

**TERRA FIRMA AND SHARED  
COOPERATION: HOW LAND  
FRAMEWORKS FACILITATE PRO-  
FOOD SECURITY PUBLIC-PRIVATE  
PARTNERSHIPS**

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## EXECUTIVE SUMMARY

In a twenty-first century world driven by globalization and information technology, shared cooperation agreements between the public and private sector are increasingly looked upon as a way to share information and spread risk for governments seeking ways to implement their goals. Public-private partnerships (PPPs), which are complex legal arrangements designed to share risks and rewards between a private enterprise and a public unit (normally the government),<sup>1</sup> are viewed as an efficient vehicle to implement such cooperation and tackle new challenges related to the myriad issues surrounding sustainable development. A sustainable development issue that is of obvious interest to the Food and Agriculture Organization is the use of PPPs that promote food security.

The implementation of any pro-food security PPP would have to involve some direct relationship to land. This is because land is vital in ensuring that food can be efficiently produced in a way that is of some tangible benefit to the local population within a country.

This paper explores the legal interface between PPPs, land, and food security. It aims to serve as a resource on important legal instruments and legal issues that focus on how land laws can facilitate pro-food security public-private partnerships. The relevant international legal instruments guiding both sustainable PPP formation and land laws are based on soft law principles derived from the United Nations Millennium Declaration, the World Food Summit, the World Summit on Sustainable Development and the Monterrey Conference on Financing for Development. The legal instruments created from those meetings provide language that encourage the formation of sustainable, multi-stakeholder partnerships, and also provide some guidance on sustainable land law frameworks. It is important to note, however, that these instruments are non-binding in scope and serve merely as insight into the continuing discourse on sustainable PPPs and land.

<sup>1</sup> United Nations Statistics Division, *Country comments for issue: Public-private partnerships (PPPs) (including buy-own-operate-transfer (BOOT) schemes)*, available at <http://unstats.un.org/>

The relevant regional instruments, by contrast, go beyond the mere encouragement of adhering to broad guidelines in PPP formation and land laws. They provide (in the aggregate) more detailed recommendations such as the need for governments to methodically decide on a private partner, the need to create PPP legal arrangements that are harmonious with national and contractual laws of a region, and the advantages of using forming PPPs for land administration projects. Relevant regional instruments discussed in the paper include the EU Green Paper on Public-Private Partnerships, the New Partnership for African Development (NEPAD), and the United Nations Economic Commission for Europe's Guiding Principles on Land Administration.

Apart from the aforementioned international and regional instruments are the actual land law issues that are implicated when public and private actors consider forming PPPs that protect food security. The broad issues that are implicated are those of land access (the process by which people gain rights to use and occupy land) and land administration (the institutions and processes required for land rights to operate in practical form). The land access issues evaluate the tensions that exist in balancing the needs of private investors who want to use land for profit on the one hand, and farmers who want to use their land for subsistence and income on the other. Such tension encompasses issues that include (1) the issue of state and private ownership of land, (2) variations that can exist in private rights (due to varying legislative constraints on land) and (3) land reform issues that expand or restrict land access.

Strong land administration systems are also important because they minimize or eliminate any ambiguities about rightful ownership of land, land quality, or land security. This has high relevance to PPPs and food security because ineffective land administration systems can dissuade private investors and hinder agricultural productivity (which can endanger both efficient PPP formation and food security). Issues of the reform of land administration systems are also analyzed, stressing the importance of land administration systems that are tailored to local conditions and customs.

With the legal instruments (both international and regional) and land law issues in place, two case studies help to illuminate how a government is able to navigate the delicate terrain in forming pro-food security PPPs within their national land law frameworks. The Sustainable Agrarian Reform Communities- Technical Support to Agrarian Reform and Rural Development (SARC-TSAARD) in the Philippines reveals how a national land reform law focused on land distribution also mandated technical support to new beneficiaries to ensure that such land was being agriculturally productive.

The second case study examines a PPP in India that focuses on bioenergy—a highly relevant issue to land because crops grown for bioenergy may compromise food production for the local population. The Indian PPP, formed primarily between an international agricultural research organization, the government, and a private entrepreneur, was able to work within the existing Indian land law framework to engineer the production of a crop (sweet sorghum) that can be used for both bioenergy and food production. This PPP also provided insight into how to link domestic local farmers in a way that allowed them to derive both food and economic benefits by becoming stakeholders in the partnership.

PPPs serve as a uniquely tailored vehicle that can help governments achieve their sustainable development goals in a cost effective and timely manner. Proper land law frameworks must be in place to facilitate those PPPs that will promote and not undermine food security. The case studies draw out some recommendations that governments should take into consideration. These include the need to decentralize public authority to more readily facilitate private collaboration, and the advantages of incorporating local farming entrepreneurs/organizations into the PPP implementation framework.

The present study concludes by affirming the innovative assistance PPPs can provide in ensuring and promoting food security, and the need for a proper land law framework to facilitate such PPPs. It is the hope that this study can be used as a guide for national lawmakers seeking to achieve such a goal.

## I. INTRODUCTION

Public-Private Partnerships broadly identify a spectrum of complex legal arrangements between the public and the private sector to provide goods or services within a country. The objective of the PPP is share control, risks, and rewards of a set of fixed assets between a private enterprise and a “public unit”, which is normally a national government.<sup>2</sup> A common thread that runs throughout all PPPs is some degree of private participation intertwined with the provision of goods and services traditionally handled by the public domain.<sup>3</sup> Recent empirical literature suggests “public-private partnerships are a constructive means of enhancing the production of goods, services and technologies that would not otherwise be produced by either sector acting alone.”<sup>4</sup> In the context of sustainable development, PPPs are viewed as an innovative vehicle for achieving sustainable development objectives such as those outlined in the Millennium Development Goals (MDGs).<sup>5</sup>

PPP projects can broadly be separated into two categories in order to fully understand its relationship to land and food security: (1) type II partnerships, which are PPPs that involve countries and key international organizations,<sup>6</sup> and (2) locally driven

partnerships, which are heavily influenced by civil society organizations such as non-governmental organizations (NGOs) and community based organizations (CBOs).<sup>7</sup> Type II PPPs have been the subject of more intensive study, since empirical information on such partnerships is more readily accessible to those seeking information. Therefore, type II PPPs shape much of the current debate on the positives and negatives of implementing PPPs to meet sustainable development goals. Locally driven PPPs, however, are also important because they involve more participation by those who are ultimately affected by the outcome of any project: the local population.

Whether the PPP at issue is type II or locally driven, there are many contractual arrangements along the lines of which a PPP can be constructed. Contractual arrangements which are relevant to food security include: (1) agreeing frameworks, (2) service contracts and traditional public contracting, (3) build, operate, and transfer (BOT) concession agreements, and (4) passive investment, either by private investment in government operations,<sup>8</sup> or through government investment in private activities.<sup>9</sup> Each arrangement falls within the broad definition of a PPP as any form of cooperation between the public and private sectors. Moreover, such arrangements are relevant to food security because the degree to which a partnership can affect domestic food production can be determined by the arrangement chosen to carry out the project.

Any PPP involving food and agriculture would have at minimum some relationship to land. This is simply because commercial production of crops—whether for food or energy production—must involve land to produce necessary yields. The proper land law framework must therefore be in place to facilitate sustainable PPPs that would promote food security.

<sup>2</sup> United Nations Statistics Division, “Country comments for issue: Public-private partnerships (PPPs) (including buy-own-operate-transfer (BOOT) schemes)”, available at <http://unstats.un.org/unsd/>

<sup>3</sup> See generally Elizabeth Bennett, Peter Grohmann, Brad Gentry, *Public-Private Partnerships for the Urban Environment: Options and Issues*, United Nations Development Programme (UNDP)/Yale University 1999, available at [www.undp.org/dpa](http://www.undp.org/dpa)

<sup>4</sup> David J. Spielman and Klaus von Grebmer, *Public-Private Partnerships in Agricultural Research: An Analysis of Challenges Facing the Industry and the Consultative Group on Agricultural Research*, International Food Policy Research Institute January 2004 p. 3, available at [www.ifpri.org/](http://www.ifpri.org/)

<sup>5</sup> Streets, J. 2005. “Waltz, Jazz, or Samba? The Contribution of Locally Driven Partnerships to Sustainable Development: A Discussion Paper” Global Public Policy Institute, Berlin Germany p. 9, available at [www.isn.ethz.ch](http://www.isn.ethz.ch)

<sup>6</sup> Richter, J., *Public-Private Partnerships for Health: A Trend With No Alternatives?* DEVELOPMENT (2004) 47(2) p. 44 (citing Nelson, Nelson, J. (2002).

“Building partnerships: Cooperation between the United Nations system and the private sector,” Report commissioned by the United Nations Global Compact Office, United Nations Department of Public Information: New York), available at [www.haiweb.org](http://www.haiweb.org)

<sup>7</sup> Streets, J. 2005. “Waltz, Jazz, or Samba? The Contribution of Locally Driven Partnerships to Sustainable Development: A Discussion Paper” Global Public Policy Institute, Berlin Germany p. 9

<sup>8</sup> See “Public-Private Partnerships for the Urban Environment: Options and Issues,” United Nations Development Programme (UNDP)/Yale University p. 4. An example would be the purchase of municipal bonds in a country.

<sup>9</sup> From UNDP Paper. An example here would be a government loan to a private project guaranteed by the International Finance Corporation.

Identifying appropriate pro-food security PPPs, as well as the proper land laws to facilitate such partnerships, requires an understanding of the legal frameworks in place to guide both countries and the private sector. Such legal frameworks exist both on the international and the regional level. Section III of this paper therefore outlines the international legal framework for both PPPs and land laws that promote, *inter alia*, food security, while Section IV analyzes the relevant regional framework. Using these soft law principles as a foundation, Section V details the legal issues that surround land laws and how they can facilitate pro-food security PPPs. This serves as a transition to Section VII, which examines in detail two PPPs: (1) a PPP in the Phillipines focused on the providing technical support to rural farmers who received land in a redistribution program initiated by the Phillipine government and (2) a bioenergy PPP in India that produces sweet sorghum, which can be used for both ethanol and food production. Both PPPs are highly instructive because they reveal the interplay between PPPs, land laws and food security and may serve as models for future study.

## II. INTERNATIONAL LEGAL FRAMEWORK FOR SUSTAINABLE PPPs AND PRO-FOOD SECURITY LAND POLICIES

The international legal framework on both pro-food security partnerships and land law policies revolves around a series of soft law principles based upon the United Nations Millenium Declaration, the World Food Summit, the World Summits on Sustainable Development (both 1996 and 2002), and the Monterrey Conference on Financing for Development. FAO defines food security as a "situation that exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meet their dietary needs and food preferences for an active and healthy life."<sup>10</sup>

<sup>10</sup> The State of Food Insecurity in the World 2001. FAO, Rome, 2002, available at <ftp://ftp.fao.org>

It should be stressed from the outset that it is difficult to apply overarching international legal norms to PPPs because of the varying and fluid nature of partnerships, and because there is no set definition for a PPP in international law. Additionally, land laws are difficult to encase in international law because property rights are primarily viewed under international law as a state sovereignty issue.<sup>11</sup> Therefore, the international legal terrain of both sustainable partnerships and sustainable land laws merely reveal the contours of the global discourse on PPPs and land law in the context of food security and sustainable development, and should be evaluated as such.

### 2.1 UN Millennium Declaration—Provisions on Sustainable Partnerships

The Millennium Declaration was adopted by the United Nations General Assembly (GA)<sup>12</sup> during the Millennium Summit in 2000. The Summit was convened, involving all UN member countries, to mutually agree on a shared set of values that would serve as a roadmap to help address the most pressing issues of the twenty-first century.<sup>13</sup> The Millennium Declaration itself is a GA resolution that serves as a point of instruction for member countries.

The Declaration contains eight chapters, of which the third is relevant to sustainable partnerships ("Development and Poverty Eradication"). Under that chapter, member countries resolved to "develop strong partnerships with the private sector, and with civil society organizations, in pursuit of development and poverty eradication."<sup>14</sup> The Millennium Declaration effectively paved the way for another UN initiative, Agenda 21.

<sup>11</sup> John W. Bruce, et al, LAND LAW REFORM: ACHIEVING DEVELOPMENT POLICY OBJECTIVES, p. 15. International Bank for Reconstruction and Development/The World Bank (2006) (hereafter "BRUCE, LAND LAW REFORM")

<sup>12</sup> U.N. GAOR, 55th Sess., Supp. No. 49, at 4, U.N. Doc. A/55/49 (2000).

<sup>13</sup> Website of the 2000 United Nations Millennium Summit, at [www.un.org/](http://www.un.org/)

<sup>14</sup> UN Millennium Declaration, section III (20).



## 2.2 Agenda 21: Land, Partnerships and Sustainable Development

Agenda 21 is a plan of action agreed upon by member countries during the 1992 UN Conference on Environment and Development.<sup>15</sup> Its comprehensive scope addresses actions that member countries should take concerning every area where human beings impact the environment.<sup>16</sup> Agenda 21 has provisions related to both sustainable land policies and sustainable PPPs that serve as a point of instruction for both governments and the private sector.

### 2.2.1 Land Policies under Agenda 21

The Agenda recognizes that expanding human presence and economic activities are placing an increasing amount of pressure on land resources, by creating land competition and conflicts that can result in the inefficient use of land for sustainable development purposes.<sup>17</sup> To resolve such conflicts, the Agenda outlines plans of action that should be undertaken by member countries. These include: (1) creating mechanisms to facilitate the participation of all concerned parties in decisions on land use and management (including communities and people at the local level)<sup>18</sup>; (2) identifying the legislative and enforcement improvements to be made to national regulatory frameworks, in order to support sustainable land use and management of land resources;<sup>19</sup> and (3) “establish[ing] a general framework for land-use and physical planning within which specialized and more detailed sectoral plans (e.g., for protected areas, agriculture, forests, human settlements, rural development) can be developed.”<sup>20</sup>

### 2.2.2 Guidelines on Sustainable Partnerships under Agenda 21

Chapter 33 of Agenda 21 transitions from the guidelines that should be carried out by member countries, to the way in which these

sustainable development guidelines should be implemented and financed.<sup>21</sup> It is within this context that the chapter emphasizes the importance of implementing the guidelines using public participation and community involvement within a country.<sup>22</sup> Also, member countries should receive financing from their own public and private sectors,<sup>23</sup> while at the same time creating the necessary national policies that would promote private investment, joint ventures, and other modalities.<sup>24</sup> As explained in the Introduction of this paper, the private financing of a project that has public elements can be an avenue which forms a PPP. This section is therefore relevant because it provides a general (although not enforceable) international foundation upon which countries can form those sustainable PPPs that involve some sort of financing scheme. The Millennium Declaration, along with the guidelines in Agenda 21, served as a foundation for the resolutions adopted during the World Summit for Sustainable Development in 2002.

