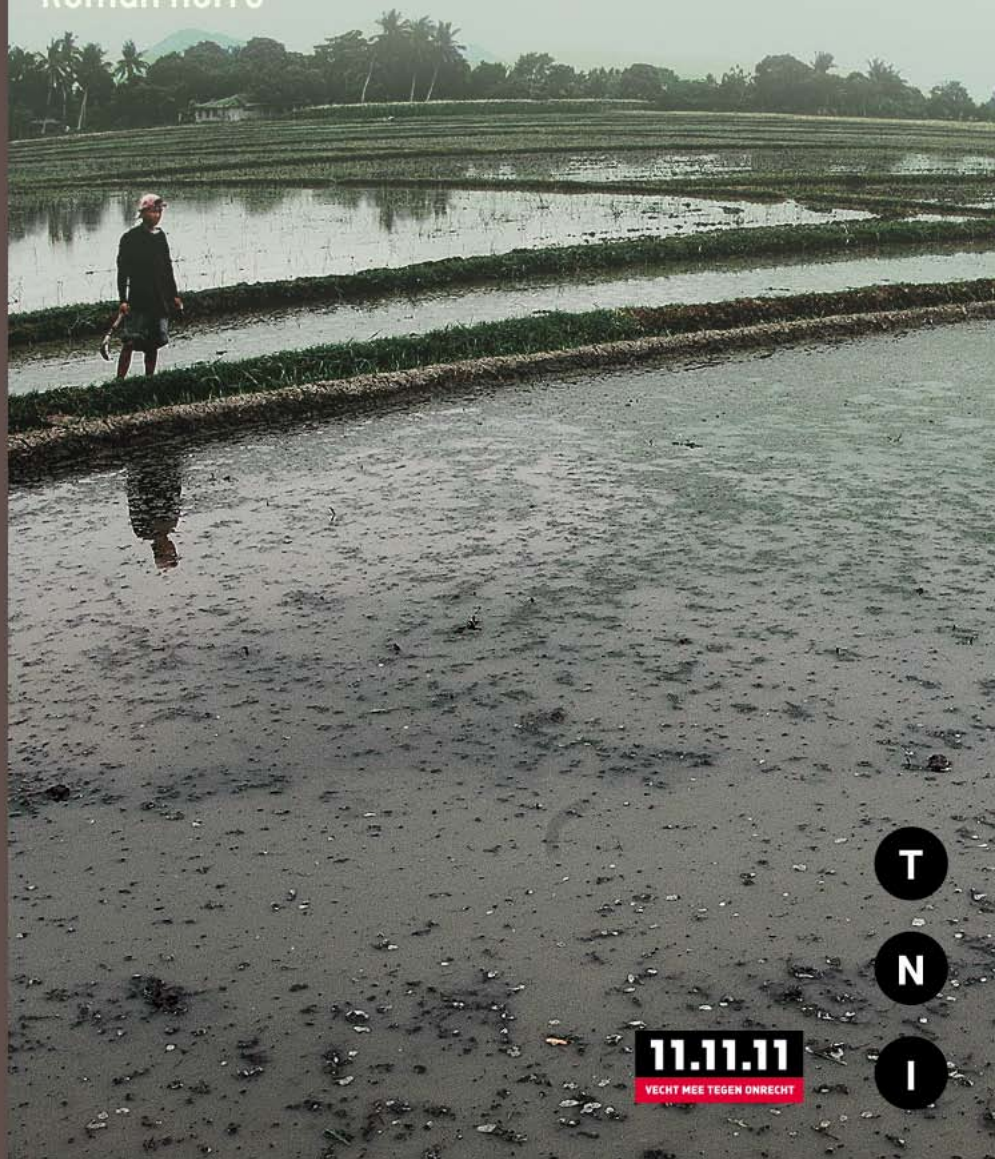


Land Policy Series 5

# Germany's Official Development Assistance in Land Policies

Roman Herre



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Amsterdam, September 2009

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Roman Herre

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## Summary

The official development assistance (ODA) of the German government's development cooperation (DC) is the fifth largest in the world. In the first decades after World War II land policy was a neglected field of DC. This changed sharply in the mid-1990s: the German DC has since become actively involved in land policy issues in more than 20 countries around the world. It is also an important actor in multilateral land policymaking. This paper focuses on the Ministry of Economic Cooperation and Development (BMZ), the technical cooperation arm (GTZ) and the financial cooperation (KfW) as the three key actors in the German development cooperation. The official aim of the German land policy is purportedly to effect poverty reduction. The expression of this policy is the commitment and support to technical land administration and management (e.g. titling, registration, cadastre, land markets). Engagement in redistributive land policies like land reform is almost non-existent. Altogether, the actual focus on land administration and technical approaches is generally blind to the political dimension of land policies. A neglect of political issues – equity issues, redistribution, meaningful participation, human rights – is unlikely to lead to any significant positive impact on the rural poor in developing countries worldwide.

## 1. Introduction

The German development cooperation (henceforth, ‘German DC’ for short) is significant in the development aid community. With an annual average budget of US\$7 billion during the last five years, Germany is one of the five top donor countries.<sup>1</sup> The bilateral development aid accounts for about 60 to 70 percent of the total German development aid. This makes the German DC a relevant actor to take a closer look at in terms of its land policy. This paper focuses on the German bilateral DC and will exclude the German involvement in the land policymaking in multilateral agency community. Tentative findings will be put forward, and new questions asked. We hope this paper will open up a more critical re-examination of the German DC in the context of land policymaking today and in the future.

The methodology employed in this study consists of two parts. The first part can be called an ‘inside perspective’. It examines the official objectives and claims of the German government. These objectives partly form the institutional normative frame for Germany’s land policy in development cooperation. The method can help us assess how coherent policy and practice have been. The second part is an ‘outside perspective’.<sup>2</sup> It puts the ‘human right to food’ and its implications vis-à-vis the policies and activities at the German DC. Why this approach? Germany is a signatory to the main conventions in international human rights law, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), which contains the right to food (OHCHR, 1976). In particular, guideline 2 and 8 set the frame for a human rights assessment of German land policies.

The paper asks the following key questions: whether and how the land policies promoted and supported by the German DC focus on the needs of the poor; whether such policies protect and increase the poor’s access to land; and whether and how and to what extent the ‘human right to food’ is in the policies.

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<sup>1</sup> OECD DAC 2007 German Development Cooperation 2006

<sup>2</sup> Outside refers to an assessment that includes other normative frames like the UN human rights system.

## 2. German land policy in historical overview

The Federal Ministry of Economic Cooperation and Development (BMZ) was founded in 1961. However, the German bilateral DC in the agricultural sector had started earlier, in the mid-1950s. Between 1956 and 1963, Germany supported 170 projects in 57 developing countries in the agricultural sector. This comprises one-fifth of all technical assistance projects during this period. Emphasis was on consultation, information transfer and planning of projects, mainly in the water sector, agricultural cultivation and enhancing of protein production. The financial assistance for projects in the agricultural sector amounted to 15 percent of the total volume of the German bilateral financial assistance.<sup>3</sup> During the first decade of the German DC, the agricultural sector was mainly subordinated to the industrial sector. The basic conditions for a sustainable and effective agricultural development like price and commercial policy, services, cooperatives, agricultural innovations and the agrarian constitution (Agrarverfassung) did not feature significantly during this period.<sup>4</sup> The outcome of this early German DC was not very encouraging. This prompted the former Minister of Economic Cooperation and Development, Walter Scheel, to comment that any assistance concerning the agricultural sector has to be, first and foremost, assistance to implement agrarian reform in its broadest sense.<sup>5</sup> Unfortunately, this would not gain any traction in the subsequent period and for a long time in the German DC.

The agriculture sector gained importance within the German DC beginning in the mid-1960s. The framework was more on instigating growth in agriculture, rather than reforming existing inequitable agrarian structures. This will be in line with the Green Revolution. Better-off farmers have benefited more from the Green Revolution than poor peasants have. This means that the development aid support to the Green Revolution had supported the relatively well-off farming sectors in developing countries rather than poor peasants and landless rural labourers. In 1975, the German government concluded that the Green Revolution was a success in many developing countries, although pointing out that it did not restructure

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<sup>3</sup> see: Kappenstein, Ludwig: Formen und Möglichkeiten der Entwicklungshilfe im landwirtschaftlichen Bereich. Agrarhilfe durch die Bundesrepublik Deutschland, in: Politische Akademie Eichholz e.V. (ed.): Agrarreformen in Entwicklungsländern, Bonn 1964, p. 62-74

<sup>4</sup> see: Brandt, Hartmut/Otzen, Uwe: Armutsorientierte landwirtschaftliche und ländliche Entwicklung, Baden-Baden 2004, p. 88

<sup>5</sup> see: Politische Akademie Eichholz e.V. (Hrsg.): Agrarreformen, p. 12

social relations that largely underpinned poverty. This justified the German government's official support for agrarian reform,<sup>6</sup> a policy statement made four years earlier.<sup>7</sup> Nevertheless, the above-mentioned *Third Report on Germany's Development Policies* of 1975 primarily focused on policies to increase agricultural production. It had a stronger focus on small-scale farmers.<sup>8</sup> In 1979, the Advisory Council of the BMZ took the position giving advantage to industrial agriculture, heavy infrastructure and increase of production. It prioritised highly productive commercial farms assuming that "trickle-down-effect" theory will work.<sup>9</sup> But the Advisory Council also emphasised the need for land redistribution in the context of poverty reduction.<sup>10</sup>

