackmail of international aid for the compensation of "its" nationals.

cannot be handled by the country on the macroeconomic level.

In spite of easily bypassed legal conditions, large expanses of reformed lands are being sold at prices far below the market price, due in part to their imperfect legal status. These sales mostly concerned the best lands and those with the highest value in terms of urban and tourist construction<sup>1</sup>. If a balance sheet were to be made taking into account the assets (e.g. land awarded to veteran soldiers) and losses (sales, restorations to former owners), it would be clear that the beneficiaries of the reforms have lost a running total of 400,000 ha of land between 1990 and 2000!

The farmers' organisations did not find any solutions to prevent this reversal of the agrarian reform land distribution. In 1993-1994, UNAG and FENACOOP admitted that the division of cooperatives was the rule although they maintained a predominantly collectivist discourse, still refusing to consider systems that allow the legalisation of individual plots, and even establish mechanisms that would have permitted the control of latter transactions by a community authority.

Globally, agricultural colonisation, land markets and agrarian reform had mixed results. This is especially the case if one considers the economic and human cost of the transformations that have occurred in Nicaragua over the past few decades. There was some improvement concerning access to land<sup>2</sup>, but the 2001 survey confirmed what empirical observation had shown: the arrangement of the country's farm sector is evolving rapidly towards dramatic polarisation.

Progression of the distribution of land in Nicaragua: 1963 to 2001

Category	% owners		% surface area	
	1963	2001	1963	2001
< 0.7 ha	2	5	0	0
0.7- 7 ha	48	39	4	3
7- 140 ha	44	52	37	54
140 - 350 ha	3	3	18	21
> 350 ha	1	1	41	22
Totals (000)	102	200	3,823	6,254

Source: Survey 2001 CENAGRO.

Whereas 44% of farmers still own less than 3% of the land, 1% continues to control nearly a quarter of the country's farmland<sup>3</sup>.

<sup>1</sup> In the communes of San Juan del Sur and Cardenas, with high tourist potential, 91% of the lands belonging to cooperatives had already been sold in 1994.

<sup>2</sup> Since 1963, the GINI coefficient has decreased from 0.79 to 0.71 at present. CENAGRO agricultural survey, 2001.

<sup>3</sup> The method used in the survey systematically underestimates the concentration of land ownership, since it reasons in terms of farms and not owners, which often have several farms in different regions.

The sale of land affected by the agrarian reform has continued to benefit a small minority of Nicaraguans and foreign purchasers.

Although large farms are now in crisis, for example, with the fall of coffee prices on the international market, a coherent agricultural policy capable of placing small commercial farming at the heart of the national development strategy is not yet a component of the programme promoted by the decision-makers or any major opposition party.

Given the unfavourable political spin on new proposals within the agrarian reform, other land policies are possible. However, the only programmes that receive massive support from international institutions (World Bank, European Union, etc.) concern the legalisation of land, along with modernisation of the land and ownership registries<sup>4</sup>.

Farm size policies coupled with regulations of the land market and of modes of access such as sharecropping, which would be consistent with an agricultural policy that supports the development of small- and medium-sized farms, is nevertheless vital to the country's economic development.

This is the essential condition for developing the country's very rich natural potential so that it can be used for sustainable growth and the elimination of poverty.

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Author of Record: MERLET, Michel.

Translation: Mary Rodeghier. 2007.

<sup>4</sup> Nonetheless, with the support of the indigenous communities of the Atlantic coast to draw boundaries and gain recognition for the land.



# Record # 10. CENTRAL AMERICA. Weaknesses and limits of agrarian reforms -3/3- Lessons from Honduras and Nicaragua (M. Merlet)

October 2002

There are many similarities between the colonial and post-colonial agrarian histories of Nicaragua and Honduras. Both countries have been the theatre of ambitious agrarian reforms over the past decades, though carried out in very different political contexts. Their comparative study is very enriching. In the nineties, both countries were subject to structural adjustment policies and the agrarian reform programmes were put to a halt in favour of a return to market practices. In both cases, the accomplishments of the agrarian transformations<sup>1</sup> evaporated surprisingly quickly.

Given that the agrarian reforms were the fruit of a massive social revolt, which had involved heavy economic and human sacrifices, and were strongly supported by the State for many years, how come they turned out to be so very weak? The answer is not only of academic interest. The lessons to be learned from these two pieces of history should help to conceive of more efficient and sustainable land policies.

## The limits of both agrarian reforms

Agrarian reforms were necessary because of serious inequalities in regards to land access, and they involved substantial government intervention. The examples of Honduras and Nicaragua show to what extent the return to market mechanisms can pose problems.

Far from preparing their beneficiaries for long-term land management, the way in which the agrarian reforms were carried out in fact speeded up the process of transforming land into merchandise despite intentions to do the contrary.

The flaws in the legal process for recognising tenure of expropriated land are often evoked as a main source of weakness in both countries' agrarian reforms. Although they went a long way towards facilitating the issuing of property deeds later on, especially in Nicaragua, the real problems are elsewhere.

Even though international organisations stress the importance of issuing title deeds and allowing for a free-market system, these things alone are not sufficient for bringing about an optimal distribution of land resources.

- Tenure security is not automatically related

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<sup>1</sup> It might be more appropriate to say what were thought to be its accomplishments!

to holding a legal deed of ownership<sup>2</sup>. Local social mechanisms that generally protect everyone's rights are decidedly more effective.

- History has shown that the region's land markets<sup>3</sup> are imperfect, isolated and opaque.

The redistribution of a large proportion of a country's arable land does not necessarily mean that an agrarian reform has attained its goals: in order to maintain what the agrarian reform had accomplished, it would be necessary to follow up by introducing certain mechanisms for regulating the land market. Yet this requires building a specific institutional framework, that will function better if it incorporates in one way or another the main actors directly involved, i.e. small farmers' organisations.

Both of the agrarian reforms studied did not provide for such an institutional structuring of the farming sector. Likewise, they hindered the development of the necessary social capital.

The transformations were radical only on the surface. They were unable to alter the social relationships in the countryside or to shift the power struggle over land matters.

These two case studies also show that the debate between "total government control" and "free market", which is essentially an ideological one, fails to account for the full reality of the situation. In fact, such a debate shrouds the true roots of the problem while it hinders the possibility of weighing the real interests held by different social groups.

Several crucial elements in the failures or limitations of both agrarian reforms can be highlighted.

## Rigid understanding of the individual and the community

Putting collective forms of production into place was a key element in both countries' agrarian reforms.

Not realising that the individual and the collective are actually intertwined in a dialectical relationship and are thus inalienable, leads to the adoption of dogmatic positions that are not politically neutral.

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<sup>2</sup> In Honduras, the coffee producers developed without ownership deeds, and over the years have become the country's leading exporters.

<sup>3</sup> This is often the case, due to the very nature of the social relations that are forged around land thereby making it a saleable good unlike other types of merchandise.

In the two cases presented here, the most significant consequences of forced collective farming can be categorised into two types.

- It prevented building realistic mechanisms and sustainable institutions for managing collective property, by imposing rigid and often irrational solutions;
- It reduced the motivation of small individual farmers to fight for a more substantial agrarian reform.

#### Interventions that hampered change

Over generations, the structure of the family farming sector is in a constant state of change. For this reason, permanent mechanisms capable of adapting forms of land access to changing circumstances are needed, whether they take the form of inheritances, sales, leases, loans, or even through sharecropping.

By making most of these mechanisms illegal for the beneficiaries, the agrarian reforms actually disadvantaged them. In fact, they were forced to make the adjustments necessary for the survival of their crops in furtive, nearly or openly illegal, manners (selling plots, ceding land for sharecropping or rentals). It became almost impossible for people to take advantage of these experiments or their institutions.

#### Special treatment of the reformed sector and the authoritarian and interventionist role of the State in the reforms

In both countries, the reformed sector was under specific tenure regimes, for which the rules of the market did not apply, or not in the same way. The title deeds issued during the agrarian reforms were not genuine "deeds of ownership", rather they were "deeds of usufruct/use". The land could not be sold or mortgaged; it could simply be conveyed through inheritance under certain conditions to descendants. These limitations were established:

- temporarily, as in Honduras, where after a certain number of years the title deeds from the agrarian reform became genuine deeds of ownership, once the beneficiary had fulfilled a certain number of conditions – using and improving the land, paying annual instalments for the acquisition of rights), or
- definitively, as in Nicaragua before 1990.

It is true that this option avoided a new concentration of land ownership. However, the main reason why it was implemented was that it allowed governments to grease the political machine represented by the agrarian reforms and increased their short-term power and control over rural populations.

However, the uniqueness of the reformed sector was not only in terms of its tenure regime. It overlapped onto organisational aspects. The reformed sector's farmers were urged to as-

semble themselves in a distinct manner, under the authority of the State, which provides certain sorts of aid. They cannot set up their own decision-making structures or intervene in the land market, because the reformed sector in which they work has been set apart from the regular land tenure system.

To conclude, in both Honduras and Nicaragua, it was the governments that direct agrarian change, leaving the farmers' organisations to execute the models and ideologies it has generated. Farmers' organisations are left out of the processes of conception and social experimentation. Consequently, the agrarian reforms are cut off from what the peasants were fighting for, namely seizing land. The activities of farmers' organisations are confined to:

- putting pressure on the government so that it adopts agrarian reform bills, without objecting to its central and monopolistic role in land management nor demanding that their local decision-making bodies have more say in this process.
- pressuring the government to hand over deeds for tenure originating in the agrarian reform, without discussing the nature of the rights conferred by these deeds,
- disseminating ideological and political messages, what in Latin America is called *conscientización*, farmers' "awareness".

The farmers' organisations of the reformed sector tended to be cut off from the abiding demands made by small farmers, which made them fragile and vulnerable, even though they could have wielded influence due to their ability to communicate with the central government. Neither did they play a role in resolving conflicts or in managing natural resources and land. Farmers' organisations were transformed into executors of government-planned measures, and sometimes they internalised the State's authoritarian practices and conceptions.

The divisions between the reformed sector and the non-reformed sector have hindered farmers from constructing a common vision. Likewise, the development of alliances has been made difficult. On the contrary, antagonism and contradiction have come to the fore. Pro-agrarian reform politics are stuck.

The agrarian reforms of Nicaragua and Honduras have taken place in such a way that the peasants who were supposed to benefit from them can in no way become a danger for the dominant classes.

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Sources: the same as for Records 8 and 9.

Author of Record: Michel Merlet.

Translation: Mary Rodeghier. 2007.