## 2.3 World Summit on Sustainable Development

The 2002 World Summit on Sustainable Development (WSSD) was organized by the United Nations and involved a series of multi-stakeholder meetings between governments and private businesses (among others) to address pressing sustainable development issues by focusing on the task of how to implement solutions, rather than merely drafting agreements expressing support for initiatives. To this end, participants at the WSSD were strongly encouraged to form partnerships focusing on the five main areas covered by the Summit: water, energy, health, agriculture and biodiversity issues (also known as “WEHAB” issues).<sup>25</sup> In addition to the multi-stakeholder partnerships that were formed through the WSSD, participants also agreed to the Johannesburg Declaration and Plan of Implementation, both of which contain provisions expressing the need for a broad spectrum of participation (including private-

<sup>15</sup> UN Department of Economic and Social Affairs, Division of Sustainable Development, Documents, available at [www.un.org/esa](http://www.un.org/esa)

<sup>16</sup> UN Department of Economic and Social Affairs, Division of Sustainable Development, Documents, available at [www.un.org/esa](http://www.un.org/esa)

<sup>17</sup> Agenda 21, Chapter 10.1, available at <http://www.un.org/esa>

<sup>18</sup> Agenda 21, Chapter 10.5(d)

<sup>19</sup> Agenda 21, Chapter 10.6(c)

<sup>20</sup> Agenda 21, Chapter 10.7(c)

<sup>21</sup> Agenda 21, Chapter 33.1

<sup>22</sup> Agenda 21, Chapter 33.1

<sup>23</sup> Agenda 21, Chapter 33.13

<sup>24</sup> Agenda 21, Chapter 33.15

<sup>25</sup> See generally UN World Summit for Sustainable Development WEHAB Working Group, *A Framework for Action on Agriculture*, August 2002, available at [www.iisd.ca/wssd](http://www.iisd.ca/wssd)

public participation) to achieve sustainable development objectives.<sup>26</sup>

Two other documents arising from the WSSD that are related to pro-food security PPPs are GA Resolution A/RES/56/76 and the Bali Guiding Principles. The GA Resolution encourages adhering to a common approach when forming partnerships involving the private sector, NGOs, civil society and the United Nations, by focusing on principles such as transparency, accountability, and respect for the modalities of the United Nations.<sup>27</sup> The Bali Guiding Principles are a set of guidelines that were used to review proposals on sustainable partnerships until the 11<sup>th</sup> Session of the Commission on Sustainable Development (CSD11).<sup>28</sup> At this Session, new guidelines were adopted using the Bali Guiding Principles (along with the GA resolution) as a preliminary framework.<sup>29</sup>

An example of a partnership that adhered to the relevant guidelines in Agenda 21 and the WSSD Plan of Implementation was a multi-stakeholder PPP involving three governments (Canada, South Africa, and the United States), private partners (e.g. Monsanto Corporation), and various agencies of the UN system (FAO, IFAD, UNEP, and UNDP).<sup>30</sup> The objective of the PPP, called EgoAgriculture, was to promote efficient land use systems that would, *inter alia*, increase food production through research and land use innovation, capacity building, and education awareness.<sup>31</sup> The partnership is in line with the WSSD principles since it is a partnership in line with

6(j) of Plan of Implementation.<sup>32</sup> The goals of the partnership were implemented through a permanent Secretariat which is responsible for (1) managing information and competitive grants, (2) initiating and supporting cooperative activities among the partners, (3) raising public awareness, and (4) making periodic reports to the partnership network about the initiative's progress.<sup>33</sup>

### 2.3.1 CSD 11 and Guidelines for Sustainable Partnerships

The CSD, in general, was established by the UN Economic and Social Council (ECOSOC) and is an inter-governmental organization that serves as a high level forum for sustainable development initiatives.<sup>34</sup> The guidelines adopted by the CSD during its 11<sup>th</sup> session included criteria and guidelines<sup>35</sup> for sustainable partnerships. Such guidelines included, for example that (1) partnerships should be new, reflect concrete value, and not existing arrangements;<sup>36</sup> (2) partnerships should account for the economic, social and environmental dimensions of sustainable development in their design and implementation;<sup>37</sup> (3) transparency and accountability is important, and can be facilitated by information exchange;<sup>38</sup> and (4) there should be consistency with national laws and national Agenda 21 strategies, as well as consistency with the priorities of the country where the project will be implemented.<sup>39</sup> Sustainable partnerships having some connection to the UN are also encouraged to register their partnerships with the CSD and submit reports for review

<sup>26</sup> UN Report on the World Summit on Sustainable Development, Johannesburg, South Africa (2002); Johannesburg Declaration ¶¶ 1.18, 1.26; Plan of Implementation, ¶¶ II.7.j; III.20.t; VI.56.a; 96(a); 127-128

<sup>27</sup> U.N. GAOR, 55th Sess., Supp. No. 76, GA Resolution A/RES/56/76 ¶ 2, available at <http://daccessdds.un.org/>

<sup>28</sup> Partnerships for Sustainable Development: Bali Guiding Principles, available at [www.un.org/esa](http://www.un.org/esa)

<sup>29</sup> Partnerships for Sustainable Development: Bali Guiding Principles, available at [www.un.org/esa](http://www.un.org/esa)

<sup>30</sup> EcoAgriculture: Promoting Science, Practice and Policy for Land Use Systems that Jointly Increase Food Production, Reduce Rural Poverty, and Conserve Biodiversity and Ecosystem Services, available at <http://webapps01.un.org>

<sup>31</sup> EcoAgriculture: Promoting Science, Practice and Policy for Land Use Systems that Jointly Increase Food Production, Reduce Rural Poverty, and Conserve Biodiversity and Ecosystem Services, available at <http://webapps01.un.org>

<sup>32</sup> [To] "Transfer basic sustainable agricultural techniques and knowledge...to small and medium-scale farmers...through multi-stakeholder approaches and public-private partnerships aimed at increasing agricultural production and food security."

<sup>33</sup> EcoAgriculture: Promoting Science, Practice and Policy for Land Use Systems that Jointly Increase Food Production, Reduce Rural Poverty, and Conserve Biodiversity and Ecosystem Services, available at <http://webapps01.un.org>

<sup>34</sup> The Implementation Track for Agenda 21 and the Johannesburg Plan of Implementation: Future Programme, Organisation and Methods of Work of the Commission on Sustainable Development available at [www.un.org/esa](http://www.un.org/esa) (hereafter "CSD11 Guidelines")

<sup>35</sup> See generally CSD11 Guidelines

<sup>36</sup> CSD11 Guidelines, ¶ 22(d)

<sup>37</sup> CSD11 Guidelines, ¶ 22(e)

<sup>38</sup> CSD11 Guidelines, ¶ 22(h)

<sup>39</sup> CSD11 Guidelines, ¶ 22(j)



of the partnerships' adherence to the principles of Agenda 21 and the Johannesburg Plan of Implementation.<sup>40</sup>

## **2.4 World Food Summits: Food Security, Land, and Partnerships**

### **2.4.1 1996 World Food Summit and Its Offspring**

The 1996 World Food Summit was convened to renew the commitment of world leaders to eventually eradicate hunger and achieve food security for all. Out of this Summit arose the 1996 Rome Declaration on World Food Security and the Plan of Action, documents that reflect the ideals and objectives of the participating member countries. It can be reasonably implied that the call for "all" resources includes the use of PPPs to aid in implementing sustainable food security policies.<sup>41</sup>

#### **2.4.1.1 Rome Declaration and Sustainable PPPs**

Among other aims, the Rome Declaration seeks to "mobilize, and optimize the allocation and utilization of, technical and financial resources from all sources...to reinforce national actions to implement sustainable food security policies."<sup>42</sup> Using "all resources" includes encouraging countries to use public and private investments to foster, *inter alia*, sustainable food and agricultural systems.<sup>43</sup> Such language readily identifies the attention that member countries devoted to the potential of public-private partnerships (in the form of passive investment) in helping to ensure food security.

#### **2.4.1.2 Plan of Action and Sustainable PPPs**

Commitment No. 6 of the Plan of Action explicitly displays the commitment of member countries to promote the use of public and private investments to foster, *inter alia*, sustainable food and rural development.<sup>44</sup> Countries are encouraged

to develop a legal framework that encourages private sector investment, while at the same time "devoting an appropriate proportion of their expenditure" to investments that enhance food security.<sup>45</sup> The Plan of Action refers explicitly to PPPs, stating that member countries should encourage the development of PPPs in promoting socially and environmentally responsible investment.<sup>46</sup>

The Plan of Action additionally exhorts countries to use financial and technical resources to (1) raise investment in sustainable agriculture activities to the level needed to promote food security<sup>47</sup> and (2) support community food security initiatives. Another World Food Summit was held in 2002, and a declaration was accepted that reinforced the commitment of member countries to collaborate with the private sector to help achieve the objectives of hunger and achieving food security.<sup>48</sup>

An example of a partnership that implicates the Rome Declaration and the Plan of Action is the Golden Rice program, a PPP between publicly funded research institutions and the private sector that sought to distribute vitamin-A fortified, genetically engineered rice to countries which needed them for both humanitarian and commercial use.<sup>49</sup> The private companies that owned the intellectual property right to make this "golden rice" entered into licensing agreements with, *inter alia*, government owned public rice research institutions to use in humanitarian situations with no expectation of royalty kickbacks where the target income was below USD\$10,000.<sup>50</sup> In this way, governments (through the public rice institutions) encouraged the formation of a PPP which encouraged private investment and supported a community food security initiative.<sup>51</sup>

<sup>40</sup> CSD11 Guidelines ¶ 23(a), (e)

<sup>41</sup> Rome Declaration on World Food Security, FAO, Rome (1996), available at [www.fao.org](http://www.fao.org)

<sup>42</sup> Rome Declaration on World Food Security, FAO, Rome (1996), available at [www.fao.org](http://www.fao.org)

<sup>43</sup> Rome Declaration on World Food Security, FAO, Rome (1996), available at [www.fao.org](http://www.fao.org)

<sup>44</sup> World Food Summit Plan of Action, FAO, Rome (1996) Commitment No. 6, available at [www.fao.org](http://www.fao.org)

<sup>45</sup> World Food Summit Plan of Action, FAO, Rome (1996) Commitment No. 6 ¶ 48.

<sup>46</sup> World Food Summit Plan of Action, FAO, Rome (1996) Objective 6.1(c), ¶ 52.

<sup>47</sup> World Food Summit Plan of Action, FAO, Rome (1996) Objective 6.2, ¶ 53.

<sup>48</sup> Declaration of the World Food Summit: Five Years Later, FAO, Rome (2002), ¶¶ 3, 28, available at [www.fao.org](http://www.fao.org)

<sup>49</sup> The Golden Rice Project, General Information, available at [www.goldenrice.org](http://www.goldenrice.org)

<sup>50</sup> The Golden Rice Project, General Information, available at [www.goldenrice.org](http://www.goldenrice.org)

<sup>51</sup> The Golden Rice Project, General Information, available at [www.goldenrice.org](http://www.goldenrice.org). Food security was

#### 2.4.2 Right to Food Voluntary Guidelines

The Right to Food Voluntary Guidelines (RtF Guidelines) are the final product of extensive deliberations conducted by an Intergovernmental Working Group established during the World Food Summit in 2002.<sup>52</sup> The objective of the RtF Guidelines (which are not legally binding)<sup>53</sup> is to give practical advice to governments to help them implement the concept of the right to food within their national food security legislation.<sup>54</sup> Although the right to food is a human rights concept,<sup>55</sup> it has implications for sustainable PPP and land laws because it is an integral component of food security. States which respect the right to food have a duty to strengthen people's access to and utilization of food, both of which fall under the definition of food security.<sup>56</sup>

Of the nineteen total Guidelines, one is directly relevant to sustainable partnerships while another governs land. Under Guideline 6 (Stakeholders), states are encouraged to apply a multi-stakeholder approach to national food security, by drawing on the private sector for know-how and to facilitate the efficient use of resources.<sup>57</sup> Under Guideline 8B (Land), member countries acknowledged the direct link between land access for the poor (and women) on the one hand, and food security on the other. States are thus encouraged to establish legal mechanisms would promote the right to food by advancing land reform that provides access to both women and the poor.<sup>58</sup>

One example, found in South Africa, reveals how a state can adopt the right to food, as a human rights concept, to help facilitate partnerships that promote food security.

The South African constitution contains within its text that every person (natural or juridical) has the right to adequate food.<sup>59</sup> Using this constitutional basis as a foundation, the Department of Agriculture initiated a program (the Integrated Food Security Strategy, or IFSS) which was created to ensure that the population had access to productive resources for food, and if this were impossible, that necessary food security interventions would increase income (and therefore purchasing power).<sup>60</sup> One of the implementing mechanisms of the program was the use of a PPP to help redistribute land to commercial farmers and provide them with institutional and infrastructural support to help promote the agricultural productivity of new land.<sup>61</sup> The private partners involve major agricultural stakeholders who provide financing and resources to the partnership to help achieve the overall goals of the IFSS.<sup>62</sup>

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promoted because vitamin A deficiency is linked to malnutrition and blindness that has affected nearly 500,000 people in developing countries.

<sup>52</sup> The Right to Food Voluntary Guidelines, FAO, Rome (2005), *Foreword*, available at <ftp://ftp.fao.org/docrep> (hereafter "RtF Guidelines")

<sup>53</sup> RtF Guidelines, Preface, ¶ 9

<sup>54</sup> RtF Guidelines, Preface, ¶ 9

<sup>55</sup> See generally Universal Declaration of Human Rights, (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948) Article 25(1); see also International Covenant on Economic, Social and Cultural Rights (New York, 16 Dec. 1966) 993 U.N.T.S. 3, entered into force 3 Jan. 1976.

<sup>56</sup> RtF Guidelines, Preface ¶ 17

<sup>57</sup> RtF Guidelines, Preface ¶ 6.1

<sup>58</sup> RtF Guidelines, Guideline 8B, ¶ 8.10

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<sup>59</sup> Charlotte Vuyiswa McClain-Nhlapo p. 15, *Right to Food Case Study: South Africa Study conducted for FAO in support of the Intergovernmental Working Group on the Elaboration of a set of Voluntary Guidelines for the Realization of the Right to Adequate Food in the context of National Food Security*, February 2004 at [www.fao.org/righttofood](http://www.fao.org/righttofood) ("The Constitution specifically makes three explicit references to the right to food. Section 27 (1) requires the State to take reasonable legislative and other measures, within its available resources, to progressively realize everyone's right to sufficient food and water. Section 28(1) (c) provides the right for every child to basic nutrition, shelter, basic health care services and social services. Section 35 (2)(e) makes provision for every detained person and sentenced prisoner to have adequate nutrition.")

<sup>60</sup> Charlotte Vuyiswa McClain-Nhlapo p. 29, *Right to Food Case Study: South Africa Study conducted for FAO in support of the Intergovernmental Working Group on the Elaboration of a set of Voluntary Guidelines for the Realization of the Right to Adequate Food in the context of National Food Security*, February 2004 at [www.fao.org/righttofood](http://www.fao.org/righttofood)

<sup>61</sup> Charlotte Vuyiswa McClain-Nhlapo p. 31, *Right to Food Case Study: South Africa Study conducted for FAO in support of the Intergovernmental Working Group on the Elaboration of a set of Voluntary Guidelines for the Realization of the Right to Adequate Food in the context of National Food Security*, February 2004 at [www.fao.org/righttofood](http://www.fao.org/righttofood)

<sup>62</sup> Charlotte Vuyiswa McClain-Nhlapo p. 31, *Right to Food Case Study: South Africa Study conducted for FAO in support of the Intergovernmental Working Group on the Elaboration of a set of Voluntary Guidelines for the Realization of the Right to Adequate Food in the context of National Food Security*, February 2004 at [www.fao.org/righttofood](http://www.fao.org/righttofood)

### **2.5 Monterrey Conference on Financing for Development and the Monterrey Consensus**

The 2002 International Conference on Financing and Development (Monterrey Conference) was organized and hosted by the United Nations and was unique in that it represented the first global exchange between governments, civil society, the business community, and institutional banks.<sup>63</sup> The overall theme of the conference emphasized the need for collaboration between the public and private sectors to mobilize resources in meeting sustainable development goals.<sup>64</sup> One of the major outcomes of the Conference was the Monterrey Consensus, an international agreement focused on financing for development. The Consensus recognizes that, in seeking to meet newly created sustainable development goals (such as those outlined in the Millennium Declaration), financing is a vital component of this process.

The Consensus should be considered a part of the international legal framework for PPPs because it explicitly provides broad objectives that governments should pursue in order to attract the private sector and to overall create a stable environment for private investment, such as (1) promoting good governance and (2) creating appropriate legal and policy frameworks to attract private investment.<sup>65</sup> The Consensus also explicitly states that, in creating such an environment to facilitate direct investment flows, public-private partnerships are important.<sup>66</sup> Countries also agreed to support the financing of projects through public-private partnership vehicles.<sup>67</sup>

<sup>63</sup> International Conference on Financing for Development Website, available at [www.un.org/esa](http://www.un.org/esa)

<sup>64</sup> World Economic Forum Financing for Development Initiative, *Building on the Monterrey Consensus: The Growing Role of Public-Private Partnerships in Mobilizing Resources for Development*, September 2005, p. 1, available at [www.weforum.org](http://www.weforum.org)

<sup>65</sup> UN Report of the International Conference on Financing for Development A/CONF.198/11 (March 2002) ¶¶ II.A.10, 12, available at <http://daccessdds.un.org/doc> (hereafter "Monterrey Consensus")

<sup>66</sup> Monterrey Consensus, ¶ II.B.21

<sup>67</sup> Monterrey Consensus ¶ B.24

## **III REGIONAL INSTRUMENTS RELEVANT TO PPPs**

Different regions of the world are conscious of the positive potential of PPPs to help governments meet the challenging development goals of the twenty-first century. With this in mind, regional areas have additionally provided their own guidelines and frameworks to guide both the creation and implementation of sustainable partnerships. Included within these guidelines are measures that can be applied to those PPPs that are seeking to protect (or promote) food security. Regional guidelines also exist for those land policies that would promote sustainable development.