The 1980 *Fourth Report on Germany's Development Policies* marks a clear shift in Germany's DC. This was the onset of neoliberal reforms. The German DC identified the reasons for hunger in many developing countries as linked to national policies focused on protection of national markets, wasteful state subsidies, and related price distortions that favour the urban sectors. This was the prelude to and beginning of the structural adjustment programmes.<sup>11</sup> Land reform was dropped from the official agenda. There was no more mention of it. The DC agenda reverted to its productivist discourse and economic growth assumption, combined with the kind of food aid that dominated the world scene during this period.<sup>12</sup>

The Fifth Report is characterised by the *basic-needs* approach, mainly relying on the statements already made by the Advisory Council in 1979.<sup>13</sup> The priority of the development policies, the DC claimed, is to be through poverty reduction through economic and social reforms, mainly through economic growth. According to this particular report, 'rural development' is one of three priority

6 see: Die entwicklungspolitische Konzeption der Bundesrepublik Deutschland von 1975, in: Dritter Bericht zur Entwicklungspolitik der Bundesregierung vom 14.11.1975, Anlage 3

7 see: Bundesministerium für wirtschaftliche Zusammenarbeit: Die entwicklungspolitische Konzeption der Bundesrepublik Deutschland und die Internationale Strategie für die Zweite Entwicklungsdekade, Bonn 1971, p. 13

8 see: Dritter Bericht zur Entwicklungspolitik der Bundesregierung vom 14.11.1975, p. 37

9 see: Wissenschaftlicher Beirat beim Bundesministerium für wirtschaftliche Zusammenarbeit: Möglichkeiten und Grenzen der Kooperation der Bundesrepublik Deutschland mit Entwicklungsländern auf dem Gebiet der ländlichen Entwicklung Das Konzept der integrierten ländlichen Entwicklung, Bonn 1979, p. 91/92

10 cited: *ibid.*, p. 41

11 cited: Vierter Entwicklungspolitischer Bericht der Bundesregierung vom 21.01.1980, p. 10

12 see: *ibid.*, p. 58

13 Fünfter Entwicklungspolitischer Bericht der Bundesregierung vom 23.02.1983



areas of the German DC. The concrete measures were directly aimed at satisfying the minimum human requirements: food, clothing and shelter, and providing essential public services.<sup>14</sup> In the subsequent Reports (1988 and 1990), German DC policy was generally characterized by what they label as the ‘integrated rural development’. It is, in essence, a repackaged ‘basic needs’ approach. Rural development was a significant feature of the reports during this period. Poverty should be reduced primarily through supporting the people to feed themselves. In the 1990 Report, for the first time since the 1970s, the issue of ‘clear land rights’ and long-term tenancy rights came to the forefront of the official German development cooperation agenda.<sup>15</sup>

It was in the 1992 German DC Report that gave the clearest signal about the DC’s changing attitude towards land policies. It was obvious that despite the intermittent mention of land reform in various German DC Reports since the 1960s, there was no real, concrete support for concrete land policy projects. The 1992 assessment of the BMZ Advisory Council pointed out in a very strongly worded formulation that, after 30 years of development cooperation the German DC had realised that it is impossible to support sustainable rural development amidst prevailing quasi-feudal land tenure relations.<sup>16</sup> Therefore, the Advisory Council recommended that above all the German DC had to actively support the implementation of agrarian reforms. The Advisory Council was critical to the point that it even recommended ceasing cooperation with and development assistance to nation-states that do not implement land reforms.<sup>17</sup>

Overall, as well as from 1960 to the early 1990s, land reform featured in the official discourses of the German DC. It would disappear at times, but only to be resurrected at other times. There is no evidence to suggest, however, that any significant projects on land reform were funded by the German DC during this period.

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14 see: *ibid.*, S. 74

15 see: Sechster Bericht zur Entwicklungspolitik der Bundesregierung vom 31.05.1990 / Siebenter Bericht zur Entwicklungspolitik der Bundesregierung vom 16.03.1988 / Achter Bericht zur Entwicklungspolitik der Bundesregierung vom 31.05.1990/ Konzept zur Förderung der Ländlichen Entwicklung, in: BMZ Materialien Nr. 81, Bonn 1988, p. 19-27

16 see: Wissenschaftlicher Beirat beim Bundesminister für wirtschaftliche Zusammenarbeit: Grundsätze und Schwerpunkte der deutschen Entwicklungszusammenarbeit in den 90er Jahren (Band 102), Köln 1992, p. 136

17 see: Wissenschaftlicher Beirat beim Bundesminister für wirtschaftliche Zusammenarbeit: Grundsätze und Schwerpunkte der deutschen Entwicklungszusammenarbeit in den 90er Jahren (Band 102), Köln 1992, p. 154

In the mid-1990s, the German DC would make significant adjustments in its framework: it would explicitly identify factors like land tenure and tenancy systems as determinants of hunger and poverty. However, despite its more explicit engagement with land issues and their intersection with poverty, redistributive land reforms or agrarian reforms would no longer be mentioned in any of its major documents and regular reports. The broad framing is on social policy reforms and environmental dimension of poverty: education, environment and poverty reduction.

## 2.1 BILATERAL DEVELOPMENT COOPERATION

Organisation for Economic Co-operation and Development (OECD) figures show that the proportion of the German DC bilateral official development assistance fund has been slowly declining over the last 20 years, although it remains important within the overall German DC, at approximately 65 percent of total DC funds.<sup>18</sup> At a practical level, the BMZ has three implementing agencies: *Deutsche Gesellschaft für Technische Zusammenarbeit* (GTZ), which is responsible for technical assistance, *KfW Entwicklungsbank* (KfW Development Bank) for financial assistance, and the *Deutscher Entwicklungsdienst* (DED – German Development Service), a cooperation service for personnel cooperation.<sup>19</sup> The BMZ maintains its role in DC policymaking.

Since 2000, the German DC has been undergoing some organisational restructuring. The BMZ has introduced a new set of guidelines for its international engagement. One objective is to rationalise its scope, hence, the existence of two categories where assistance will be focussed on: *selected partner countries* (*Partnerländer*) and *priority partner countries* (*Schwerpunktpartnerländer*). This reorganisation reduced the number of countries receiving the German DC fund, from around 120 up to 1999 to 57 countries by 2008.<sup>20</sup> Focus areas for the German DC have been defined in the context of other bilateral agencies. As a general guideline, only one focal area in a partner country is selected, while in a priority partner country three focal areas for development cooperation are defined. These focal areas are embedded in country strategies. The priority areas and strategies are linked and

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18 OECD DAC 2005 Prüfbericht über die EZ Deutschland p.93

19 There are multiple other organisations like InWent or CIM but these are the most relevant ones.

20 The formulated aim in 2000 was to reduce the number to 60 countries (see: BMZ 2005 Zwölfter Bericht zur Entwicklungspolitik der Bundesregierung p. 121). The new country list of February 2008 detailing 57 countries (See: <http://www.bmz.de/en/principles/aims/index.html>)

laid out by *priority area strategy papers* (*Schwerpunktstrategiepapiere* SSP). These papers are binding for all implementing organisations (GTZ, KfW and DED). Along the lines of the Paris Declaration, the overall framework for these strategies is supposed to be provided by the policies of national governments, usually a Poverty Reduction Strategy Paper (PRSP).<sup>21</sup> The formulated priorities in the latter are supposed to form the basis for the German DC with the partner country. The institutional restructuring, together with a narrow definition of ‘co-ownership’ (only meant to be ‘governmental co-ownership’), would influence policy and project implementation in some major ways. The Paris-Declaration notion of ‘co-ownership’ is often used as a convenient reason to justify why the BMZ is not actively engaged in rural development. The BMZ usually argues that the national governments in question choose the focal areas, BMZ just follows; and that it happens that national governments rarely favour rural development or land reform as a field of cooperation. However, the reality is not as simple as BMZ suggests. We will see that there are cases where bilateral and multilateral agencies do indicate to national governments what kinds of projects they prefer to fund or not. It is not an apolitical setting where national governments chart their own focal areas for cooperation in a process completely detached from the bilateral and multilateral aid community. It is also not the case that bilateral and multilateral aid agencies are innocent actors that they just for orders from national governments. The reality of overseas aid partnership is far more politically dynamic and complicated than what is being suggested, as will be demonstrated in the rest of the paper.

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21 *ibid* p.121

### 3. Land policy in German development cooperation

#### 3.1 THE NORMATIVE FRAME FOR LAND POLICY

As described earlier, all implementing organisations (GTZ, KfW and DED) are bound to the broad policy framework set by the BMZ. Thus, the BMZ will be an important subject of this paper. Unlike the development cooperation ministries of other countries (e.g. UK's Department for International Development<sup>22</sup>), the German BMZ has no specific policy paper on land. Land policies in the German DC are embedded in multiple key policy papers.

The BMZ's *Programme of Action 2015* addresses the United Nations Millennium Development Goals (MDGs) in reducing poverty worldwide. The BMZ has formulated ten priority areas of action to contribute towards reaching the international target of halving the proportion of people living in extreme poverty by 2015. The issue of equitable access to productive resources has been identified as a major component of the BMZ policy. The issue of access to productive resources by vulnerable groups (poor, women) is found in four out of the ten areas of action by BMZ. The first and the second areas of action actually directly address land reform. First priority area focuses on pro-poor growth. In order to foster the productive potential of the poor and ensure their fair share in the benefits of increased economic activity, the BMZ policy recommends measures to improve the poor's access to productive resources, including land reform.<sup>23</sup> Second priority area focuses directly on "realising the right to food and implementing agrarian reform".<sup>24</sup> The relation between poverty alleviation, the reduction of hunger and malnutrition in the rural areas and the reform of the legal system of landholding (long-term security of property or tenure and agrarian reform) are all explicitly declared. Moreover,

"The German government will give increased support to agrarian and land reform, by advocating such reform in its policy dialogue with the

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22 Refer to Craeynest, Lies, 2008. 'From rural livelihoods to agricultural growth The land policies of the UK Department of International Development'. TNI Land Policy Series 4, Amsterdam: Transnational Institute.

