Critical Reflection

Following the KOFF Roundtable of November 27th 2012 on ‘Land Grabbing’ in Fragile and Conflict-Affected Contexts

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Introduction

Large-scale land acquisitions are a reality in most regions worldwide. Vast areas of land are leased to foreign as well as national investors on a long term basis of 30-99 years. A growing number of reports, referring to this practice as ‘land grabbing’, show that these mostly very intransparent deals tend to go along with corruption, forced evictions and other human rights violations as well as enhanced competition over water. The challenges associated to the large scale land acquisitions are even heightened in conflict-prone regions, where property of and access to land and water often are among the key dividing issues.

Swiss organizations in development and peace promotion are facing various negative impacts of land acquisitions in their projects. Powerful economic and political interests reshape patterns of water and land management in regions where land acquisitions take place. Local land users in different project areas are pressured or forced to give up the land they are cultivating and living on. The organizations themselves and their local partner institutions face various threats when engaging in advocacy work on the issue.

This roundtable on conflict sensitive water and land management assembled representatives of Swiss civil society and state agencies. They debated the implications of land acquisition on their work as well as their responses. The event featured the two country cases of Ethiopia and Cambodia, where negative consequences of land acquisitions on development and social peace are particularly prevalent. Moreover, the participants discussed to what extent the newly developed FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (hereafter: FAO VG on Tenure) are a useful tool to confront the negative consequences of land acquisitions in these and other country contexts.

This report picks out some of the main issues discussed at the roundtable, adds some further thoughts of the authors and refers to a limited number of additional sources. The first section looks at the two most prominent ways in which adverse effects of land acquisitions are addressed: supporting land titling processes and advocacy. The second session reflects the debates on the potential of the FAO VG on Tenure as a tool to fostering sustainable land and water management.

Addressing negative effects of large-scale land acquisitions

The two ways of addressing the negative effects of land investments in developing countries that were at the center of discussions were land titling and...
advocacy. These two approaches are among the most prominent on a global scale and at the same time reflect the experiences of the organizations present at the event. In the following, the two approaches as well as some challenges associated to them are discussed.

**Titling**

The FAO, IFAD, UNCTAD and the World Bank, in a discussion paper of 2010 recommend systematic property rights formalization as a crucial part of the solution to the problem of land grabbing. As a first step in this process, the authors call for the “identification of rights holders, [the] legal recognition of rights and uses, [and] their demarcation and registration.” They argue that such a process is necessary for the respect of existing property, a key principle for responsible agricultural investment. Property rights, formalization of land rights and titling mechanisms hence are introduced with the intention to secure rights for the owner. Those concepts induce a legal system for land owners and possibilities for defending and/or claiming those rights judicially. The underlying assumption is that a formal land title brings the owner a certain degree of security, as titles and documents make land rights explicit. Large-scale land titling programs are conducted primarily by the respective public authorities. The Cambodian government for instance has been particularly active under its Land Administration, Management and Distribution Program (LAMDP) which started in 2002 and is to last until 2017. The World Bank and bilateral donors such as Germany and Finland supported corresponding programs.

With growing experience of land titling programs, a number of key challenges have come to the forefront:

**Coping with plural concepts of property**

Local concepts of land property and land rights often don’t fit the western understanding of private ownership and formal land titles. First, cultural, religious, traditional and historical meanings of land in many of which land is not considered a tradable resource are of high relevance for big parts of the population in affected countries. Second, in many contexts, collective ownership and overlapping tenure rights are common. Against this background, the implementation of privatization of land and other natural resources face huge constraints. This is also acknowledged by the FAO et al. which emphasize the difficulty of formalizing the plurality of existing land use or ownership – be it statutory or customary, primary or secondary, formal or informal, group or individual. These concepts not only fundamentally question the concept of formal land rights as such, a just allocation of formerly commonly used resources to specific people or groups is in practice next to impossible. In many parts of Ethiopia for instance, as underlined by participants at the workshop, ‘land property rights’ do not exist or have diverse meanings. The majority of people in the country’s rural areas depend on their own land plus the collective use of the commons – pasture land, fishing grounds, water wells, forests and related natural resources. The communal land use provides access to (dry-season) grazing land, to rivers/lakes and to communal crops. At the same time, traditional and informal tenure rights for individuals, families and communities overlap in complex patterns.