Such guidelines are, in the aggregate, more specific than the broad language contained in the aforementioned international agreements. This is simply because it is easier to create more specific frameworks at the regional level than the international level. However, these guidelines are still voluntary and therefore only contribute to the discourse that exists on how to create and implement sustainable PPPs. Three regional guidelines on partnerships and land policies that have some relevance to food security are detailed below.

### **3.1 EU Green Paper on Public Private Partnerships**

The 2004 Green Paper was drafted to launch a debate on how to apply existing EU law on public contracts and concessions to the PPP phenomenon.<sup>68</sup> PPPs formed with EU countries have three major legal inquiries: (1) the necessary guidelines that must be in place to select the private partner for the partnership, (2) what must occur in the phase following the selection of the private partner and (3) the status and effect of creating a separate legal entity to specifically implement the project under a PPP.<sup>69</sup>

<sup>68</sup> *European Union Green Paper on public-private partnerships and Community law on public contracts and concessions*, sec. 1.3, ¶ 17, available at <http://eur-lex.europa.eu> (hereafter "EU Green Paper")

<sup>69</sup> EU Green Paper, sec. 2.2, 2.3, 3

First, in selecting a private partner, while an EU member country must use restricted procedures under EU directives, they can also resort to “competitive dialogue” when dealing with complex contractual arrangements.<sup>70</sup> These dialogues allow a country to engage potential private sector candidates and to make decisions based on who has the best legal and/or financial structure for a partnership.<sup>71</sup>

Concerning the second legal inquiry (the phase following the selection of the private sector partner), the Green Paper encourages that the resulting agreed upon PPP contract be in harmony both with national laws and the contractual laws of the EU. Such laws include principles on equality of treatment (terms and conditions under the PPP cannot serve as a barrier to provide services) and transparency (descriptive documents must state clearly the terms and conditions for performance under the partnership).<sup>72</sup>

The final legal inquiry concerns the legal status of the private entity seeking to enter into a partnership. If the private entity has some public component before it even enters the PPP (i.e. a mixed entity), the same rules on EU public law and concessions would still apply to the PPP arrangement (but not to the transaction that initially created the pre-existing mixed entity).<sup>73</sup> This is encouraged in order to make sure the activities of the partnership are transparent enough to be distinguished from the business activities of the mixed entity.<sup>74</sup> The Green Paper paved the way for future dialogue<sup>75</sup> within the EU discussing the creation of a framework to regulate PPPs.

<sup>70</sup> EU Green Paper, sec. 1.2 ¶ 13

<sup>71</sup> EU Green Paper, sec. 2.1.1 ¶ 25

<sup>72</sup> EU Green Paper, sec. 2.3.1 ¶ 44

<sup>73</sup> EU Green Paper, sec. 2.3.1 ¶ 44

<sup>74</sup> EU Green Paper, sec. 2.3.1 ¶ 62

<sup>75</sup> See, e.g., *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions*, available at <http://eur-lex.europa.eu>

### **3.2 New Economic Partnership for African Development: PPPs and Land Implications**

The NEPAD framework is a pledge among sub-Saharan African countries to take more affirmative steps toward the sustainable development of their respective countries. The framework asserts that dependency through aid can no longer be a viable path toward development, and advocates self-determination through people-centered development.<sup>76</sup>

In the context of PPPs, NEPAD identifies the necessary frameworks (such as strong corporate governance laws)<sup>77</sup> that must be in place to attract and facilitate private capital flows, while at the same time proposing a plan of action to help implement such frameworks. These plans include, *inter alia*, establishing an initiative to enhance the capacity of countries to implement PPPs.<sup>78</sup> Such an initiative should be implemented by creating a PPP capacity-building program through the African Development bank and other regional institutions, and the program would assist governments in structuring and regulating PPP transactions.<sup>79</sup>

In addition to these provisions on partnership and private investment, there are also provisions related to land and food security. One of NEPAD’s objectives is to “ensure food security for all people and increase access of the poor to health and nutrition.”<sup>80</sup> With this objective in mind, the framework advocates both (1) improving land tenure security and promoting necessary land reform, and (2) fostering food security by developing and managing increased production, transport, storage and marketing of food crops.<sup>81</sup>

One of the concrete achievements of NEPAD in the context of sustainable PPPs was the development of the Comprehensive Africa Agriculture Development Program (“CAADP”), which is concerned about achieving food security through market access and agriculture. The CAADP

<sup>76</sup> *The New Partnership for Africa’s Development Framework* ¶ 7 (October 2001) (hereafter “NEPAD Framework”)

<sup>77</sup> NEPAD Framework, A2 ¶ 86 *et seq.*

<sup>78</sup> NEPAD Framework ¶ 151

<sup>79</sup> NEPAD Framework ¶ 151

<sup>80</sup> NEPAD Framework ¶ 154

<sup>81</sup> NEPAD Framework ¶ 155



encourages the use of PPPs in land management and also the development of infrastructure for commercial farming in order to improve agribusiness.<sup>82</sup> The call for PPPs that promote both land management and infrastructure reveal the commitment of the NEPAD member countries to the promotion of pro-food security PPPs.

### **3.3 A Regional Framework for Forming PPPs in Land Administration: The UNECE : Guiding Principles on Land Administration**

The United Nations Economic Commission for Europe (UNECE) drafted principles on PPPs and land administration in order to provide an information resource for European countries that were making efforts to reform or improve their national land administration systems. The UNECE recognized that many European countries were retreating from the previously large roles of government in their respective countries, and were seeking a way to reduce bureaucracy, tap into private sector expertise, and meet the increasing expectations of citizens for public services. With regard to land administration systems in particular, it was accepted that government involvement with the private sector could facilitate accurate, inexpensive, and customer-friendly access to land information.<sup>83</sup> To ensure such an outcome, however, requires a level of public-private cooperation that will create a favourable situation for all partners.<sup>84</sup>

The main guiding principles of PPP in land administration (twelve in total)<sup>85</sup> seek to guide a win-win situation for all players. The principles include: the need for private partners to be selected from a proper procurement and tendering exercise; encouraging trust and a sense of mutual ownership between the parties; making sure there are sufficient resources and experts

spread across the public and private sector; a mutual understanding of the business risks, benefits, and the sharing of revenues; the need for reciprocal knowledge transfer; the preference for a long-term investment framework; a regular review of the PPP legal agreement to ensure that the PPP is continuing along as originally expected; the need for government public accountability and private responsibility for performance; the need for the government to specify threshold requirements that the prospective private partner must satisfy before implementing the project (such as professional training and indicators for performance measurement); and the need to make arrangements for the auditing of the private partner's performance.

These guidelines provide a framework for European countries that are seeking to either reform or improve their land administration systems by using the help of PPPs. With these principles in mind, it is the hope that countries in need of effective land administration systems can exploit the benefits of the PPP arrangement to their advantage.<sup>86</sup> The UNECE Guidelines on PPPs have a direct connection to land (i.e. land administration) and also implicate food security because a strong land administration system is necessary to validate any rights (including agricultural) that one acquires in land within a country.<sup>87</sup> The Guidelines therefore fall within the regional framework that should be used to assess sustainable PPPs.

It is with this international and regional foundation in mind that one can analyze the legal issues that countries face in designing the land laws necessary to facilitate the creation of pro-food security PPPs.

<sup>82</sup> NEPAD Secretariat, *Implementing the Comprehensive Africa Agricultural Development Programme and Restoring Food Security in Africa*, African Union/NEPAD, 2005, available at [www.nepad.org](http://www.nepad.org)

<sup>83</sup> United Nations Economic Commission for Europe ¶ 29, *Land Administration Guidelines: With Special Reference to Countries in Transition*, ECE/HBP/96, 1996, New York and Geneva (hereafter "UNECE Guidelines")

<sup>84</sup> UNECE Guidelines ¶ 29

<sup>85</sup> UNECE Guidelines ¶ 55

<sup>86</sup> UNECE Guidelines ¶ 1

<sup>87</sup> See Section 4.1.2 for a detailed discussion on land administration, PPPs, and food security.

## IV. LAND LAWS AND PRO-FOOD SECURITY PUBLIC-PRIVATE PARTNERSHIPS

### 4.1 Overview of Land Laws

National land legislation is intimately tied to the unique history of each country—resulting from factors such as colonial legacies, political regimes (stable or unstable), and religious practices.<sup>88</sup> It would therefore be simple for one to say that it is difficult to develop broad legal guidelines on the proper land laws that could facilitate PPPs that promote food security. However, by focusing on two broad themes (land access and land administration) where land implicates food security, some overarching guidelines can be developed that should be taken into serious consideration by countries seeking to promote food security.

#### 4.1.1 Land Access

Land access broadly refers to the process by which people (in the individual or collective sense of the word) gain rights and opportunities to use and occupy land for commercial or social purposes, on a temporary or permanent basis.<sup>89</sup> To ensure land access for the purposes of food security means, in many countries, to provide opportunities for rural farmers to produce food both for subsistence and the generation of income.<sup>90</sup> This is because the majority of countries in the world have large rural populations which depend on the food produced by their own households. Pro-food security land access measures must therefore be in place to enable this

demographic to acquire land and utilize it for their collective or individual benefit.

Under the more detailed issue of whether access to land can facilitate pro-food security PPPs, attracting private investment must essentially be reconciled with the aforementioned needs of poor rural farmers in order to meet the ultimate goal of food security.<sup>91</sup> An analysis of the tension created by the two competing interests (the private sector and rural farmers) requires an examination of three land access issues that implicate both investment and food security: (1) the state versus private ownership of land, (2) variations in private rights, and (3) national land reform issues. These three provide the pillars from which to view the issue of land access, PPPs, and food security.

#### 4.1.1.1 State vs. Private Ownership of Land

Many states are the largest owners of agricultural land in their country.<sup>92</sup> Assessing whether land used for food production should be ultimately state owned or can be privately vested is difficult to evaluate in the abstract, since the mere fact of state ownership provides little insight into the strength of private rights that could allow private interests to co-exist alongside any state interest in land.<sup>93</sup> This is because the state could be the ultimate owner of land on the one hand, and yet a legal framework could be place that awards secure leases to private investors to increase land productivity.<sup>94</sup>

The key point here, therefore, is the need for clear and enforceable legal provisions to guarantee enforceable private land tenancy rights whenever land is ultimately state-owned. To have otherwise would diminish any incentive to invest and simultaneously pose obstacles to the productive use of land. For example, in 2001 the government of Ghana owned 40 per cent of urban and semi-urban lands, but most of it was left undeveloped because of the lack of clarity of

<sup>88</sup> LAW AND SUSTAINABLE DEVELOPMENT SINCE RIO: LEGAL TRENDS IN AGRICULTURE AND NATURAL RESOURCE MANAGEMENT, p. 205, LEGISLATIVE STUDY NO. 73, FAO, ROME, 2002 (hereafter "FAO LEGISLATIVE STUDY 73")

<sup>89</sup> See FAO/International Institute for Environment and Development, International Conference on Agrarian Reform and Rural Development, *Policies and Practices for Securing and Improving Access to Land* March 2006, ¶ 3, available at [www.icarrd.org](http://www.icarrd.org) (hereafter "ICCARD Issue Paper#1")

<sup>90</sup> See ICCARD Issue Paper #1 ¶ 46, see also Quan, J. *Land Access in the 21<sup>st</sup> Century: Issues, Trends, Linkages and Policy Options*, p. 3 FAO Livelihood Support Paper (2006) (hereafter "LSP Wkg Paper 24")

<sup>91</sup> See ICCARD Issue Paper #1 ¶ 46

<sup>92</sup> See FAO LEGISLATIVE STUDY 73, p. 213

<sup>93</sup> See FAO LEGISLATIVE STUDY 73, p. 213

<sup>94</sup> See Deninger, K. *LAND POLICIES FOR GROWTH AND POVERTY REDUCTION: A WORLD BANK POLICY RESEARCH REPORT*, p. 169. International Bank for Reconstruction and Development/The World Bank (2003) (hereafter "Deninger, LAND POLICIES FOR GROWTH AND POVERTY REDUCTION")



leasehold rights.<sup>95</sup> Conversely, in Brazil where the state also owns land, there are provisions in place which allow households to acquire certificates of usufruct (known as *usucapios*) which protect against eviction and have a strong legal foundation.<sup>96</sup>

#### 4.1.1.2 Variations in Private Rights

Regardless of whether the government is the ultimate owner of land within a country, or whether the land can be freely alienated to private individuals (investors or farmers), a separate issue that should be addressed is the extent to which a holder of private rights (as owners or tenants) can exercise their rights or have them taken away.<sup>97</sup> Private rights in land include full ownership, leasehold rights, user rights and permits.<sup>98</sup>

The varying landscape of private rights that exist in different countries is due mostly to the scope of legislative constraints imposed on land rights. For example, at the liberal end of the spectrum is Lithuania, which allows private land owners to (1) occupy and use the land for any business purpose (as long as not prohibited by law) (2) use water and natural resources on their land for farming purposes, and (3) to sell any produce grown on the land.<sup>99</sup> By contrast, Ukraine's land code obstructs the free transferability of agricultural land by banning the sale of such land before 2005. This land code also requires that agricultural land can only be sold to persons who are certified under the Ukrainian government as having an agricultural education or experience.<sup>100</sup>

The two examples presented above demonstrate the tension that exists between making land accessible to private owners while at the same time ensuring that land is used in a way that is appropriate for a particular society. This is the essential conflict that exists in identifying how land laws can simultaneously promote private investment and ensure food security. Other potential problems that may arise include unregulated expropriation powers by the

state without compensation<sup>101</sup> or obstacles posed by legal pluralism (i.e. overlapping land ownership rights over the same territory which leads to contradictory rules and competing authorities).<sup>102</sup>

One possible method of reconciliation, as demonstrated in Nepal,<sup>103</sup> would impose quantitative ceilings on the amount of land a private person can own, while at the same time dividing 50% of any land cultivated by a tenant between the tenant and other landowners for ownership.<sup>104</sup> This is done to ensure that tenants become owners of the land that they helped to develop. This Nepalese law can serve as a middle ground between private investment and food security because it allows private investment (and therefore PPPs) in land, while at the same time promoting food security by ensuring that agricultural land is being productively cultivated instead of being underutilized.

Another possible legal method to balance private land rights with investment and food security is to legally recognize collective land rights rather than individual titling.<sup>105</sup> It is a fact that in many countries throughout the world, local possessors of land gain access to such land through customary norms, rather than through an official titling process.<sup>106</sup> Although customary norms differ between countries, they are all defined by local communities bonded through local history.<sup>107</sup> In light of this, laws that recognize and enforce collective (i.e. local group) private property rights would create a system where a potential outside investor would have to consult local communities in order to receive any land allocation within the boundaries of the local group.

<sup>95</sup> See LAND POLICIES FOR GROWTH AND POVERTY REDUCTION, p. 170

<sup>96</sup> See LAND POLICIES FOR GROWTH AND POVERTY REDUCTION, p. 171

<sup>97</sup> See FAO LEGISLATIVE STUDY 73, p. 214

<sup>98</sup> See FAO LEGISLATIVE STUDY 73, p. 214

<sup>99</sup> See FAO LEGISLATIVE STUDY 73, p. 215

<sup>100</sup> See FAO LEGISLATIVE STUDY 73, p. 217

<sup>101</sup> See Deninger, LAND POLICIES FOR GROWTH AND POVERTY REDUCTION, p. 173

<sup>102</sup> See Cotula, L. ed. *Changes in 'Customary' Land Tenure Systems in Africa*, p. 7 FAO Livelihood Support Paper (2006) (hereafter "LSP Wkg Paper 38")

<sup>103</sup> See Agrarian Reform and Rural Development in Nepal Executive Summary, ICCARD Country Study, available at [www.icarrd.org](http://www.icarrd.org)

<sup>104</sup> See Agrarian Reform and Rural Development in Nepal Executive Summary, ICCARD Country Study  
<sup>105</sup> See ICCARD Issue Paper #1 ¶ 65

<sup>106</sup> See ICCARD Issue Paper #1 ¶ 64

<sup>107</sup> See Cotula, L. ed. *Changes in 'Customary' Land Tenure Systems in Africa*, p. 5 FAO Livelihood Support Paper (2006) (LSP Wkg Paper 38)

An example of such a legal structure exists in Mozambique, where national land legislation protects the right of local communities to use and benefit from their collectively owned land.<sup>108</sup> It is expected that if outsiders want to use such land, they would have to “negotiate terms and conditions under which local users may benefit from [the] outside investment.”<sup>109</sup> Such a land law would therefore also facilitate a middle ground that would allow an investor to form a PPP, while at the same time not undermining local food security.

