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Securing the Land Rights of
the Rural Poor: Experiences
in Legal Empowerment

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Palombi & Paul Mathieu



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This project involves the preparation of a series of qualitative and quantitative empirical articles culminating in an edited volume on approaches to integrating justice and development in ways that benefit the poor and other disadvantaged populations.

The volume will be part of the IDLO book series *Lessons Learned: Narrative Accounts of Legal Reform in Developing and Transition Countries*. Consistent with the thrust of the book series, the legal empowerment book and online papers seek to identify successes, challenges and lessons springing from the integration of law and development.

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SECURING THE LAND RIGHTS OF THE RURAL POOR: EXPERIENCES IN LEGAL EMPOWERMENT

Jeffrey Hatcher,¹ Lucia Palombi² and Paul Mathieu³

Executive Summary

Secure land rights⁴ contribute to the sustainable livelihoods of individuals, families and communities: a sense of personal security; the avoidance or mitigation of social conflicts; investment confidence; and sustainable development. This paper presents and analyzes some examples of legal empowerment initiatives to secure the land rights of the rural poor. Aiming to contribute to the larger debate on how to effectively secure the land and natural resource rights of the rural poor, it draws some lessons from these examples, their impacts and difficulties. It also highlights the role of external support in these processes.

The paper is based on a set of case studies coordinated by the Land Tenure and Management Unit (NRLA)⁵ of the Food and Agriculture Organization of the United Nations (FAO), in collaboration with several development practitioners and organizations. These cases⁶ provide the basis for Section 3 of this chapter.

The paper is organized into four sections: Section 1 discusses the importance of the legal empowerment paradigm for approaching initiatives to secure land rights. Section 2 addresses what legal empowerment for securing land tenure rights means and how it works. Section 3 offers examples of externally supported initiatives to legally secure land tenure rights and provides an initial review of their impacts. Finally, the concluding Section 4 offers observations on lessons learned for future initiatives to secure the land and natural resources rights of the rural poor.

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⁴ Secure land rights, as used in this paper, involves having the confidence that one will not be arbitrarily dispossessed of land and related natural resources to which one is entitled by virtue of a pattern of use, ownership, occupation or other legitimate claims such as customary rights. Having legal proof and protection of one's land rights is an important element of secure land rights.

⁵ FAO uses NRLA as the short-hand term for this unit, which is derived from natural resources and land. Since the full name of the Unit would indicate otherwise, FAO uses the acronym to indicate its work concerning natural resources and land.

⁶ The case studies have been published by FAO's NRLA on a CD: *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009). See <www.fao.org/nr/tenure/lt-home/en/> for more information.

Introduction

Access to and control over land and other natural resources such as forests and water are often key determinants of the livelihoods and socio-economic security of families and communities in rural societies.

This paper discusses a simple conceptual framework for understanding the importance and the components of legal empowerment for securing land rights. After presenting some examples and an analysis of legal empowerment initiatives to secure land rights in Africa, Asia and Latin America, some of the impacts and the difficulties are highlighted, as well as the role of external support. This paper is based on work first developed by the Land Tenure and Management Unit (NRLA) of the Food and Agriculture Organization of the United Nations (FAO). As part of its work program, this Unit has commissioned a number of studies from Africa, Asia and Latin America that document and analyze a variety of legal empowerment experiences and actions aiming at securing the land rights of the poor.

The paper is organized into four sections: Section 1 discusses the importance of the legal empowerment paradigm for approaching initiatives to secure land rights. Section 2 addresses what legal empowerment for securing land tenure rights means and how it works. Section 3 offers examples of externally supported initiatives to legally secure land tenure rights and provides an initial review of their impacts. Finally, the concluding Section 4 offers observations on lessons learned from these examples.

1. Why legal empowerment to secure the land rights of the poor is increasingly important

Growing populations and increasing commercial demands for agricultural land are making commercial land transactions and attempts to illegitimately take over the lands of the poor (colloquially called "land grabbing") more frequent. Coupled with speculation and the changing climate, this trend could threaten the livelihoods of rural people in many regions of the world. To face these threats, the ability to legally document and defend one's rights is increasingly urgent but still difficult for those who need such legal protection most. As global, national and local pressures for land alter rural dynamics, it is and will be increasingly difficult to protect land rights that are not clearly established and documented in writing in accordance with the law

Different actors enjoy unequal levels of information on and awareness of land legislation and legally accorded rights. They also have very unequal capabilities to navigate the legal rules and procedures for securing their land rights or transactions. Legal empowerment of the socially and legally weaker rural populations is thus increasingly needed to reduce these imbalances and to strengthen their capacities to legally assert and defend their land rights.

1.1 Land rights under new threats

The land rights of the poor are often challenged and under threat in many parts of the world as a result of several trends and factors. Growing populations and changing ecological conditions tend to make good land increasingly scarce and valuable. Arable lands become more coveted, more likely to be transferred through monetary transactions, and the object of growing competitions and conflict, often violent. In many regions, particularly in Africa, the customary

mechanisms regulating land allocation are challenged by these growing tensions and by the changing attitudes of traditional authorities, who are often tempted to take advantage of the accelerated commoditization of land for their own profit.

1.2 New laws and new opportunities

There are also some positive opportunities and innovations to address the challenges mentioned above. Many countries have begun putting in place legal systems allowing for the legal registration of customary rights.⁷ These legal systems usually also increase the role of decentralized administrative entities and local government to manage land rights. These new laws aim to promote the legal formalization of land rights for all citizens. To date, the implementation of this process remains difficult and limited.