**Entering the logic of land markets**

With the attribution of formal land titles, land becomes a tradable good and smallholders become players in the global market for land. The emotional value of land tends to lose importance vis-à-vis a purely monetary logic of land property and use. This erosion of traditional concepts leads to a situation in which especially marginalized parts of the population can come under high pressure to hand over their land to financially powerful investors and accept financial compensation. In addition, smallholders are in a weak negotiating position. They are often weakly organized, unaware of the actual economic value of their land and face powerful international investors which most often are backed by state authorities.

**Inequalities within titling processes**

Titling processes involve huge economic interests by different societal groups. Hence, there is an imminent danger that these processes get hijacked by politically and economically powerful elites. The

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3 Ibid., p.2.

Cambodian Land Administration, Management and Distribution Program (LAMDP) which started in 2002 and is to last until 2017 is, as one presenter pointed out, an example for such risks and inequalities in the titling processes. The Program involves the formalization of two different kinds of land concessions. Economic Land Concessions (ELCs) are attributed to international and national companies for production purposes and vary in size between 1000 and 10’000 ha. Social Land Concessions (SLCs) in turn cover between one and three ha and are allocated at household levels. Over the years, it has become evident that real estate actors with a strong financial basis and political backing in the government and the ruling party are steering land titling procedures in Cambodia.\(^5\) This has led to various adverse effects. The concessions of large entities of arable land through ELCs cover major parts of the total arable land of Cambodia, whereas the distribution of land to poor families for sustaining their livelihood in the form of SLCs remains marginal.\(^6\) Pro-poor policies with regard to land and investment are on the losing side in this race for land. Even worse, in many regions that were targeted by investors, marginalized groups are not considered as eligible for titles. This has led to a situation in which those most in need of the security a land title aims to provide did not benefit from the LAMDP.\(^7\) In spite of the fact that the Cambodian government in 2012 announced that it will suspend the granting of land to foreign and national investors and started a nationwide land titling program, the political will to protect small land holders must be questioned.\(^8\) There is still a lack of appropriate regulations and mechanisms to prevent further displacement, violence and other human rights violations resulting from land investments. While the LAMDP initially prioritized the improvement of tenure security among its goals it has on the contrary become a legal instrument to transfer state public land into state private land and lease it to mostly foreign agribusiness investors.

**Enforcement of formal land titles**

Even if a smallholder holds a formal land title and resists the temptation to sell it, it is not guaranteed that he will be able to withstand government pressure once his land has become of interest for investors. Many countries know a clause that allows for expropriation under certain circumstances. The Ethiopian government for instance has the constitutional right to expropriate private property for public purposes, the common benefit, and development.\(^9\) However, a clear definition for ‘public purpose’ and criteria for ‘common benefit’ and ‘development’ are lacking. These provisions are often invoked when it comes to land acquisitions, since according to the Ethiopian Government’s Land and Agricultural Policies large-scale agricultural land investments shall increase productivity, create employment, trigger technology transfer and investments in infrastructure.

The discussions raised a few critical lessons for development and state agencies involved in land titling. First, the success of the titling programs crucially depends on the political will of host governments. When supporting such programs, there is a danger of becoming part of a process that has detrimental effects on the local population. Second, programs of land rights formalization should be based on customary land rights and take into account forms of common land use. The titling form and process needs to be inclusive and sensitive towards land-related grievances at the local level. Third, the titling process needs to start where the necessity of tenure protection is highest. These are in most cases the areas that have been or are about to be leased to investors. And fourth, the capacity of smallholders to claim their rights is of crucial importance. This asks for a continuous process of local capacity building and well-functioning judicial institutions.

**Advocacy**

In recent years, the advocacy campaigns on land grabbing have gained considerable attention. Advocacy-oriented organizations were at the forefront of generating knowledge about the land acquisitions and pointing at its adverse impacts on the local

\(^{5}\) Source: presentation at the roundtable.

\(^{6}\) A GIZ presentation of May 2011 identifies 1’400’000 ha of ELCs versus 6277 ha for SLCs. See: GIZ (2011), Land Distributions in Cambodia: Experiences and New Approaches for State-led Management.


\(^{8}\) In May 2012, the Cambodian government has announced a moratorium on new ELCs. Nevertheless, it is argued that there are major loopholes in the moratorium. See e.g.: The Guardian (2012), Conflict over Land in Cambodia is Taking a Dangerous Turn, 24.11.2012.