#### 4.1.1.3 Land Reform and Land Access Issues

It is clear from the preceding sections that land laws provide the regulatory framework that serves as the basis for mobilizing land policy. These laws shape the terms and conditions of land transactions, which guide the outcome of land markets and also how land is allocated.<sup>110</sup> In the context of facilitating both PPPs and pro-food security outcomes, access to agricultural land (for both investors and local users) is a necessity.

Land reform<sup>111</sup> serves as a method by which access to land can be more readily accomplished. Although one may argue that such access should be facilitated by the market alone (through sales and rentals), it is a fact that many poor farmers will not be able to access land through the purchase market alone because of wealth constraints<sup>112</sup> and imperfections in the credit market.<sup>113</sup> Therefore, it is implied that market forces alone cannot correct highly unequal and often inefficient distributions of land,<sup>114</sup> and that some governmental intervention is necessary.<sup>115</sup>

<sup>108</sup> See ICCARD Issue Paper #1 ¶ 66

<sup>109</sup> ICCARD Issue Paper #1 ¶ 66

<sup>110</sup> See Land Law Reform: Achieving Development Policy Objectives, p. 3

<sup>111</sup> See LSP Wkg Paper 24, p. 9 (“Common interpretation of land reform is systematic or planned changes in the distribution of land rights, as opposed to a broader definition which would include changes to ensure tenure security and/or land administration.”)

<sup>112</sup> See Bruce, LAND LAW REFORM, p. 150

<sup>113</sup> See Deninger, LAND POLICIES FOR GROWTH AND POVERTY REDUCTION, p. 187

<sup>114</sup> See Bruce, LAND LAW REFORM, p. 150

<sup>115</sup> See FAO/International Institute for Environment and Development, International Conference on Agrarian Reform and Rural Development, “Agrarian

There are two schemes of reform for land access that have high relevance to PPPs and food security: (1) land privatization of former state land and (2) land redistribution.

#### 4.1.1.1.1 Privatization of Former State Land and the Lithuania and Ukraine Examples.

Prominent examples of the first scheme are the land privatization measures carried out in Central and Eastern Europe and the former Soviet Union.<sup>116</sup> Land during the time of the Soviet Union was considered a means of production that was owned exclusively by the state.<sup>117</sup> After the fall of the Soviet Union, almost every country in this region adopted laws that privatized formerly state-owned land and collective farms, while simultaneously creating a framework to guide the operation of the new private land market.<sup>118</sup> However, the methods of privatizing former state land have occurred in diverse ways that have varying implications on PPPs and food security.

In the Ukraine for example, the government sought to legally allow the private ownership of Ukrainian land, while at the same time maintaining some state level of influence over land policies. The newly formed constitution after the demise of the Soviet Union allowed individuals, collectives and legal persons (such as companies) to own land, but at the same time provided a window for the state to exercise ownership rights if such an activity survives public scrutiny (i.e. approval through public referendums).<sup>119</sup> The constitution paved the way for other Ukrainian legislation which (1) allowed the state to classify all land based on its natural features, location and societal needs,<sup>120</sup> (2) allowed the state to monitor

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Reform in the Context of Food Sovereignty, the Right to Food and Cultural Diversity: Land, Territory and Dignity” (March 2006), ¶ 29 (hereafter “ICCARD Issue Paper #5”)

<sup>116</sup> FAO LEGISLATIVE STUDY 73, p. 233

<sup>117</sup> W. Valletta, “The agricultural land (share) lease in Ukraine as an instrument for reconsolidation of farm Operations”, available at [www.fao.org](http://www.fao.org)

<sup>118</sup> FAO LEGISLATIVE STUDY 73, p. 211

<sup>119</sup> William Valletta and Volodimir Nosick, “Ukraine: The Continuing Dilemma of Land Rights of the People”, FAO Legal Papers Online #25, February 2002, available at [www.fao.org/legal](http://www.fao.org/legal)

<sup>120</sup> William Valletta and Volodimir Nosick, “Ukraine: The Continuing Dilemma of Land Rights of the

and enforce land use to ensure environmental, economic and social protection, and (3) allowed the state to intrude into private land acquisitions by setting the procedures and participating as a third party to prevent price distortions and speculation.<sup>121</sup> Using this legislation as its foundation, the state was able to create a agricultural land share policy<sup>122</sup> which viewed such land shares as entrepreneurial enterprises where young farmers actively committed their land and passive members (i.e. older pensioners) would offer up (as leases) their shares<sup>123</sup> for the agriculturally productive development of land. These policies, however, did not bring about the productivity increase that the government hoped for. Resulting revisions have allowed citizens with land shares to become owners of land parcels, which they can lease to a cooperative farming organization or freely establish their own farming operation on the land.<sup>124</sup>

Such heavy state intervention alongside land reform measures that privatized former state land was not present in Lithuania, which sought to privatize formerly owned state land without the need for land shares or other cooperative arrangements that required joint ownership between individuals and the state.<sup>125</sup> The two relevant

Lithuanian land privatization laws sought to (1) ensure that farmland that was nationalized in the past was returned to dispossessed citizens and (2) other land needed for productive activities would be transferred to citizens as they deemed necessary.<sup>126</sup> Lithuania accomplished its objective by enacting legislation that authorized the transfer of previously owned state farmland to private citizens to former owners and descendants.<sup>127</sup> To facilitate such a transfer, the citizen was required to make a land claim to the relevant coordinating government agencies under simple procedures that minimized confusion.<sup>128</sup> Additionally, trade enterprises and investors were allowed to obtain leases or rights of use (easements) over the newly transferred land.<sup>129</sup> Since the state created clear land transfer procedures for the privatization of former state land, and did not interfere with the new land rights of citizens (or enterprises seeking subsidiary rights), Lithuania has enjoyed a successful land transfer process in comparison to other former Soviet Union countries and has facilitated private investment and has protected food security.<sup>130</sup>

In the context of food security and public-private partnerships, the privatization of formerly state-owned agricultural land directly implicates issues of food access and availability, as well as the ability of private investors to claim a stake in such land. The Ukrainian example above reveals the hindrances that can be created where privatization occurs with the remnants of heavy state regulation of land ownership

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People", FAO Legal Papers Online #25, February 2002 p. 5

<sup>121</sup> William Valletta and Volodimir Nosick, "Ukraine: The Continuing Dilemma of Land Rights of the People", FAO Legal Papers Online #25, February 2002 p. 5

<sup>122</sup> W. Valletta, "The agricultural land (share) lease in Ukraine as an instrument for reconsolidation of farm Operations", available at [www.fao.org](http://www.fao.org) ("The land share encompasses a group of rights held by each peasant as a common owner and worker-member of the farm. These include, among other elements, participation in decision-making about the use and disposition of all the land (not just the individual's share), entitlement to part of the total profits derived from use of the land and a corresponding share of liabilities. The share also includes priority rights of the shareholders to buy each other out and to approve share sales to new common owners (outsiders)).

<sup>123</sup> William Valletta and Volodimir Nosick, "Ukraine: The Continuing Dilemma of Land Rights of the People", FAO Legal Papers Online #25, February 2002 p. 9

<sup>124</sup> W. Valletta, "The agricultural land (share) lease in Ukraine as an instrument for reconsolidation of farm Operations", available at [www.fao.org](http://www.fao.org)

<sup>125</sup> William Valletta, "Completing the Transition: Lithuania Nears the End of Its Land Restitution and Reform Program" FAO Legal Papers Online #11,

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September 2000, p. 3, available at [www.fao.org/legal](http://www.fao.org/legal)

<sup>126</sup> William Valletta, "Completing the Transition: Lithuania Nears the End of Its Land Restitution and Reform Program" FAO Legal Papers Online #11, September 2000, p. 2

<sup>127</sup> William Valletta, "Completing the Transition: Lithuania Nears the End of Its Land Restitution and Reform Program" FAO Legal Papers Online #11, September 2000, p. 2

<sup>128</sup> William Valletta, "Completing the Transition: Lithuania Nears the End of Its Land Restitution and Reform Program" FAO Legal Papers Online #11, September 2000, Introduction

<sup>129</sup> William Valletta, "Completing the Transition: Lithuania Nears the End of Its Land Restitution and Reform Program" FAO Legal Papers Online #11, September 2000, p. 4

<sup>130</sup> William Valletta, "Completing the Transition: Lithuania Nears the End of Its Land Restitution and Reform Program" FAO Legal Papers Online #11, September 2000, Conclusion

and transactions. This could have the dual effect of undermining agricultural productivity, and could also dissuade investors from placing time and money into potential partnership projects. However, such privatization, combined with the right level of state protection of agricultural land (tailored to the unique circumstances of each country) can create a suitable environment that would foster the creation of PPPs that do not undermine food security.

#### 4.1.1.1.2 Land Redistribution and the Namibia Example.

The second scheme (land redistribution) can be detailed through Namibia, which has implemented land reform laws for both commercial<sup>131</sup> and communal land.<sup>132</sup> The motivation for such reform measures rested on the negative colonial legacy of the country, which created two-pronged problem of the extremely skewed concentration of commercial land in the hands of a few on the one hand, and on the other the rapid privatization of communal lands without the appropriate safeguards to protect those communal persons who lost their land unjustly.<sup>133</sup> The resulting land reform measures undertaken provided new legal frameworks that facilitated land redistribution to correct the commercial ownership inequities created by the two colonial regimes of Germany and South Africa.<sup>134</sup> The two main land reform laws focused on both commercial and communal land. The communal land reform law, however, does not factor into the discussion on redistributive schemes because communal lands, which are owned by state or traditional authorities, are plainly not the target of Namibian redistributive measures. As of 2000, the government had no state-owned, communal land available for redistribution.<sup>135</sup> Namibia's redistributive

<sup>131</sup> Namibia Agricultural (Commercial) Land Reform Act, 1995, available on FAOLEX

<sup>132</sup> Namibia Agricultural (Communal) Land Reform Act No. 5 of 2002, available on FAOLEX

<sup>133</sup> See C. Tapia Garcia, "Land Reform in Namibia: Economic Versus Socio-Political Rationale" Land Reform, Land Settlement and Cooperatives, 2004/2, FAO, Rome, available at <http://ftp.fao.org/docrep>

<sup>134</sup> See C. Tapia Garcia, "Land Reform in Namibia: Economic Versus Socio-Political Rationale" FAO Corporate Document Depository p. 4

<sup>135</sup> See William Breytenbach, "Land Reform in Southern Africa" p. 58, in *Who Should Own the Land? Analyses and Views on Land Reform and the Land Question in Namibia and South Africa*.

scheme has therefore focused solely on taking land from private commercial agricultural landowners of freehold titles<sup>136</sup> and reappportioning them to previously landless Namibian citizens.

Namibia's commercial land reform law initially allowed the state to acquire landholdings and redistribute them for resettlement purposes through the "willing buyer-willing seller approach."<sup>137</sup> Under such an approach, a commercial farmer must have been willing to sell their land to the government in the first place, and the government, through a commission, would subsequently decide whether or not to purchase the land.<sup>138</sup> The government was also granted the mandate to enter and take commercial agricultural land if (1) the land was not being maximized to full agricultural potential<sup>139</sup> or (2) if one collectively held excessive agricultural land (based on the rationale that agricultural land is more productively utilized when divided among many owners, rather than just one).<sup>140</sup> The government's expropriatory powers over agricultural land were later expanded in principle through an amendment that allowed the government to expropriate commercial land for any redistributive purpose, as long as there was just compensation.<sup>141</sup> The amendment would therefore allow the government to take land regardless of the wishes of the then-occupant.

The commercial reform law additionally implemented a land taxation scheme<sup>142</sup> which sought to, *inter alia*, discourage the underutilization of commercial agricultural

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Namibia Institute for Democracy, Justine Hunter ed., February 2004, available at <http://209.85.135.104>

<sup>136</sup> See Justine Hunter, ed. "Who Should Own the Land? Analyses and Views on Land Reform and the Land Question in Namibia and South Africa" Namibia Institute for Democracy, p. 11

<sup>137</sup> C. Tapia Garcia, "Land Reform in Namibia: Economic Versus Socio-Political Rationale" FAO Corporate Document Depository, p. 7

<sup>138</sup> See C. Tapia Garcia, "Land Reform in Namibia: Economic Versus Socio-Political Rationale" FAO Corporate Document Depository, p. 7

<sup>139</sup> See Namibia Agricultural (Commercial) Land Reform Act, 1995 ¶ 14 (3)(i), available on FAOLEX

<sup>140</sup> See Namibia Agricultural (Commercial) Land Reform Act, 1995 ¶ 14 (3)(ii), available on FAOLEX

<sup>141</sup> See C. Tapia Garcia, "Land Reform in Namibia: Economic Versus Socio-Political Rationale" FAO Corporate Document Depository, p. 7

<sup>142</sup> See Namibia Agricultural (Commercial) Land Reform Act, 1995 ¶ 76, available on FAOLEX



land and to reduce land prices to broaden ownership access.<sup>143</sup> The objective behind such a goal was to empower formerly disadvantaged Namibians to become productive commercial farmers.

Furthermore, the reform law seeks to restrict foreign nationals from receiving commercial agricultural lands unless they have governmental consent. Without such consent, the government has the authority to sell the property by public tender regulated by any terms and conditions the government chooses.<sup>144</sup> Foreign nationals include individual citizens and companies and closed corporations.<sup>145</sup>

These redistributive reforms have high relevance to food security and PPPs because they concern the productivity of commercial agricultural lands. Namibia's law paradoxically seeks to ensure the proper utilization of commercial agricultural land for maximum productivity, while at the same time regulating (but not prohibiting) the alienation of such land to potential foreign investors. Both aspects of the law directly relate to the availability of and access to food, and also concern the ability of private foreign investors to directly engage in partnerships that could help promote food security.

#### 4.1.1.1.3 Secondary Obstacles

In the context of food security and PPPs, any prospect of land reform must account for the possibility that any measure to help rural local persons gain more land access does not automatically guarantee more agriculturally productive use of the land.<sup>146</sup> This is because other secondary obstacles can thwart the potential for food productivity. Such obstacles include: the need for a complementary infrastructure to help local individual farmers receive and transport necessary items; the need for capital and credit to help farmer beneficiaries to produce efficiently; and the need for training that

would allow individual farmers to make proper entrepreneurial decisions.<sup>147</sup>

Therefore, any land reform law enhancing land access that is designed to facilitate private investment and food security must also be designed to help governments navigate through, or directly confront, these obstacles. In short, a strong enabling environment is needed for these new small farmer beneficiaries to prosper.<sup>148</sup> An example of such a law, discussed in detail in Section VI of this paper, involves the Comprehensive Agrarian Reform Program in the Philippines, which paved the way for a PPP that took the further step of providing technical support and training to new farmer beneficiaries to help increase crop quality and productivity.