## Record # 11. POLAND. Agrarian reforms and family farming (P. Dabrowski and A. Lipski)

October 2002

Poland has undergone three big agrarian reforms, which took place in completely different circumstances and following completely different methods. The "Polish land issues laboratory" illustrates well the diversity that is hidden behind what is called an "agrarian reform", the importance of alliances formed between the ruling classes and the peasantry and the necessity to take into account the *agricultural model* which they seek to promote – a certain type of farm and a certain type of rural society. Today, despite decollectivisation, the position and future of family farming are again seriously threatened in Poland.

### The first agrarian reform (1919-1939)

It was decided on political grounds. The Polish nobility needed the support of the peasantry for its projects for national construction and defence<sup>1</sup>, which is something that it did not understand until later. It was not until after World War I in 1919 that the first agrarian reform law was passed.<sup>2</sup>

Feudalism had weighed very heavily on Polish farmers up until the abolition of serfdom in 1863<sup>3</sup>. Just before World War I, large-scale landowners still possessed around a quarter of Polish farmland. Large farms could range from 200-300 ha to 2000-3000 ha, sometimes even more. They were surrounded by a large mass of families that possessed only very little land. A number of families didn't have any land at all, and the most common measure of possessed surface area was under 2 ha. A few farms extended over 20-30 ha. The very poor rural class represented more than 65% of the population although they had given rise to waves of immigration towards the Americas or Europe since the XIXth Century<sup>4</sup>.

The 1919 agrarian reform included expropriating with compensation (30 to 50% of real value) of

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<sup>1</sup> Poland has been constantly under attack since the end of the Middle Ages. The country disappeared from the European map for 123 years after having been divided up between Austria, Prussia and Russia in the late XVIIIth century.

<sup>2</sup> This followed a process of land redistribution, which had been spontaneously initiated by a certain number of landowners: 840,000 hectares had been redistributed before 1919.

<sup>3</sup> Obligatory work for the noble masters had increased from 2 or 3 days a week to practically the whole week in the XVIIIth Century. A peasant's life was not worth much. His neighbour (a noble of course) would be fined 3 *groszy* for a killed peasant in compared to 5 for a cow.

<sup>4</sup> To Canada, the USA, Brazil (Parana, Rio Grande do Sul) or Argentina; or to work in the factories of Germany and France.

farms of more than 60, 180, or 300 ha depending on the region, in view of promoting the creation of small family farms (in theory 15-20 ha, in reality 5 ha on average). This was supplemented with credits for peasants for the purchase of land. Between 1919 and 1939, it was progressively executed without reaching its goal, as 1.7 million ha were still waiting to be redistributed just before World War II. Yet the impact was real: the landed gentry controlled no more than 2.2 million ha compared to the 6.6 million ha in 1919.

### The second agrarian reform (1944)

In 1944, the Soviet Union liberated Poland, while confiscating 30% of its territory and imposing a totalitarian system. The communists put an agrarian reform law into effect in order to gain peasant support<sup>5</sup>.

Land and assets (from 50 to 100 ha according to the region) were expropriated without compensation. Despoiled landowners were obliged to leave their home towns.

The results are difficult to determine because the country's territorial boundaries were altered and moved westward. Peasants were attributed 1.7 million ha, less than 10% of Poland's farmland. Displaced peasants from the East of the country, which was occupied by the USSR, received farms previously belonging to German families that had immigrated or had been chased westward. However, the primary beneficiary of these transformations was the State, who appropriated 40-70% of the farmland in the West of the country. State farms grew. There were 6,200 of them occupying 3.14 million hectares in 1955; they covered 4.6 million hectares in 1980.

The totalitarian agricultural policy aimed towards two incompatible objectives: ideologically, to collectivise land in order to control rural peoples and food production; and technically, to produce more in order to meet the needs of the working class. First, the authorities chose oppression: falsifying the 1947 elections, repressing peasant activists, forcing the wealthier peasants to deliver certain farm products at 50% of their real price. An armed resistance movement against both the Soviets and collectivisation existed until 1953-54 in regions where the peasantry was at its strongest. From 1956 to 1970, forced collectivisation was progressively abandoned, but the deliveries continued and State farms continued to be the main beneficiaries of agricultural investments (80% for 20% of farmland holdings).

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<sup>5</sup> The public opinion at that time was ignorant of everything pertaining to collectivisation and the Ukraine famine in the thirties, of deportations and peasant revolts.

As part of a modernisation plan from 1971 to 1980, Poland opened to foreign investments, granted loans to farmers at a reduced interest rate, subsidised agricultural prices and abandoned taxes on fertilisers. On the other hand, the State maintained its control over rural structures and trade with an absurd planning system, resulting in serious economic imbalances. During the eighties, the country underwent a serious economic crisis. Inflation soared, which resulted in the resignation of the government and the arrival of democracy.

The first democracy independent of the Soviet bloc had to face a bankrupt economy. The land and agriculture issue was one of the heaviest. Although collectivisation had been less extreme and more recent than in other Soviet countries<sup>1</sup>, with 75% of land still belonging to small farmers, the problem was essentially that of structural stiffness: the average farm size was less than 5 ha. State farms (taking up 25% of Polish farmland) had also suffered from the catastrophic former management.

#### The third agrarian reform (1991-...)

The liberalisation of the economy, suppression of subsidies, opening of frontiers and privatisation had very strong repercussions on agriculture, leading to a drop in the net income of agricultural producers. Starting in 1991, the government reinvigorated its agricultural policy through market intervention. The process of land privatisation was the subject of a live debate in 1993 within the Solidarność administration. Should the country permit a free land market without worrying about how land sales may restructure the farm sector as the liberals want, or should it control land sales in order to promote family farming? The independent farmers' party left the ruling coalition, which had been degenerating until the victory of the former communists during the legislative elections a few months later.

The new land policy implemented from 1991 was characterised by the creation of a National Land Agency, the restructuring of government farms, and then their privatisation (land and assets). State farm debts were secured.

Laws concerning this land reform will be modified many times. Although in 1997, they affirmed that one of the objectives of the National Land Agency was indeed the creation and extension of family farms, no real decision in this vein had been taken, and the parliament continued to hesitate between free and controlled sales. Although the Polish are highly concerned by land matters, and the Polish constitution affirms that family farms constitute the basis of Polish agriculture, the land issue is not prioritised. Rather, other issues involving the country's integration in the European Union or the WTO are empha-

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<sup>1</sup> In the USSR, 100% of land had been collectivised, and for a much longer time, creating a "peasantless country".

sised.

In 1997, 3.6 million hectares of decollectivised land had been leased, 0.6 million hectares sold and 0.4 million were administered by the National Land Agency. A large majority of State farms were leased or sold in their entirety, without being fragmented. Very few were accessible to small farmers, despite the establishment of an installation programme for new farmers, which remained in fact very limited.

Peasant farms, either outcomes of the second agrarian reform or traditional ones that existed at the beginning of the nineties, were small in size, poorly equipped and were not immediately able to be competitive in a context of economic liberalisation and market opening. In these conditions, the liberal land reform instigated the creation of giant properties, often of several thousand hectares<sup>2</sup>. There is even a 70,000 acre one, which would certainly not be found anywhere in Western Europe! Some of them are not actually being cultivated<sup>3</sup>, whereas there are a number of farms without enough land in the surrounding areas. Other farms are developed following modern agricultural techniques and capitalist logic. The two million family farms that exist today in Poland and which represent 25% of the population should be, according to the official directives, reduced by at least half. The future is to belong to agribusiness, despite the fact that there is heavy unemployment in the cities and the lack of jobs in the countryside.

Polish farmers' organisations do not share this official opinion and are convinced that Polish family farming, which had been able to resist collectivisation, represents an advantage for Poland and Europe.

For A. Lipski, a former leader of Rural Solidarność, the agrarian reform should be redefined in order to promote family farming and ought to be done with mechanisms for regulating the land market.

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Paper Editors: Morgane Le Gal, Michel Merlet.

Translation: Mary Rodeghier. 2007.

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<sup>2</sup> Yet, very little land was sold to foreigners, since this would have only been possible under special authorisation of the Ministers of Agriculture and the Homeland.

<sup>3</sup> This situation is not unique to Poland. This is also the case in Ukraine, for example.



## Record # 12. ALBANIA. From absolute collectivism to radical egalitarian land distribution. (A. Civici)

October 2002

### The collectivist period

The establishment of the Communist regime in Albania in 1945 was immediately followed by the adoption of an agrarian reform law. Big landowners were expropriated without compensation and their "exorbitant" capital goods were confiscated, including all vineyards, orchards, gardens, pastures and forests larger than the legally defined limit. In less than two years, Albania's very unequal land distribution, a product of the Ottoman agricultural structure and "second serfdom", had been replaced by an egalitarian society made up of small-scale farmers. However, forced collectivisation of agricultural land caused this to disappear very quickly. The agricultural sector's new structure was accompanied by a limitation of property rights (prohibition of land transactions, sales, purchases, leases) and by the creation of cooperatives, which were taking over more and more land.

Under strict State control, forced and total collectivisation resulted in the complete socialisation of the means of production in a span of only twenty years. The 1976 Constitution abolished private ownership, plot ownership and animal ownership. Nowhere else in the world would small farmers' material necessities be prohibited to such an extent in the name of the creation of the "New Man."

The rapidity of this transition from a profoundly unequal agricultural system to collectivisation's "classless" fiction has nevertheless been upstaged by Albania's head-spinning transition from collectivisation to total land privatisation.

### A radical privatisation

The collapse of the Communist regime in 1990 left Albania in a state of utter disorganisation. Popular debates concerning the utility of collective units, which went as far as to call for their destruction, led the newly elected pluralist regime to lance an agrarian reform. Thus, in July 1991, only four months into the new regime, a new "Land Law" was passed.

This law re-established private ownership of capital goods and instituted rules relating to land distribution. Land was given back to small farmers in a strictly egalitarian way, according to the number of members in each family. The cultivated land possessed by an agricultural cooperative at the end of the year 1990 was redistributed without compensation to families that had been registered as members of the cooperative before July 31<sup>st</sup> of that year. For a certain time (3-4 years), beneficiaries were forbidden to sell, buy or lease the land that they had received. The purpose of this measure was to prevent people from making irrational transac-

tions during the early, disorderly stages of the post-Communist transition. Also at this time, it was decided to compensate former landowners who had been expropriated during the 1946 agrarian reform.

In 1990, 700,000 ha of cultivated land was divided among 160 State farms of 1070 ha and 492 cooperatives at 1057 ha each (on average). After a few years, all of this land was redistributed. By 1993, Albania's agricultural sector had taken the following form: 467,000 small farms having an average surface area of 1.3 ha, which were divided into 1.8 million plots, in addition to a small private sector consisting of thirty large-scale farms (2.2% of the total agricultural surface area).