1.3 Legal security of land rights as often inaccessible to those who need it most

Since most of the rural poor find it difficult to establish and document their rights, many are dispossessed of their land by powerful, richer or more astute actors. Therefore, relying on land laws and using legally defined procedures to secure land rights are important but also very difficult steps for many of the rural poor.

Several factors contribute to the rural poor's difficulty in using law and legal procedures to assert their land rights. Modern laws are complex and are often poorly disseminated by the state and unknown by the poor. Even when they have some knowledge of the laws, the rural poor are often illiterate and socially weak, and many are unaware of how to concretely deal with complex procedures, land administrations and bureaucrats. As a result, even progressive and well-meaning laws do not really protect land rights that are not legally documented in writing, nor do they make it easy to convert and formalize customary rights into legally documented rights that are more effectively protected by statutory law.

In many cases, land administrations and professionals who could facilitate the formalization of customary, non-written rights and who could make legal procedures user-friendly for all citizens tend to be rare, remote, expensive and not easily accessible. For all these reasons, many poor rural people do not even consider dealing with state institutions (typically land administrations in the situations addressed in this paper), feeling that the law is for the rich and not for them.

2. Legal empowerment to secure the land rights of the poor: what it is and how it works

2.1 A short definition

In the context of land tenure, legal empowerment of the poor could be defined as the multiple processes and actions by which people become more skilled, more powerful and eventually better able to use legal institutions and procedures to assert, document and defend their land rights. When regulations and procedures are so complex that they cannot be used by the poor, legal empowerment may

⁷ In Africa, these countries include Côte d'Ivoire, Ethiopia, Ghana, Madagascar, Mozambique, Namibia, Niger, the United Republic of Tanzania and Uganda, among others. In South America, Bolivia, Brazil, Ecuador, Peru and the Bolivarian Republic of Venezuela, among others, have introduced and begun implementing legislation to legally recognize customary land rights to varying degrees of effectiveness. In Asia, India, Nepal and the Philippines have also allowed for the legal recognition of use and management rights concerning forest resources.

also include legal and institutional changes that make procedures simpler and less costly, and the administrations in charge more accountable, user-friendly and accessible.

2.2 “The social working of law”: legal procedures and concrete interactions

Security of land tenure (as an individual legal entitlement and as a public good) can be seen as resulting from the interactions between land users and the suppliers of public services and administration, whose function is to legally document, protect and disseminate information about land rights.

What matters is how rights can be legally asserted, adjudicated and protected in practice. This depends on the actual functioning of procedures rather than the mere existence of laws, no matter how well worded or well intended. The real functioning of procedures involves the “social working of law”⁸ and the concrete interactions between individuals and groups: on one hand, the users (or potential users) of laws and public institutions, and on the other, the individuals in the public (state) institutions that implement legal procedures.

The concrete interactions between the citizens and the providers of public services (i.e. the public servants in land administrations) are an important component in the provision of legally secure rights and legal empowerment processes. Improving these interactions is an important part of legal empowerment to secure land rights.

2.3 The continuum of legal empowerment: a set of interlinked actions

A sequence of steps is necessary to legally secure land rights where the poor are illiterate and far removed from the state and the law in many ways. Building on the typology adopted by John Bruce and his co-authors,⁹ the following continuum of actions and conditions may be defined as follows:

- **existence of legal rights:** rights enshrined in the national and sub-national legal framework;
- **availability of appropriate legal information:** support to understanding the law, its procedures and how they are used;
- **awareness of rights and willingness and confidence** to legally assert them through legal procedures;
- **capacities** (legal, social, financial) to activate procedures and to successfully interact with state agents in legal land institutions.

These components of legal empowerment for securing land rights are linked, and in reality function as a sequence of conditions and actions called the “continuum of legal empowerment to secure land rights”.

⁸ Franz von Benda-Beckmann has introduced the concept of “social working of law”. See, among others: F von Benda-Beckmann, ‘Uncertainty and land management’ in H Savenje and A Huijsman (eds), *Making Haste Slowly: Strengthening Local Environmental Management in Agricultural Development* (1991) 75-88.

⁹ J W Bruce et al, *Legal empowerment of the poor from concepts to assessment*, report produced for USAID (2007). They have proposed the following typology of legal empowerment elements: (i) rights enhancement: reforming the law to the advantage of the poor and including them in the policy-making process; (ii) rights awareness: ensuring that the poor understand their rights and the processes to exercise and enforce them; (iii) rights enablement: assisting the poor to overcome bureaucratic and cost barriers; and (iv) rights enforcement: affordable, fair mechanisms for enforcement of rights and contracts.

The fourth (procedural capacities) further includes three key factors: language, interactions and power balances:

1. Knowing how (and being able in practice) to use the *language* and meanings of complex words designating specific actions, things, rights and/or relationships.
2. Knowing *how to interact with state institutions* and the individuals within them, given that they often have specific social bias, habits, conceptions and ways of working (rent-seeking, political patronage, patron-client relationships, etc.).
3. Social assertiveness and *power balances*. Being daring and confident enough to assert rights in the context of “real life” social and administrative relations. This implies that the poor are and feel they are skilled and strong enough assert their rights effectively when facing competing claims and stronger actors. It is also important when they interact with state administrations that are not pro-actively delivering accessible and affordable public services to poor citizens.