#### 4.1.2 Land Administration

The concept of land administration addresses the institutions and processes that are required for land rights to operate in practice.<sup>149</sup> It therefore covers issues such as the recording of information about land rights (such as titles in land), land valuation and taxation, and how to resolve disputes about land rights and boundaries.<sup>150</sup> A strong land administration system is important because if there are ambiguities concerning common land administration issues such as rightful ownership, land quality, or land security, the value of the property is lessened, and that has a direct negative effect on productivity.<sup>151</sup> In the context of PPPs and food security, an ineffective land administration system can simultaneously dissuade investors and hinder land productivity, which would undermine food security. Conversely, effective land administration increases tenure security, which can stimulate overall investment in agricultural land by increasing both farm inputs and physical improvements (such as irrigation and terracing).<sup>152</sup> Effective land administration is therefore a

<sup>143</sup> See Republic of Namibia, Ministry of Lands and Resettlement, *Implementation of Land Tax on Commercial Agricultural Land in Namibia: A Case Study*, p. 6 available at [www.icarrd.org](http://www.icarrd.org)

<sup>144</sup> See Agricultural (Commercial) Land Reform Act ¶ 60(3), available on FAOLEX

<sup>145</sup> See Agricultural (Commercial) Land Reform Act ¶ 60(3), available on FAOLEX

<sup>146</sup> See Bruce, LAND LAW REFORM, p. 152

<sup>147</sup> See Bruce, LAND LAW REFORM, p. 151-52

<sup>148</sup> See LSP Wkg Paper #24, p. 56-57

<sup>149</sup> See FAO LEGISLATIVE STUDY 73, 217

<sup>150</sup> See FAO LEGISLATIVE STUDY 73, 217

<sup>151</sup> See S. Nichols, J. Riddell and P. Toselli, *Land reform and administration with private-public sector partnerships: lessons from the Black Sea region*, published by Sustainable Development Department p. 26, FAO, available at [ftp://ftp.fao.org/sd](http://ftp.fao.org/sd)

<sup>152</sup> See Bruce, LAND LAW REFORM, p. 152

necessary prerequisite to ensuring that land rights provide the proper access to land.

Common problems that are associated with inefficient land administration systems include (1) lack of strong central systems to oversee administration issues,<sup>153</sup> (2) lack of coordination between different government agencies, each of which carry some degree of land administration duties,<sup>154</sup> (3) high costs and cumbersome bureaucratic procedures associated with the registration of any land transaction,<sup>155</sup> (4) lack of public access to the land register (i.e. cadastre),<sup>156</sup> and (5) lack of the systematic adjudication of land disputes.<sup>157</sup>

#### 4.1.2.1 Land Reform of Land Administration Systems

As with land access issues addressed in the previous section, an overhaul of the land administration system (or modification) can be addressed through law reform, either through the efforts of the state alone, or through the efforts of a PPP.<sup>158</sup> However, regardless of the approach used, any land administration system must be uniquely tailored to local concepts and practices as opposed to a boilerplate, one-size fits all approach.<sup>159</sup> As stated earlier, this is simply because many countries with food security issues have overlapping rights and obligations over same areas of land as a result of colonial laws combined with the customary rights of communities, and the

resulting pluralist framework (i.e. legal pluralism) is distinct in every country.<sup>160</sup>

In the context of the interrelationship between facilitating PPPs and promoting food security, a land administration system that protects local rights is vital because the absence of such protection would allow private investors to both engage in land grabs<sup>161</sup> from the local population and use land in a way that is not guaranteed to be agriculturally productive.<sup>162</sup> As an example, Mozambique has different governmental institutions that perform land administration functions. The bodies responsible for the registration of land do not require customary land owners to register their land. Under the law, they merely have to present verbal testimony or other expert witnesses to prove their rights.<sup>163</sup> Even though registration of local land rights is strongly encouraged in situations of intense land competition, local rights are still recognized and encouraged.<sup>164</sup> Additionally, any disputes over land can be resolved at the customary level by local community tribunals, which the government supports through a training program designed to provide technical training to these lay judges.<sup>165</sup>

Implementing a comprehensive land administration system that recognizes local rights can bring about potential problems, such as manipulation by local elites, corruption, high transaction costs, and lack of geographical access to administration institutions.<sup>166</sup> To combat such problems, land administration systems must have both

<sup>153</sup> See A.L. Overchuk, *Integrated approach to land policy, development of land administration institutions and land market in the Russian Federation*, p. 229, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES. World Bank/FAO (2003), available at [www.fao.org/docrep](http://www.fao.org/docrep) (Overchuk)

<sup>154</sup> See FAO/International Institute for Environment and Development, International Conference on Agrarian Reform and Rural Development, *Land Security and Tenure in Ghana: Some Considerations for Improvement* (March 2006) ICCARD Paper, sec. 2.4, available at [www.icarrd.org](http://www.icarrd.org)

<sup>155</sup> See Overchuk, p. 229

<sup>156</sup> See Bruce, LAND LAW REFORM, p. 32

<sup>157</sup> See Bruce, LAND LAW REFORM, p. 32

<sup>158</sup> See generally, S. Nichols, J. Riddell and P.

Toselli, *Land reform and administration with private-public sector partnerships: lessons from the Black Sea region*, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES. World Bank/FAO (2003), available at [ftp://ftp.fao.org/sd](http://ftp.fao.org/sd) (hereafter "Black Sea PPP Paper")

<sup>159</sup> See ICCARD Issue Paper #1 ¶ 39

<sup>160</sup> See ICCARD Issue Paper#1 ¶ 35; see also Vernon R.N. Chinene, Fabian Maimbo, Diana J. Banda, Stemon C. Msune: *A Comparison of Customary and Leasehold Tenure: Agriculture and Development in Zambia*, p. s. 91-92 (1998); available at [ftp://ftp.fao.org/sd](http://ftp.fao.org/sd)

<sup>161</sup> See Deninger, LAND POLICIES FOR GROWTH AND POVERTY REDUCTION, p. 170

<sup>162</sup> See A.L. Overchuk, *Integrated approach to land policy, development of land administration institutions and land market in the Russian Federation* p. 227, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES. World Bank/FAO 2003/3, available at [www.fao.org/docrep](http://www.fao.org/docrep)

<sup>163</sup> See M.C. de Quadros, *Current Land Policy Issues in Mozambique*, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES. World Bank/FAO, 2003/3, available at [www.fao.org/docrep](http://www.fao.org/docrep)

<sup>164</sup> See M.C. de Quadros, "Current land policy issues in Mozambique"

<sup>165</sup> See M.C. de Quadros, "Current land policy issues in Mozambique"

<sup>166</sup> See ICCARD Issue Paper #1 ¶ 43



legitimacy and legality. Legitimacy refers to the circumstances where the local community recognizes that a land claim is legitimate according to shared local values,<sup>167</sup> while legality references the strong legal backing of local land rights.<sup>168</sup> In general, one cannot function without the other. In the context of PPP formation and food security, legitimacy without legality (and vice-versa) can be problematic if there is competition over land, and the local systems in place are not enough to buffer against private investors who do not respect customary norms.<sup>169</sup>

Both proper land access and an effective land administration system must be in place to facilitate the creation of PPPs that promote food security. An expansive, blanket approach is unrealistic; each country has unique circumstances that must be accounted for. However, the following two-part analysis should be undertaken. First, land access issues must be accounted for. Issues of state versus private ownership and the extent of private land rights should be evaluated. Secondly, the land administration system must be assessed, taking into account the twin issues of legitimacy and legality and the need to protect customary rights to help promote food security. Any land reform that takes place (for access or administration purposes) must have these issues in mind.

## V. NATIONAL PPP CASE STUDY EXAMPLES

### **5.1 General Example: The Case of the Sustainable Agrarian Reform Communities – Technical Support to Agrarian Reform and Rural Development (FAO/SARC-TSAARD)—the Philippines**

The Sustainable Agrarian Reform Communities – Technical Support to Agrarian Reform and Rural Development (SARC-TSARRD) project is an example of a public-private partnership that focuses on providing technical support and institutional strength to the beneficiaries of a state-initiated land reform project. It is a useful partnership to study because it provides insight into how state-led redistributive land

reform in favour of rural farmers can attract the PPPs necessary to ensure that food security is strengthened as a result of the reform.<sup>170</sup> The Philippines are unique in that it has undergone many stages of land reform within its postcolonial history, and the land reform law that spurred on the aforementioned PPP (the Comprehensive Agricultural Reform Law, or CARL) focuses not only on land distribution, but also on making sure that support services are delivered to the new beneficiaries to ensure productivity.

#### *5.1.1 The Land Law Framework Within the Philippines*

The land law history of the Philippines reflects a history of struggle between landless, disenfranchised farmers and wealthy landowners. The colonial legacies left by both Spain and the United States created a system whereby land was concentrated in the hands of a few landowners due to high rental prices that were beyond the reach of tenants who wanted to purchase land for themselves.<sup>171</sup> This eventually led to farmer unrest in the 1930s that eventually led to the passing of legislation (the Rice Tenancy Act) which was supposed to lead to a land sharing arrangement that would, in theory, give tenants the opportunity to own 50% of the land they occupied at the time. In practice, however, this law provided no relief for landless farmers because local municipalities failed to enact enabling laws that would have implemented the national law.<sup>172</sup>

Subsequent land reform legislation sought to impose more binding requirements to provide landless farmers with access to the

<sup>167</sup> See ICCARD Issue Paper #1 ¶ 44

<sup>168</sup> See ICCARD Issue Paper #1 ¶ 44

<sup>169</sup> See ICCARD Issue Paper #1 ¶ 44

<sup>170</sup> Menachem Lourie, *Participation of Stakeholders in Developing Agrarian Reform Communities in the Philippines* p. 3, available at [www.fao.org/docrep](http://www.fao.org/docrep) (hereafter "Lourie *Participation of Stakeholders in Developing Agrarian Reform Communities in the Philippines*")

<sup>171</sup> Republic of the Philippines, Department of Agrarian Reform, *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development* p. 4, available at [www.icarrd.org](http://www.icarrd.org) (hereafter "*Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development*")

<sup>172</sup> Republic of the Philippines, Department of Agrarian Reform, *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development* p. 4

ownership of former ancestral lands for redistribution to landless farmers.<sup>173</sup> This, however, created a land competition problem as the redistributive schemes infringed on the rights of indigenous peoples and became a source of even more conflict for the Philippine government.<sup>174</sup>

New land reform pathways were sought in the 1970s through presidential decrees which laid the preliminary groundwork for CARL and CARP. The decrees (1) named the entire country as a land reform area<sup>175</sup> and (2) authorized the distribution of rice and corn lands to farmers who actually tilled the land.<sup>176</sup> These were the first Philippine land reform measures that sought *widespread* land redistribution to facilitate ownership for landless individuals.

The Comprehensive Agricultural Reform Program (CARP), was conceptualized under a new administration (Aquino) through executive orders instituting a mandate of “comprehensive, radical, and massive restructuring of the agrarian landscape in the country, aimed at promoting social justice and improving farmers’ incomes and productivity.”<sup>177</sup> These executive orders sought, in contrast to previous legal mandates, to implement a “genuine” program of widespread agrarian reform.<sup>178</sup>

CARL is the legislation that implemented the CARP.<sup>179</sup> CARP applied to all types of land (public or private) and its objective was to distribute land to farmer beneficiaries to, *inter alia*, increase agricultural productivity and improve the standard of living among

agrarian reform beneficiaries (ARBs).<sup>180</sup> ARBs were the actual farmers who received land through the CARP distribution scheme. Its actual scope covers 8.01 million hectares of land for redistribution to approximately five million farmers.<sup>181</sup> As of 2000, over five million hectares (66%) have been distributed. These new ARBs were thus the beneficiaries of a land access reform measure.

The task of the distribution of land rests in the hands of different Philippine government agencies (Department of Agrarian Reform and Department of Environment and Natural Resources), farmer civil society groups, and private individuals.<sup>182</sup> By dividing the task of redistribution among different sectors of society, CARP leaves room for reform to occur either by (1) expropriation by the Philippine government or (2) voluntary transactions initiated by private individuals.<sup>183</sup> Reform can also occur under CARP through non-land transfer schemes such as stock distribution options or through production and profit sharing,<sup>184</sup> but these are beyond the scope of this paper.

Under CARP, the Department of Agrarian Reform (DAR) has the discretion to distribute certain categories of land within a ten year period to qualified beneficiaries. The categories of land (in order of priority) include: rice and corn lands, public agricultural lands exceeding 50 hectares,<sup>185</sup> and private agricultural landholdings of certain sizes (for example, 24–50

<sup>173</sup> Republic of the Philippines, Department of Agrarian Reform, *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development* p. 4

<sup>174</sup> Republic of the Philippines, Department of Agrarian Reform, *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development* p. 4

<sup>175</sup> Presidential Decree No. 2

<sup>176</sup> Presidential Decree No. 27

<sup>177</sup> Executive Order 229 (citing Republic of the Philippines, Department of Agrarian Reform, *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development* p. 4)

<sup>178</sup> Republic of the Philippines, Department of Agrarian Reform, *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development* p. 4

<sup>179</sup> Republic Act No. 6657, 10 June 1988, Philippines, available on FAOLEX

<sup>180</sup> Lourie *Participation of Stakeholders in Developing Agrarian Reform Communities in the* p.3

<sup>181</sup> Republic of the Philippines, Department of Agrarian Reform, *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development* p. 7, available at [www.icarrrd.org](http://www.icarrrd.org) (hereafter “*Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development*”)

<sup>182</sup> *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development*, p. 7

<sup>183</sup> Saturino Borrás, Jr., *Can Redistributive Reform be Achieved via Market-Based Voluntary Land Transfer Schemes? Evidence and Lessons from the Philippines*, JOURNAL OF DEVELOPMENT STUDIES, Vol. 41, No. 1 (January 2005) p. 99

<sup>184</sup> *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development*, p. 8

<sup>185</sup> See Republic Act No. 6657 Sec. 7. This includes alienable and disposable agricultural lands and those public lands under agricultural lease already cultivated and planted with crops.

hectares).<sup>186</sup> When the DAR uses its powers of expropriation to acquire land for redistributive purposes, it presents a monetary offer, with the presented value based on a land valuation scheme contained within CARL.<sup>187</sup>

The beneficiaries that are entitled to land under CARP are (in order of priority): (1) agricultural lessees and share tenants, (2) regular farmworkers, (3) seasonal farmworkers, (4) other farmworkers, (5) tillers and public land occupants, (6) collectives, and (7) others working directly on the land.<sup>188</sup> These beneficiaries have a ceiling on the amount of land they can receive through the redistribution (not exceeding three hectares)<sup>189</sup> and can only transfer such land by descent, to the government, or to other qualified beneficiaries for 10 year periods.<sup>190</sup>

As stated before, CARP goes beyond a mere land distribution scheme and includes measures that aim to provide access to support services to help make lands more agriculturally productive (and to also produce income-generating enterprises).<sup>191</sup> CARP established an Office of Support Services under DAR, which along with a council (Presidential Agrarian Reform Council—PARC) is responsible for providing support services such as loans,<sup>192</sup> necessary infrastructure,<sup>193</sup> and research and production of fertilizers that can help with farming and cultivation.<sup>194</sup> These services are applied to the recipients of reformed land, the ARBs.<sup>195</sup>

<sup>186</sup> Republic Act No. 6657. 10 June 1988, Philippines, Sec. 7

<sup>187</sup> Republic Act No. 6657. 10 June 1988, Philippines, Sec. 16(a); Sections 17 and 18

<sup>188</sup> Republic Act No. 6657. 10 June 1988, Philippines, Sec. 22(a)-(g)

<sup>189</sup> Republic Act No. 6657. 10 June 1988, Philippines, Sec. 24

<sup>190</sup> Republic Act No. 6657. 10 June 1988, Philippines, Sec. 27

<sup>191</sup> *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development*, p. 8

<sup>192</sup> Republic Act No. 6657. 10 June 1988, Philippines, Sec. 37(b)

<sup>193</sup> Republic Act No. 6657. 10 June 1988, Philippines, Sec. 37(d)

<sup>194</sup> Republic Act No. 6657. 10 June 1988, Philippines, Sec. 37(e)

<sup>195</sup> *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development*, p. 8

### 5.1.2 The FAO/ SARC-TSAARD Project: An Inevitable Pro-Food Security PPP

The CARL, CARP and resulting ARBs spurred on the creation of the FAO SARC-TSAARD PPP. The project was created to help the Philippine DAR in transforming ARBs into “self-reliant and productive farmers.”<sup>196</sup> FAO initiated the project by signing an agreement with the DAR Secretary to begin implementation with the above mentioned goal.<sup>197</sup> The mandate imposed by CARL to provide support services to ARBs raised the need for shared cooperation to efficiently provide the required support to these new landholders. A PPP between the Philippine government (DAR) and the private sector was thus ideal for this situation because the private sector could expose these ARBs to the technical support and know-how that would go beyond the boundaries of what the Philippine government alone could provide.