This phenomenon of radical privatisation, a unique example in the world, is not limited to farming. The fact that the entirety of the State's holdings were distributed to the people right away provided a base for national unity at a time when the government no longer embodied a particular State apparatus nor was armed with an alternative economic strategy. Private commerce and the family farming economy had become the foundations for a new Albanian society: the agricultural sector employed 47% of the active population and contributed to 45% of the GDP.

In line with this restructuring of the Albanian agricultural sector, around 575,000 ha of farmland was distributed to more than 450,000 peasant families. They created then around 460,000 small private farms with surface areas varying from 0.5 to 3 ha per family.

Tab. 1. Cultivated surface area according to property size (in thousands of ha)

	1990	1993	1997	1999
Cultivated land	704	702	700	699
State sector	170	170	20	20
Cooperative farms	504	0	0	0
Private sector	30	533	680	679

Source : MAA, statistics 2000

Although the law called for equal land allocation across the nation, with each family receiving a certain amount depending on the number of family members, the reality was different, notably for geographic reasons. Paradoxically, the farms are largest (with the average surface area of cultivated land from 1.2 to 1.7 ha) where flat, open farmland (and therefore the best land) is abundant. On the other hand, in mountainous areas where farmland is poor and fragmented, tiled fields cover an average surface area of only 0.2 to 1 ha.

In 2000, 30% of farms measured between 0.1 and 0.5 ha; 24% between 0.6 and 1.0 ha; 35% between 1.1 and 2.0 ha; and 11% measure more than 2.0 ha (INSTAT, 2000).

### Specific problems

As a consequence of the search for equality between types of land and production conditions (irrigated land or not, land in flat open country areas, hills or mountains, close or far from the road, etc.), land distribution committees have fragmented the land allocated to each family even more by creating 1.8 million individual plots. This means that a family possessing a total surface area of 1.3 ha might have 4 to 7 plots measuring 1.0 to 0.2 ha each, with an average distance of 1-10 km separating each plot and the plots from the house.

These figures convey that the majority of family farms make use of extremely small plots of land. Such a restricted land tenure system clearly influences a farm's productive activity, its production size, the market it produces for, its use of farm equipment, irrigation, etc.

Three negative effects on the country's agricultural sector and its rural development result from such extreme fragmentation of farmland. They are:

- Abandon of all efforts to modernise farm production (mechanisation, efficient water use, crop rotation, etc.)
- Land far from dwellings was often abandoned. According to the surveys, on average, 10% of the closest plots were left untilled, whereas for plots further away, this figure reaches 47%
- Numerous difficulties in the lease and sale of land.

In this context, from 1995 to 2000, the efforts made by the government and other involved institutions focused around three principal aims:

- Finalising land distribution and providing small farmers with deeds of ownership. By the end of April 2000, about 92% of the land designated for redistribution was distributed and around 92% of small farmers had the corresponding documents.
- Consolidation of ownership: creating a singular, modern property registration system. To establish this system, the parliament and the Albanian government modified the legal framework and opened "Registration offices" in 34 districts of the country. Financed by US-AID (USA), the Phare Program (EU) and the Albanian Government, the project is currently operating in 2,378 out of 3,046 cadastral areas.
- Developing and revitalising the land market was one of the main objectives for the period of 1999-2003. During the last two years, the legal framework concerning the

sale, purchase and lease of agricultural land was completed, and thus the legal obstacles to the development of the land market were eradicated. The rapid increase in real estate transaction since 1999 demonstrates the effectiveness of this policy. At the end of April 2000, more than 40,000 transactions had already been registered, of which 15,000 were for farmland.

More effective protection and management of farmland is becoming necessary. Two observations can be made upon analysis of the land market:

- Firstly, direct and definitive land sales on the outskirts of large towns, next to national highways or in industrial and tourism zones: the final destination of this agricultural land was the construction of industrial installations, residence buildings, socio-cultural installations, tourist hotels and restaurants. The sale price is from 40 to 150 dollars per square meter.
- Secondly, partial sales or lease of land that continues to be used as agricultural land: this phenomenon is typical of interior agricultural zones, close to big towns or transformation centres. The majority of buyers or renters are nearby farmers or livestock breeders, who invest to increase their production. Also, there is some joint-venture investment in export production.

### Overly broad land use

Different indicators—from the proportion of untilled land in relation to the total surface area of arable land to the number of sowings per year—show that land use is not as intensive as one would hope given the small size of the majority of Albanian farms.

The available figures for 1997-1999 convey the extent of untilled land in Albanian agriculture: 43% of farms in Albania leave 14% of their land untilled. This phenomenon is amplified in the South of the country, where 35% of the arable land is not used for 80% of farms. It is less but still present in the centre of the country, in particular in the Western plains, Albania's most fertile region, where 26-36% of farms have untilled lands occupying 5-10% of the total surface area. Analysing this phenomenon is difficult. Several economic, psychological, agronomic and cultural factors may be at the root of it: land ownership fragmentation, inappropriate infrastructures, the influx of foreign capital making agricultural work less attractive (especially in the South), the lack of financial means to cultivate all of the available surface area, the poor quality of land and low production levels.

In such conditions, land consolidation appears to be a necessity. Some other problems also prevail such as families who trade plots and villages where households are encouraged to rent to other families within the village.

### Latent land insecurity persists

The security of land possession still remains a sensitive matter, which is more difficult to understand than it would seem at first. It is appropriate to distinguish formal security on the one hand (possession of documents proving rights in land, document precision, and security of the ways to register and make public land holdings), and subjective security of possession on the other, which refers to how farmers perceive the meaning of the rights they possess over land.

The enquiries that we have done between 1997 and 2000 show that historically founded ways to access land have high rates of social approval at the local level.

In places where there are no former landowners, such as in former wilderness areas that have since been transformed into farmlands, having a definitive document proving ownership provides small farmers with land tenure security. There are still some small farmers who, even though they have been working the land for several years, have not yet obtained a property title, and hence feel that their situation is insecure.

In areas where the farmland had been appropriated before collectivisations, the security of a person's title depends largely on the tenure history of the allocated land. Possessing land that once belonged to one's father is socially considered to be more legitimate, and thus the title for that land is more secure. Therefore, an official property title deed is just one element, not the only one: when a person says, "I have my father's land" – that means, "I obtained a quantity of land for which I have ownership rights in accordance with the 1991 law, but I have settled on my family's traditionally held land."

This perceived tenure insecurity directly influences farmers' freedom to decide on how to use resources, even when they possess official documents. Thus, whether the plot in somebody's possession is "their father's land" or not, the historical origin of the land is particularly important in determining how free that person is to use the land. As far as land awarded by the 1991 law that does not historically belong to the family is concerned, the right to decide how to use the land is limited considerably by pressure coming from ex-landowners, fear of changes in the law, disputes between neighbours who make opposing claims, etc. Land sales, construction and long-term investments are among the most challenging problems faced by small farmers. This fear of losing one's land is manifest in farmers' hesitations to invest in land where "there are other peoples' interests".

#### A future to be strengthened and farm policies to be created

The current farming structure in Albania can be nothing but transitory. We see that issuing official property titles is not enough in itself to resolve fundamental questions that are raised as far as land is concerned. The transformations, however radical they may have been, did not totally erase prior social relationships.

Can modern, sustainable production units be achieved by the sole means of land markets (ownership and lease)? Could the formation of new co-operative structures also play a part in this?

In order to fully express the potentials of new family farming production, Albania will need a coherent and comprehensive agricultural policy, which would help to fundamentally reorganise the rural world. The integration of this country in the worldwide market economy, the ways land is managed and the potential role to be played by farmers' organisations will be crucial elements in the make-up of Albania's future.

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Sources: interview with Adrian Civici and Adrian Civici, *La réforme foncière et la consolidation de la propriété*, unpublished article (oct. 2001). Adrian Civici and François Lérin, « Albanie, sans transition », *Courrier de la Planète* N°47, September - October 1998.

Final paper editing: Morgane Le Gal and Michel Merlet.

Translation: Mary Rodeghier. 2007.



# Record # 13. USA. Agricultural land and the law of the United States of America, origin of the Washington Consensus. (O. Delahaye)

October 2002

The relationships between the law and the economy, in particular when agricultural land is concerned, are very different in the United States and in continental Europe, both at the level of general clauses as well as in their practical implementation<sup>1</sup>. This difference originates in the foundations of Anglo-Saxon law. At the same time, the particular way in which land ownership developed in the United States, where the historical relationships between land and man that underlie the land tenure systems of other countries were discarded, contributes to the marked differences between the American and the European land situations.

The terms of the "Washington Consensus" are heavily influenced by this situation, which is unique to the United States. Notably, the "Washington Consensus" has directly inspired the land policies that multilateral organisations promote in developing countries.

## Agricultural land is regarded in quite a unique way in the United States

The history of the United States of America from its independence until the early 20<sup>th</sup> century is perceived as being the product of a common will to establish a "freehold estate": a land ownership system emancipated from all feudal or community ties, which is considered as the principal condition of liberty and democracy<sup>2</sup>. The existence of a vast expanse of land deemed "public" (omitting the fact that it is land stolen from Indian nations by "treaties" signed after wars of conquest against autochthonous peoples) permitted the establishment of such 'free' ownership. When the availability of public land decreased at the beginning of the 20<sup>th</sup> century, the market became the principle means of according land ownership. For this reason, reflection about land is integrated into the general framework of economic thought in a country where both public opinion and official policies place the market on a level similar to, if not superior to, that of the government as an institution of social control. Since its origins, thought about land in the USA has therefore focused on processes of land allocation (by tender or

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<sup>1</sup> With very unequal levels of application and a jurisprudence which often deviates from law regulations, according to regional situations and balances of power.

<sup>2</sup> However, practice does not follow this principle of ideal democratic ownership. The real land policy included immense concessions to railway or other companies, and sales to speculators.

through the market), without considering the social relations implied: reflection on agricultural unearned income coming from agricultural land holdings, typical in situations of land scarcity, is rare.