3. Lessons learned from experience: methods and impacts of legal empowerment to secure the land rights of the poor

To understand how legal empowerment works and to improve the empirical knowledge base of such processes in rural areas, FAO has collaborated with various organizations and has commissioned a number of studies from Africa, Asia and Latin America that document and analyze a variety of legal empowerment experiences and actions aiming at securing the land rights of the poor. Together with the International Institute for Environment and Development (IIED) and the Law Faculty of the University of Ghana, FAO also organized an international workshop in Accra, Ghana, in March 2008. The workshop report, jointly published by FAO and IIED, presents the work experiences of legal services organizations from different parts of Africa.¹⁰ Drawing from the concrete experiences illuminated by these case studies, concrete examples are presented below of some core elements of the continuum of legal empowerment to secure land rights. The studies described below provide some insight into the problems faced by the rural poor and government administrations, and some actions to respond to these problems. Where possible, the case studies also summarize the impacts of these activities.

3.1 The role of decentralized institutions in disseminating land tenure information in Niger

In 1993, Niger passed its Rural Law (*Code Rural*), which creates the conditions for securing the land rights of rural populations. The main objective of this law is to solve land problems through decentralized Land Committees (COFOs, *Commissions Foncières*). COFOs can be found at different administrative levels: the department (COFODEP), the municipality (COFOCOM) and the village (COFOB). They are designed to take into account the different needs of the population at the most appropriate administrative level. In addition, one of their main activities is to disseminate legal information to rural communities.

¹⁰ L Cotula and P Mathieu (eds), *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa* (2008).

A 2007 study conducted by Avella and Younfa¹¹ in the Departments of Mirriah and Gouré, in the region of Zinder, indicates that the COFODEPs have developed several strategies for disseminating land information to rural population, including awareness campaigns at the village level using tools such as radio programs, audio cassettes and visual banners. These awareness tools have started to address the lack of knowledge on formal land rights among rural population and are an important instrument for disseminating legal information to rural populations. However, their effectiveness is limited by: the fairly small number of villages reached by the awareness campaigns and the visual banners; the lack of radio coverage and absence of cassette players in many villages of the region; and the dependency on the funds provided by NGOs and other donors. One additional limitation is that very often the COFO members are not sufficiently informed and trained on how to implement the Rural Law.

Avella and Younfa therefore suggest designing capacity-building initiatives directed at COFO members in order to improve their ability to effectively communicate the rights contained within the Rural Law and the procedures that rural communities and individuals must follow to assert their rights. They also recommend strengthening COFOs' internal mechanisms through improved monitoring and by supporting them to gain the technical knowledge and professionalism required. Finally, they propose to improve the communication between the several levels of the COFOs so that users can receive the same information from the different institutions involved.¹²

3.2 Securing land rights through decentralized land authorities in Madagascar

The Department of Property and Land Services within the Malagasy Ministry of Agriculture, Livestock and Fisheries has promoted a comprehensive initiative, the National Land Programme (PNF, *Programme National Foncier*). Its main objective is to meet the massive demand from citizens to rapidly, cheaply and legally secure their land tenure rights. This is achieved through the formalization of customarily acquired but unwritten land rights, the safeguard and regulation of written land rights, and improved access of the rural poor to legal information. The decentralization process of land management underway in Madagascar aims at strengthening the capacities of local administrative institutions. This decentralization, together with the simplification of procedures and lowering costs, has the potential to make these institutions more accessible to most rural people. Towards this aim, communal and intercommunal *Guichets Fonciers* (local Land Desks) have been created to issue land certificates and register the transfer of customary held land rights.

The methods and the effectiveness by which the *Guichets Fonciers* communicate information are key to the effective implementation of Malagasy land reform. Goislard¹³ conducted a study in 2008 focusing on how these *Guichets Fonciers* perceived and communicated land law information and how they raised local awareness of legal rights and responsibilities related to land rights. According to this study, legal information appears to be well distributed across the region and

¹¹ N Avella and A Younfa, *L'accès à l'information foncière et aux institutions décentralisées pour sécuriser les droits fonciers des ruraux pauvres. L'expérience des Commissions Foncières au Niger*, FAO Livelihood Support Programme Working Paper No.43 (2007) 47 (reproduced in FAO Resource CD, Land Tenure Collection No. 3, 2009).

¹² Ibid 66.

¹³ This section draws substantially from C Goislard, 'L'accès à l'information foncière pour sécuriser les droits fonciers des ruraux pauvres à Madagascar. Le cas des Guichets Fonciers' (2008) in *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009).

the several municipalities; however, this does not seem to be always the case at the village level due to time constraints and budget restrictions. The radio was the most used communication tool, together with one-to-one conversations, but this communication tool has not been applied consistently throughout the area concerned and most often has been left to the discretion of the regional government representatives.

Goislard recommends that a communication strategy be conducted at the regional, district and village levels. Officials should visit the villages at least twice a year to advise on the procedures for issuing and managing land certificates; media tools (radio, visual banners, comics, etc.) should be designed to complement these visits. Peasant organizations and NGOs with very strong expertise in communication techniques and methodologies must be completely integrated in this process. Goislard also points out that regional government and *Guichet* staff had not received specific training on land issues, and therefore recommends conducting ongoing training and encouraging working meetings.