#### 5.1.2.1 How does this PPP Function?

The public component of the SARC-TSAARD is primarily the Philippine DAR. The DAR is the lead implementing government agency for CARP. They have a legal mandate, under CARL, to orchestrate the delivery of support services that will help ARBs become productive farmers.<sup>198</sup> To implement CARP, DAR has made the strategic decision to focus its activities on agrarian reform communities (ARCs). ARCs are areas composed of a cluster of villages (*barangays*) where at least 60% of the population consists of ARBs.<sup>199</sup> By focusing on implementing support services to ARCs instead of individual ARBs, a community-integrated approach to development is embraced, since support services can be introduced along with the appropriate infrastructure at the same time.<sup>200</sup>

<sup>196</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities in the p. 3*

<sup>197</sup> Sol Jose Vanzil, “Investment Requirement Cut To \$300-M From \$1-B, Philippine Headline News Online, 2000, at [www.newsflash.org/2000](http://www.newsflash.org/2000)

<sup>198</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities in the p. 3*

<sup>199</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities in the footnote 1.*

<sup>200</sup> E.A. Guardian, *Impact of access to land on food security and poverty: the case of Philippine agrarian reform in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES*. World Bank/FAO 2003/3, available

Additionally, a focus on ARCs presents a more attractive way to build partnerships with the private sector, since the private sector would be more inclined to invest in projects where results can be more readily evaluated.<sup>201</sup> It would be more difficult to evaluate results for a project that focuses on individual farmers scattered throughout the country.<sup>202</sup>

The private component of the PPP primarily aids in helping the eventual beneficiaries of the PPP (the farmers) improve their access to necessary support services which would help to increase their levels of farm productivity.<sup>203</sup> The major private partners in the project include (1) international development banks (World Bank, Asian Development Bank) and foreign agencies (UNDP, FAO) that help in ARC development, and (2) agribusiness enterprises that help in the marketing of agricultural goods once they are produced by ARBs.<sup>204</sup> The PPP therefore combines both type II and locally-driven partnerships to help meet the ultimate goal of increased food productivity: the type II partnerships in the form of an agreement between the FAO, World Bank, and the Phillipine government; and the locally-driven partnerships involving agreements between agribusiness enterprises and local ARCs. This PPP therefore encompasses two levels of partnerships within one project.

SARC-TSAARD was implemented in four stages, and although private partner participation is promoted at every stage, some stages require heavier private sector help than others. The four stages are: (1) applying the farming systems development (FSD) approach<sup>205</sup>; (2) post-FSD training

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at [www.fao.org/docrep](http://www.fao.org/docrep) (hereafter Guardian, *Impact of access to land on food security and poverty*)

<sup>201</sup> *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development*, 10

<sup>202</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities* p. 3

<sup>203</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities* p. 4

<sup>204</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities* p. 4

<sup>205</sup> See *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities* p. 4. The FSD refers to a wide range of community development processes undertaken to identify the positives and negatives of farming practices and to aid in eventually improving farm productivity. Under the FSD, a multistakeholder approach is emphasized.

courses; (3) agribusiness linkages and (4) credit facilitation.<sup>206</sup> The first stage involved the formation of teams composed of DAR field staff and local farmers who created a development plan to be implemented in ARCs.<sup>207</sup>

The second stage involved the provision of training courses to ARCs which were based on addressing needs and problems voiced by farmers during the first stage. The overall objectives of these training courses included: (1) identifying and helping to implement improved farm technologies, (2) satisfying local demand for goods and services, and (3) facilitating access to training materials.<sup>208</sup> Prior to the training courses, meetings were carried out by relevant staff associated with the PPP (including FAO and the UNDP) to develop guidelines to help monitor the courses.<sup>209</sup> A point worth noting that is relevant to food security: during the training courses materials were handed out to farmers as start-up inputs. The inputs included seeds, fertilizers and garden tools—all of which can help increase farm productivity.<sup>210</sup>

The third stage involved establishing strong agribusiness linkages. Prior to the formation of the project, farmer beneficiaries under CARP were left on their own to both produce crops and market them to the right business intermediaries for sale.<sup>211</sup> This more often than not resulted in low profits for these ARBs because they lacked the relevant market information to make the right business decisions for for-sale crops produced on their own land.<sup>212</sup> SARC-TSAARD sought to remedy this situation with a strategy that focused on: (1) market-matching consultations and dialogues between farmers and agribusiness enterprises; (2) a network within DAR that provided investment and marketing assistance at local levels; and (3) a system

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<sup>206</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities* p. 4

<sup>207</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities* p. 5

<sup>208</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities* p. 8

<sup>209</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities* p. 9

<sup>210</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities* p. 9

<sup>211</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities* p. 11

<sup>212</sup> *Lourie Participation of Stakeholders in Developing Agrarian Reform Communities* p. 11



to help disseminate market information.<sup>213</sup> This strategy helped to forge market linkages between ARCs and leading agribusiness corporations,<sup>214</sup> since the private sector was assured that the ARCs would provide a steady supply of crops in accordance with any contracts entered into. As a result, many contracts were formed between the two factions.<sup>215</sup> From 1997-2000, for example more than 75 marketing agreements were undertaken, which covered more than 260 ARCs (consequently involving more than 35,000 ARBs).<sup>216</sup>

The final stage of the PPP seeks to address one of the main problems that ARBs have encountered during the land reform process: the lack or absence of credit to finance farming production. SARC-TSAARD bridges this gap by matching those ARCs (who have project ideas) to relevant financing institutions.<sup>217</sup> This is similar to the matching process used to establish agribusiness linkages, and it provides a mutual forum for farmers to understand loan procedures on the one hand, and for credit institutions to fully understand ARC credit proposals on the other.<sup>218</sup> Credit facilitation workshops are also held where ARBs discuss all aspects of a project proposal with account officers from lending institutions on hand to answer questions.<sup>219</sup>

The impacts of this PPP on food security were measurable: farming households have increased access to roads and bridges—improving local access; farm technologies have improved; and ARCs were able to acquire quality seeds and planting materials and farmers were able to diversify into higher value crops.<sup>220</sup> Moreover, this pro-food security was facilitated directly through a Philippine law that provided access to previously landless farmers through

redistributive reform. This PPP therefore provides an example of a sustainable PPP, facilitated by a key land access reform law, which has promoted food security.

## VI. THE LAND LAW, PPP AND FOOD SECURITY INTERFACE APPLIED TO BIOENERGY

### 6.1 Bioenergy and Land Issues

The bioenergy phenomenon provides a unique perspective on the relationship between land laws, PPPs and food security. This is because the topic presents complex food security dilemmas that require innovative solutions. The bioenergy phenomenon is here to stay, since global energy consumption will only continue to increase alongside the rapid increase in the global population.<sup>221</sup> Sustainable energy consumption is therefore viewed as necessary in the face of a world that is increasing in population but not in the quantity of available resources. It is generally accepted that bioenergy can be that sustainable energy consumption alternative because (1) it is a widely available resource, (2) it is convertible to convenient forms of energy (such as electricity, gas, and heat), (3) it can potentially help in climate change mitigation (although this is now heavily disputed<sup>222</sup>) and (4) it can potentially reduce rural poverty.<sup>223</sup>

Three definitional points should be made before addressing the topics below. First, *Bioenergy* refers to biomass that can be converted either into solid dried biofuels, or liquid biofuels, for the purpose of energy

<sup>213</sup> Lourie *Participation of Stakeholders in Developing Agrarian Reform Communities* p. 12

<sup>214</sup> Guardian, *Impact of access to land on food security and poverty*

<sup>215</sup> Guardian, *Impact of access to land on food security and poverty*

<sup>216</sup> Lourie *Participation of Stakeholders in Developing Agrarian Reform Communities* p. 12

<sup>217</sup> Lourie *Participation of Stakeholders in Developing Agrarian Reform Communities* p. 13

<sup>218</sup> Lourie *Participation of Stakeholders in Developing Agrarian Reform Communities* p. 13

<sup>219</sup> Lourie *Participation of Stakeholders in Developing Agrarian Reform Communities* p. 12

<sup>220</sup> Lourie *Participation of Stakeholders in Developing Agrarian Reform Communities* p. 15

<sup>221</sup> UN-Energy, *Energy Challenge for Millennium Development Goals*, June 22 2005, available at [www.undp.org](http://www.undp.org)

<sup>222</sup> See *Report of the United Nations Special Rapporteur on the Right to Food*, U.N. GAOR, 62nd Sess., Supp. No. 289, at 14, U.N. Doc A/62/289 (2007), available at [www.righttofood.org](http://www.righttofood.org); see also BiofuelWatch et al, *Agrofuels: Towards a Reality Check in Nine Key Areas* (June 2007) p. 9, available at [www.corporateeurope.org](http://www.corporateeurope.org)

<sup>223</sup> *Advancing Bioenergy for Sustainable Development: Guidelines for Policymakers and Investors*, Volume I pp. 2–4, Joint UNDP/World Bank Energy Sector Management Assistance Programme, available at <http://wbln0018.worldbank.org>

consumption.<sup>224</sup> Second, *biofuels* (whether solid or liquid) refer to fuels of renewable and biological origin, and include woodfuel, charcoal, livestock manure, biogas, biohydrogen, bioalcohol, agricultural wastes and by-products, and energy crops.<sup>225</sup> Finally, biofuels can be produced from technologies that are either *first generation* or *second generation*. First generation biofuels are those made from sugar, starch, oil or animal fats using “conventional”<sup>226</sup> technologies.<sup>227</sup> Conventional technologies include, *inter alia*, the use of dehydration and distillation processes to help convert crops high in sugars and starch (requiring productive land for mass production) into ethanol, a biofuel which will be discussed in the case study below.

Second generation technologies, on the other hand, refer to advanced processes using cellulose from biomass feedstock to derive biofuels.<sup>228</sup> This is viewed as a potentially advantageous option for biofuel development because plants (and other sources) high in cellulose can be produced on unproductive and degraded land otherwise unsuitable for food production.<sup>229</sup> Although there are technological and economic obstacles that currently prevent second generation biofuels from being produced on a mass scale, there is an incentive for further development of these

technologies because they may provide a solution to the land competition dilemma that the production of bioenergy presents.<sup>230</sup>

### 6.1.1 Bioenergy Production, Land Competition and Food Insecurity Dilemma

In general, bioenergy production can be very land intensive<sup>231</sup> and therefore has the potential to strongly interfere with normal uses of land that exist at both the national and local level.<sup>232</sup> This is generally referred to as the “food/fuel” debate.<sup>233</sup> The debate gives rise to a number of effects that bioenergy has on food security. However, these negative effects can be grouped into two broad channels: (1) price effects in international markets and (2) local effects related to food production.<sup>234</sup> In the context of land, an analysis of local effects on food production is more relevant than the issue of price because local effects implicate the land and food security interface more directly.

In assessing local effects on food production, bioenergy production can negatively affect food security by (1) reducing land *availability*, (2) reducing local *access* to food, (3) reducing *stability* of food supplies and (4) minimizing the *utilization* of available food.<sup>235</sup> Within the context of land,

<sup>224</sup> UN-Energy, *Sustainable Energy: A Framework for Decision Makers*, p. 3, fn. 1, available at [www.fao.org/docrep](http://www.fao.org/docrep)

<sup>225</sup> Jull, C., Carmona-Redondo, P., Mosoti, V., Vapnek, J. “Recent Trends in the Law and Policy of Bioenergy Production, Promotion, and Use, FAO Legal Papers Online #68 (September 2007), available at [www.fao.org/Legal](http://www.fao.org/Legal)

<sup>226</sup> See Richard Doornbosch and Ronald Steenblik, “Biofuels: Is the Cure Worse Than the Disease?” Organization for Economic Cooperation and Development (OECD) Roundtable on Sustainable Development, Sept 2007, available at <http://media.ft.com/cms>.

<sup>227</sup> UN-Energy, *Energy Challenge for Millennium Development Goals*, p. 4, June 22 2005, available at [www.undp.org](http://www.undp.org)

<sup>228</sup> See Richard Doornbosch and Ronald Steenblik, p. 11 “Biofuels: Is the Cure Worse Than the Disease?” Organization for Economic Cooperation and Development (OECD) Roundtable on Sustainable Development, Sept 2007, available at <http://media.ft.com>.

<sup>229</sup> See Richard Doornbosch and Ronald Steenblik, p. 11 “Biofuels: Is the Cure Worse Than the Disease?” Organization for Economic Cooperation and Development (OECD) Roundtable on Sustainable Development, Sept 2007, available at <http://media.ft.com>.

<sup>230</sup> See Richard Doornbosch and Ronald Steenblik, p. 11 “Biofuels: Is the Cure Worse Than the Disease?” Organization for Economic Cooperation and Development (OECD) Roundtable on Sustainable Development, Sept 2007, available at <http://media.ft.com>.

<sup>231</sup> See Josef Schmidhuber, “Impact of an Increased Biomass Use on Agricultural Markets, Prices and Food Security:

A Longer-Term Perspective” FAO, Rome, available at [www.fao.org/es](http://www.fao.org/es). Although first generation biofuels clearly present land competition issues, this is not necessarily the case with second generation biofuels at this stage of their development.

<sup>232</sup> *Advancing Bioenergy for Sustainable Development* Volume I p. 48

<sup>233</sup> United Nations Economic and Social Council, “United Nations Committee on New and Renewable Sources of Energy and on Energy for Development,” Report on the second session ¶ 45. E/1996/24, E/C.13/1996/8 (12–23 February 1996), available at [www.un.org/documents/ecosoc](http://www.un.org/documents/ecosoc)

<sup>234</sup> “Bioenergy: Facts and Figures,” Global Bioenergy Partnership, 2007, available at [www.globalbioenergy.org](http://www.globalbioenergy.org) (citing Schmidhuber and Nyberg, FAO 2007)

<sup>235</sup> Nyberg, J. and Raney, T. “Food Security Concept Note. First FAO Technical Consultation on Bioenergy and Food Security,” p. 4, available at <http://faointb3.fao.org> These four categories



bioenergy more directly affects land availability and local access.

Land availability may be reduced because the use of land to produce crops for bioenergy can squeeze out those crops that are produced for food consumption.<sup>236</sup> Additionally, because bioenergy crops are so land-intensive, monocropping techniques to produce such crops can lead to severe land degradation, which would prevent future use of the land for food crop production.<sup>237</sup> Access refers to the ability of local households to have the economic means to purchase food.<sup>238</sup> Included within this concept is the ability of local households to find the food they need within a convenient geographical area.<sup>239</sup> Bioenergy crops could displace crops that are normally produced in areas that local households would otherwise have access to.<sup>240</sup>

The UN Special Rapporteur on the Right to Food has also identified other food security issues that would have an indirect effect on land as bioenergy production continues to occur in countries around the world. One such issue is the prospect of forced evictions by agribusiness corporations who need massive amounts of land for first generation bioenergy production. Situations have been documented in Brazil, Colombia, Argentina, Paraguay and Argentina where agribusiness companies have either urged peasants to sell their land, or otherwise plainly occupy land where communities have been living for decades.<sup>241</sup> In Paraguay in particular, 350 cases have been documented where indigenous communities, holding land according to local customary laws, had their houses and crops burned by agribusiness (directly and indirectly) in

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correspond to the four dimensions of food security: (1) availability, (2) access, (3) stability and (4) utilization.