The agricultural land issue became an object of academic reflection in the United States at the end of the 19<sup>th</sup> century because public land was being depleted and the Civil War had ended, which raised the question of the fate of plantation land in the South. The percentage of tenant farmers within the whole of agricultural producers had risen from 25.6% in 1880 to 42.4% in 1930: tenant farming was therefore becoming a step toward ownership. Up until this time, tenant farming had been considered as contradictory to the ideal of a nation of free landowners; hence the invention of the concept of the "agricultural ladder". Any hard-working and able person could eventually become a landowner by completing a series of steps. Furthermore, a path to land ownership was not obstructed by the presence of a class of landed gentry<sup>3</sup>. This vision, which perpetuated the myth of free access to land originating in the settlement of the Wild West, lasted until the forties, even though the rise in the proportion of tenant farmers illustrates a very different reality.

At the time of the New Deal and the Second World War (1933-45), the State became a primary actor on the real estate scene. It intervened directly on land holdings by establishing different programs of soil conservation, the suspension of farming on arable land and rural development<sup>4</sup>. The Second World War changed priorities, while doubts concerning the validity of the agricultural ladder arose. If one was not the son of a landowner, it was clearly difficult to become a landowner by climbing the rungs of the ladder. In fact, most landowners acquired their holdings by means of inheritance. Thus, the New Agricultural Ladder was created, according to which owning land was considered to be re-

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<sup>3</sup> The farmer was supposed to go through six stages in his career: farm apprentice, agricultural worker, farmer, cultivating landowner paying a mortgage, a mortgage-free cultivating land-owner, and finally retired land-owner.

<sup>4</sup> The *Agricultural Adjustment Act* -AAA- managed payment programs for producers in compensation for a reduction of their cultivated surface area; the *Resettlement Administration* installed poor families on two million hectares bought by the federal government, and transformed into the *Farm Security Administration*, whose influence and programs quickly became marginal.

lated to one's social origin and not to one's capacities to climb the Ladder. Moreover, in 1959, the percentage of tenant farmers working in the agricultural sector dropped to 19.8%. The New Deal agrarian programs, which had been suspended during the war, will never be truly reinstated. Likewise, agricultural land tenure has ceased to be central to economic thought as the American agricultural crisis is perceived to have come to an end and the economic weight of agricultural land is decreasing.

#### Laws, markets, and social regulation in the USA: the birth of the institutional economy

During the 1787 Constitutional Convention, Dickinson proclaimed, "experience must be our only guide, reason may mislead us." This resolute pragmatism explains the key role played by the law and the courts in the economic regulation of the United States. While in France laws attempt to legislate *ex ante* on foreseen situations, American legislation tends to propose solutions to problems *a posteriori* that have already been raised concretely in the courts. Judiciary decisions thereby play a more important role than the law itself in the elaboration and application of economic rules.

Such pragmatism can also be found in American thinking about land and tenure. Exemplary are the first institutional economists' statements concerning the respective roles of the market and the State (or, more generally, government institutions) that inspired the measures taken in the agricultural sector during the New Deal.

John Commons, one of the founders of institutional economics, placed the concept of working rules<sup>1</sup>, at the core of his thinking. Working rules regulate the practical functioning of the economy, and can be modified, according to him, only by Supreme Court decisions. Commons' thinking inspired Ely, the creator of the magazine, *Journal of Land and Public Utility Economics* (today *Land Economics*). Ronald Coase<sup>2</sup> is also representative of this sort of pragmatic thinking, which links judiciary decisions to the daily practice of economics. Commons and Coase consider the transaction to be a central theme of economic analysis. It is, in this sense, an essentially concrete object, which is at the core of the daily practice of social actors, and is more central than the supply and demand of goods, the subject of classical economists' reflections. Transactions, approved by legal decisions in the event of disagreement between partners, came to occupy a privileged place in reflection about the relationship between the law and the economy. These early postulates of institutional economics were taken up again by different streams of neo-institutional economic

<sup>1</sup> It's a concept close to the broad definition of the term 'institutions' (see Neale, 1987) that covers not only social actors, but also formal and informal norms that influence their behaviour on the market.

<sup>2</sup> Coase R. 1960. The Problem of Social Cost. *The Journal of Law and Economics*. 3(1):1-44.

thought, of which the primary traits concerning land are as follows:

1. thinking in terms of property rights.

An example of the connection between institutional economics and the analysis of legal decisions lies in formulations regarding property rights that were made after the publication of Hardin's 1968 essay, "The Tragedy of the Commons", which considered that "the institution of private property coupled with legal heritage" as the only alternative to efficiently manage humanity's limited resources. This article was at the origin of the widespread belief that private property is necessary for the efficient use of resources<sup>3</sup>. The historical becoming of property rights in the United States is the subject of numerous studies<sup>4</sup>.

2. Transaction costs. This is the approach that most directly follows from Coase's analysis. The existence of transaction costs modifies certain aspects of the classic approach of market regulation. It results in differential advantages for agents. De Janvry, Sadoulet and Thorbecke<sup>5</sup> consider that "the rural community is characterised by highly imperfect markets with low internal transaction costs but high external costs". Such an approach explains market malfunctions regarding the neo-classical model. In practice, the transaction costs approach leads to a methodology that includes the examination of each step involved in different types of transactions.

3. Information is emphasised. Informational asymmetry is a proposition close to that of transaction costs<sup>6</sup>. It is based on the fact that agents who exchange on the market do not possess the same level of information, which is particularly pertinent to land issues, where transparency is hardly the rule. Differential

<sup>3</sup> Carter, Feder et Roth. Carter M. R. 1999. Old Questions and New Realities: Contemporary Land and Land Policy Research in Latin America. Congrès "Land in Latin America: New Context, New Claims, New Concepts". Royal Tropical Institute. Amsterdam. 26/27-05-1999.

<sup>4</sup> See in particular, Anderson and Hill, who propose a method to determine the moment where costs of private land ownership formalisation becomes inferior to the benefits one can expect from it. Anderson T. et Hill P.J. 1976. The role of Private Property in the History of American Agriculture, 1776-1976. *American Journal of Agricultural Economics*. 58(5):937-945. Anderson T. et Hill P. J. 1990. The Race for Property Rights. *The Journal of Law and Economics*. 33:177-197.

<sup>5</sup> Janvry, de A. Sadoulet E. et Thorbecke E. 1993. Introduction. *World Development*. 21(4):565-575.

<sup>6</sup> Bardhan P. 1989. The New Institutional Economics and Development Theories: a Brief Critical Assessment. *World Development* 17(9):1389-1395.

transaction costs and informational asymmetry are considered to be at the origin of the segmentation of markets between different categories of agents.

A decisive impact on the way in which multilateral institutions regard land issues

In general terms, land proposals formulated within the framework of multilateral organisations do not go beyond the aspects that we have just brought to light. Furthermore, they do not directly consider other essential aspects, such as the importance of political strife and power relations in the application of land policies.

Neo-institutional economic theory, which stems from reflection over domestic situations in the United States, and in particular, from the special place occupied by court decisions, inspires the land policies proposed by the majority of multilateral development organisations (World Bank, Inter-American Development Bank). Its postulates, which are endorsed by the United States government's Agency of International Development (USAID) and by a number of American universities, constitute what has been called the "Washington Consensus". It dictated the underpinnings of Third World land policies implemented in the 1980s and 90s: emphasis on the market as a regulator of land distribution; denigration of the agrarian reform programs of the sixties and seventies; withdrawal of the State from any direct involvement in rural development programs and reinforcement of individual ownership.

Recent developments seem to take us back to a less extreme position since the market and agrarian reform are both proposed as complementary forms of land redistribution. The "post-Washington Consensus"<sup>1</sup> proposes a "market-assisted agrarian reform" and insists on aspects neglected by earlier "market only" policies, such as a real recognition of bundles of property rights.

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Source:

DELAHAYE, Olivier. "Le foncier agricole aux Etats-Unis: le marché, les tribunaux, la loi et les origines de l'économie néo-institutionnelle » in Société Française d'Economie Rurale : Face au droit rural et à ses pratiques, une approche conjointe des économistes, des juristes et des sociologues. Paris : L'Harmattan, 2001. pp. 191-198.

Paper editor: MERLET, Michel.

Translation: Mary Rodeghier. 2007.

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<sup>1</sup> Stiglitz, J. 1998. More Instruments and Broader Goals: Moving toward a Post-Washington Consensus. UNU/WIDER Annual Lecture.

<http://wider.unu.edu/stiglitz.htm>





## Record # 14. DENMARK. A pioneer for small farmers in Western Europe. (C. Servolin)

October 2002

The inception of the modern agricultural policy of capitalist European countries is found in mid-18<sup>th</sup> century Denmark under the aegis of an absolute monarchy and supported by bourgeois merchants. Danish agriculture at this time was dominated by feudal landowners who ran an extremely oppressive system of serfdom. The rudimentary method of traditional collective crop rotation over a three year cycle, heavy labour, and burdensome taxes kept the peasants in a state of misery. "Upon the initiative of the royal administration, investigations into agriculture were performed, since the reform movement included debates concerning the type of agriculture that should be practised to restore the country's prosperity".

There was a consensus on the need to stop collective crop rotation, the enclosure of common land and the grouping of fields. However, two schools of thought clashed: the proponents of large farms like in England, which would have resulted in clearing the land of most of the rural population, and the supporters of a populous and wealthy peasantry declaring that "such a peasantry, provided that it was given the means, was perfectly capable of implementing the English technical innovations, with technical and economic efficiency at least equal to that of aristocratic *country gentlemen*. It was not until after violent political struggle that the latter standpoint won at the very end of the 18th century."

C. Servolin underlines the importance of these decisions: "With truly admirable realism of which few examples exist in history, the enlightened faction of the Danish elite, supported by the King and his progressive administration, was able to both identify the remarkable potential for the development of small farms and identify all the obstacles that required eliminating before this potential could come to fruition. The peasants were emancipated by a number of legislative measures in only a few years."

- Starting in 1786, feudal obligations were abolished and replaced by the practice of paying a fixed rent for land in cash. A modern system of land tenancy was imposed that defined the rights and obligations of both farmer and owner.
- In 1788, a public bank was founded to help the peasants become landowners by granting them long-term loans at low interest rates. In 1820, Danish farmers already owned nearly half of the land they cultivated, and this proportion increased throughout the 19th century. In 1850, the peasants were encouraged to set up a cooperative credit system to finance production drives.

