

# Foreign Voices



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## **Respect the role of communities!** **Recommendations for land policy and food security** **from a civil society perspective**

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*Inequitable distribution of land, lack of access rights by certain groups, particular women, and lack of legal security in relation to land ownership pose great challenges to the participatory development of land policies in Africa. In most cases agrarian land and agricultural reforms fail due to lack of governance and implementing mechanisms, lack of stakeholder participation and the need to respect dual tenure systems which are based on modern and traditional structures. Today the land policy challenges are also caused by the rapid changes in the ways in which land is accessed and used across the globe. There is rising demand for agricultural commodities for food, feed and agro-fuels as well as for ecosystem services including carbon sequestration. Whilst the increased global demand for agricultural commodities and natural resources could present new opportunities to smallholder farmers, rising competition for land with global actors increases poor people's vulnerability to loss of access to land that they use. Good governance structures thus have to be put in place to regulate land investments and ensure equitable access to land. Governance must be worked out among each people and each country. No one model will do or one size approach can be adopted. The following principles should be taken into consideration when developing governance measures and land policies.*

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*„Women do produce more than half of all the food  
that is grown on a global scale“*



### **Principle of trusteeship**

In cases where ownership of land is vested in the state or the President, the state should hold the land resources in trust for all its citizens. All governing bodies within the state are subservient to the nation in honouring the general interest of sustaining the endowment of land resources. In this role, these bodies need to implement land resource decisions as worked out through democratic processes at all levels, from local to national. What is needed are transparent, inclusive processes for land policy development in the revision or formulation of national land policies. Participatory approaches are more likely to strengthen land rights of the poor than those carried out without consultation. If this principle is respected, the state will not lease land to foreign companies or states without involving the affected communities in the decision making process. The civil society can play an important role in this regard to facilitate participation of vulnerable groups through the formation of alliances and platforms to more effectively represent their interests. International organizations could help by supporting national platforms to develop capacities.

### **Recognition of diverse tenure systems**

The law of property often defines ownership from an individualistic perspective, giving titles to a specific title holder and it is never deemed as collective in nature. However, in local context, the land is deemed as communal and collective in nature and often held in trust of the community by the state or headman. The communities do not have individual rights and do not have entitlement to sell or obtain security of tenure from the property except use rights. Most often, there exists a dual legal system in African countries where both customary and leasehold tenure systems are recognized. This lack of clarity over land ownership and tenure in many African countries can be overcome by recognizing local land tenure systems. Minorities of the poor people who use land for their livelihoods hold private title to land, but mainly depend on local tenure systems which tend to be better adapted to local contexts than official property rights systems based on Western models. Local tenure systems accommodate the reality of diversity in social, ecological and economic contexts and often allow overlapping rights. New land policies should recognize and protect the diversity of informal and customary tenure systems that exist. Such should be integrated into land administration systems and development planning. Where customary tenure exists, it is thus necessary to reinforce the capacity of customary institutions that address land and natural resource management.

### **People-centred land policies**

Land policies should support diverse interests of land users with special attention to the needs of the most vulnerable whose livelihood depend on land. This approach addresses the root causes of insecure tenure and unequal access to land by vulnerable groups with weak land rights. Because land is a social relation, customary land use resources management systems have to be respected. The International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on Biological Di-

iversity (CBD), the UN Convention to Combat Desertification (UNCCD) and the UN Declaration on the Rights of Indigenous Peoples all recognize the important role that communities play in managing land and natural resources. These conventions should be ratified by national governments and effectively implemented to secure land tenure and resource access for the most vulnerable. Land policies should thus recognize the importance of community based management systems. Communities have a record across centuries of allocating land use in sustainable ways for the entire community, protecting natural resources – from land to animals to minerals – for future generations.

### **Sustainable management and use of land resources**

“Sustainable” refers to intergenerational justice, in that land resources use will not only meet current needs, but also those of several future generations. The principle of sustainable management and use of land/natural resources need to apply to all land types, from customary to commercial. Land not utilised for the designated purpose is a breach of social contract with the nation. If land resources use is unsustainable on land designated as customary, for example, the state can intervene to alter the land resources use. Reciprocally, involvement by the affected communities in resources management of state land and national parks is necessary to sustain their livelihoods, before commercial interests.

### **Gender equity**

While respecting customary land resources use and tenure, gender equity in land allocation and use requires full legal recognition and enforcement of the rights of women. Women do produce more than half of all the food that is grown on a global scale, yet they account for 70% of the world’s hungry. The Human Rights Council Advisory Committee’s Study on discrimination in the context of the right to food states that, despite representing the agricultural workforce and production, women are estimated to have access to or control only 5% of land globally. In some cultures, rural households continue to acquire land through inheritance laws that ensure women’s continued unequal access and control over land. This underscores the importance of legal and cultural reform to balance power relationships within the family. Policy measures to strengthen women’s rights include joint land registration of rights (Ethiopia) and incentives for women’s land access, such as lowering the land registration tax (Nepal). Women must thus be equally represented in decision making processes but this is only possible through capacity building which has been the main role of civil society organisations.

### **Natural justice**

To honour community livelihoods equally with national land resources use, prior informed consent (PIC) of the community is as important legally as central government management over land use. Requirement of a written prior informed consent, or refusal to consent, from the affected communities allows a community to contest land resources use as proposed by the central government (e.g., for tourism, mining) in relation to their livelihoods. Exceptions to this shared authority could be assured for cases

of national emergencies (e.g. floods, drought), serving the greater public interest (e.g., right of way for a major highway or railway), and other prior designated reasons.

### **Principle of equitable benefit sharing**

Many options exist for accruing revenue from land resources: fees for transactions or use (mostly fees arising out of contract farming or use of resources), leases (when land is leased for a certain period of time), taxation (land taxes for use of land), joint investment contracts, transferable shares (sales, transaction fees).

To recognise local authority over land resources as well as national interests, revenue needs to be shared between local and national authorities. This principle addresses current practices of only a few persons benefiting from natural resources utilisation or at best, the national government, while local communities suffer land/natural resources degradation (erosion, abandoned quarries, riverbed destruction) and often, infrastructure degradation (road damage, cooptation of available electricity).

### **Conclusion**

Given the increased global demand for agricultural commodities and natural resources, there is greater need than before to put in place land and agrarian policies that will favor food security/sovereignty at the national level and protect smallholder farmers from expropriation of their land. Land policies should support diverse interests of land users with special attention to the needs of the most vulnerable whose livelihood depend on land, particularly women. New land policies should recognize and protect the diversity of informal and customary tenure systems that exist to avoid legal uncertainty over land ownership. On the other hand, good governance structures have to be put in place to regulate land investments and ensure equitable access to land. The civil society can play an important role to hold governments accountable to their obligations and also contribute to the process through capacity building that facilitates participation of vulnerable groups through the formation of alliances and platforms to more effectively represent their interests.

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### **Imprint**

The **Development and Peace Foundation** is a cross-party, non-profit-making organisation which was founded in 1986 on the initiative of Willy Brandt. More information is available under: [www.sef-bonn.org](http://www.sef-bonn.org)

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