3.3 Raising the awareness of judges on land law complements empowerment actions in Mozambique¹⁴

Serra and Tanner note that few people in Mozambique are well informed about the country's Constitution and the rights it accords them, especially those related to land tenure. This opens the door to the more powerful in Mozambican society to claim and register land, as has been seen in the recent trend of foreign investors acquiring land for biofuels production.¹⁵ The authors also note that rural citizens have serious problems accessing justice and very few are aware of the process to request support in resolving conflicts. Moreover, effective provision of state land administration services requires that the providers – local- and provincial-level land administrators and local judiciaries – have an up-to-date understanding of land legislation and how it should be applied. Serra and Tanner report that in many parts of Mozambique, it is clear that judges and public prosecutors have little knowledge of the 1997 Land Law, which legally recognizes historically acquired land use rights. The judges also had little understanding of its underlying policy principles reflecting the day-to-day custom and practice of most rural Mozambicans. A project was launched by FAO in 2001 with the cooperation of senior judges within the national judiciary to train judges on the Land Law and other associated laws regulating natural resources rights and use.¹⁶

By bringing a small national-level institution like the Centre for Legal and Judicial Training (CFJJ) to the village level, the training project has begun to instill some sense of juridical awareness among its target groups, particularly the participating rural communities. It has largely succeeded in generating a new awareness among local people of the judiciary and what it does. Communities have benefited from direct interactions with legal professionals and judges to help them deal with problems with outside investors and the local administration.

Serra and Tanner summarize the qualitative impacts as follows:

For both the paralegals and the communities, this experience has also helped people to review their image of the judiciary. From being distant

¹⁴ This section draws on C Serra Jr and C Tanner, 'Legal Empowerment to Secure Land Rights in Mozambique. A Case Study' (2008) in *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009).

¹⁵ A Welz, *Ethanol's African Landgrab* (2009) Mother Jones, <<http://www.motherjones.com/environment/2009/03/ethanols-african-landgrab>> at 25 September 2009.

¹⁶ The 1997 Environment Law and the 1999 Forest and Wildlife Law.

figures in a far away town where their role is seen mainly as putting people in prison, the community meetings show that judges and prosecutors are also ordinary people. The communities then begin to understand how they can present problems to judicial institutions, and which ones are most appropriate in specific circumstances. And through the paralegals, they gain a supportive link to the professional support they need to make use of this framework. [...]

For the judges and prosecutors who take part in the programme, this experience is also invaluable. It provides them with rare opportunities to see what is happening at local level, and to begin to see more clearly how they can act to bring together the vastly different world views of the peasant farmer or illegal hunter, and the formal world of the government, investors and their priorities. This does not necessarily make their work easier, and it is too early at this stage to say if and how they are achieving better results. But all the anecdotal evidence from follow up meetings and discussions with those who have taken part indicates that the courses and seminars have helped them greatly.¹⁷

3.4 Linking judicial institutions and civil society organizations to secure land rights in Rwanda and eastern Democratic Republic of the Congo (DRC)

In Rwanda, since 2005, a single comprehensive land law has substituted for a multitude of land-related laws, and the issuance of land titles has created a new land tenure framework, which is still not well known by the judicial actors and civil society. In order to fill this knowledge gap, the legal support NGO *Réseau de Citoyens Justice & Démocratie* (RCN, Citizens' Network for Justice and Democracy), created in 1994 to provide legal support in post-conflict Rwanda, has encouraged closer ties between the judicial system and civil society. According to a 2008 study by Vasseur,¹⁸ RCN's work focuses on structural communication bottlenecks, both at institutions and civil society levels, and contributes to improving the legal awareness of all the actors involved in land disputes. Its work involves three complementary approaches:

3.4.1 The institutional and judicial approach¹⁹

Judges face practical difficulties in managing land litigation, which represents about 80 percent of disputes they adjudicate. The experience of RCN in supporting the judicial institutions in Rwanda shows a common lack of communication between and within these institutions. Training sessions targeted 213 judges with the specific aim of providing them with the skills for a good understanding and control of land disputes in the context of the new Rwandan Land Law. "Problem-oriented training" was organized in five three-day sessions, which were decentralized to the provincial level. The assessment by the judges at the end of the training was that the topic of the Land Law came at the right time and allowed them to have a clear legal instrument to manage and solve land disputes.

¹⁷ Serra and Tanner, above n 14, 22.

¹⁸ This section draws substantially from A Vasseur, 'Reforme foncière et sécurisation des droits sur la terre au Rwanda. Le projet de RCN Justice et Démocratie pour une justice de proximité' (2008) in *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009).

¹⁹ Ibid 11.

3.4.2 The civil society approach²⁰

The partnership agreement of January 2006 between RCN and the federation of farmers and livestock holders, IMBARAGA, promoted training sessions, workshops and roundtables to discuss problems related to the dissemination of the law and to strengthen people's ability to deal with land tenure issues. Extension workers have been trained to strengthen their knowledge on land tenure and their capacities to disseminate information on relevant laws to the population. The beneficiaries of the training were also members of IMBARAGA as well as representatives of the local administration, such as agronomists, civil servants and religious leaders.²¹ Training sessions with up to 50 people have been facilitated by a multidisciplinary team comprising one sociologist, one legal expert, one lawyer, one veterinary technician and one agronomist.

3.4.3 A 2008 study on land conflict management

The parties involved in litigation were interviewed and a comprehensive analysis was carried out of records and archives of local administrations, mediators and courts. Through these steps, RCN has been able to understand power relations in communities, evaluate the difficulties encountered by the comprehensive Land Law, and design legal empowerment strategies to address them.

RCN also works in eastern DRC. A 2008 study by Mugangu²² shows that it bases its work there on the idea that strengthening the capacities of those involved in land management and land disputes will facilitate land rights security. It works with judges, district, municipal and cadastral authorities, chiefs, judicial police inspectors and officers. RCN's projects contribute to facilitate communication between the public users and the judicial system, laying the foundations of social control by citizens over the operating system.