- The level of general and technical education improved. In 1814, primary education became obligatory. A vast network of schools was then set up with government aid along with a tightly knit system of professional agricultural education. In 1868, a permanent training system was set up for young farmers (through training grants)

The crisis of the 1880s ended the construction of the Danish agricultural system:

- The small and medium sized farmers were reoriented towards intensive animal production, such as pork, dairy products, beef and eggs, which were more profitable than cereal and vegetable production on small farms;
- They were also oriented towards exports. Denmark is a small country whose main natural resource is agriculture, thus it could gain from exploiting a branch hitherto neglected by the large industrial countries. In 1880, Denmark exported 2/3 of its production. With the appearance of cheap cereals, Denmark became at first a factory for processing animal products for the large urban conurbations of Germany, and later for those of the United Kingdom. From 1870 to 1914, the number of dairy cows doubled, butter production quadrupled and the number of pigs multiplied by six;
- This change relied "on a solidly organised, well managed and disciplined peasantry. This was the accomplishment of the farmers' unions (Landboforeniger)." Established to lead the struggle for the political and economic liberation of the peasantry, they backed a policy of agricultural expansion by building a powerful cooperative sector.

In an agricultural system whose production is intended for export, price levels are no longer bound to local markets and internal demand. "For each product, the market became unified under the authority of the export offices set up by the cooperatives. They organised each production branch into hierarchically organised "sectors". The farm products began to take on modern characteristics: they became uniform, with rigorous technical and quality standards, and at the same time they were made distinctive through the competition brought by the introduction of brands and labels. The markets and prices were regulated by the cooperatives and export offices, which also oriented production.

Individual farming had distanced itself from its origins in one essential way: whereas small farmers had worked for an existing demand, expressed beforehand and known to them, new farmers worked for a remote market whose limits

were unknown. Thus, farmers were encouraged to produce more and more and to increase their incomes. However, such practices required the involvement of other actors, particularly the government:

"the most important characteristic of this new agriculture is the vital role played by the government. This is evident first of all in its emergence, since the "liberation" of the individual small farmer would have been unthinkable without a political project directed by the government, through the political, administrative, and financial assistance it gave the organised peasantry. Furthermore, the important role played by the State is inherent to Denmark's political economy, which supposes that the government dictates a development strategy, ensures and finances the regulation of production, investment and markets, either directly or indirectly through cooperation with farmers unions."

The Danish agricultural system is in some ways the prototype of modern agricultural policies that every capitalist European country has adopted and implemented henceforth. Similar transformations can be found in the small countries of Northern Europe, such as the Netherlands, due to economic necessity, whereas in the other countries of Western Europe, the modernisation of ag-

riculture took much longer, occurred more slowly and was less generalised and systematic, because of the coexistence of different agrarian systems (peasant farming and large estates in Southern and Eastern Europe), or due to the existence of vast empires, or the early supremacy of industry (United Kingdom, France).

From the end of the 19th century, one after another, European countries explicitly decided to base their agriculture on the individual farm rather than on the big capitalist farms that dominate British farming, by providing it with the means to fulfil its potential for development: firstly, via finance and, secondly, by a series of measures aimed at modernising farms and adapting their size to the needs of society (called "structural policies" in France).

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Source:

SERVOLIN, Claude. L'agriculture moderne. Editions du Seuil. February 1989. 318 p. and an interview with the author.

Author of Record: MERLET, Michel.

Translation: Mary Rodeghier. 2007.

## Record # 15. NETHERLANDS: An interventionist agricultural policy intended to reduce regional inequalities (S. Devienne)

October 2002

The Netherlands possesses the most efficient agricultural sector in the European Union: with only 1.6% of its active population, this small country produces 8% of the EU's agricultural output, and rivals with France at the international level for second place behind the USA among agro-exporting countries.

This high performance originates in Dutch agricultural history, since the coastal regions of the country have been at the forefront of agricultural development in Western Europe for more than three centuries. Also, Holland's success is the fruit of its agricultural policy, which has been focused since the 50s not only on the most developed regions but also on the disadvantaged inland regions in order to offset the differences in terms of development and to use the country's agricultural resources to their fullest.

Dutch agriculture is basically run by families and is characterised by relatively uniform farm structures. Farms are small (18 ha on average, 8.5 ha per farm worker) and grouped around this average. Two-thirds of farms now cover less than 20 ha, and only a mere 7% exceed 50 ha.

The Dutch public authorities have always supported the development of small farms. In the coastal polder regions, the first drainage programmes began in the 10th century and were initially carried out by the peasants themselves. They were later coordinated by the aristocracy and the clergy that set up farms of 15 to 20 ha, which were rented or sold to free peasants. At the beginning of the 16th century, these farms began very early to participate in commercial trading with advantageous conditions. This process was facilitated by water transport. During this period, the farms specialised in dairy production, and purchased cereals from Eastern Europe where they were produced on large feudal estates by a population of serfs. This transformation opened the road to an agricultural revolution in the coastal regions. These were drained by windmills, the meadows were fertilised, selective cattle-breeding was introduced, animal food-cakes were produced for dairy cows, etc. The Dutch and Friesian peasantry showed that they were capable of implementing technical innovations that considerably increased the productivity of agricultural labour. Having gained much power by the end of the 16th century, the urban middle classes seized the opportunity and invested massively in the development of this peasant economy, in fact three times as much capital as they invested in the West India Company, which was established at the same time. They began major

projects to drain the deepest inland lakes (50% of Holland's farmland surface area) to set up 20 ha farms, which were rented to tenant farmers. In order to maintain the profitability of its investments, it implemented taxation that allowed continued and rapid development of coastal farms during the 17th and 18th centuries.

At the end of the 19th century, during the agricultural depression, the Dutch government decided to maintain free-trade, though it applied an agricultural policy that aimed to reinforce the farming economy:

- a system for agricultural research, education and widespread training, which addressed itself to all farmers (evening and winter classes), was put into place by the government;
- supporting the development of cooperative ways to meet supply needs, to process raw farm goods and to provide agricultural loans: the government subsidised the establishment of agricultural mutual savings banks.

Furthermore, the public authorities intervened inland to facilitate and speed up the sharing of and clearing of the wilderness that took up nearly three quarters of the territory, by giving priority to the extension of small farms. This process was assisted by the possibility of borrowing real estate credit.

In the early 20th century, the small farmers of Holland's inland regions were fully involved in commercial activities. They developed animal production on small farms (dairy, pork and poultry) by buying cheap cereals on the world market. They also purchased fertilisers, plant food and so forth. However, this integration in the world market occurred three centuries later than that of the coastal regions. The disadvantages faced by inland regions (transportation difficulties, much less advantageous taxation) led to unequal agricultural development, which had a cumulative effect that lasted until 1950 in spite of radical changes made by the farms of these interior regions since the end of the 19th century.

After World War II, the Dutch public authorities implemented a policy aimed at reducing economic and social disparities among farmers, especially across regions. This interventionist and systematic policy was applied without opposition from 1950 to the mid-1980s. It successively made use of different tools and was remarkably coherent: funding was distributed well among research, education, widespread training, moderni-

sation, the development of rural land and support for food industry.

How was it possible to implement such an original policy, particularly for Western Europe?

Right after World War II, the Dutch public authorities started to intervene in the national economy, to such an extent that economists began to speak of a "semi-planned" economy. This intervention was part of a close partnership between the State, unions and civil society groups. The unions and civil society groups were equally represented in public agencies that were conferred a number of duties traditionally under the government's realm of activities. The 1950 law that laid the framework for the national economy provided for the creation of such agencies within each of the sectors of the economy. The State continued to make the large, over-arching decisions regarding the political economy, whereas the agencies within each economic sector made their own interpretations. Three types of agencies within the farming sector were created:

- a "horizontal" agency, in which farmers' groups and farm workers' unions were given equal representation,
- field-specific "vertical" agencies, with equal representation of the different agents who work in this field,
- "foundations" responsible for implementing the general measures of agricultural policy, of which both representatives of the Ministry of Agriculture and farmers' groups are members

The rate of union membership in the agricultural sector is high: more than 80% of farmers are members of one of three farmers' unions. One of the unions acts as spokesperson for inland farms. Dutch union pluralism is the basis of farmers' democratic representation: the interests of small farmers in disadvantaged regions are expressed through the agencies that carry out an important role in defining and implementing agricultural policies. The government gives a positive response to the defence of their interests since one of its main objectives is to reduce economic and social inequalities.

The public authorities did little to intervene and correct the land market. The Land Administration Foundation, founded in 1950, above all intervened in rural development areas, in the framework of the policy to encourage farmers to cease their activity, though did little on the free market. From 1953 to 1963, farmland sales needed to be checked with respect to both prices and land use. Its closing down led to an increase of market prices, which, in this very densely populated country, reached high levels (23,000 to 30,000 euros/ha today). Measures of control on tenant farming remained in place.

However, the agricultural policy intervened actively with respect to agricultural loans, to encourage the modernisation of the most disadvantaged farms. An agricultural credit fund was

founded in 1950 and it provided guarantees to farmers that proposed a viable development project but did not have enough assets to obtain bank loans. The project could comprise the expansion of the farm and investments are supported by substantial tax breaks.

Inequalities in regional agricultural development were reduced in several steps, by the successive implementation of different agricultural policy instruments:

- regionally differentiated pricing policies, in favour of the most disadvantaged regions from 1950 to 1965;
- limitation of poultry production disconnected from the territory to farms of less than 10 ha, thereby allowing them to offset their size disadvantage, from 1950 to 1960;
- integrated development of rural land (merging plots, construction of new farm buildings, improvement of infrastructures) from 1958, that took into account three quarters of farmland until 2000, according to a plan that gave priority to the least favoured regions. These regions are those in which the highest increases of productivity could be expected, thereby ensuring optimal use of the large amounts of public funds invested. Overall the objective was satisfied and formed a powerful tool for reducing inequalities in regional development;
- different levels of investment aid given to regions from 1978 to 1982, permitting much higher rates of subsidies in disadvantaged regions. These aids are only proposed to farms with incomes lower than the reference income, itself set below the average salary;
- intervention by the public authorities in the land market via the Land Administration Foundation;
- implementation of the research and popularising policy adapted to different regions' problems: as early as 1932, specialised centres were set up to develop the small farms of the inland regions. From 1970, Dutch agricultural development policy relied on a dynamic research and development structure capable of proposing suitable types of farm organisation, by anticipating individual initiatives.

The implementation of this policy has allowed the farms of the inland regions to catch up with the rest of the country over the last forty years. Overall, it has modernised the country's farm production while reducing economic and social disparities in the agricultural sector. The reduction of an entire range of inequalities related to the division of land and capital is the most satisfactory solution, both socially and economically since it permits optimal utilisation of these re-

sources and, consequently, the highest productivity of labour. The performance of Dutch agriculture goes to prove this. This redistribution is the fruit of an audacious and original policy, whose formulation has been made possible by close collaboration with powerful unions that democratically represent the farmers.

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Source: DEVIENNE, Sophie. Doctoral thesis. Unpublished.