23 „Eliminating gender-specific, ethnic and social exclusion, with the purpose of mitigating the unequal distribution of, and unequal access to, productive resources. This includes land reform...”

24 BMZ 2001 Poverty alleviation – a global task. Programme of Action 2015 p.19

governments of its partner countries. It will lend financial and advisory support, for example, to tenancy reforms, socially compatible distribution of land, and securing a legal basis for access to land/ land ownership, especially for women...<sup>25</sup>

This policy statement gives BMZ's programme a great potential for the generously funded German DC to be directly involved in pro-poor land policies.

The main reference for the sector of Rural Development is the paper *Rural Development: A Reference Framework*.<sup>26</sup> It is a formally binding programme directive by the BMZ. The principal concerns of Rural Development are poverty reduction and food security.<sup>27</sup> It has also identified human rights as part of its framework, particularly the right to food and the right to development.<sup>28</sup> Land and agrarian reforms are seen as a relevant instrument for equitable economic growth in the rural areas, but also as a helpful instrument for national food security policies. From these assumptions, two concrete fields of assistance have been identified:

- (1) Provide technical and legal advisory services for the review of national agricultural and food security policies.
- (2) Provide advice and assistance for the implementation of agrarian and land reform programmes.

### **3.2 THE BONN STATEMENT - A MULTI-STAKEHOLDER DOCUMENT**

A central paper that needs to be addressed is the *Bonn Statement on Access to Land*. The statement is the result of a BMZ-sponsored international conference held in Bonn in 2001. Around 125 representatives from civil society, social movements, women organisations, governments and international agencies had participated. It has no binding character, but the BMZ often refers to the key resolutions in the conference in its subsequent documents and policy statements.<sup>29</sup> The conference

<sup>25</sup> *ibid* p.20

<sup>26</sup> BMZ 2001 *Rural Development: A Reference Framework*. It replaces the related paper of 1988 Sector Concept *Rural Development*

<sup>27</sup> *ibid* p.13

<sup>28</sup> *ibid* p.9

<sup>29</sup> This is for example formulated in a letter from the Minister Wieczorek-Zeul to FIAN from June 12th 2002.

statement addresses a whole range of issues related to land reforms. Some of the highlights of this conference include: (i) agrarian reform must be a priority of bilateral [...] development co-operation; (ii) 'market assisted land reform' policies are insufficient instruments in the context of highly unequal societies and thus cannot replace redistributive agrarian reforms which expropriate, within the framework of the law, land from large landowners and redistribute these to poor peasants'; (iii) the need for transparent processes in land policies which can be achieved by involving local communities; and (iv) the promotion of organisations of marginalised groups to ensure their participation in rural development and agrarian reform processes. These are among the steps that are necessary to achieve pro-poor land policies. As already mentioned, the Bonn Declaration is not legally binding, but it is certainly influential to the thinking within BMZ and GTZ.

### 3.3 THE EUROPEAN LAND POLICY GUIDELINES

The BMZ does not have its own land policy. In situations that it needed to refer to a policy, it usually refers to the European Union Guidelines on Land Policies, which was passed and signed by the EU Council of Minister in November 2004.<sup>30</sup> It is therefore relevant to briefly look at the EU land policy. The EU Land Policy is divided into a policy part and an operational part. The following table summarises the EU land policy highlights related to four major issues, namely, human rights, land redistribution, land administration and participation.

Table 1 Highlights of the EU Land Policy Guidelines

Human Rights
3.0.1 Land tenure is at the heart of a number of rural development issues. Access to land is linked to some basic economic and social human rights, such as the right to food. <sup>31</sup>
3.2.1 While access to land is not recognised as a human right as such, it may be considered as a means to achieve fundamental human rights, as defined by international conventions.

<sup>30</sup> European Union (2004). EU Land Policy Guidelines, Brussels. Refer also to the Bergeret, P., 2008. 'EU Land Policy and the Right to Food'. *TNI Land Policy Papers Series 3*. Amsterdam: Transnational Institute (TNI) and Brussels: 11.11.11 Coalition of the North-South Movements.

<sup>31</sup> Emphasis by the author

## Land Redistribution

5.6 Land redistribution is a major issue wherever land rights are highly polarised and access is very unequal, land is under-used by large owners, or historical injustices are to be addressed. [...] Agrarian reform and land redistribution have long since been seen as a key issue for poverty alleviation and social justice.

5.6.3 Land redistribution is a clear policy choice where inefficient large farms co-exist with small farms and landlessness.

6.3.3.3 More specifically the EC and the EU Member States can strongly improve the impact of land policy reforms by jointly supporting national reform processes and, in particular, [among others] by [...] supporting land reform and land redistribution, in particular where high inequality persists.

## Land Administration

5.3.1 Land registration or titling was considered necessary to achieve security of rights, increase productivity, and access to credit, but experience shows that titles may be neither necessary nor sufficient to achieve these aims. [...] Informal land rights may not be insecure if they are locally recognised and not contested. Secondly, investment in land depends on favourable economic context, so changes in land rights alone may not make any difference. Moreover, programmes of land titling in a macroeconomic context that undermines the viability of smallholders can induce distress sales of land causing landlessness for many, land concentration and accumulation for few, resulting in increased poverty and inequality.

6.0.2 The system of [land] administration needs to be specially oriented towards ensuring that the rights of the poorer and less powerful groups are respected and confirmed since it is these groups that usually suffer during periods of growing land scarcity and land registration if land distribution is left to market forces alone.

6.3.1 Most of the time [donor's ...] support has been limited to promoting titling and land information systems, non-contentious activities believed to be technical, neutral and universal. This neutrality is only apparent, and this position often leads to choices unable to fit local realities, thus excluding the poor.

5.6.5 While market-led reforms avoid some of the risks and difficulties of forced acquisition and redistribution, the availability of land for sale and funding constraints greatly limit both the speed and impact of such reforms on the poor.

<b>Empowerment and Participation</b>	
5.7.4	Supporting the interest groups campaigning for reform can contribute to build ownership and political backing.
6.2.4	Organisations and movements of poor landless and land insecure people should be considered as primary stakeholders in policy development and implementation, and extra efforts (including resources) should be dedicated towards supporting their participation, in order to ensure that land policy reform brings about poverty reduction.
6.2.5	...alliances with autonomous peasant organisations...
6.2.6	...civil society groups and local communities [...] must also be closely involved in monitoring...

It is clarified in the EU Guidelines that: (1) access to land is a human rights issue, linked especially to the right to food, (2) land redistribution is a key issue to be addressed where access is highly polarized, (3) land administration (including titling and marked-led reforms) is reflected as an ambiguous policy choice with a potential to turn into an anti-poor policy of choice, and (4) for pro-poor land policies it is fundamental to support and strengthen the poor landless and land insecure people (their organisations and movements) in comprehensive participation processes (from policy development to the monitoring of results).

To summarise, the BMZ repeatedly expressed its commitment towards land policies focussing on the needs of the poor, enhancing their access to land (the latter as a central productive resource in the countryside of many developing countries). The link between land policies and ‘human right to food’ is generally, but a little bit vaguely, accepted. Land reform including redistribution of land within a legal frame is seen as one of the basic policy options. The importance of supporting poor landless and land insecure people and their organisations and movements are also pointed out. The German BMZ has no distinct land policy. Its land policy declarations are embedded in different policies. However, BMZ regularly refers to the EU Land Policy Guidelines and commits to it. Hence, despite some inconsistencies and incoherence, there is no doubt that officially and formally, the German government has committed itself to support pro-poor land policies, including redistributive land reforms in developing countries. However, whether and how and to what extent such formal policy statements and commitments are translated into reality is another story. We turn our discussion to this in the succeeding pages.



#### 4. Land policy at project and programme level

Budget for land reform programmes are traditionally included in the rural development sector. However, the budget for rural development has been significantly reduced over time. From 1990 to 2004, the budget for technical assistance in rural development was reduced by almost 50 percent.<sup>32</sup> Budget reduction for agriculture, fisheries and development-oriented food security has suffered even more. The budget for this cluster declined from € 222 million in 1997 to € 80 million in 2003, a percentage decline from 7.8 to 3.2 percent, respectively, of the total budget allocation.<sup>33</sup> The irony, of course, is that this significant decline started immediately after the World Food Summit in 1996 where national governments committed themselves to cut by half the number of hungry people by 2015. Moreover, the share of the agricultural sector in the overall official development assistance was 10.7 percent in 1998. It was cut to 3.9 percent<sup>34</sup> in the following year and further down to 2.7 percent in 2003. Again, it is ironic that the World Bank would later declare that by 2008 three out of every four poor people in the world are *rural* poor.

Meanwhile, land policies focussing on land administration and management are mainly included in the sectors such as ‘Other Multisectoral Activities’ and ‘Governance and Democracy’ (renamed in 2005 to ‘State and Civil Society’). In contrast to ‘rural development sector’, these sectors have been experiencing a ‘boom’. From 1996 to 2006, the budget for ‘Other Multisectoral Activities’ almost doubled from US\$ 219 million to US\$ 426 million, whilst the budget for ‘State and Civil Society’ for the same period had nearly quadrupled, from US\$ 184 million to US\$ 677 million.<sup>35</sup>

Therefore, the policy statements by BMZ around 2000 where the importance of rural development have been highlighted did not translate into significant budget allocations, or did not even protect the existing budget of this particular sector. This signals the shift towards projects that promote ‘technical and administrative efficiencies’, such as land administration and management

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32 From € 293 million in 1990 to € 152 million in 2004. AWZ Public Hearing on Rural Development in Bilateral Development Cooperation 4/20/2005

33 idib. 1996 was the peak value in the 1990ties

34 see: Bericht zur Entwicklungspolitik der Bundesregierung vom 07.06.2001, p. 208

35 see: OECD Stat at [http://stats.oecd.org/wbos/Index.aspx?DatasetCode=ODA\\_DONOR](http://stats.oecd.org/wbos/Index.aspx?DatasetCode=ODA_DONOR)

(mapping, cadastre, and so on). This will be a major defining feature of the contemporary German DC.