3.5 Supporting San communities to secure territorial use and management rights in Namibia²³

Namibia's communal conservancies are an example of community-based natural resource management (CBNRM) initiatives. Members of conservancies are mainly indigenous people known as San. Namibia's 1996 Amendment Act allows for the creation of conservancies, but does not give communities ownership of the conservancy land; however, it does give them the legal right to use the natural resources found on the land such as wildlife and plants.

The N'a Jaqna Conservancy was established in 2003 following years of planning. The conservancy covers 9,120 km² and is home to approximately 5,000 people. The gazetting of the Nyae-Nyae Conservancy²⁴ for Ju/'hoansi San people in the neighboring Tsumkwe East Constituency in 1997 provided the inspiration for the San people in Tsumke West Constituency to start the conservancy establishment

²⁰ Ibid 14.

²¹ Participants were selected according to predefined criteria, including literacy, age, health and gender.

²² S Mugangu, 'Vulgarisation de l'information légale et sécurisation des droits fonciers en République Démocratique du Congo. Le projet de RCN Justice & Démocratie en Ituri' (2008) in *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009).

²³ The section on Namibia draws from B Fuller, 'Conservancies in Western Namibia. A case study in legal empowerment' (2008) in *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009); W Odendaal, 'Legal empowerment to secure land rights in North Eastern Namibia. The case of N'a Jaqna Conservancy' (2008) in *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009).

²⁴ This was the first conservancy in Namibia to be gazetted under the Nature Conservation Amendment Act (Act 5 of 1996).

process. Observing the positive developments taking place in the Nyae-Nyae Conservancy, the San community appealed to the Working Group of Indigenous Minorities in Southern Africa (WIMSA), an NGO representing Southern Africa's indigenous peoples, for assistance in applying to the government for a conservancy of their own. This San initiative resulted in the recruitment of a WIMSA consultant to conduct discussions with several communities in the area, which in turn resulted in substantially increasing the communities' awareness of the value of the natural resources in their environment.

This increased understanding guided the San in applying for a conservancy that included the management of economically and culturally important forest resources. They expressed a wish to manage their entire environment for the benefit of the population. The San argued that the management of wildlife resources cannot take place in isolation from the environment on which they depend for food and habitat. In response, a Constitution reflecting the needs and aspirations of the San people under the policy of the Government of Namibia was drawn up with the assistance of WIMSA and submitted to the government in 1998. Today, the desire of the San to include the management of forest resources is reflected in the establishment of community managed forest areas within the Conservancy.

Despite the outside assistance, the establishment of community-managed areas took four years from the date of application in 1999 until the gazettelement of the N'a Jaqna Conservancy in 2003. During those years, the Conservancy management, representatives of the San people and WIMSA persistently negotiated for the official recognition of the Conservancy.

In addition to support from WIMSA, the San Human Rights Programme, which receives assistance from the NGO Legal Assistance Centre-Namibia (LAC), works to empower individuals within the overall San community by providing legal knowledge and skills training. It also works to: strengthen the capacity of communities to lobby for public services and to participate in the law reform and policy development affecting their areas; raise public awareness of new laws and outcomes of cases; bring public interest test cases to court, thereby enforcing and protecting the rights of San communities to access land and public resources; and establish San community legal advice centers where people can access information.

In 2004 and 2005, the San Human Rights Programme trained and mobilized a number of San "paralegals" to work in areas of the country where San people reside. They have since assisted San people with matters related to the issuing of identification documents and birth certificates. One specific impact of the support was witnessed in 2005, when a legal case was brought to court and won by the LAC on behalf of affected San community members against a cattle farmer in Tsumkwe West Constituency, who had tried to force San people away from a water point so that his cattle could use it. However, the Programme depends on support from the LAC and WIMSA, and it is doubtful that it would become a truly independent, effective and sustainable San paralegal program without continuous long-term NGO support.

3.6 Bringing land management closer to rural people in Mali

In 2005, in order to secure rural land rights, bring land management closer to rural communities and reduce the costs and number of the legal procedures required for securing land rights, the Government of Mali passed the Agricultural Framework Law (*Loi d'Orientation Agricole*). One of the main objectives of the law is to make legal procedures to secure land rights more accessible to the majority

of the population through decentralized institutions. A 2007 study conducted by Goislard and Djiré²⁵ in southern Mali indicates that there is widespread ignorance about these new laws at the institutional and community levels. Most of the farmers interviewed did not have access to concrete information about the current legal procedures to secure land rights; some of them knew of the existence of legal procedures but felt powerless because they thought that they were inaccessible and not suited for them. Farmers' unions and organizations were afraid of a progressive dispossession of farmers by the more powerful who had greater knowledge of the legal context as well as the financial and social means to access it. As described by the study, the institutional actors in charge of land management were aware that these legal procedures did not correspond to the needs of rural people. Furthermore, they acknowledged their own ignorance about these regulatory systems, which are complex and difficult to apply.

In order to protect their acquisitions, purchasers of land are beginning to obtain receipts or certificates of sale, or *petits papiers* (small papers). Moreover, a few better informed buyers are certifying these deeds at the administration level. Conversely, rural people face several problems in securing their land because they are not well informed and have difficulty accessing legal services and procedures. The institutions responsible for the formalization of land acts are all located in urban centres and at the communal level. Legal tools to secure land rights should normally be available to all citizens who wish to use them, but in reality the texts are overly legalistic and in a language foreign to many citizens, thus excluding most of the rural population from land ownership.