<sup>236</sup> Nyberg, p. 4

<sup>237</sup> Steven Karezai et al, "Traditional Biomass Energy: Improving Its Use and Moving to Modern Energy Use" January 2004, Thematic Background Paper Presented at International Conference of Renewable Energies p. 21, available at [www.renewables2004.de](http://www.renewables2004.de)

<sup>238</sup> Nyberg, p. 4

<sup>239</sup> *Bioenergy: Facts and Figures*, Global Bioenergy Partnership, 2007

<sup>240</sup> *Sustainable Energy: A Framework for Decision Makers*, p. 31

<sup>241</sup> See Report of the United Nations Special Rapporteur on the Right to Food, U.N. GAOR, 62nd Sess., Supp. No. 289, at 13, U.N. Doc A/62/289 (2007), available at [www.righttofood.org](http://www.righttofood.org)

favour of large soya plantations for bioenergy production.<sup>242</sup> Such forcible eviction affects the ability of local rural farmers to have access to land for their own crop production. The Special Rapporteur stated that these land violations amount to violations of the human right to respect and protect people's access to food.<sup>243</sup> Corporations should therefore avoid complicity with such violations.<sup>244</sup>

To address land concerns, bioenergy proponents make the argument that bioenergy crops can be produced on those types of land that are normally not used for food production (i.e. arid and degraded lands). However, this cannot be regarded as a universal solution since producing on such land may not be cost-effective. This is because investing in bioenergy crops on such land may result in lower and less dependable crop yields.<sup>245</sup> Additionally, physical limitations (i.e. low rainfall, steep slopes, etc.) may require more land preparation, technical expertise, and/or transport costs that may prove to be too unprofitable.<sup>246</sup> Moreover, in spite of promises associated with new research developments in bioenergy, many bioenergy crops currently being produced still require high-quality agricultural land.<sup>247</sup> Potential legal options that exist to resolve this tension should revolve around the promotion of bioenergy crops that (1) have high per unit productivity, which would mean less land could be used to produce a higher yield, or (2) crops that can be used for a dual purpose—for bioenergy and food production.<sup>248</sup>

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<sup>242</sup> See Report of the United Nations Special Rapporteur on the Right to Food, U.N. GAOR, 62nd Sess., Supp. No. 289, at 13, U.N. Doc A/62/289 (2007), available at [www.righttofood.org](http://www.righttofood.org)

<sup>243</sup> See Report of the United Nations Special Rapporteur on the Right to Food, U.N. GAOR, 62nd Sess., Supp. No. 289, at 13, U.N. Doc A/62/289 (2007), available at [www.righttofood.org](http://www.righttofood.org)

<sup>244</sup> See Report of the United Nations Special Rapporteur on the Right to Food, U.N. GAOR, 62nd Sess., Supp. No. 289, at 13, U.N. Doc A/62/289 (2007), available at [www.righttofood.org](http://www.righttofood.org)

<sup>245</sup> *Advancing Bioenergy for Sustainable Development* Volume I p. 8

<sup>246</sup> *Advancing Bioenergy for Sustainable Development* Volume I p. 8

<sup>247</sup> *Sustainable Biofuels Report* Part 2 p. 33

<sup>248</sup> Hazell, P. and Pauchari, R.K. ed. *Bioenergy and Agriculture: Promises and Challenges*, Brief 7 of 12 International Food Policy Research Institute, December 2006, available at [www.ifpri.org](http://www.ifpri.org); see also UN Conference on Trade and Development, *The*

### 6.1.2 The Ideal Pro-Food Security Bioenergy PPP? The Case of the ICRISAT/Rusni Distilleries/AAI PPP in Andhra Pradesh, India

In light of the aforementioned tensions that can exist between bioenergy production, land, and food security, a PPP can provide a viable option for those countries that want to attract bioenergy investments while at the same time promoting food security. However, for such bioenergy PPPs to exist, appropriate land laws must be in place that strikes a balance between ensuring land access and protecting the food security of the local population. The country of India and the recent PPP formed between the International Crops Research Institute for the Semi-Arid Tropics (ICRISAT), Rusni Distilleries and Aakruthi Association of India (AAI) provides some insight into how bioenergy intersects with the land, PPP and food security interface.

#### 6.1.2.1 The Land Law Framework Within India

India's diverse political, economic and social influences have given way to a multilayered land law framework.<sup>249</sup> At the time of its independence from colonial powers, India promised to correct an unequal land structure that strengthened local rural elites, who commonly extracted unjust land revenues and taxes from those living on the land.<sup>250</sup> The resulting need for land reform was complicated by the fact that land in this country not only represented a means of economic livelihood, but also reflected social status under the caste system.<sup>251</sup> The resulting new Indian Constitution made land subject to the authority of states (i.e.

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*Emerging Biofuels Market: Regulatory, Trade and Development Implications*, p. 32, available at [www.unctad.org](http://www.unctad.org)

<sup>249</sup> R.S. Deshpande p. 3, *Current Land Policy Issues in India*, FAO/World Bank, Land Reform: Land Settlement and Cooperatives, Special Edition, Vol. 3 (2003)

<sup>250</sup> R.S. Deshpande p. 2, *Current Land Policy Issues in India*, FAO/World Bank, Land Reform: Land Settlement and Cooperatives, Special Edition, Vol. 3 (2003)

<sup>251</sup> R.S. Deshpande p. 3, *Current Land Policy Issues in India*, FAO/World Bank, Land Reform: Land Settlement and Cooperatives, Special Edition, Vol. 3 (2003); see also Consult for Woman and Land Rights and Action Aid International, *A Case Study on Implementing Land Rights for Women in India: Revitalizing Rural Communities Through Just Agrarian Reforms and Rural Development*, p. 3

individual provinces), which meant that only state legislatures had the power to enact and implement land reform laws.<sup>252</sup> The central government, however, still played a significant concurrent role in forming land policies, since they had the legal authority to do so under the economic and planning authority that they are given under the constitution.<sup>253</sup>

Since colonial independence, the Indian central government has enacted a series of five-year plans which have focused heavily on land policy issues.<sup>254</sup> The early phases focused on issues of land reform. The government believed that a just land reform policy had to address issues of, *inter alia*, (1) tenancy reform and (2) fixed ceilings on land holding. Reform that focused on these two issues paved the way for the ICRISAT PPP.

Tenancy reform laws differed across states and territories, because states had constitutional authority to enact their own laws and also because the social and agrarian structures varied so widely across the different regions of India.<sup>255</sup> Broad directives were handed down from the central government to the states to incorporate principles such as fair rent, strong tenancy records, and the right of landowners for personal cultivation.<sup>256</sup> Additionally, tenants who were in possession at the time of the land reforms were given *raiyyati* (owner-cultivator) status, which allowed 8.8 million beneficiaries to gain access to 7.3 million hectares of land.<sup>257</sup> Each state then implemented

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<sup>252</sup> R.S. Deshpande 3, *Current Land Policy Issues in India*, FAO/World Bank, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES, SPECIAL EDITION, Vol. 3 (2003)

<sup>253</sup> R.S. Deshpande 3, *Current Land Policy Issues in India*, FAO/World Bank, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES, SPECIAL EDITION, Vol. 3 (2003)

<sup>254</sup> R.S. Deshpande 4, *Current Land Policy Issues in India*, FAO/World Bank, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES, SPECIAL EDITION, Vol. 3 (2003)

<sup>255</sup> R.S. Deshpande 5, *Current Land Policy Issues in India*, FAO/World Bank, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES, SPECIAL EDITION, Vol. 3 (2003)

<sup>256</sup> R.S. Deshpande 6, *Current Land Policy Issues in India*, FAO/World Bank, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES, SPECIAL EDITION, Vol. 3 (2003)

<sup>257</sup> Consult for Woman and Land Rights and Action Aid International, "A Case Study on Implementing Land Rights for Women in India: Revitalizing Rural

additional rules based on the relationship between production and land tenure within the state.<sup>258</sup> In Andhra Pradesh, for example, leasing is permitted but regulated by the state, while in other states leasing is completely prohibited.<sup>259</sup> These laws were meant to provide security to tenants,<sup>260</sup> but instead have led to (1) reduced access to the land rental market for poor households who wish to rent and (2) the lack of legal protection for those poor tenants who are forced to enter into covert and informal tenancies with landowners.<sup>261</sup>

The placing of fixed ceilings on land holdings was seen as necessary by India because (1) there was evidence that holding large amounts of land diminished productivity and led to uneconomic land use and (2) a large proportion of the population depended on land as an economic source of<sup>262</sup> their livelihood and thus needed their own land.<sup>263</sup> The resulting legislation, although rife with loopholes that some landlords exploited during implementation,<sup>264</sup> has largely succeeded in "keeping a check on concentration of land in the hands of a few."<sup>265</sup> Both levels of reform paved the way for the use of the land *purchase* (rather than rental)

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Communities Through Just Agrarian Reforms and Rural Development" p. 16

<sup>258</sup> R.S. Deshpande 6, *Current Land Policy Issues in India*, FAO/World Bank, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES, SPECIAL EDITION, Vol. 3 (2003)

<sup>259</sup> R.S. Deshpande 6, *Current Land Policy Issues in India*, FAO/World Bank, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES, SPECIAL EDITION, Vol. 3 (2003)

<sup>260</sup> R.S. Deshpande 6, *Current Land Policy Issues in India*, FAO/World Bank, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES, SPECIAL EDITION, Vol. 3 (2003)

<sup>261</sup> Tim Hanstad, Robin Nielsen and Jennifer Brown Rural Development Institute (RDI) p. 9, *Land and Livelihoods: Making Land Rights Real for India's Rural Poor*, USA May 2004 LSP Working Paper 12

<sup>262</sup> Tim Hanstad, Robin Nielsen and Jennifer Brown Rural Development Institute (RDI) p. 9, *Land and Livelihoods: Making Land Rights Real for India's Rural Poor*, USA May 2004 LSP Working Paper 12

<sup>263</sup> R.S. Deshpande 10, *Current Land Policy Issues in India*, FAO/World Bank, Land Reform: Land Settlement and Cooperatives, Special Edition, Vol. 3 (2003)

<sup>264</sup> R.S. Deshpande 10, *Current Land Policy Issues in India*, FAO/World Bank, Land Reform: Land Settlement and Cooperatives, Special Edition, Vol. 3 (2003)

<sup>265</sup> R.S. Deshpande 10, *Current Land Policy Issues in India*, FAO/World Bank, Land Reform: Land Settlement and Cooperatives, Special Edition, Vol. 3 (2003)

market as a way to assist farmers in obtaining ownership access to land. Small purchase programs were formed in states such as Andhra Pradesh, which for at least 20 years has allowed landless beneficiaries to purchase up to two acres of dryland through a combination of grants and credit.<sup>266</sup> These land reform laws therefore directly facilitated a new community of dryland farmers.

### 6.1.2.2 *The Elements of the Partnership*

The PPP formed between ICRISAT, Rusni Distilleries and AAI represented a pro-food security bioenergy project which was facilitated by the Indian tenancy and ceiling reforms that created this new community of dryland farmers. The public component of the partnership is the Indian government, which is a partner with the Agri-business Incubator (ABI) of the nonprofit international research organization ICRISAT.<sup>267</sup> The ABI is an initiative that supports entrepreneurs with agricultural technology, business consultancy, and necessary infrastructure.<sup>268</sup> The private component of the partnership is Rusni Distilleries Ltd, a start-up company which sought to manufacture ethanol (a *biofuel*) from the agriculturally based raw material of sweet sorghum.

Although ABI-ICRISAT and Rusni Distilleries formed the basic public-private framework for the partnership, another organization, Aakruthi Agricultural Associates of India (AAI), was a vital component in ensuring that the PPP was actually implemented properly. The AAI is a grassroots organization composed of agricultural professionals that seek to bridge the gap between research organizations (such as ICRISAT) and local farmers in Indian communities.<sup>269</sup> This PPP is therefore a primarily locally-driven partnership because of the direct interaction between the public and private components and the local population.

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<sup>266</sup> See Tim Hanstad, Robin Nielsen and Jennifer Brown Rural Development Institute (RDI) p. 9, *Land and Livelihoods: Making Land Rights Real for India's Rural Poor*, USA May 2004 LSP Working Paper 12

<sup>267</sup> See generally ICRISAT website, [www.icrisat.org](http://www.icrisat.org)

<sup>268</sup> "Agribusiness Incubator, Creating Opportunities for ICRISAT", at [www.abiicrisat.org](http://www.abiicrisat.org)

<sup>269</sup> [www.dgroups.org](http://www.dgroups.org)

### 6.1.2.3 How does this PPP Function?

Rusni Distilleries holds a patent for a new way of producing ethanol from the sweet sorghum plant. Sweet sorghum is a useful and intriguing plant in the bioenergy industry because it can be grown in short periods, with low maintenance costs, and can be grown on marginalized areas such as dryland.<sup>270</sup> Rusni sought a way to use their patent in such a way that would contribute to the biofuel revolution while at the same time not compromising local food security. It found its answer in ICRISAT's ABI, which formed a legally-binding partnership agreement with Rusni to create a distillery that was the first to commercially produce ethanol from sweet sorghum.<sup>271</sup> The ABI contributed crucial components to the partnership, such as agro-technology support that helped served as a basis for further ethanol production. Additionally, ABI provided business support to Rusni by (1) obtaining government clearance from Andhra Pradesh for large-scale ethanol production; (2) assisting the company in obtaining equity investments, and (3) providing agricultural land for seed production.<sup>272</sup> In essence, the ABI commercialized the sweet sorghum to ethanol concept to the government of Andhra Pradesh and facilitated its eventual production.

AAI provided a crucial link to the partnership, since they facilitated the connection between the partnership and dryland farmers in Andhra Pradesh. AAI identified those farmers that would be interested in planting the sweet sorghum. These interested dryland farmers would receive the improved sorghum seeds from the ICRISAT-Rusni partnership and plant and harvest them. The PPP also helped these farmers in marketing their produce locally.<sup>273</sup> A subsequent mechanism was designed to collect the parts of the sorghum plant that would be used for ethanol production (the stalk) and eventually

transported to the ethanol distillery for ethanol production.<sup>274</sup>

### 6.1.2.4 How Does this Bioenergy Partnership Fit into the Land, PPP, and Food Security Framework ?

The ICRISAT-Rusni-AAI PPP, as mentioned above, essentially uses sweet sorghum for commercial ethanol production. Sweet sorghum is viewed as a pro-food security crop in the context of bioenergy because the plant can serve a dual purpose—it can be used both for bioenergy and food production. While the stalk of sweet sorghum produces juice that can be used to produce ethanol biofuel, the leftover grains can be used for food production.<sup>275</sup> Therefore, rather than using other bioenergy crops that can displace food crops on agriculturally fertile land, sweet sorghum cultivation will not reduce land availability and local access to food.<sup>276</sup>

The land reforms, specifically in the areas of tenancy reforms and land ceilings, facilitated the growth of the dryland farmer population in states like Andhra Pradesh. In order to be ensured food security in the context of the bioenergy phenomenon, these farmers would have to be involved in a positive way that would allow them to both farm and generate enough income and food for their own households. Sweet sorghum is an ideal crop to cultivate for dryland farmers, mainly because they do not require much water, can withstand stress and are inexpensive to cultivate.<sup>277</sup> By providing sorghum seeds to these dryland farmers and buying back the stalk for their ethanol production, the ICRISAT PPP has also created a mechanism whereby the farmers receive an income for what they produce, which has a positive affect on a farmer's ability to access food. Therefore, the dryland farmers, whose statuses were facilitated by Indian tenancy and ceiling reforms, were positively benefited by a bioenergy PPP in a unique

<sup>270</sup> ICRISAT, *Sweet Sorghum: Food, Feed, Fodder and Fuel Crop*, 2006 p. 4, available at [www.icrisat.org](http://www.icrisat.org)

<sup>271</sup> See CGIAR News, June 2007, available at [www.cgiar.org](http://www.cgiar.org)

<sup>272</sup> *Sweet Sorghum: Food, Feed, Fodder and Fuel Crop*, p. 4

<sup>273</sup> "Global Research Body to Promote Bio-Fuels in India," The Indian Express Online Media Ltd.; The Financial Times Limited, September 1, 2007

<sup>274</sup> "Ethanol from sweet sorghum does not compromise food security", available at [www.icrisat.org](http://www.icrisat.org)

<sup>275</sup> *Sweet Sorghum: Food, Feed, Fodder and Fuel Crop*, p. 4

<sup>276</sup> India PR Wire, Press Release, "Sorghum Cultivation Can Provide Ethanol and Food, Say Scientists," available at [www.indiaprwire.com](http://www.indiaprwire.com)

<sup>277</sup> "Sorghum cultivation can provide ethanol and food, say scientists" India PR Wire, March 15 2007, at [www.indiaprwire.com](http://www.indiaprwire.com)



way that actually promoted food security. The overall goal of the PPP is to cover at least 4000 acres of dryland<sup>278</sup> and to engage at least 3200 dryland farmers.<sup>279</sup>

## VII. CONCLUSION

Public-private partnerships are viewed as the wave of the future in ensuring that the sustainable development goals of our time are achieved. Nations took on a pledge during the World Summit on Sustainable Development to invite all members of society, including the private sector, to aid in meeting new challenges in this century. The protection and promotion of food security is one of the sustainable development challenges that must be met in a world that is increasing in population but not in resources.