This division between technical and administrative issues in land policy and the more political agrarian reforms is not that sharp inside the implementing agency GTZ. At global level, both areas of work are subordinated to the broader framework of rural development sector. This sector used to have a Land Management unit. Since 1994, the unit has been institutionalised within GTZ, partly through the 'Sector Approach: Land Management'.<sup>36</sup> Between 1994 and 1997, this unit published around 20 studies - mainly country cases - on land policies. The aim of this assessment was to explore whether and where German DC could be an active partner in land policies. The central argument running through these studies essentially confirms that land rights and land tenure systems are the very basis for any land policy. This assessment process resulted in the comprehensive document 'Guiding Principles: Land Tenure in Development Cooperation'.<sup>37</sup> The implementation of the Sector Approach can be seen as the starting point for a policy framework for the German DC on land. The main tasks of the Sector Approach include pre-evaluation of possible engagements in land policy, Ministry consultations on land issues, the Ministry's representation in multilateral land policy processes, and the support of country-level land policies through its technical expertise. The aim is to promote and/or establish pro-poor land policy and land tenure issues as part of the development concepts in the partner countries.

Looking at the finance arm of the BMZ, the KfW's perspective on land reform can partly be seen in the seminar on *Land Right/ Land Tenure/ Land Reform - what can we contribute?*, organised in 2006.<sup>38</sup> Hans Aepli of the KfW believes that for a long time the German DC has neglected land policy, despite its significance in poverty reduction. Nevertheless, he does not agree that a stronger involvement in national agrarian reforms is needed. He assumes that national agrarian reforms often fail because of lack of political will at the national level. He recommends that KfW should withdraw from such nationwide efforts of agrarian reform and focus on local and decentralized approaches. Meanwhile, Michael Kirk, an expert on land policies often consulted by the German DC, concludes at the seminar, that 'technical solutions' are getting increasingly important along with land markets and land rental markets. Furthermore, he concludes that since the International Conference on Agrarian Reform and Rural Development (ICARRD), organised by UN's Food and

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36 Initial name Sector Project: Relevance of Land Tenure for Development Countries

37 GTZ 1997 Guiding Principles: Land Tenure in Development Cooperation

38 Seminar of the KfW in cooperation with the Gtz, 24th & 25th of October 2006, Frankfurt am Main

Agriculture Organisation (FAO) in 2006, the land reform debate has been stuck.<sup>39</sup> Given his influence within the German DC, we can treat his personal views as indicative of where the current thinking on land reform is within BMZ and GTZ.

It is also clear that there are significant differences of views from key actors between the various agencies in the German DC. While BMZ promotes pro-poor land policy, at least formally, the KfW categorically excludes state-led agrarian reforms, and refers mainly to market-led solutions. ‘Human rights-based approaches’ to land reforms and the issue of expropriation were completely absent in the discussion the KfW seminar. The German DC also neglected the ICARRD process, and this can perhaps partly be explained by the KfW way of thinking within the German DC, in contrast to the dominant views of ICARRD that highlight economic, social and cultural (ESC) rights as core elements in agrarian reforms.<sup>40</sup> Incoherence and inconsistency marks KfW’s attitude towards human rights and land policy. On one hand, KfW formally states that financial assistance projects help implement the Economic, Social and Cultural (ESC) human rights and that the agricultural sector is important for the realisation of the ‘human right to food’.<sup>41</sup> KfW also emphasises the fact that it pro-actively supports the implementation of the human rights through its projects.<sup>42</sup> On the other hand, the human rights approach disappears completely when the subject of discussion and concern is land policy.

#### 4.1 AN OVERVIEW OF PROJECTS AND PROGRAMMES

The following list of active projects between 2000 and 2005 are identified as relevant for the field of land policies. These are not ‘standalone’ land policies, but are embedded within broader projects in multiple sectors, like the ‘Natural Resource Management’, ‘Poverty Reduction’ or ‘Policy Reform’ sector. The list is not complete even for this period. The BMZ has not provided any complete list. Nevertheless, the snapshot list for this specific period can help provide a better idea of what kinds of land projects the German DC had supported, or might be supporting. The core data in table 2 is taken from the 2004 GTZ report *Bericht über die Projektvortschrittsprotokolle des Sektorprojekts*.

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39 Presentation of Michael Kirk at the KfW Seminar

40 See Final Declaration of the International Conference on Agrarian Reform and Rural Development 2006

41 KfW 2004 Förderung der Entwicklungsländer Menschenrechte

42 KfW Declaration on Human Rights, 28th December 2008

**Table 2 Country-based activities in land policy**

Country	Implementing Organisation	Project/Programme Title
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**AFRICA**

Ghana	KfW	Construction of a National Land Administration
	Gtz	Land Policy and Land Management
	Gtz	Improvement of Governance
Mali	Gtz	Assistance in Communal Land Management
	Gtz	Municipal Land Management
Namibia	Gtz	Assistance in Land Reform
	Gtz	Assistance in Land Reform
	KfW	Infrastructure for the Assistance of Land Reform
	DED	Capacity Building 'Landboards'
Benin	Gtz	Rural Land Plans
Lesotho	Gtz	Capacity Building for Land Management

**ASIA**

Cambodia	Gtz	Land Management
	Gtz	Land Management Project (Installation of Cadastre System)
	DED	Sector: Good Governance
Philippines	Gtz	Assistance of the Agrarian Reform
	Gtz	Support of the Bondoc Development Programme
	KfW	Support of the Bondoc Development Programme

43 <http://www.gtz.de/en/themen/laendliche-entwicklung/14741.htm>

Contribution		Partners/other donors	Key Issue/Key Words	Term
FKM (skilled labour months)	Euro			

	6 million	World Bank	Land administration	
	No data			2000-2003
	No data		Reform of legal-administrative framework	2003-2015
	No data			2001-2003
				2003-2010
				1999-2003
	€ 2.8 million	USAID, DfID	Administration/landboards	2003-2012
	€ 10 million		Infrastructure	2006-2012
	No data			?
	No data		Land map/ administration	?
6	€40,000			1999-2003

12	€75,000		Legal security and efficient administration <sup>43</sup>	1998-
	€ 3.5 million	World Bank multi-donor project (Land Management and Administration)	Cadastre/ land administration	2002-2008
	No data	GTZ/ DANIDA	Urban and regional planning	?
4	No data		Agrarian reform	2001-2003
	€ 9.26 million		Rural development	1990-2003
	€ 0.92 million		Rural development	1990-2003

East Timor	Gtz	-
Laos	Gtz	Land Titling Project II of WB and AusAID
Sri Lanka	Gtz	Beyond Emergency
Mongolia	Gtz	
	Gtz	Establishment of fiscal cadastre/ land management

## EASTERN EUROPE

Georgia	Gtz	Land Management
	Gtz	Land Management
	KfW	Cadastre and Land Register I +II
Romania	Gtz	Secure Property Rights and Land Management
	Gtz	Promoting the Land Registry System
Bulgaria	Gtz	
Serbia	Gtz	Land management/ Cadastre
	Gtz	Assistance in establishing a land registry system
Montenegro	Gtz	Municipal Land Management

<sup>44</sup> In the financial cooperation, the KfW was the leader of the donor consortium. KfW 2005 Introduction of Cadastre and Land Registration Brief project description sheet

1.25	€10,000	World Bank	Land policy for growth and poverty reduction in South and East Asia	?
2	€50,000	World Bank	Consultation of the WB	2003-2004
1.25	€15,000	World Bank	Consultation of the WB Possible interactions with WB "Land Titling and Related Services"	2003
1	€25,000		Project application: Cadastre 1,5 Mio. €	2003
	No data		Cadastre/ Administration	2005-2010

1	€18,000	World Bank, USAID and UNDP are also active in the area of cadastre and land registration <sup>44</sup>	Capacity building/ training of experts	2001-?
	No data		Survey and registration of properties	2000-2006
	€24.7 million			
2	€20,000		Consultancy Out of this measure the actual TC-project evolved	2002
	No data			?
0.5	No data	US\$37 million World Bank Project (2001-2009, Registration and Cadastre Project)	Construction of national land administration	2004-2005
	€2,000	Close link to the US\$ 30 million World Bank Project 'Real Estate Cadastre and Registration'	Cadastre/ land registry	?
	No data			?
	No data		Legal security and municipal planning and administration in regard to the use of land as a resource	2003-2008

Croatia	Gtz	Assistance at establishment of cadastre
	Gtz	Support in setting up a land registration system
Bosnia-Herzegovina	Gtz	Land Administration

Table 2 shows that the German DC was involved between 2000 and 2005 in land policy issues in at least 17 countries. Divided by regions, six projects are located in Asian countries, four in African countries, and seven in Eastern European countries. There was no mayor activity in Latin America and the Caribbean. Despite options for supporting land reforms in Latin America, the exclusion of the continent was not unintended within the GTZ. From 2000 to 2004, the specific regional focus of the Sector Approach had been Asia, Africa and Southeast Europe.<sup>46</sup>

In 13 out of 17 country cases, land administration is the single or major area of activity. Land administration includes land registry, land titling, cadastre, facilitating land markets, and building of a national legal framework, including the setup or reorganisation of related land institutions. In three countries (Lesotho, East Timor and Sri Lanka), the activities seem to be short- term consultations. Meanwhile, only in two countries, namely, Namibia and the Philippines, was there a major support to an explicitly agrarian reform programme that included land redistribution. These two country cases will be critically examined below.