A 2008 study conducted by Djiré in the cotton (Koutiala) and peri-urban zone (Koutiala and Bamako) of Mali discusses the roles of intermediaries and informal facilitators in facilitating the access to legal language to secure land transactions.²⁶ The study focuses on the role of intermediaries and facilitators such as notaries and land brokers (*courtiers* in the text.). Most notaries are based in the capital and in some larger cities. In addition to geographical remoteness, there is also a knowledge gap distancing the notaries from the average citizen.

Other informal actors such as real estate companies, surveyors and land brokers actively provide information on the formalization of land transactions. Brokers are intermediaries in the truest sense, usually connecting people, facilitating or leading to the conclusion of an agreement or a land transaction. In theory, brokers should give the parties relevant and useful information regarding the transaction. But in the opinion of most institutional actors encountered during the Djiré study, they often play a negative role in securing land because they tend to encourage corruption in land administrations and exploit their clients taking advantage of their ignorance of the laws and procedures. Yet, in the absence of an efficient and accessible land administration system, informal brokers manage to play a consistent and important role in bringing buyers and sellers of land together and in allowing rural people to make use of the legal language.

In order to encourage more transparent, accessible and pro-poor land transactions, the first measures provided for under the Agricultural Framework Law on rural land issues require a solid information campaign directed towards the actors within the decentralized services. Goislard suggests that this information campaign should involve all the administrative actors in the rural

²⁵ C Goislard and M Djiré, *Accès à l'information juridique, aux institutions et procédures légales : Quelle sécurisation foncière pour les ruraux pauvres au Mali? Etude de cas dans le sud malien*, FAO Livelihood Support Programme Working Paper 44 (2007).

²⁶ M Djiré and K Traoré, 'Assurer la sécurisation légale des transactions foncières au Mali. Quel rôle pour les intermédiaires et facilitateurs?' (2008) in *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009).

areas and disseminate simple and usable information on the content and tools of the Domain and Land Tenure Code as well as the Agricultural Framework Law.

3.7 Legal counseling, paralegal support and capacity development to enhance communities' land rights in Bolivia, Guatemala and Peru

In Central and South America, three civil society organizations (i.e. non-governmental and grass-root organizations) have supported rural communities to access and secure their land rights under the complex legal framework of their countries. Studies prepared by the *Fundación Tierra* (Land Foundation) in Bolivia, the *Comité de Desarrollo Campesino* (CODECA, Committee for Peasants' Development) in Guatemala and the *Centro Peruano de Estudios Sociales* (CEPES, Peruvian Center of Social Studies) in Peru emphasize the importance of engaging existing legal frameworks and using laws that are applicable in rural areas.²⁷

3.7.1 Fundación Tierra, Bolivia

In the highlands of northern Bolivia, Fundación Tierra piloted a new approach to land regularization that takes communities' capacities and demands into account. From 2004 to 2006, in its work with San Vicente Collagua peasant community, it facilitated the training of paralegals to assist in the delimitation of the community boundaries and individual parcels within the community. The paralegals also acted as conflict mediators in case of disputes during the delimitation process. Paralegals were trained on three major issues: conflict mediation and customary laws; the national legal framework and related provincial laws; and in the conduct of field work using handheld global positioning system (GPS) devices to position and record landmarks. A strong component throughout the training was familiarizing trainees with legal procedures. The main result of these steps was the fulfillment of all the requirements of the new land law for legalizing the internal, community-led process of regularization, including a geo-referenced plan of internal and external community boundaries. A number of disputes were settled through customary conciliation mechanisms, thus avoiding resorting to the courts. The use of native languages together with the recognition of customary rules by the overall legal framework were fundamental in building a sense of ownership of the regularization process.

3.7.2 Comité de Desarrollo Campesino, Guatemala

Some lessons learned may be drawn from CODECA experiences related to the Monseñor Romero community in Guatemala. This community was formed in 1988 as an Associated Farmers Enterprise, legally known as *Empresa Campesina Asociativa* (ECA). This form of legal entity restricted the community's decision-making power and held the community collectively responsible for debts contracted by ECA's individual members. CODECA therefore provided the community with information related to their rights and responsibilities as an ECA and helped it find better legal alternatives. Supported by CODECA, community members drafted a constitution with the assistance of a legal assistant and registered the community as a local development committee (*comité local de desarrollo*). The results of the legal empowerment activities in the community are

²⁷ This section draws substantially from G Colque et al (coordination by L Del Castillo), 'Legal empowerment to secure the land rights of peasant communities in Latin America. Study of three experiences in Bolivia, Guatemala and Peru and abstracts of original country case studies' (2008) in *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009). The original full text case studies in Spanish are available on the website of the International Land Coalition (ILC), which, together with FAO, provided financial and technical support to the conduct of these case studies, available at <http://www.landcoalition.org/doc_video_photo/coalition.htm> at 26 November 2009.

the dissolution of the ECA and the recognition of the new local development committee that allowed the community to access three development projects.