Author of Record: DEVIENNE, Sophie. Teacher-researcher Institut National Agronomique de Paris Grignon (INA-PG)

Translation: Mary Rodeghier. 2007.



## Record # 16. FRANCE. The SAFERs, an original land market regulation mechanism that is operated by the State and farmers' organisations (M. Merlet, R. Levesque)

September 2007

In France, there is a system for regulating the land market that relies on the collaboration of the State and farmers' organisations. This system, little known outside of this country's borders, is called the Land Development and Rural Settlement Associations (Sociétés d'Aménagement Foncier et d'Etablissement Rural, SAFERs) and constitutes one of the key components of French "structures policy". Under this "structures policy" umbrella falls not only all the policies for agricultural modernisation, but also policies aiming to preserve the family farm model by providing farms with enough land to meet contemporary technical and social demands.

### The structures policy in France: review of main clauses<sup>1</sup>

- A retirement pension encourages older farmers to yield their land for the benefit of young farmers.
- Land Development and Rural Settlement Associations (SAFERs) regulate the land market (theme of this document)
- Multiple farm ownership is prohibited in order to avoid excessive land concentration. Likewise, changes in farm sizes are restricted by locally-determined<sup>2</sup> criteria that establish the maximum legal surface area, a value which ranges from 1 to 3 times greater than the minimum farm surface area required in order to obtain agricultural subsidies.

The creation of SAFERs with the agricultural act of August 1960 responded to the demands of farmers<sup>3</sup> in a context where there was a high demand for farmland. The government and the young farmers' unions shared a common goal: preparing the French agricultural sector for entry in the common market of the six-member European Union (France, Italy, Germany, Luxemburg, Bel-

<sup>1</sup> There are also laws which regulate tenant farming and guarantee growers' rights, which are not dealt with here.

<sup>2</sup> The criteria are fixed by a decision-making body in each of France's 95 *départements*.

<sup>3</sup> The CNJA (National Centre for Young Farmers) and the JAC (Young Catholic Farmers) played a central role at this level.

gium and the Netherlands). At this time, French farms were numerous, small, and parcelled out. There was a political will to modernise family farming and revamp the agricultural sector at a time when Europe was importing more food products than it was exporting. The SAFERs were designed to purchase farmland and main agricultural centres in order to achieve the following goals: to equip and settle young farmers; to reorganise land parcels and to enlarge farms that were below the threshold of profitability. Given the considerable increase in rural real estate prices, which was related to the increase in farming revenues due to guaranteed prices regardless of the quantity produced, the young farmers' organisations wanted the SAFERs to be able to redirect part of the assets that had been put on the free market toward priority beneficiaries of the structures policies. Thus, the 1960 act was modified two years later, when SAFERs were granted pre-emptive rights, which had not been originally granted<sup>4</sup>.

The SAFERs' purpose is "to ameliorate agricultural structures, increase the surface area of certain farms and assist farmers as they settle in and begin to cultivate the land".

These 29 non-profit anonymous limited companies are spread throughout the whole territory, including the overseas *départements* (DOM). They are managed by a board of directors made up of diverse shareholders (the agricultural bank (Crédit Agricole), the local Chambers of Agriculture (Chambre d'Agriculture) collective investment companies, local authorities, professional farming associations including trade unions<sup>5</sup>).

SAFERs are entitled to purchase, transfer and exchange land, farms (land and/or buildings, equipment, livestock), or cultivated forests. They have the obligation to sell the assets acquired within 5 years, with the possibility for prolongation under certain circumstances (land regroupings, planting, reforestation,

<sup>4</sup> These two first laws would be completed following several amendments modifying texts establishing the main principles of the functioning of SAFER.

<sup>5</sup> Up until 1981, only one school of unions was officially recognised in France, the FNSEA and the CNJA.

etc.).

SAFERs' interventions are based on the principles of:

- Motivation: SAFERs must declare a motive for their pre-emption and yield actions lest they be declared invalid.
- Announcement: The transparency of their operations is ensured by the fact that they are made public knowledge. Disrespect of this requirement automatically annuls any acquisitions or transfers.
- Right to disassemble existing farms<sup>1</sup>.

Among the SAFERs' activities, pre-emption is the one that has provoked the most criticism and the most lawsuits, even though it is not the activity carried out the most often.

Pre-emptive rights mean that a SAFER may take the place of the purchaser of farmland located in the territory over which it presides.

In order for this system to work, the appropriate SAFER must be officially notified of any sale of farm real estate or of lands to be used for agriculture that are located within the area where that SAFER may exercise its pre-emptive right. Such notification can be considered as an offer to sell the assets at hand to the SAFER. This obligation turns SAFERs into privileged real estate watch agents and enables them to act against real estate speculation.

This pre-emptive right is neither generalised (numerous exceptions), nor automatic or absolute. In practice, it is exercised on average for only 1 to 2% of farmland for sale on the real estate market.

The law determines the ends to which a SAFER can effectuate a presale:

- Settling, resettling or helping farmers (one of the SAFERs' fundamental objectives)
- Enlargement of existing farms (this is also a fundamental principle of SAFERs given the context of their creation when the majority of French farms were too small)
- Helping farms survive if some of their land is expropriated for a public works project; preserving the family farm
- Fighting against real estate speculation.
- Assisting in the event that a viable farm is endangered because its buildings and

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<sup>1</sup> This principle has led to many lawsuits since the SAFERs were often criticised for having destroyed viable, albeit large, farms.

land are separated; using and protecting forest areas.

The motivations for each presale must be filed at two government Commissariats, one representing the Ministry of Agriculture, the other the Ministry of Finances. These two commissariats must explicitly approve the presale. Representing the State, they each have a veto on all of the SAFERs' decisions. Each presale must result in a better arrangement than would have resulted if the matter had been left to the free market.

When a SAFER purchases through presale, its purchase follows some conditions, such as the price indicated in the notification. The SAFER replaces the ousted buyer, purely and simply. The seller is obliged to sell to the SAFER.

Nevertheless, if the SAFER deems that the price indicated in the notification is too high as regards to the normal market, it can exercise its pre-emptive right after price revision. The SAFER proposes a reduced price to the seller, who then has the right to either accept or decline by taking the asset off the market.

#### Notification

Each time a SAFER attributes real estate, an application must be filed. Applications are looked over, when applicable, by local commissions made up of union members and sometimes elected officials, which formulate their recommendation. Next, a local technical committee (made official in 1999) looks it over. The local technical committee is composed of farm unions, representatives of local elected officials and qualified individuals, which formulates their recommendation. It is up to the Board of Directors to make a final decision. Nevertheless, the Board of Directors' decisions must never be put into effect prior to the approval of both government Commissariats. One Commissariat's refusal makes it necessary to formulate another decision.

In order to be the appointee to whom a SAFER attributes an asset, one must be in possession of the required finances. If a bank refuses to grant a loan, the initial decisions of a SAFER may be re-examined. The effectiveness of a land policy thus depends also on the candidates' varied means of ob-



taining loans<sup>1</sup>.

In general, the established system proved somewhat effective in fulfilling its mission. One must however bring up the fact that numerous critiques have arisen, largely because trade union pluralism was not recognised until 1981 and because each time a SAFER attributes to one appointee, it is satisfying that person and disappointing the other candidates that were not approved. The influence of agricultural unions, the FDSEA and particularly the CDJA (the young being the most affected) at the local level (départements) was of crucial importance for the extent and manner in which land policies were implemented. As union positions varied strongly depending on the farm region, the laws were applied in a very uneven manner.

Since their inception, the role of the SAFERs has changed along with rural land issues, and the law has been adapted accordingly. Although they were originally designed to put into place new farming structures, they are being used more and more as an instrument of territorial development. Since they are able to anticipate expropriations and the displacement of certain farms, SAFERs permit local administrators to better manage public development operations. SAFERs do indeed participate in rural land development operations: they can help create authorised trade union associations; they can redirect land, buildings or farms toward non-agricultural uses, in view of favouring rural development; they can contribute to the protection of nature and the environment; they can also give technical assistance to national parks and territorial bodies.

Today, SAFERs have a public service mission. They put the land distribution aspect of central and local public policies into effect, in order to support the development of farming and forestry, to conserve landscapes and the environment, to promote local development (road and highway infrastructures, high-speed railways, canals).

Since 1999, they are able to exercise their pre-emptive rights not only for agricultural

reasons, but also for environmental ones. It is noteworthy that 90% of their interventions are carried out without discord.

After having been perceived for a long time as uniquely a tool for securing the harmonious evolution of agricultural structures and avoiding monopoly and over-speculation, SAFERs have turned out to have an important role in rural, local development as they possess perfect information concerning the land market since they are notified of all real estate sales.

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Document prepared for the "Soil Management and Land Policies" workshop of the China-Europe Forum. AGTER. October 2007. Paris.

Translation: Rodeghier, Mary. 2007.

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<sup>1</sup> The Agricultural Bank, Le Crédit Agricole, which is at the same time a cooperative network and a public structure backed by the State, has played an essential role in France. To learn more about this bank's history or about agricultural finance policies in France, see the Christian Bosséno's article in "Campagnes en mouvement. Un siècle d'organisations paysannes en France", coordinators Médard Lebot and Denis Pesche, Ed. Charles Léopold Mayer et Inter-Réseaux, 1998 and the work of André Neveu, "Financer l'agriculture, quels systèmes bancaires pour quelles agricultures?" Ed. Charles Léopold Mayer, 2001 (papers 2 et 3).



## Record # 17. FRANCE. The *Société Civile des Terres du Larzac* (Larzac Land Trust), an innovative and original approach to rural land management. (J. Bové)

October 2002

### Context: A long, symbolic and victorious peasant struggle

After 10 years of struggle against the expansion of the Larzac military camp, a result of the original and widely publicised non-violent action that generated large national and international support, the farmers on this French plateau obtained a historical victory in 1981 with the abandon of the military extension project.

It's in this context that the SCTL, *Société Civile des Terres du Larzac*, (Larzac Land Trust<sup>1</sup>) was created. The group embodies the legal solution enabling the inhabitants of the Larzac plateau to manage the 6,300 ha that had been bought by the public property administration for the expansion of a military camp, and which had not been bought back by its former owners, often non-residents, after the project was aborted. When the SCTL was formed, most of the land was still being cultivated for 2 reasons: the majority of farmers<sup>2</sup> continued to cultivate it even though their landlord had sold it to the army; and in the late seventies, young farmers illegally occupied farms that had been sold to the army by speculators. In May 1981, the Larzac farmers' group realised the strategic importance of the fact that this land had been acquired by the State. These 6,300 ha, geographically concentrated and cleared of the burden of private property were perceived as a tremendous opportunity for agriculture in Larzac.