It is also notable that the World Bank is involved in many of the German DC land policy projects. At least this is the case in nine out of 17 countries that the German DC is involved. In some cases, the ties between the German DC and the World Bank are even closer since the German activities are incorporated in a multi-donor project.

In addition to country-based activities, the German DC is also active in networking with three major international development institutions, the World Bank, FAO and the European Union. The GTZ had supported the World Bank in the process of preparing its key document, the Bank's *Land Policy Research Report* published in 2003.<sup>47</sup> The GTZ Sector Approach in Land Management tried to establish a

<sup>45</sup> According to Mr. Kohlmeyer (letter of Mai 2007), BMZ, Head of Division Rural Development

<sup>46</sup> GTZ 2004 Bericht über die Projektvortschrittsprotokolle des Sektorprojekts, chapter 1

<sup>47</sup> For a general background on the current World Bank land policy, refer to Holt-Gimenez, Eric, 2008. 'Territorial Restructuring and the Grounding of Agrarian Reform: Indigenous Communities, Gold



0.5	€6,000		Land administration/ cadastre	2001-2002
	No data			
	No data	World Bank <sup>46</sup> , Sida, ADA	Land administration/ cadastre	2001-2011

regional African network for land policy. In addition, the Sector Approach proposed a regional southern and eastern African project that promotes agrarian reform processes. But it seems that BMZ did not accept the GTZ project proposal. Also, the Sector Approach supports the FAO process to elaborate guidelines for good governance of land and natural resources.<sup>48</sup>

The table on the German DC involvement in land policy however are very incomplete, especially in terms of funds actually allocated to projects. This makes our overview analysis limited. Repeated requests made by the author to the BMZ did not yield any further data in this regard. Therefore, we have to leave it at that. The point being made from this table, however, is to validate a critical point being consistently raised in this paper - the German DC involvement in land policy is limited to a very narrow section in the land policy universe. This 'universe' consists of the support for technical land administration that covers land titling, land registry, cadastre, and surveying that are aimed at helping invigorate land markets. We now turn to the three country case studies - the Philippines, Namibia and Ghana.

## 4.2 THE PHILIPPINES: STOPPING A PROMISING PROJECT ON LAND REFORM

By 2008, three out of every four poor people in Philippines were living and working in rural areas. Most of them are poor peasants. Existing monopoly of land control and ownership that can be traced back to Spanish and American colonial periods is at the heart of rural poverty. A few big ownerlanded families control the majority of farmlands in the Philippines. A series of land and tenancy reforms since the 1930s until the 1980s resulted in marginal pro-poor reforms. By the late 1980s, we still had a situation where around 5 percent of the total number of landowners owned and controlled 80 percent of the private farmland. This is

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Mining and the World Bank' *TNI Land Policy Papers Series 3*. Amsterdam: Transnational Institute and Brussels: North-South Coalition of Movements.

48 For a general background, refer to Monsalve S. 2008. 'The FAO and its Work on Land Policy and Agrarian Reform.' *TNI Land Policy Papers Series 1*. Amsterdam: Transnational Institute (TNI) and Brussels: 11.11.11 Coalition of the North-South Movements.

excluding the vast public lands that were under the informal control of private elites. It was against this background that the Comprehensive Agrarian Reform Programme (CARP) was enacted and started in 1988. Twenty years later, by 2009, the programme managed to redistribute around 6 million hectares of land - around half of the total farmland in the country - to around 3 million peasant households. These account for about 50 percent of the total peasant households in the country. This is the official data, but as Borrás points out, the actual land redistribution accomplishment, while significant, may not be as high as what the government claims.<sup>49</sup> Yet, CARP has been one of the more significant land reforms during the last twentieth century in the world.

In this case study, we will see whether and how and to what extent the German DC was involved in a programme that explicitly dealt with land reform. The German DC has claimed the Bondoc Development Programme in the Philippines as one of its successful projects. Whether and to what extent this is true, we will analyse in the succeeding discussion.

Bondoc Peninsula is situated in the southern part of Quezon Province, in the main island of Luzon. It is about eight hours drive south of Manila, the capital city. About 80 percent of the Bondoc population - approximately 400,000 persons or 70,000 households - live from subsistence farming and fishing. The total land area in Bondoc Peninsula adds up to 222,000 hectares. Agricultural land is mostly used for coconut mono-cropping, corn and rice cultivation.

As in other parts of the Philippines a large number of peasants do not own the land they cultivate, they are tenants and seasonal farm workers. A few big landowners claim large parts of the land in Bondoc Peninsula. The biggest landholdings are those of Domingo Reyes (estimated 14,000 to 16,000 hectares in the municipalities of Buenavista, San Andres and San Narciso), the Uy family (3,500 hectares in San Andres and San Narciso) and the Matias family (2,800 hectares in San Francisco). These rural elites are not just interested in agricultural production, but also in controlling the land in order to consolidate and expand their political power in the rural areas. Most of these landlords also control the local government units. They carry their own brand of laws in these localities.<sup>50</sup> Most of the tenants in

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49 See Borrás, Saturnino (2007). *Pro-Poor Land Reform: A Critique*. Ottawa: University of Ottawa Press.

50 For a critical background on the politics of this district, refer to Franco, Jennifer, 2008. 'Making Land Rights Accessible: Social Movement Innovation and Political-Legal Strategies in the Philippines'. *Journal of Development Studies*, 44(7): 991-1022.

these landholdings are trapped in a feudal sharecropping system with sharing arrangements of 40-60 percent, sometimes even 25-75 percent<sup>51</sup> in favour of the landowners. This system results in massive poverty among the peasantry. Land redistribution is at the heart of any effort to reduce or eradicate poverty in this district. However, the landlords are not ready to give up their economic and political monopoly. They resist land reform quite vigorously.

The German DC's involvement in Bondoc dates back to 1990. They established the Bondoc Development Programme or BDP, which ended in 2003. The main contribution was made through the GTZ and amounted to approximately €9.26 million.<sup>52</sup> In addition, about € 0.95 million were allocated by equivalent funds of the German DC's financial cooperation arm, the KfW. The BDP had multiple project components that changed over time. It started as a road building project. In the mid-1990s the German government dropped the road component after an intense protest from the local communities that suspected that the road project was mainly a ploy for a counter-insurgency project of the national government (campaign against the communist guerrillas, the New People's Army) so that the military transport can easily criss-cross the peninsula with better roads. The project was significant revised in 1996. It then included broad rural development components, including agrarian reform.<sup>53</sup>

During the early phase of the project, the BDP contracted various NGOs to partner with in the areas of local governance, cooperative work, sustainable forestry. They also got a partner NGO on agrarian reform. However, their partner NGO refused to confront the most politically contentious components of agrarian reform in the peninsula, that is, to challenge the biggest landlords and work for the redistribution of the vast landholdings. For this reason, the agrarian reform component of BDP got a slow and late start.

It was late 1996 when a new NGO partner for agrarian reform was recruited. The new partner, the NGO Philippine Ecumenical Action for Community Empowerment or PEACE has a long history of militant tradition in rural community-organising

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51 These sharecropping arrangements are officially prohibited in the Philippines.

52 GTZ Mission Report 2005 Short report on the status of the activities promoted by the project, in particular within the field of agrarian reforms. The financial share of the support to the agrarian reform is not clear, but it can be estimated that it will be a small part against such cost-intensive components like road building.

53 As a response to local and international critique, which saw the road building project as a part of the government's effort to fight the NPA. But also channels for civil society participation have been missing at all.

work. PEACE was enticed by the GTZ's support for agrarian reform that included direct support to tenants and farm workers in asserting their legal claims for land. The partnership got started. This part of the BDP project was entitled 'community organising of agrarian reform communities'. The concept of the community organising was (1) to inform the tenants of their rights under the CARP, (2) to help organise peasants and other possible beneficiaries for exchange of information, and (3) to support peasants to petition the government for agrarian reform coverage, and pursue their legal claims for land under CARP. In addition, the project provided legal assistance to oppose the typical landlord efforts to 'criminalise' land claims made by peasants.

Prior to 1996, not a single hectare of land from the vast landholdings of the peninsula's biggest landlords was included in the agrarian reform programme because of the landlords' 'fearsome reputation'.<sup>54</sup> Out of fear, not one tenant wanted to apply for agrarian reform coverage. From 1996 onwards, this changed. Whatever the success in land redistribution, and however small these victories were, these are certainly hard-earned victories. According to the PEACE Foundation, from 1996 to 2001 the BDP helped 7,520 households acquire land under CARP. The redistribution of land controlled by landlords was very hard to implement. The three biggest haciendas were not even on the official target of the Philippine government until the organised peasants petitioned for these areas. The inclusion of even very small parts of these haciendas<sup>55</sup> can be seen as a result of 'painstaking – even life threatening organisation and mobilisation around agrarian reform'.<sup>56</sup> A first breakthrough came in late 1998, where 174 hectares of the coconut hacienda owned by the Reyes family was officially expropriated by the government and redistributed to poor peasants.<sup>57</sup> It was one of the most dramatic land reform implementation activities during that decade because it involved the national military in implementing the land transfer order of the Department of Agrarian Reform.