3.7.3 Centro Peruano de Estudios Sociales, Peru

The study examining the work carried out by CEPES since 1998 shows how the process of land reform in Peru has not been adequately supported by information campaigns in rural areas. CEPES started to support peasant communities through legal empowerment and advice. The study focuses on two cases on the communities of San Cristóbal and Choclococha. In the first case, CEPES supported the communities in engaging in public fora, demanding transparency and addressing the corruption of state institutions and the abuse of power by a mining company. In the second case, CEPES managed to create a space for peasants to negotiate their rights with a mining company in order to alter the agreement already signed with the same company. While there is no standard model for legal training, CEPES identified the following best practices:

- **capacity development** through intensive training workshops, panels for consultation and advice on the laws and rights of the community, as well as radio programs, flyers and newsletters;
- **legal advice** aimed to ensure that peasants, companies and state entities can interact as equals and that everyone can have the same opportunities to take autonomous decisions with the same negotiation skills;
- **promotion of leadership within the communities**, consisting in the training and education of community members so that they can use their skills to involve other communities and gain their support to have an impact beyond their local area.

For CODECA, CEPES and Fundación Tierra, one of the most significant achievements in their legal counseling experience has been the strengthening of community organizations, thus allowing communities to more effectively defend their rights when their property was threatened. As part of a wider process of social empowerment, legal counseling, training of paralegals, farmers' advocate offices and legal workshops, the strengthening of communities and their awareness of their own land rights have been fostered in order for communities to defend their rights before state institutions.

3.8 Collective bargaining with legal support: empowering women and resolving land disputes in India²⁸

The high costs and drawn-out litigation process in India hampers the rural poor's ability to successfully engage the legal system to secure their customary land rights. Moreover, a lack of information on their rights and little legal support means that the rural poor start from a disadvantaged position.

The Indira Kranti Patham (IKP) Non-Purchase Programme²⁹ works to empower local women's groups to secure land rights in Andhra Pradesh State. It is implemented by the Society for Elimination of Rural Poverty (SERP)³⁰ through District Rural Development Agencies and trains young people from villages to act as paralegals.

²⁸ This section draws substantially from D Vughen, K Vakati and R Giovarelli, 'Ensuring secure land rights for the rural poor in Andhra Pradesh' (2007) in *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009).

²⁹ The program is called "non-purchase" because it works to secure land rights through means other than the purchase of land parcels.

³⁰ SERP is an independent autonomous Society established under Indian Law.

The IKP Non-Purchase Programme limits its activities to land issues and has the following stated objectives: "(1) making poor people aware of their rights; (2) ensuring title and tenure security of lands to the poor by identifying and resolving issues relating to land; and (3) socially empowering the poor to assert their rights. The ultimate goal is to provide the community with the power to handle their own land issues capably. Thus, an overriding objective is to transfer land knowledge and information to the village communities."

The Programme addresses the task from several angles. Paralegals conduct training sessions with members of women's self-help groups (SHGs) to inform them of their legal rights, and help them identify and resolve land issues and disputes. In addition, it trains youth from the villages as community surveyors in partnership with the Department of Survey and Settlement, who work with the paralegals to resolve cases requiring survey work.

Beginning in 2003, one employee from each of the state's district land administration departments, was trained on land issues affecting the poor. The employee was then tasked with identifying land issues concerning the poor and bringing them to the attention of departmental officials. In many cases, the employees tried to persuade the officials to address the issues through their personal relationships with the administrations' decision-makers.

After some initial success of providing legal assistance in 152 cases and securing 1,648 acres of land in a pilot area in the Cuddapah District, in late 2006, IKP NP expanded to more than 400 mandals³¹ in 22 of 23 districts of Andhra Pradesh. The results from the first year of the scaled-up version of the IKP NP show activities in 19 districts in which the Programme identified land issues involving a total of 78,873 people, covering over 44,500 hectares of land. More than 27 percent of those issues have been resolved.

Vughen, Vakati and Giovarelli (207) explain some of the qualitative impact of empowerment programs in Andhra Pradesh as follows:

One major lesson learned from the experience in Andhra Pradesh is that poor women, when organized into strong groups, as a collective have much stronger bargaining power and are better able to articulate their needs and demands. As a result, pro-poor project initiatives become easier to facilitate. Accordingly, institution-building of the poor women was a major area of emphasis in Phase I of IKP. There are now approximately 700,000 Self-Help Groups (SHGs) in Andhra Pradesh.³²

Observers at the village level report that after the first land issue has been resolved the SHG members invariably become convinced of the IKP functionary's commitment to resolving their issues. Moreover, the more vocal members (usually the leaders) are often the first to speak up and have their issues addressed. As a result, these influential women tend to speak positively of their experience to the other members. That factor, combined with the effect of regular attendance at SHG network meetings of paralegals and occasionally of the legal coordinator, results in the regular inclusion of land issues as agenda items at the VO [village organizations] and the MS [*mandal samakhyas*] meetings. This, in turn, raises even more awareness of land issues and how they can be resolved. All of the women interviewed during the study said that they previously would not even dream of taking up land issues as an SHG agenda item as

³¹ A third-level administrative unit.

³² D Vughen, K Vakati and R Giovarelli, above n 28, 3.

they lacked awareness and sufficient information on which to do so. But with the encouragement of the IKP land functionaries they feel capable of discussing the issues and applying formally to the Revenue Department for redress. NP is proving to be a very empowering tool.³³

3.9 Women gaining awareness of equal land rights in Burkina Faso

Being capable of asserting one's own rights is particularly relevant for women, whose rights over land in many cases are more vulnerable than men's due to social and economic conditions that make the latter more powerful. In a study on women's access to land in Burkina Faso,³⁴ Ki-Zerbo examines women's participation in social communication and civil society initiatives to improve women's access to natural resources, land and legal information.