\(^{9}\) FDRE Constitution (1995), article 40 and article 89(5).
population. These campaigns aim at creating a public outcry and ultimately want to influence the behavior of companies, the states where investments take place, the states where investors are based and international organizations such as the FAO or the World Bank.

In some cases civil society organizations can already showcase some successes in influencing national land policies or company behavior. As an example in the Swiss context a discussant brought in the case of the company ADDAX Bioenergy which invests in Sierra Leone and came under scrutiny of civil society organizations. A series of actions through a network of local civil society organizations in Sierra Leone and a combination of publications and studies brought evidence to negative effects of the investment for the local population. With continuous support of the mobilized local organizations and active involvement in advocacy from Swiss and German ecumenical agencies, certain successes could be achieved through which the company became more responsive to local grievances.

In spite of small successes, advocacy on land grabbing remains a difficult endeavor. The two most prevalent challenges that came up at the Roundtable are briefly discussed below.

Access to reliable information

A first impediment is the limited access to and the reliability of information. On the one hand, advocacy organizations can rely on an increasing number of studies on country cases and projects trying to collect data to draw an overall picture. On the other hand, these data remain incomplete due to a general lack of transparency on land acquisitions on the side of host governments and companies, as well as due to the evolving nature of the phenomenon. In order to follow up on the developments on the ground and to report on potential rights abuses, organizations are forced to invest considerable amounts of time and money in investigative research.

Restrictions on civil society organizations

While the first challenge tends to become less important, the more people and organizations invest in researching patterns and impacts of land acquisitions, the restrictions on civil society organization are getting increasingly tough. The 2009 Ethiopian NGO-law is one of the strictest laws on NGO restriction worldwide. It was enforced with the argument of enhancing transparency and accountability of civil society organizations. The law consists of specific criteria and regulations that basically, as experts experienced with their local partners, serve to control civil society organizations’ work and activities. Any civil society group that receives more than ten percent of its funding from abroad - even from Ethiopian Diasporas – is considered to be ‘foreign’. The categorization as ‘foreign’ automatically limits the spectrum of legal activities. Amongst other issues, the law prohibits the work on Human Rights, governance, conflict resolution or reconciliation. Increasing repression against representatives of NGOs and civil society actors working on land issues complicates advocacy and puts researchers as well as their informants at risk. The government of Cambodia also drafted a new NGO law that has come under heavy criticism from local and international civil society organizations. The developments in Ethiopia and Cambodia reflect a global trend towards shrinking political space of civil society actors, especially with regard to politically sensitive issues and independent, critical monitoring of government policies and programs.13

The debates at the Roundtable indicated that in order to enhance the efficiency of advocacy, first the creation of regional networks and platforms as well as a coordinated dialogue and lobbying towards regional bodies and international institutions are central. Second, political pressure on host governments is needed to foster the freedom of civil society and push for transparency. Third, transparency would be significantly increased, if companies would be obliged to conduct and publish detailed environmental and social assessments of their operations.

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11See e.g.: http://www.cornell-landproject.org/papers/

12See e.g.: http://landportal.info/landmatrix

13ACT-Alliance (2011), Shrinking Political Space for Civil Society Action.
The FAO-Guidelines – Part of the solution?

In May 2012, and after several years of multi-stakeholder consultation, a comprehensive set of guidelines on the tenure of land, fisheries and forests have been adopted by the FAO member countries. At first glance, the FAO VG on Tenure seem to have the potential to help development organizations tackling negative effects of land acquisitions. First, they pursue the same set of objectives. The FAO VG on Tenure as well as the development projects aim to contribute to the goals of “food security […]”, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development.”

Second, they speak to the debate on land titling by addressing the specifics of governance of tenure of land, fisheries and forest for the benefit of all and with an emphasis on vulnerable and marginalized people. And third, they seem to offer a good entry point for advocacy since they are thus far the only existing global reference for the tenure of land which has a solid backing by an international consensus of governments, international organizations, civil society and the private sector.

In this section, it shall be discussed to what extent the FAO VG on Tenure can be instrumental in both land titling processes and advocacy. In doing so, some of the strengths and critiques of the FAO VG on Tenure – most of which came up at the roundtable - are elaborated on.