In the next decade, other significant series of land reform implementations followed in the rest of the country. These involved police and military assistance and were inspired by and patterned after the Bondoc case. It was a high point of the peasant mobilisation on the peninsula; it was a high point in the development intervention of the German DC in the district.<sup>58</sup> This would embolden the peasants, their NGO

54 See: Manila Times Bondoc Peninsula's growth stunted by insurgency, 23th October 2002

55 Following the PEACE Foundation 400 ha of the Reyes hacienda and 600 ha of the Matias hacienda.

56 PEACE Foundation 2005 The GTZ Mission: Why It Fails to Make a Comprehensive Assessment of the Agrarian Reform and Human Rights Situation in Bondoc Peninsula

57 PEACE Foundation 2004 Progress and Tragedy in Bondoc Peninsula briefing paper

58 Se Franco, 2008, for a general background.

ally, as well as the BDP, to challenge the largest landlords on the peninsula. The process started in 2001. There is no doubt that the two key factors made peasants take the risk to challenge the violent landlords: the presence of the PEACE Foundation, and BDP. They learned from the Bandoc case how these allies can mobilise political resources to defeat even the most powerful and violent landlords on the peninsula. There was a lot of dynamism around the land reform campaign in 2001. During the next two years, the peasant struggle for land appeared to be booming. They were attempting to take back lands that were actually public lands, usually informally occupied by the big landlords. With the BDP assistance, the peasants were able to take advantage of NGO support and support of lawyers. They made significant progress in tracking down vast public landholdings that were informally appropriated by private landlords. Gains were made in terms of actual land redistribution, although these were relatively small. However, peasants were emboldened and empowered. A district level militant peasant movement was formed, the *Kilusang Magbubukid ng Bondoc Peninsula* (Peasant Movement of Bondoc Peninsula, KMBP).

Thus, the entire agrarian reform process on Bondoc Peninsula must be seen as a core driver for social and political transformation of a quasi-feudal region. The agrarian reform component of the BDP has therefore become a central component in the rural development project of BDP. Moreover, the presence of the German DC served as a key deterrence to any violent retribution by the landlords against peasants. Landlords knew that the German DC is well connected nationally and internationally, so they were hesitant to openly attack the project. At around €20,000, the annual cost of the agrarian reform community organising component in partnership with PEACE was quite low relative to the overall BDP cost.

Despite some encouraging outcomes in the agrarian reform component of the BDP, the GTZ stopped its financial support to the BDP in 2003. The large landholdings in the peninsula have remained intact.<sup>59</sup> The BDP pullout would have some important consequences, generally adverse, for the communities. The reason was straightforward: BDP had administrative procedures about timetable, and these have to be implemented. The BDP director, a German, agreed to the BDP pullout, but recommended special arrangements for transition projects aimed at sustaining the momentum gained in the land reform component of the project, as well as aimed at protecting poor peasants from possible violent reprisals from the landlords. The director recommended, very specifically, that the legal assistance to the peasant organisations and their ally NGOs be provided. In any case, the

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59 GTZ Mission Report 2005

amount they were requesting was quite small. However, the GTZ rejected such recommendations and requests, a decision that would later be confirmed by the BMZ. Peasant movements, their ally NGOs, local government officials and human rights groups in Germany vigorously protested, fearing that the peasants would be left without allies at the hands of violent landlords and that any modest gains in land reform would be undermined.

By June 2003, the remaining activities under the BDP were stopped. The official justification for withdrawal from the BDP was twofold. First, it was argued that the project time of 13 years exceeded the usual duration of 10 years, although the support of the agrarian reform communities lasted only seven years. The second argument was that the Philippine government did not request a follow-up of GTZ's work in Bondoc Peninsula.

The worries expressed by peasants, NGOs, local government officials and even by the BDP project director were not without basis. Landlords are violent. To complicate the matter, the communist guerrillas also did not like the reformist land reform initiatives. During and right after the pull out by the BDP, four peasant leaders associated with the peasant movement KMBP and the NGO PEACE were assassinated between February 2003 and July 2004 in separate incidents.<sup>60</sup> Three peasant leaders of KMBP were brutally murdered within one year. In July 2004, a group of masked men gunned down the newly elected vice-mayor of Buenavista, a close ally of the KMBP peasant movement and supporter of the agrarian reform process. He was involved in a land struggle against Reyes family. These killings must be seen as the tip of the iceberg. The list of agrarian reform related harassments and criminalisation of agrarian reform petitioners is long and documented by the PEACE Foundation and an International Fact Finding Mission (IFFM) conducted in 2006.<sup>61</sup> One typical kind of harassment is the criminalisation of peasants. By 2008, more than 300 cases against agrarian reform petitioners, activists and beneficiaries were filed at the local courts in Bondoc.<sup>62</sup>

Manuel Quiambao of the PEACE Foundation described the situation as: "...the German government came in, had a big hand in stirring the hornet's net, and then when the hornet began charging, ran in the other direction, leaving the far more

60 PEACE Foundation 2004 Progress and Tragedy in Bondoc Peninsula briefing paper. Before these cases, the last documented murder happened in 1996.

61 PEACE Foundation 2004 Progress and Tragedy in Bondoc Peninsula briefing paper. Report of the International Fact Finding Mission 2006 Running Amok: Landlord Lawlessness and impunity in the Philippines

62 IPON Report 2008

vulnerable to take the stings – only we should point out that the ‘stings’ we are talking about have included murder, attempted murder... trumped up criminal charges [...], property destruction, forced eviction...<sup>63</sup> His description of the situation was confirmed by the IFFM undertaken in 2006. The mission concluded that since the withdrawal of the GTZ the situation changed dramatically: From late 2003 up to June 2006, 175 cases of criminal charges against poor peasants were filed in courts by landlords (usually in the form of ‘theft’) in a clear attempt to harass and intimidate peasants.

In a meeting with the BMZ in December 2004, Quiambao made constructive proposals for new measures that could be taken by the GTZ. These proposals included (1) to conduct a fact-finding mission with participation of the involved NGOs to investigate the cases, (2) an action-oriented report of the BDP mission that includes lessons learned, and (3) a modest legal assistance project that should protect agrarian reform beneficiaries and help prevent a rollback of the agrarian reform process. In 2005, after continuous requests for a follow-up and a meeting of Philippine NGO representatives with the German parliament’s Committee on Economic Cooperation and Development, as well as a meeting of Quiambao with the BMZ, the GTZ conducted a mission to determine: (1) the progress of the further land redistribution, as well as (2) violations of human rights.<sup>64</sup> Such a mission was also proposed by PEACE that suggested the participation of local and international NGOs and submitted a proposal for Terms of Reference for the mission. Despite the dialogue between PEACE and the GTZ/ BMZ, as well as the concrete proposal for close cooperation, the GTZ mission was conducted without participation and even without prior knowledge of the PEACE Foundation. The GTZ commissioned somewhat dubious external technical experts for the study mission.

The findings of the study mission were put in a very general and superficial form. The report concluded that there was no increased violation of human rights after the withdrawal of the GTZ – negating the naked truth about this issue. In fact, the critique on the mission formulated by the PEACE Foundation was substantial. Despite its formulated objective to investigate the human rights situation, not one single case of human rights violation was documented, not one victim mentioned by the report of the PEACE Foundation was interviewed and no locally involved NGO was part of the mission. Furthermore, it remains open why the GTZ mission did not involve the people they have been in dialogue with and especially the NGOs they worked with in the Bondoc Peninsula. This made peasants, PEACE

<sup>63</sup> Letter of PEACE Foundation responding to the 2005 GTZ Mission Report

<sup>64</sup> GTZ Mission Report 2005

and local officials suspect that the so-called technical study mission was done by GTZ simply to justify its pullout from BDP, and not really to seriously look into the issues raised by peasant groups and NGOs. The peasant groups and PEACE are justified to raise an issue of accountability of the German DC in the case of deteriorating human rights and agrarian reform situation in Bondoc peninsula.

What this case study has shown is that the German BDP has demonstrated that the bilateral German DC can make a very positive contribution to agrarian reform processes. Using the community organising approach, the GTZ directly supported poor peasants in their land claims and from a human rights perspective.<sup>65</sup> Interim results of land redistribution, the dynamics brought about in the agrarian reform process, as well as overall development data<sup>66</sup>, suggest that there is a potential for a positive impact on poverty reduction in such approach. Another very important effect was that it supported the democratisation process in the quasi-feudal Bondoc Peninsula. The direct support to agrarian reform communities can be seen as a rare example where German DC was directly involved in politically contentious redistributive land reform activities. Civil society and human rights organisations like the FoodFirst Information and Action Network (FIAN) have seen this approach as an important support towards the realisation of the 'human right to food'. This is not only highlighted by the civil society. The BMZ itself highlights the programme as an outstanding and very successful support for rural development and poverty alleviation.<sup>67</sup>

From the Bondoc case study, some critical issues need to be addressed regarding the process of withdrawing from the BDP:

- (1) From a human rights perspective, it is highly problematic that the GTZ stopped its support at a time when the conflict between poor peasants and landlords were just beginning to unfold. This left the petitioners in a very vulnerable situation. The conceivable dramatic consequences have been known to the German DC. Furthermore, the hard-earned victories in land reform have been jeopardised by such complete pullout.

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65 The UN Hunger Task Force sees the multiple marginalization as the core problem of the rural poor. Following the Task Force (see: UN Hunger Task Force 2005 Halving Hunger: it can be done), these groups experience social, political, economic and geographic marginalization.

66 BMZ 2006 Medienhandbuch Entwicklungspolitik 2006/2007 p. 205 ...Netto-Zuwachs des BSP von 3,2 Prozent auf Grund einer Mehrproduktion von 20 Prozent führte zu einer direkten Besserstellung der armen Bevölkerung und indirekt zu einer positiven Einkommensentwicklung anderer Kleinbauern und Pächter.