On the other hand, the Larzac farmers who benefited from much activist support were aware of their potential leadership in showing the way to a new land management system. The interest in finding a legal solution that would guarantee long-lasting agricultural activity without having to go through real estate sales reaches far beyond the local context. Let's come back to the origin of the SCTL and its functioning.

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<sup>1</sup> We use the term «land trust» because of the similarities to the common law related scheme, even if it does not exist in the French legal framework. (note of editor)

<sup>2</sup> For the 103 farmers concerned by the fight against the military camp, there were 450 landowners.

### Land redistribution managed by the Larzac farmers themselves

In 1981, the Larzac farmers started a collective brainstorming process that lasted three years. The primary goal was to set up new farms and not to expand already existing ones. A "settlement committee" was thus created, which elaborated selection criteria for candidates while privileging projects with a high added value that necessitated a lot of human labour, in order to promote population growth on the plateau<sup>3</sup> and to revitalise the economic and social fabric of the region.

The work thus initiated has been furthered by an "inter-cantonal committee for Larzac land development" and by communal committees in each of the twelve administrative districts of the plateau. At a rhythm of one meeting per month over three years, this committee made the inventory of available land, including its agronomic classifications, selected candidates and distributed the land. It also took care of the buildings having non-agricultural functions.

The farmers who had a lease before the land was expropriated by the army were taken into consideration during the land allocations (3,200 hectares returned to these farmers). In addition, 2,800 hectares were attributed to twenty-two new farms, seven of which had begun through occupation during the struggle, and fifteen afterwards. In order to make it easier for young settlers, the farmers gave up a certain portion of their plots without compensation. Numerous land exchanges took place in order to better regroup the plots around the farm buildings.

It took the farmers of Larzac only three years to settle this question.

### Creation of the *Société Civile des Terres du Larzac*

In December 1982, farmers tried to create a structure for the transfer of the management responsibility back to a body independent of State power. With the help of legal advisors,

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<sup>3</sup> Affected, like a lot of French rural areas, by a desertion phenomenon linked to the dominant model of agricultural development. (Réd. Cahier)

they opted for the creation of a *Société Civile*, an innovative structure similar to an associative interest group that aims to manage the State's holdings (buildings and land) on the Larzac plateau.

Associates of the SCTL are persons and legal entities who either:

- A Make use of agriculture or pasture land given to the SCTL to manage, or
- B Are non-agricultural users of buildings given to the SCTL to manage, or
- C Are farmer members of a common land management committee (one per administrative district)

According to the statutes, half of the shares plus one must be held by associates mentioned in A, in order to guarantee long-term agricultural activity.

The fact that the management committee is made up of a majority or farmers reflects the fact that farming is the main activity in Larzac. However, a representation of non-agricultural users is guaranteed in order to provide for the development of non-agricultural rural activities, thereby permitting better living conditions on the Larzac plateau.

On April 29, 1985, the Société Civile des Terres du Larzac (SCTL) signed a sixty-year lease with the State, renewable for 6,300 ha<sup>1</sup>. With this legal arrangement, the State supported decentralisation and the management by the people concerned of their own means of production. The SCTL, which by its composition regroups the majority of state assets users, manages state holdings and makes its decisions according to users' advice. It rents or lends holdings, the management of which was entrusted to the SCTL according to rules established after much debate: the objective is to revitalise the plateau, both by new settlements and by supporting the people already there.

The two main types of contract<sup>2</sup> are based on the *duration of the economic activity*, provided that leases (with a few exceptions) are always connected to a usage, and to the conservation or creation of employment.

- The SCTL proposes farmers a *career*

<sup>1</sup> The peasants also collectively manage 1 200 ha of supplementary land, through the GFAs (Agricultural Land Groups) which had been established from 1973 with the help of activists in order to prevent the Army from acquiring land.

<sup>2</sup> The SCTL can sign a third type of contract, hunting leases (free), with communal hunting societies.

*lease*, valid up until the age of retirement. This type of contract is an example of how farmers' use rights are secured in a way that is different from ownership. It is a normal agricultural lease in conformity with the French rural code, which guarantees agricultural use rights for the duration of the economic activity,<sup>3</sup> but which is not automatically transferable to descendants<sup>4</sup>. Its price is determined at the local level by the *préfecture*, as is the case for all rural agricultural leases in France.

- Non-agricultural users have a lesser-known form of free contract, called a "*usage loan*", designed for non-agricultural holdings that have buildings on them. The loan is approved according to the usage as defined in the contract (artisan, commerce, habitat, etc.). The length is determined by the SCTL according to the duration of the borrower's professional activity. It is not transferable to heirs and it is free<sup>5</sup>.

The SCTL had to take into account the fact that the buildings on its real estate holdings were generally in bad condition. The handing over of farms or houses required large investments that the SCTL could not make. Occupants were responsible for building improvements, but they were taken into account when they leave. The SCTL established a use value ensuring the leaving tenant a fair compensation and retired people a sufficient sum of money to move elsewhere.

#### What lessons?

Although being born in quite uncommon conditions, the experience of the Société Civile des Terres du Larzac represents an innovative and original approach to land management for local development, which is of interest to a much broader public. It has shown that collective management of a large area of land<sup>6</sup> is possible and can be successful as

<sup>3</sup> In France, less than 0.5 % of farmers benefit from this, as most private land-owners refuse to make up leases for more than nine years.

<sup>4</sup> If a child wants to take over from his parents for an identical agricultural or artisanal utilisation, he/she will be able to, and will even have priority; but if this child wants to keep the lease while pursuing an objective contrary to the revitalisation desired by the SCTL, his/her contract will not be approved and the asset will be rented to a third party. The decision then will be made by the SCTL general assembly!

<sup>5</sup> The SCTL preferred the "usage loan" to a usual lease in order to avoid the danger of lease transfers, that is, the sale of a commercial artisan activity that would ultimately make it impossible for the SCTL to choose its tenants.

<sup>6</sup> A number of French «communes» are smaller.

long as it is organised in accordance with the real interests of a given area's users.

- Access to land must be independent from ownership. For a producer, being able to settle without being obliged to buy land is decisive. Land must no longer be submitted to the market: without having to abolish ownership, land management and its agricultural destination can be collectively secured at a municipal, district or territorial level.

- Collective land usage must be preserved; the common good must outweigh individual interests. He or she who cultivates the land does not necessarily need to make all of the decisions. It is the people living in a territory who must decide collectively how the land ought to be used. For the benefit of a collective territorial management arrangement, a portion of the landowner's property rights can be removed. It is no longer the principle of "land is for those who cultivate it", but rather "land is for the collective use of a territory's inhabitants".

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## Record # 18. FRANCE. The «tenant farming statute». A successful experience in making farm producers' land use rights secure. (M.Merlet)

September 2007

### An important matter for many countries: making land use rights secure

The surface area of farmland that is worked by someone other than the landowner adds up to a considerable amount in many countries, developed and developing<sup>1</sup>. Ensuring the use rights of agricultural workers who are not landowners constitutes a fundamental matter for millions of farm producers.

Farming by someone other than the landowner, a labour practice which takes many different forms such as loans, rentals and sharecropping, responds to situations that may be radically different depending on the land tenure system in place. This type of practice actually increases the elasticity of use rights and also enables rapid adjustments that would not be effectuated through property yields alone. Such elasticity is utterly essential for family farming economies, since the availability of labour in a family production unit varies over time.

Continental Europe is full of interesting and diverse examples of how the use rights of tenant farmers' and sharecroppers' use rights have been made secure. In adopting a modern tenant farming statute in 1786, Denmark became a pioneer figure in this field. Legislation protecting tenant farmers can be found in the majority of European nations in which commercial family farming prevails. Members of the same family sometimes even rent to each other. Renting has neither the same role nor the same implications as inheritances and inheritance laws function differently in different places.

In the mid-twentieth century, France implemented a radical policy ensuring the rights of tenant farmers and sharecroppers.

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<sup>1</sup> According to the FAO, the proportion of farmland being worked by someone other than the landowner (including situations when both the landowner and someone else works the land) in 1970 was at 63% in North America, 41% in Europe, 32% in Africa, 16% in Asia, and only 12% in Latin America. Source: A. de Janvry, K. Macours et E. Sadoulet, « El acceso a tierras a través del arrendamiento » In *El acceso a la tierra en la agenda de desarrollo rural*. Banco Interamericano de Desarrollo (Sustainable Development Department Technical Papers Series ; SRUR-108), 2002.

### French tenant farming laws

French tenant farming laws go back to the 1940s (modification of the Napoleonic Code 04/09/43, then 17/10/45, including sharecropping in 1946)<sup>2</sup>. French agriculture desperately needed to modernise its production techniques.

Nowadays, the texts that deal with the tenant farming statute are part of the Rural Code. In this paper, the essence of their content is presented.

"The meaning of tenant farming statutes is two-sided: it limits the social power of the landlord-lessor over 'their' purported tenant farmers, and, correlatively, it limits the amount of unearned income resulting from land holdings, or in other words, it limits the revenue that the landowner reaps from the farming activity".<sup>3</sup>

#### *a. The farmer is guaranteed long-term land access*

The contracts are either written or verbal. The minimum length of a lease is nine years. There are also long-term leases of 18 and 25 years, as well as career-long leases (the duration is set for the retirement age of the tenant).

The tenant has the right to renew the lease for nine years, except in the event of a serious incident or if the right to reclaim the land is exercised (the lessor may not take back the land unless the land is to be worked by the lessor himself, his spouse, a descendant of legal adulthood, or a minor descendant having been declared legally independent. This person must permanently and actively participate in farm labour, and must personally inhabit the dwellings located on the asset that was reclaimed).

In the event that the tenant dies, the lease continues in the name of his spouse, his de-

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<sup>2</sup> Conceived of during the Peoples' Front (*Front Populaire*), the tenant farming statute was then passed by the Chamber of Deputies but then rejected by the Senate, in which the landed gentry were well represented. (Pierre Coulomb, *La politique foncière agricole en France*)

<sup>3</sup> Pierre Coulomb, op cit.

scendants, or his older relatives who must either participate in farm labour or had actively participated over the five years prior to the tenant's death).

If the tenant improves the asset (through labour or investment), the lessor must give compensation once the lease is over.<sup>1</sup>

Under the conditions of having exercised a farming profession for at least three years and having worked himself the land that is for sale, and under certain conditions having to do with the structures policy, the tenant has priority for buying the land if the owner wishes to sell it (tenant farmer's pre-emptive right).