According to Ki-Zerbo, exercising the right to speak out or taking action to secure equal land rights is an ongoing challenge. In some places, women's combined efforts have nevertheless had a positive impact and women's groups have been successful in winning collective land rights. In order to secure women's rights to land, however, the collective method should not be seen as the only solution, because individual rights to control and own land are also very important. Aware of their lack of legal information, the women of Burkina Faso are collaborating to call for their rights and to call on civil society organizations to help them with their social communication activities.

Ki-Zerbo argues that legal information must be accompanied by administrative structures in charge of monitoring the application of laws. Simultaneously, Ki-Zerbo suggests the development of functional literacy initiatives, including specific training in land tenure matters, the translation of reference documents into local and national languages, and their distribution using appropriate media, such as cassette tapes, at an affordable price. In addition, Ki-Zerbo recommends summarizing and simplifying legal texts, training local extension workers, paralegals and administrative agents in education and communication techniques, strengthening the skills of community radio staff in the "gender and development" approach, and strengthening women's negotiating skills.³⁵

3.10 Advocacy and land rights campaigns influencing policy reforms in the Philippines

The experience of Task Force Mapalad, Inc. (TFM), as presented by Armando Jarilla, is an excellent example of the impact of legal empowerment activities in securing the land rights of the poor.³⁶ TFM was created in September 1999 in the Negros Occidental Province in central Philippines, where land ownership has remained concentrated in a few powerful families. It is a national federation of farmers, farm workers and individuals working for access to land and rural development in the Philippines. TFM works with government and non-government institutions to achieve policy reforms, but the farmers are at the forefront of local and national mobilizations for land rights and rural development. A successful

³³ Ibid 15

³⁴ F Ki-Zerbo, 'Les femmes rurales et l'accès à l'information et aux institutions foncières pour la sécurisation des droits fonciers. Étude de cas au Burkina Faso' (2004) in *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009).

³⁵ Ibid.

³⁶ This section draws substantially from A Jarilla, 'Securing the land rights of the rural poor through legal empowerment in the Philippines. The Task Force Mapalad Experience' (2008) in *Legal Empowerment in Practice. Making Land Rights Legally Secure for All*, FAO Resource CD, Land Tenure Collection No. 3 (2009).

land rights campaign in the Negros Occidental Province encouraged TFM to expand to ten provinces, and now more than 20,000 people are members of the TFM, reaching up to 512 agricultural estates.

TFM implements a training and legal education program for farmer-paralegals, TFM campaign specialists, peasant community organizers and local volunteers. Moreover, it consults with NGO lawyers and paralegals on land reform-related cases and supports paralegal clinics and community mobilization for policy reforms and dialogues with the Supreme Court and concerned government institutions to reform land laws. In addition, TFM files administrative complaints against government officials that do not fulfill their duties in land reform and social justice. Its activities are planned under a six-month campaign based on the current trends of land reform at the national as well as provincial levels.

TFM's experience-based advocacy led to several landmark policies and declarations such as the Supreme Court rule reiterating that only the agrarian reform department has jurisdiction over agrarian-related matters.³⁷ In this way noncompliant landowners cannot go to lower courts to obstruct the land reform program.

Conclusion

Efforts to secure the land rights of the rural poor are becoming increasingly important as global economic and climatic trends are putting new pressures on increasingly scarce natural resources. This paper has highlighted the relevance of legal empowerment strategies as a means to achieve this.

Strategies to legally empower the rural poor to secure their land rights come in a variety of forms; they can be directed at the poor themselves, bureaucrats, government officials and/or civil society organizations. To be effective, they must respond to the basic challenges underlying the rural poor's difficulty in understanding their legally recognized rights, accessing the necessary information and procedures for them to legally secure their land and ensuring that the legal and administrative systems work for the most marginalized. For example, programs can involve providing paralegal support, awareness-raising activities and legal training. Moreover, legal empowerment strategies can be more effective if they successfully address the underlying issues of power relations, information awareness and social marginalization that often preclude or thwart the poor's ability and willingness to access and use the legal or administrative system in place.

Generally, land tenure security is a function of both legal recognition and social legitimacy. The above cases hint at the intricate web of factors affecting tenure security, including barriers such as technical and administrative lacunae, which can be just as important as the sense of exclusion faced by many of the rural poor in the project areas. Moreover, it is clear that successful engagement of the rural poor in a given community in asserting and defending their land rights with external support can have a multiplier effect, as others in the area and in neighboring areas begin to sense that they too can successfully secure their land rights.

The cases also highlighted some of the common challenges in promoting legal empowerment strategies. The temporal and financial limits of external support

³⁷ *Department of Agrarian Reform v Roberto J Cuenca* (2004) G.R. No. 154112, Supreme Court of the Philippines.

are a major challenge to the implementation and success of legal empowerment strategies. Additionally, the lack of awareness on the part of government officials and bureaucrats of the poor's legal right to secure tenure rights and of the procedures to do so poses a significant challenge. Yet, these cases also show that engaging public administrations and sowing the seeds for locally led legal empowerment activities is possible.

There is still much to understand about the provision of clear legal information and legal support, and its effects on the tenure security of the rural poor in the long term. It is still unclear whether such strategies can be effective at scales large enough to properly address the threats to rural land tenure security throughout the world today. Some of the cases presented above suggest that external support is essential for beginning legal empowerment strategies in rural areas. But they also show that with the right approaches and demand from the rural poor, such strategies can become part of larger and local social mobilization and civic engagement efforts, thus increasing the likelihood of their success.