67 BMZ 2006 Medienhandbuch Entwicklungspolitik 2006/2007 p.205f.



- (2) It remains unclear why the GTZ and BMZ refused a follow-up – a standard in the German DC. This should have helped at least safeguard interim land reform gains, prevent a rollback of the agrarian reform process and protect the peasants against the massive harassments and violent retribution by landlords. Estimates by Michael Boguslawski, former project director of the GTZ, show that the budget for a three-year comprehensive legal assistance project proposed by the NGOs would be very low.<sup>68</sup>
- (3) Despite the claims by BMZ and GTZ that the BDP was a great success, and its claim to elaborate an action-oriented ‘lessons learned document’ from the project, there has been no accessible information on the project or on the community organisation approach to date.

The GTZ withdrawal from a project site at a time when external support was crucial has resulted in a situation that is the very opposite of strengthening the rural communities: it undermines the peasant communities. Such an unjustified pullout also points to the question of ‘accountability’ of foreign aid agencies to the local people.

Recent reports of the International Peace Observer Network (IPON), a group of volunteer German students that was established in Bondoc after the BDP pullout, suggest a partial rollback of the agrarian reform gains in the peninsula. Already redistributed lands are being re-claimed by the landlords, while large areas of lands originally included in the CARP land redistribution coverage are now being excluded from the agrarian reform programme.<sup>69</sup> Poor peasants, their movement (KMBP) and their ally NGOs, however, continue to struggle despite the pullout of the German DC. A very modest amount of grant to support such an effort was provided by the German non-governmental organisation Miserior. Whether they would be able to regain the 1996-2003 political momentum and heighten their struggle for land and democracy in the Bondoc peninsula remains to be seen.

This example of GTZ’s direct support to agrarian reform should be seen from a broader perspective in the context of BMZ and GTZ more generally. First, the support to BDP started in 1996 and was one of the first major activities of German DC in the field of land reform. It started at a time when the idea of a market-

68 In a meeting with German Parliamentarians (April 2005) he estimated that the budget for a three year legal support project would be 300.000 Euro.

69 See: <http://www.ipon-philippines.org/index.php?id=17>

-led agrarian reform was not yet mainstreamed in the international development agenda.<sup>70</sup> Second, the direct support to BDP was, and is, the only case where BMZ and GTZ got directly involved in a politically contentious land redistribution programme in rural contexts marked by highly inequitable access to land.

Moreover, the BDP experience also demonstrated the importance of having direct partnership with autonomous civil society groups, both NGOs and peasant movements, as well as a direct support for a more political project, i.e. community organising and mobilisation project as well as support for legal assistance to peasant groups in making their land claims. It is puzzling, therefore, that the German DC has not documented and disseminated the relatively positive lessons in the particular strategy for land reform in the Bondoc peninsula, despite its original promise to do so. Perhaps the reason is the ascendancy of the policy current within BMZ and GTZ that gives more importance to technical land administration (land titling, land registry, cadastre, and surveying to develop land markets) than to politically contentious policies such as land reform. This can be seen from the fact that recently, in three out of four countries where GTZ has projects, technical land administration is the sole and/or central initiative. In the Philippines, the GTZ came back to the issue of land reform in 2007 and 2008 – but only by commissioning so-called technical experts on land markets, which produced a policy conclusion and recommendation virtually arguing that a distributive land reform is no longer necessary in the Philippines and that technical land administration is the way forward. It is ironic because if a political technical land administration (land registry, land titling, cadastre, formalisation of land claims that are not taken within the context of redistributive land reform) is carried out in the Bondoc peninsula, the biggest beneficiaries for such will be the landlords and not the poor peasants.<sup>71</sup> The GTZ study was the main document used by anti-CARP members of the Congress and Senate in 2008 to argue against the extension of the CARP law that expired in June 2008. Fortunately, the law was extended for another five years, allowing for continued compulsory land acquisition.

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70 For a critical background on market-led agrarian reform, refer to Borras, Saturnino Jr., 2003. 'Questioning Market-Led Agrarian Reform: Experiences from Brazil, Colombia and South Africa.' *Journal of Agrarian Change*, 3(3): 367–94.

71 This was exactly what happened in the Land Administration and Management Programme (LAMP) funded by the World Bank and AusAid, as well as in the market-assisted land reform programme of the World Bank. See Borras, Saturnino, Danilo Carranza and Jennifer Franco, 2007. 'Anti-Poverty or Anti-Poor? The World Bank's Market-Led Agrarian Reform Experiment in the Philippines.' *Third World Quarterly*, 28(8): 1557-1576.

### 4.3 NAMIBIA: SUPPORT FOR THE POOR OR THE ELITE?

Contemporary issues of land reform in Namibia are traced back to the German colonial period in 1884-1915 and the subsequent administration of the apartheid regime of South Africa. During this period, a dualistic social relations in land property emerged. On one hand, there was the communal land in the north of Namibia where the German colonial administration accepted traditional authorities, including their right to allocate the land as long as the authorities accepted the sovereign authority of the Germans. On the other, there was the commercial land in the centre and south of the country, originally mostly land of the Herero people that were occupied by white settlers, primarily of German origin.

By 2008, Namibia had an unemployment rate of 35 to 40 percent and the highest income inequality<sup>72</sup> in the entire African continent. Around 70 percent of the population live in the rural areas. Most of them live in the northern communal area mainly used for subsistence farming where landlessness is a central problem. The communal land has agriculturally more favourable conditions due to higher rainfall, which makes at least some parts useful for crop production. By contrast, the semi-arid and arid commercial land is mainly used for extensive livestock farming.<sup>73</sup>

The population pressure on fertile soil is high. Land tenure rights are allocated by traditional leaders. The critique is that this often leads to a very arbitrary allocation of land. Against this background, the issue of reform of the commercial land is very popular, especially among the people in the northern communal area. It is very much about social equality as many vast portions of land in the commercial area are in the hands of white landowners.

Thus, the first Namibian government after the independence in 1990 started a land reform with a focus on the commercial land.<sup>74</sup> Instead of a truly redistributive, expropriatory land reform, part of the negotiated settlement for the country's independence was to carry out a market-oriented 'willing-seller-willing-buyer' (WSWB) land reform formula. In 1992, the Affirmative Action Loan Scheme (AALS) was implemented with the goal to create incentives for wealthier black farmers in the communal land to acquire land in the commercial area.<sup>75</sup> The AALS

72 Measured by the Gini-coefficient.

73 It is calculated, that a farm must have at least 3.000 ha to become profitable.

74 Commercial land is about 36 Mio. ha compared to 34 Mio. ha communal land. See: ISS/UNDP (ed.): Land, Poverty and Public Action Policy Paper No. 8 – Land reform in Namibia: issues of equity and poverty, 2005, p. 9

75 Reasoning that in these areas larger livestock is needed to sustain a farm.

focused on creating medium-sized and larger farms owned by black farmers.<sup>76</sup> Meanwhile, the National Resettlement Programme (NRP) targeted the poor and landless people. Within this programme, the government bought farms offered by their owners corresponding to regular market prices, and resettled families and groups on the farms. Between 1991 and 2005, only about one million hectares were re-allocated within the scope of the NRP. In contrast, under the AALS about 5.5 million hectares came under the control of wealthier black Namibians.<sup>77</sup>

One reason for this imbalance is the general difficulty to establish autonomous and viable farms.<sup>78</sup> The underlying causes are manifold, including insufficient technical and financial assistance for new farmers, deficiencies within the Ministry of Land and Resettlement regarding personnel manpower, lack of financial strength and capacities, and the lack of support for the NRP-beneficiaries to receive a title.

The Agricultural Commercial Land Reform Act of 1995 already refers to the possibility of expropriation. The related amendment of 2003 stressed that expropriation within the legal frame of land reform should be applied to accelerate land acquisition and distribution. Apart from that, the technical and financial capacities should be enhanced and extended. In order to achieve effective rural poverty alleviation a close interlocking of the land reform in both programme areas (AALS and NRP) is advisable. The main points of the actual land reform process seems to be, firstly, redistribution of land in the commercial area to reduce pressure on land in the communal areas; secondly, to introduce a 'modern' land tenure system in the communal areas to develop (this is what the donors assume at least) a viable small-scale agriculture.

The German DC has been actively involved in the Namibian land reform process since 2003. The basic problems seen by German DC are inequitable land tenure in the commercial area, pressure on land and uncertain land tenure as well as unsustainable land use in the commercial area.<sup>79</sup> The BMZ agreed with the Namibian government to support the land reform process until 2012. Both German DC executive bodies, GTZ and KfW, are now involved in the process.

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76 see: LAC (ed.): *Our land we farm. An analysis of the Namibian Commercial Agricultural Land Reform Process*, Windhoek 2005, p. 28

77 see: LAC (ed.): *Consultative Workshop: Perceptions on Land Reform*, held on 21-22 November 2006, Windhoek 2006, p. 22

78 see: Adams, Martin: *Land Reform in Namibia, 2000*, p. 9 ([www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/namibref.rtf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/namibref.rtf))

79 see amongst others: *Consultative Workshop: Perceptions on Land Reform*, p. 69

The GTZ project ‘Support of the Land Reform’ is designed to run from 2003 until 2012, with a current budget of €2.8 million. The declared goal of the GTZ is equitable access to land, sustainable land use in the commercial, as well as in the communal area.<sup>80</sup> After an assessment through the sector approach ‘Land Management’, the first measure of the GTZ was an active support of the Permanent Technical Team on Land Reform (PTT). It resulted in Action Plan on Land Reform in 2005 that maps out the further process of land reform. The plan was endorsed by the Namibian cabinet in June 2006 and officially launched in August 2006. For the GTZ, the further involvement in the land reform process is based on this report. A closer look at the report will follow later.