**Strengths**

Among the strengths of the FAO VG on Tenure with respect to dealing with adverse effects of large-scale land investments are its considerable legitimacy among state and non-state actors, its applicability to the issue, the recognition of diverse forms of land rights and its human rights-based approach.

**Legitimacy**

The legitimacy of the FAO VG on Tenure is considerable. The document was adopted unanimously by the 82 member countries of the Committee of World Food Security (CFS). Moreover, the FAO VG on Tenure are a product of a lengthy negotiation process between a broad range of stakeholders. In total, 96 countries, more than 25 civil society organizations, the private sector and several bi-lateral organizations were involved. African governments were particularly active in the drafting of the Guidelines. The broad involvement of experts from research institutions and civil society was secured through the ‘civil society mechanism’ which is a regular and formal part of the CFS. Civil society actors from various countries have stated their appreciation for the FAO VG on Tenure, stressing broad civil society participation in the development process and considering the document as an excellent tool to (re)start dialogue with their national governments on their issues of concern.

**Applicability**

The FAO VG on Tenure touch upon the issue of large-scale land acquisition and mention the specific challenges arising in conflict-prone regions. Part four sets out guidance on how governments should ensure responsible public and private investment in land. The Guidelines acknowledge that responsible investments are essential for improving food security. But they also recommend safeguards to protect tenure rights of local people, human rights, livelihoods, food security and the environment. That fact that the FAO considers the document as a reference in dealing with large-scale land acquisitions is mirrored in the media release on the adoption of the Guidelines where the issue has been given particular attention. The FAO VG on Tenure also include some provisions referring on the conflict potential of land tenure. This is the case in part 6 section 25 on conflicts in respect to tenure of land, fisheries and forest, as well as in part 4 section 12 on ‘do no harm’ and part 5 section 22 on ‘transboundary matters’.

In order to increase the applicability of the instrument, the FAO has started to develop technical guides on the implementation of the principles.

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16 Ethiopia is member of the CFS and has supported the Guidelines. Cambodia is not part of the CFS.
17 Source: presentation at the Roundtable.
18 See e.g.: ActionAid (2012), op.cit.
Moreover, NGOs are coming up with succinct guidance on how the FAO VG on Tenure can be used as a tool by civil society organizations and governments. As such, the Guidelines present a variety of increasingly detailed entry points for debates on sustainable land management including in contexts of social and political tensions.

**Recognition of the diversity of land rights**

The FAO-Guidelines point at the existence of different forms of traditional governance systems including commons. They identify a wide range of tenure systems and provide guidance on how states should recognize traditional or customary and common property tenure regimes. The Guidelines make it clear that the state has an obligation to protect legitimate tenure rights and highlight in particular the rights of indigenous peoples and other traditional communities.

**Human Rights Perspective**

The FAO VG on Tenure are consistent with the international human rights instruments such as the Universal Declaration of Human Rights and the two Covenants and refer to the UN Declaration on the Rights of Indigenous Peoples. Moreover, they recommend a human rights based approach in the implementation of the principles. The mainstreaming of human rights is important in the sense that it allows for linkages to other human rights based instruments such as for instance the UN Guiding Principles on Business and Human Rights as well as to the mechanisms the human rights instruments provide for (e.g. the Universal Periodic Review at the UN Human Rights Council).

**Weaknesses**

Three major weaknesses of the FAO VG on Tenure were indicated at the roundtable: the lack of appropriate enforcement mechanisms, the focus on the formalization of land rights and the ambiguity and loopholes on a number of critical issues.

**Voluntarism and accountability**

The FAO VG on Tenure are voluntary in nature, soft law that lacks the binding character of a formal treaty. While states have made political commitment to uphold the Guidelines, compliance cannot be enforced, nor can tribunals come up with authoritative interpretations of the still very vague principles of the document. In the absence of institutionalized monitoring and given the highly politicized nature of land rights, there is a danger that the Guidelines remain toothless.

**Focus on formalization**

Workshop participants questioned the general approach of the FAO VG on Land Tenure which is based on ensuring responsible formalization of land tenure rights. Identifying and recognizing the appropriate customary property rights is very complex and delicate. In many situations, this process will stir tensions among different groups and the potential for political instrumentalization is high. Moreover, the marginalized parts of society risk of being at the backseat. There is thus a risk that formalizing land tenure rights will foster existing inequalities, an issue that is not addressed sufficiently by the FAO VG on Tenure. Also, the realization of sustainable, participatory and enduring formalization processes is a huge administrative task that would in many countries involve fundamental changes in land governance including legal reforms and the building of additional institutional capacities.