### 7.1 Overall Recommendations Gleaned From the PPP Case Studies

#### 7.1.1 Recommendations for the Legal Structure of PPPs

The two case studies presented above provide guidance as to how PPPs should be structured to maximize the promotion of food security. The legal structure of the PPP must be monitored because differing public-private arrangements must be appropriately tailored to the country situation such that food security is adequately protected. The lessons that can be extracted from the PPP case studies can be divided into a non-exhaustive list of dos and don'ts that can be used by both national lawmakers and the private sector in forming pro-food security PPPs.

In the context of the promotion of food security, the positive lessons garnered from the case studies above are (1) the need for the proper contracting out of public services when a government decides to involve the private sector (to prevent against collusion and corruption); (2) the decentralization of public authority to state and municipal branches to more readily facilitate private collaboration; (3) considering international research organizations (such as ICRISAT) as partners in the PPP framework through

<sup>278</sup> [www.justbelowthesurface.com](http://www.justbelowthesurface.com)

<sup>279</sup> "Pro-Poor Biofuels Outlook for Asia and Africa: ICRISAT's perspective (A Working Paper)", March 13 2007, available at [www.icrisat.org](http://www.icrisat.org)

research agreements and/or licensing agreements; and (4) promotion of local entrepreneurship and small business by incorporating local grassroots organizations into the PPP framework (i.e., tri-sectoral partnerships).<sup>280</sup>

The case studies also provide lessons on what to *avoid* in forming pro-food security PPPs. formed partnerships must not serve as a disguise for full privatization measures at the expense of engagement with the general public. Both the SARC-TSSARD and the ICRISAT PPPs are true public-private collaborations that feature ongoing public involvement in the private sector activities throughout the implementation of the project onto its conclusion. For example, the Philippine DAR used the private sector for both financing and the implementation of services to the country's farmer beneficiaries, and stayed involved throughout the implementation phase through joint collaborations in helping to provide technical support to the farmers. Under the ICRISAT PPP, although the Indian government was less involved in the implementation of the project, there were other measures put into place, such as the linking of a local grassroots organization (AAI), which ensured that the local population derived public benefits from the partnership.

#### 7.1.2 Land Law Framework Afterthoughts

An analysis of the legal issues surrounding pro-food security PPPs reveal that appropriate land law frameworks must be in place that both guarantee access to land, and ensure that effective land administration systems are in place to protect access. Such legal guarantees can provide the foundation to facilitate the creation of those PPPs which promote food security. The examples of the land reform initiatives undertaken in both the Philippines and in India reveal that laws which create the need for new beneficiary support services, or laws that create a new class of farmers, can provide avenues by which PPPs that promote food security can be formed. Although there are other laws that most likely also contributed to the

<sup>280</sup> Suezan C. Lee, *Public-Private Partnerships for Development: A Handbook for Business Committee for Economic Development and United States Agency for International Development*, July 2006 p. . 3, available at [www.ced.org/docs](http://www.ced.org/docs)



creation of these two PPPs (such as those related to private investment, tax, labor, and immigration), the proper land law framework is essential for a *pro-food security* PPP because land is directly implicated in any food security issue. Nothing reveals this

more vividly than the food versus fuel debate in the context of bioenergy. Therefore, while addressing issues of food security, PPPs should be considered as an option as long as the appropriate national land law exists within a country.

## REFERENCES

- Elizabeth Bennett, Peter Grohmann, Brad Gentry, *Public-Private Partnerships for the Urban Environment: Options and Issues*, United Nations Development Programme (UNDP)/Yale University 1999, available at [www.undp.org](http://www.undp.org)
- BiofuelWatch et al, *Agrofuels: Towards a Reality Check in Nine Key Areas* (June 2007) pg. 9, available at [www.corporateeurope.org](http://www.corporateeurope.org)
- Saturino Borrás, Jr., 2005. *Can Redistributive Reform be Achieved via Market-Based Voluntary Land Transfer Schemes? Evidence and Lessons from the Philippines*, JOURNAL OF DEVELOPMENT STUDIES, Vol. 41, No. 1
- John W. Bruce, et al, 2006. LAND LAW REFORM: ACHIEVING DEVELOPMENT POLICY OBJECTIVES. International Bank for Reconstruction and Development/The World Bank
- Consult for Woman and Land Rights and Action Aid International, 2006. *A Case Study on Implementing Land Rights for Women in India: Revitalizing Rural Communities Through Just Agrarian Reforms and Rural Development*, available at [www.icarrd.org](http://www.icarrd.org)
- Cotula, L. ed., 2006. *Changes in 'Customary' Land Tenure Systems in Africa*, FAO Livelihood Support Paper
- Deninger, K., 2003. LAND POLICIES FOR GROWTH AND POVERTY REDUCTION: A WORLD BANK POLICY RESEARCH REPORT, International Bank for Reconstruction and Development/The World Bank
- Deshpande, R. 2003. *Current Land Policy Issues in India*, FAO/World Bank, Land Reform: Land Settlement and Cooperatives, Special Edition, Vol. 3
- FAO, ROME, 2002. LAW AND SUSTAINABLE DEVELOPMENT SINCE RIO: LEGAL TRENDS IN AGRICULTURE AND NATURAL RESOURCE MANAGEMENT, pg. 205, LEGISLATIVE STUDY NO. 73.
- FAO/International Institute for Environment and Development, International Conference on Agrarian Reform and Rural Development, 2006. *Agrarian Reform in the Context of Food Sovereignty, the Right to Food and Cultural Diversity: Land, Territory and Dignity*, available at [www.icarrd.org](http://www.icarrd.org)
- FAO/International Institute for Environment and Development, International Conference on Agrarian Reform and Rural Development, 2006. *Land Security and Tenure in Ghana: Some Considerations for Improvement* ICCARD Paper, available at [www.icarrd.org](http://www.icarrd.org)
- FAO/International Institute for Environment and Development, International Conference on Agrarian Reform and Rural Development, 2006. *Policies and Practices for Securing and Improving Access to Land*, available at [www.icarrd.org](http://www.icarrd.org)
- FAO, Rome, 2002. The State of Food Insecurity in the World 2001, available at <ftp://ftp.fao.org/docrep>
- García, C. Tapia, 2004. *Land Reform in Namibia: Economic Versus Socio-Political Rationale* in LAND REFORM, LAND SETTLEMENT AND COOPERATIVES, FAO, Rome, available at <ftp://ftp.fao.org/docrep>
- Government of Nepal, 2006. *Agrarian Reform and Rural Development in Nepal Executive Summary, ICCARD Country Study*, available at [www.icarrd.org](http://www.icarrd.org)
- Guardian, E.A., 2003. *Impact of access to land on food security and poverty: the case of Philippine agrarian reform* in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES, available at [www.fao.org/docrep](http://www.fao.org/docrep)
- Hanstad, T., Nielsen, R. and Brown, J., 2004. *Land and Livelihoods: Making Land Rights Real for India's Rural Poor*, FAO Livelihood Support Programme Working Paper 12
- Hazell, P. and Pauchari, R.K. ed., 2006. *Bioenergy and Agriculture: Promises and Challenges*, Brief 7 of 12 International Food Policy Research Institute, available at [www.ifpri.org](http://www.ifpri.org)

- Hunter, J. ed., 2004. *Who Should Own the Land? Analyses and Views on Land Reform and the Land Question in Namibia and South Africa*. Namibia Institute for Democracy, available at <http://209.85.135.104>
- ICRISAT, 2006. *Sweet Sorghum: Food, Feed, Fodder and Fuel Crop*, available at [www.icrisat.org](http://www.icrisat.org)
- ICRISAT, 2007. *Pro-Poor Biofuels Outlook for Asia and Africa: ICRISAT's perspective (A Working Paper)*, available at [www.icrisat.org](http://www.icrisat.org)
- Jull, C., Carmona-Redondo, P., Mosoti, V., Vapnek, J., 2007. *Recent Trends in the Law and Policy of Bioenergy Production, Promotion, and Use*, FAO Legal Papers Online #68, available at [www.fao.org/legal](http://www.fao.org/legal)
- Karezai, S., 2004. *Traditional Biomass Energy: Improving Its Use and Moving to Modern Energy Use; Thematic Background Paper Presented at International Conference of Renewable Energies*, available at [www.renewables2004.de](http://www.renewables2004.de)
- Lee, S., 2006. *Public-Private Partnerships for Development: A Handbook for Business Committee for Economic Development and United States Agency for International Development*, available at [www.ced.org](http://www.ced.org)
- Lourie, M., 2001. *Participation of Stakeholders in Developing Agrarian Reform Communities in the Philippines* available at [www.fao.org/docrep](http://www.fao.org/docrep)
- NEPAD Secretariat, *Implementing the Comprehensive Africa Agricultural Development Programme and Restoring Food Security in Africa*, African Union/NEPAD, 2005, available at [www.nepad.org](http://www.nepad.org)
- Nichols, S., J. Riddell and P. Toselli, 1999. *Land reform and administration with private-public sector partnerships: lessons from the Black Sea region*, published by Sustainable Development Department FAO, available at <ftp://ftp.fao.org/sd>
- Nyberg, J. and Raney, T., 2007. *Food Security Concept Note. First FAO Technical Consultation on Bioenergy and Food Security*, available at <http://faointb3.fao.org/development>
- Overchuk, A.L., 2003. *Integrated approach to land policy, development of land administration institutions and land market in the Russian Federation*, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES, available at [www.fao.org/docrep](http://www.fao.org/docrep)
- Quadros, M.C., 2003. *Current Land Policy Issues in Mozambique*, in LAND REFORM: LAND SETTLEMENT AND COOPERATIVES, available at [www.fao.org/docrep](http://www.fao.org/docrep)
- Quan, J., 2006. *Land Access in the 21<sup>st</sup> Century: Issues, Trends, Linkages and Policy Options*, pg. 3 FAO Livelihood Support Paper 24.
- Republic of Namibia, Ministry of Lands and Resettlement, 2006. *Implementation of Land Tax on Commercial Agricultural Land in Namibia: A Case Study*, available at [www.icarrd.org](http://www.icarrd.org)
- Republic of the Philippines, Department of Agrarian Reform, 2006. *Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development*, available at [www.icarrd.org](http://www.icarrd.org)
- Richter, J., 2004. *Public-Private Partnerships for Health: A Trend With No Alternatives?* DEVELOPMENT 47(2)
- Schmidhuber, J., 2006. *Impact of an Increased Biomass Use on Agricultural Markets, Prices and Food Security: A Longer-Term Perspective*, available at [www.fao.org/es](http://www.fao.org/es)
- David J. Spielman and Klaus von Grebmer, *Public-Private Partnerships in Agricultural Research: An Analysis of Challenges Facing the Industry and the Consultative Group on Agricultural Research*, International Food Policy Research Institute January 2004 pg. 3, available at [www.ifpri.org](http://www.ifpri.org)
- Streets, J., 2005. *Waltz, Jazz, or Samba? The Contribution of Locally Driven Partnerships to Sustainable Development: A Discussion Paper*, available at [www.isn.ethz.ch](http://www.isn.ethz.ch)
- United Nations Conference on Trade and Development, 2006. *The Emerging Biofuels Market: Regulatory, Trade and Development Implications*, available at [www.unctad.org](http://www.unctad.org)

United Nations Development Programme/World Bank Energy Sector Management Assistance Programme, 2005. *Advancing Bioenergy for Sustainable Development: Guidelines for Policymakers and Investors*, Volume I pgs 2-4, , available at <http://wbln0018.worldbank.org>

United Nations Economic and Social Council, 1996. United Nations Committee on New and Renewable Sources of Energy and on Energy for Development, Report on the second session, available at [www.un.org](http://www.un.org)

United Nations-Energy, 2005. *Energy Challenge for Millennium Development Goals*, available at [www.undp.org](http://www.undp.org)

United Nations Special Rapporteur on the Right to Food, 2007. *Report of the United Nations Special Rapporteur on the Right to Food*, U.N. GAOR, 62nd Sess., Supp. No. 289, U.N. Doc A/62/289, available at [www.righttofood.org](http://www.righttofood.org)

United Nations World Summit for Sustainable Development WEHAB Working Group, *A Framework for Action on Agriculture*, August 2002, available at [www.iisd.ca](http://www.iisd.ca)

Valletta, W., 2000. *Completing the Transition: Lithuania Nears the End of Its Land Restitution and Reform Program*, FAO Legal Papers Online #11, available at [www.fao.org/legal](http://www.fao.org/legal)

Valletta, W., 2002. *The agricultural land (share) lease in Ukraine as an instrument for reconsolidation of farm Operations*, available at [www.fao.org/docrep](http://www.fao.org/docrep)

Valletta, W. and Volodimir Nosick, 2002. *Ukraine: The Continuing Dilemma of Land Rights of the People*, FAO Legal Papers Online #25, available at [www.fao.org/legal](http://www.fao.org/legal)

Vernon R.N. Chinene, Fabian Maimbo, Diana J. Banda, Stemon C. Msune, 1998. *A Comparison of Customary and Leasehold Tenure: Agriculture and Development in Zambia*, available at <ftp://ftp.fao.org/sd>

## LEGAL INSTRUMENTS CITED

### INTERNATIONAL

Agenda 21, UN Department of Economic and Social Affairs, Division of Sustainable Development, Documents, *available at* [www.un.org/esa](http://www.un.org/esa)

Bali Guiding Principles Partnerships for Sustainable Development, *available at* [www.un.org/esa](http://www.un.org/esa)

CSD 11 Guidelines: The Implementation Track for Agenda 21 and the Johannesburg Plan of Implementation: Future Programme, Organisation and Methods of Work of the Commission on Sustainable Development *available at* [www.un.org/esa](http://www.un.org/esa)

FAO, Rome, 2002. Declaration of the World Food Summit: Five Years Later, *available at* [www.fao.org/docrep](http://www.fao.org/docrep)

FAO, Rome, 1996. Rome Declaration on World Food Security, *available at* [www.fao.org/docrep](http://www.fao.org/docrep)

FAO, Rome, 2005. The Right to Food Voluntary Guidelines, *available at* <ftp://ftp.fao.org/docrep>

FAO, Rome, 1996. World Food Summit Plan of Action, *available at* [www.fao.org/docrep](http://www.fao.org/docrep)

GA Resolution A/RES/56/76, U.N. GAOR, 55th Sess., Supp. No. 76, *available at* <http://daccessdds.un.org>

International Covenant on Economic, Social and Cultural Rights (New York, 16 Dec. 1966) 993 U.N.T.S. 3, entered into force 3 Jan. 1976, *available at* [www.unhchr.ch](http://www.unhchr.ch)

Johannesburg Declaration of the World Summit on Sustainable Development, *available at* [www.un.org/esa](http://www.un.org/esa)

Plan of Implementation of the World Summit on Sustainable Development, *available at* [www.un.org/esa](http://www.un.org/esa)

United Nations Millennium Declaration, *available at* [www.un.org/millennium](http://www.un.org/millennium)

United Nations Report of the International Conference on Financing for Development A/CONF.198/11 (March 2002) (Monterrey Consensus), *available at* <http://daccessdds.un.org>

Universal Declaration of Human Rights, (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948), *available at* [www.un.org](http://www.un.org)

### REGIONAL

European Union Green Paper on public-private partnerships and Community law on public contracts and concessions, 2004, *available at* <http://eur-lex.europa.eu>

The New Partnership for Africa's Development Framework, 2001, *available at* [www.nepad.org](http://www.nepad.org) (NEPAD Framework)

United Nations Economic Commission for Europe Land Administration Guidelines: With Special Reference to Countries in Transition, 1996 (UNECE Guidelines)



**NATIONAL**

Namibia Agricultural (Commercial) Land Reform Act, 1995, *available in* FAOLEX

Namibia Agricultural (Communal) Land Reform Act No. 5 of 2002, *available in* FAOLEX

Philippines, Republic Act No. 6657. 10 June 1988, *available in* FAOLEX

FAOLEX: <http://faolex.fao.org/faolex/index.htm>