*b. The level of unearned income resulting from land holdings is controlled by the State*

Prefecture-level decrees in each farming region set the minimum and maximum between which the rent may vary. Both dwellings and farmland are controlled by these decrees.

The rule regulating the changes in rent prices was to set these in kind, as a quantity of the product per hectare. This rule boils down to rents being indexed in relation to agricultural prices.

*c. A specific device for conflict resolution*

Specific jurisdiction was designed in order to address the differences between landowners and tenants, allowing the tenant farming statute to be applied effectively. Rural lease courts are the first place where all litigation concerning the statutes of tenant farming and sharecropping are heard. These courts are made up of two leasing landowners and two renting farmers, and are presided over by a claims judge.

*d. Working in conjunction with other development policies*

The lease contract is subject to "structures control", a policy that aims to avoid an over-concentration of land and to maintain viable farms. The contract's validity is bound by these regulations and by the tenant's need to obtain a farming permit.

Discussion topics

The implementation of a tenant farming law

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<sup>1</sup> Early on, the portion of the investment that the tenant farmer could recover at the end of the lease was rather small; it increased starting in 1960, when the law reinforced the possibilities for the tenant to invest and to modernise the farm, all the while seeking not to go against the financial interest of the landowner (Coulomb, op cit.)

in France was made possible by the existence of powerful farmers' organisations and a favourable balance of power at the national level. This policy obtained the desired results; for the most part, it contributed to the modernisation of family farming in regions where the majority of landowners did not work their own land. In addition, the tenant farming law did not cause a drop in the amount of land rented to tenant farmers. The unearned income resulting from land holdings was reduced to a symbolic minimum and the farmers obtained the security necessary for long-term investments. All of this was achieved without having had to resort to an agrarian reform.

Nevertheless, it is interesting that tenant farming is most developed in regions having large annual crops. Conversely, tenant farming is less common in areas where perennial crops, such as vines, prevail. Evaluating land improvement for perennial crops is quite complicated.

Guaranteeing agricultural producers' right to work the land without being landowners resolves the problems with equal inheritances across a generation and contributes to a sort of resource management that is more sustainable and compatible with the greater interest. This can happen by making renters', sharecroppers' or right-holders' rights more secure, like in the French case with the tenant farming statute. Such a land policy, which is interesting and effective in certain contexts, requires adequate legislation. Only if there are powerful farmers' organisations that are able to fight for the support of these sorts of laws and to demand their application could these policies be effective. Also, sometimes specific jurisdiction needs to be established so that justice is available for small farmers in such delicate matters.

- The Spanish tenant farming policy, which was inspired by what happened in France, had very different effects. Landowners reacted by refusing to yield their lands to be worked by others. Because of this, land access is even more difficult for small farmers in certain regions. The relative weakness of Spanish farmers' organisations as compared to French agricultural organisations is most likely one of the reasons that explains this relative failure.
- Ensuring tenant farmers' use rights can have distinct effects and can cause some problems in regions where the modernisation of agriculture promoted the consolidation of large farms that rent farmland to a large number of small landowners. This policy would then privilege



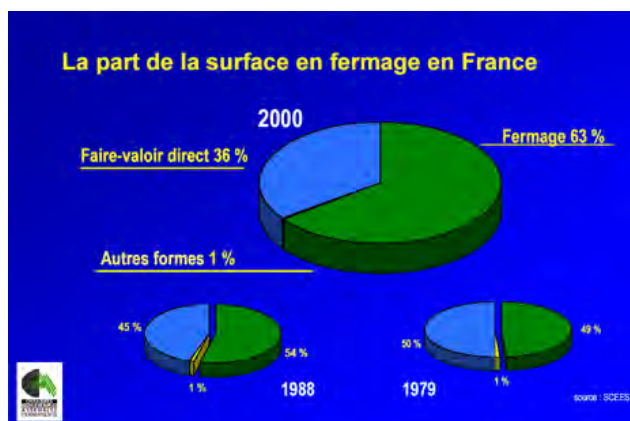
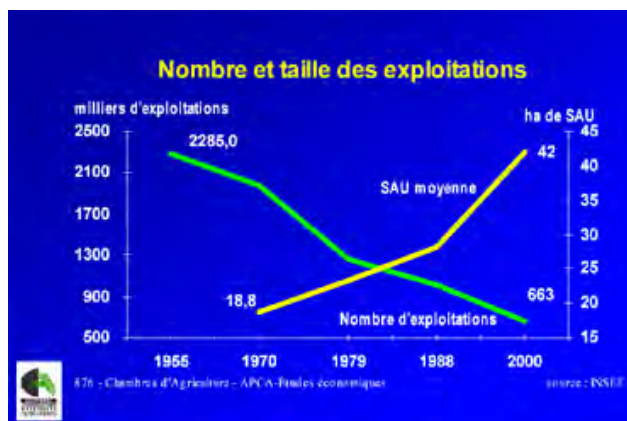
large productions rather than family farming.

Reorganising property by creating decision-making bodies that deal specifically with land management is another way to correct the problems related to land transfers from one generation to another. The status of these bodies can take a number of different forms, legal, civil society groups, stockholding groups, land holders' groupings<sup>1</sup>, cooperatives. They then rent the land that producers need. Farmers' rights must be guaranteed, and their production units must correspond to society's requirements.

In the English juridical context, or Common Law, the land trust produces similar results. The different types of property rights are managed separately and can take on many varied forms.

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Annex: Data on the changes within French agriculture




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Translator: Rodeghier, Mary. 2007.

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<sup>1</sup> "Groupements Fonciers Agricoles" or "Groupements Fonciers Pastoraux"



# **PART III**

## **APPENDIX**

**Internet sites**

**DPH records**

**Bibliography**



## SELECTION OF WEB SITES OF INTEREST RELATING TO LAND ISSUES

This list is not exhaustive.

The fact that site references are indicated does not in any case mean that we always share the points of view and positions that are expressed in them.

An up-dated list is available at <http://www.agter.asso.fr/spip.php?rubrique26&lang=en>

### A. Worldwide :

Foncier & Développement

<http://www.foncier-developpement.org>

International Conference on Agrarian Reform and Rural Development (ICARRD)

<http://www.icarrd.org/en/index.html>

World Forum on Agrarian Reform (FMRA)

<http://www.fmra.org/>

FAO - SD - dimensions

[http://www.fao.org/sd/index\\_fr.htm](http://www.fao.org/sd/index_fr.htm)

FAO. Legal Office.

<http://www.fao.org/Legal>

IFAD. Land and rural poverty.

<http://www.ruralpovertyportal.org/english/topics/land/index.htm>

International Land Coalition

<http://www.landcoalition.org/>

Landtenure.info. Elements fondamentaux des régimes fonciers

<http://www.landtenure.info/>

World Bank - Land Policy and Administration

<http://web.worldbank.org/landpolicy>

Nations Unies. Habitat.

<http://www.unhabitat.org/>

Nations Unies. Habitat. Global Land Tool Network; Nations Unies. Habitat. Global Land Tool Network

<http://www.gltn.net/>;

<http://www.unhabitat.org/categories.asp?catid=503>

CGIAR. CAPRI. System-Wide Initiative on Collective Action and Property Rights

<http://www.capri.cgiar.org/>

Commission Union Européenne. Page Land Policy.

[http://europa.eu.int/comm/development/body/theme/land/index\\_en.htm](http://europa.eu.int/comm/development/body/theme/land/index_en.htm)

FIAN Foodfirst Information and Action Network

<http://www.fian.org/>

Land Tenure Center, Université de Wisconsin (USA)

<http://www.ies.wisc.edu/ltc/>

LRAN. Land Research Action Network

<http://www.landaction.org/>

Institute for Food and Development Policy (USA)

<http://www.foodfirst.org/>

International Association for the Study of Common Property IASCP (USA)

<http://www.indiana.edu/~iascp/>

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<http://www.foncier.org/>

Terre de liens (France)

<http://www.terredeliens.org/>

SAFER (France)

<http://www.safer.fr/>

## **C. Latin America**

Groupe Chorlavi (Amérique Latine)

<http://www.grupochorlavi.org/>

USAID. Organisation des Etats Américains (OAS). Systèmes de registres de la propriété et de cadastres en Amérique Latine.

<http://www.landnetamericas.org/>

United Nations. Hábitat. América Latina

<http://www.unhabitat-rolac.org/>

NEAD (Núcleo de Estudos Agrários e Desenvolvimento Rural) . Brasil.

<http://www.nead.org.br/>.

Programa Crédito fundiário. MDA. Land Credit. Ministry of Rural Development. Brasil.

<http://www.creditofundiario.org.br/>.

NERA. Núcleo de Estudos, Pesquisas e Projetos de Reforma Agrária. Brasil.

<http://www2.prudente.unesp.br/dgeo/nera/>.

CPT. Comissão Pastoral da Terra. Brasil.

<http://www.cptnac.com.br/>.

MST - Movimento dos Trabalhadores Rurais Sem Terra. Brasil.

<http://www.mst.org.br/>.

CEPES. Centro Peruano de Estudios Sociales. Peru.

<http://www.cepes.org.pe/>.

INRA - Instituto Nacional de Reforma Agraria. Bolivia. Bolivia.

<http://www.inra.gov.bo/>.

Fundación Tierra. Bolivia.

<http://www.ftierra.org/>.

Observatory on agrarian revolution. Bolivia.

<http://ftierra-observa.org/site/>.

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CLAIMS Afrique Ouest politiques foncières UE

<http://www.inco-claims.org/>

Groupe de Recherche et d'Action sur le Foncier (GRAF)

<http://graf.zcp.bf/>

La Plateforme - The Hub

<http://www.hubrural.org/>

OXFAM. Land rights in Africa

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## DPH RECORDS ON LAND POLICIES.

### A. The DPH records

DPH (Dialogues for Human Progress) is an international network of Experience-Exchange, which brings together NGOs, documentation centres, public organisms and individuals. The DPH philosophy is based on a number of convictions: innovation spreads through networks, information useful to action comes out of action, choosing useful information is a subjective process, information credibility comes from its emitter, information itself is nothing, while its use is everything.

The network, free and based on exchange, mainly aims at gathering and analysing information. It works with five languages: French, English, Spanish, Portuguese, Italian.

Each partner is both producer and user of information. At the heart of the system lies an essential tool: the DPH record, which is signed and selective. The network links people and institutions who share common values (DPH Charter), and each member has at his disposal the collective memory of the network.

The DPH records are available on the World Wide Web at: <http://www.d-p-h.info/>

### B. Non-exhaustive list of DPH records connected to the proposal paper.

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