**Ambiguities and loopholes**

With regards to addressing negative effects of large-scale land investments, the FAO VG on Tenure have been criticized for offering a number of ambiguities and loopholes that could be instrumentalized by investors and host states. First, the guidelines remain unclear on what exactly is understood by ‘legitimate’ tenure rights. This seems essential, since the legitimacy of the tenure rights is at the heart of most of the disputes over land. Second, the condition of free prior and informed consent is limited to indigenous peoples. It does not extend to other vulnerable communities for which the principles of consultation and participation apply. Moreover some civil society organizations have criticized that the FAO VG on Tenure accept the transfer of tenure rights through market transac-

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23 E.g. ActionAid (2012),op.cit.
24 Ibid.
25 Locher et al. (2012), op.cit.
26 ActionAid (2012),op.cit.
tions. Given the relatively weak regulatory framework in many states and the pretty large room for maneuver by host governments, the bargaining power of marginalized right holders remains weak.27

Conclusions

Strategies of mitigating the adverse effects of large scale land acquisitions seem to be at a crossroads. Land titling programs such as in Cambodia have not delivered the desired results yet. Host governments and/or parts of the ruling elite as the central players, together with national or transnational companies pursue their own vested interests while the already marginalized remain without effective protection. Advocacy work has crucially contributed to shed light on the often intransparent processes of land acquisition and to give a voice to negatively affected people. The fact that many host governments – such as Ethiopia – have increased their restriction and repression on civil society actors looking into land acquisitions can be read as a sign of increasing nervousness. At the same time, it increasingly limits the capacities of civil society organizations to carry out research and approach authorities. The FAO VG on Tenure have the potential to add a new dynamic to both of these strategies and can serve as starting point for new or renewed dialogue on issues of good governance in the land sector. They present a framework for sustainable formalization of land tenures which takes into consideration the voices and interests of the affected people. Moreover, they constitute a common language and reference point towards which governments can be held accountable by advocacy organizations. At the same time, the evidence on the ground shows that there is still a long way to go. Increased efforts are needed until internal and external pressure on host governments, powerful elites and the private sector is sufficiently high that the legitimate rights of small-holders are respected.

27 Ibid.
**swisspeace**

swisspeace is a practice-oriented peace research institute. It carries out research on violent conflicts and their peaceful transformation. The Foundation aims to build up Swiss and international organizations’ civilian peacebuilding capacities by providing trainings, space for networking and exchange of experiences. It also shapes political and academic discourses on peace policy issues at the national and international level through publications, workshops and conferences. swisspeace therefore promotes knowledge transfer between researchers and practitioners. swisspeace was founded in 1988 as the Swiss Peace Foundation in order to promote independent peace research in Switzerland. Today the Foundation employs more than 40 staff members. Its most important donors are the Swiss Federal Department of Foreign Affairs, the Swiss National Science Foundation and the United Nations.

**Center for Peacebuilding (KOFF)**

The Center of Peacebuilding (KOFF) of the Swiss Peace Foundation swisspeace was founded in 2001 and is funded by the Swiss Federal Department of Foreign Affairs (FDFA) and 45 Swiss non-governmental organizations. The center’s objective is to strengthen Swiss actors’ capacities in civilian peacebuilding by providing information, training and consultancy services. KOFF acts as a networking platform fostering policy dialogue and processes of common learning through roundtables and workshops.

**Working Group on Peace and Development (FriEnt)**

The Working Group on Peace and Development (FriEnt) is an association of German governmental organizations, church development agencies, civil society networks, and political foundations. FriEnt aims to pool capacities, support networking and cooperation, and contribute to conflict-sensitive development cooperation. FriEnt’s nine members are united by their great commitment to peace and development. They vary, however, in their size, mandate, international partners, projects and approaches. They aim to utilize their diverse perspectives and experience as an asset for their shared productive work on peace building in the context of development cooperation.

**Critical reflections**

In its *critical reflection* publications, swisspeace and its guest speakers critically reflect on topics addressed at roundtables. They both make a note of the arguments put forward during the roundtables and carry on the discussion in order to encourage further debates.

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