The KfW was already active in the communal area before 2006.<sup>81</sup> Since the endorsement of the Action Plan, the KfW has been strongly involved in the Namibian land reform through its project ‘Infrastructure to Support Land Reform’. The € 10 million project is not closely bound to a specific task. Nevertheless, core incentives are formulated. The core strategy is the construction of a land administration via Communal Land Boards to transform traditional and customary land tenure systems into a ‘modern’ tenure system with private and communal property rights.<sup>82</sup> It is believed that this shall bring about tenure security and – following Hernando de Soto’s theory – lead to higher investment. The GTZ gives technical assistance to the implementation of land boards.

Apart from the GTZ, the British and US development cooperation agencies (DIFD and USAID) also supported the Action Plan. The Plan also recommends the continuation of the willing-seller-willing-buyer land sales transactions despite the fact that from 1990 until 2005, only some 1,526 families benefited from this programme, and these were mainly middle and upper class farmers.<sup>83</sup> Until 2005, about five times more land was redistributed by AALS than by NRP.<sup>84</sup> Interestingly, in none of the past years the existing Ministry budget for buying land (in the scope of NRP) had been fully utilised.

According to the PTT-Report, the AALS should be strengthened and expanded. The authors of the Report also refer to the advantages of expropriation that can

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80 see amongst others: Consultative Workshop: Perceptions on Land Reform, p. 69

81 It at least conducted a mission related to the development of communal land that is referred to in the action plan.

82 see: KfW 2007 Project Fact Sheet: Infrastructure to support the Land Reform in Namibia

83 see: Ministry of Lands and Resettlement. The Permanent Technical Team (PTT) on Land Reform (ed.): Recommendations, Strategic Options and Action Plan on Land Reform in Namibia, 2005, p. x

84 *ibid.*, p. 26

accelerate the land acquisition. But this instrument was not implemented. It is only mentioned that in 2004 some 25 farms were identified but not acquired. Following the report, expropriation is thought to be merely an additional option in addition to the main approach of ‘willing-seller-willing-buyer’ formula.<sup>85</sup>

Moreover, the report recommends that regular evaluation and effective monitoring of the process by the donor community could prevent aberrations. The report remains vague regarding the involvement of civil society and especially the marginalised groups in the land reform process, stating that “the participation of civil society in the land reform process is important” and that “the role of non-State actors and other civil society groups in supporting land reform could be further elaborated.” The plan of action recommends a consultative process on land reform involving all stakeholders by an annual three-day workshop until 2020.

For historical reasons, Namibia is quite relevant and important for the German DC, especially on the land question. It is no wonder that the current budget for the Namibian land reform seems to be one of the biggest contemporary involvements of the German DC in any land policy that is not confined to technical land administration alone. This makes the Namibian land reform a highly relevant case in this paper.

Poverty reduction is mentioned as a central task in the Namibian land reform project. The focus on the poor in the land reform process, however, is minimal. The Namibian land reform process focuses on the AALS as a central instrument where participation is limited to farmers with a minimum of 150 large stock units or 800 small stock units. In short, it concentrates efforts on farmers potentially commercially successful – and not on those who are very poor. Therefore, the official claims of the project and the project’s approaches are inherently contradictory.

Meanwhile, another major area of focus of the German DC in Namibia is on land administration in the communal northern area, supporting the land boards. This strategy of shifting land tenure regulation from traditional authorities into a national legal frame and providing the administrative body has no direct effects on equitable land tenure and a redistribution process in favour of the poor as such.

Furthermore, the GTZ has been strongly involved in consultation and policy advice at the national level. GTZ has an enormous influence on this process.

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85 Ibid., p. 32/33

Nevertheless, the work of the PTT and the Action Plan on Land Reform has evolved as the common basis of cooperation. Taking this as a basis for German DC, it fails to adequately address the needs of the poor and marginalised by:

- (1) Further promoting the AALS and aggravating the imbalance between the AALS and the NRP. Pro-poor redistribution mainly means land being passed from white elites on to black mid-scale to large farmers. This could contribute to reduce racial tensions but not much to poverty reduction;
- (2) Not implementing, to any significant extent, the instrument of expropriation within the legal frame as potential means to reallocate assets.<sup>86</sup> This is ironic because in all the years from 1995 to 2005, the Namibian government could not even spend all allocated budget for the land reform process;<sup>87</sup>
- (3) Not sufficiently ensuring a real and effective participation of the rural poor people's groups and their organisations;
- (4) Not promoting the 'human right to food' within this frame.

Furthermore, the GTZ is active in promoting sustainable use of natural resources within the land reform project. It is true that the support of sustainable agriculture and the development of unused land would be a contribution to reduce land tension and the high rural poverty. But this is not the crux of land reform.

It should be of primary importance for the Namibian state to work against the imbalance in favour of the AALS and to focus its efforts on providing support to poorer families. The German DC should actively support such a framework. By promoting the 'willing-seller-willing-buyer' formula in land reform, the German DC is actually and essentially supporting and subsidising not the poor in Namibia but the rich landed elites, most of whom are whites and of German origin. It is no wonder that there is perception among the non-German European diplomatic community in Namibia that directly assisting the German white Namibians – instead of poor black Namibians – is the main reason for German DC's interest and investment in the Namibian land policy.<sup>88</sup> The German DC officials explain their action as being cautious to avoid a Zimbabwean land scenario in Namibia. But it

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86 Referring to information of Mr. Engel (GTZ) 7 farms have been expropriated since 2004.

87 Following Mr. Engel the reasons are "Unzureichendes Angebot an Farmen hinsichtlich der Eignung für Umsiedlung und mangelnde Umsetzungskapazitäten des Landwirtschaftsministeriums"

88 Süddeutsche Zeitung 8th September 2007. Farmer fürchten Enteignung

has to be noted that, in fact, it was the earlier slowing down on redistributive land reform in Zimbabwe that eventually triggered the fast-track land reform process beginning in 1997. If the German DC is serious in trying to avoid a Zimbabwean scenario, the best way to go is to drop support to the 'willing-seller-willing-buyer' land sales transactions, and carry out a truly redistributive land reform that will directly favour the poor Namibians.

#### 4.4 GHANA

Traditionally, land in Ghana belongs to local communities, customary owners or the state. About 78 percent of the total land area in Ghana is locally owned, and the state owns about 20 percent. The remaining two percent are held in dual ownership. Such situation creates pluralistic legal environment, including customary law alongside state regulation.

Since 1983, Ghana carried out extensive Structural Adjustment and Economic Reform Programmes (SAP & ERP), initiated and supported by the World Bank and the International Monetary Fund. Structural reforms like liberalisation of the economy, removal of subsidies and divestment in state-owned enterprises are still in progress.<sup>89</sup> It is important to see land policy activities embedded in such a context. A study by K. Kasanga shows that in northern Ghana landlessness was a phenomenon that is newly emerging after the SAPs. In the past, northern Ghana was dominated by small farms and landlessness did not appear to be an issue. Now landlessness is a growing reality for many rural people with all its serious social and economic implications like hunger and insecurity. This is also reflected in the poverty data. In the 1990s, poverty incidence increased in the central and northern regions of Ghana.<sup>90</sup>

Today, smallholder agriculture is in serious crisis and pressure on land is increasing. The World Bank rates Ghana as the most investment-friendly country in Western Africa.<sup>91</sup> Growing demand for land also leads to eviction of subsistence farmers.<sup>92</sup> The mining sector is one of the most important factors for such evictions. "Surface

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89 K. Kasanga 2003 Current land policy issues in Ghana in: FAO 2003 land reform special edition 2003/3

90 K. Kasanga 1997 Economic recovery and the emerging landless class: a case study of the Tono and Veia Irrigation schemes of north-eastern Ghana.

91 German Agency for Foreign Economics

92 GTZ Ghana 2006 Sustainable Development



mining [...] poses the greatest threat to both commercial and subsistence farming”, as Kasanga explains.<sup>93</sup> These industries require large tracts of land. Its control must be transferred from a public asset to private firms. This leads to a massive enclosure of commons and drastically reduces land available for farming, as well as reduced access to land by the poor.

With its project ‘Land Policy and Land Management’ from 2000 to 2003, the GTZ did preparatory work for the current multi-donor project. Today, German activities in land policy are embedded in ‘Land Administration Project’ (LAP) of the World Bank. Its overall budget is US\$ 55 million, where the Bank’s contribution is US\$ 20 million. KfW and GTZ contribute \$ 6 million and \$ 4 million, respectively.<sup>94</sup> German implementing agencies are subordinated to the World Bank in this project. This makes it necessary to first look at the entire multi-donor project. The project is conceived as the first phase of the implementation of a long-term (15-25 years) land administration reform programme. Its main goal is to enhance an investment-friendly climate through individual private property rights.<sup>95</sup> The following table summarises central objectives and targets of the LAP formulated by different stakeholders. One has to bear in mind that the World Bank is not a completely independent institution from national governments; the German influence within it is significant.

**Table 3 Objectives and targets of different actors under the LAP in Ghana**

<b>World Bank</b>
...improve security of land tenure, simplify the process for accessing land...
The establishment of land titles will assure security of tenure to land and peaceful possession, facilitating investments in housing, industry, agriculture and services sectors of the economy that will generate employment and economic growth.
...harmonise customary and statutory land laws and also help generate incremental revenue to both national and local governments through registration fees...

93 K. Kasanga 2003 p.143; for more information see A. Armstrong 2007 Gold strikes the bread basket: Indigenous livelihoods, the World Bank, and Territorial Restructuring in Western Ghana

94 The World Bank speaks of \$ 6 million, the KfW talks about € 6 million. We use the World Bank data.

95 <http://web.worldbank.org/external/projects/main?Projectid=P071157&Type=Implementation&theSitePK=40941&pagePK=64330676&menuPK=64282137&piPK=64302789>

...stimulate economic development, reduce poverty and promote social stability by improving security of land tenure, simplifying the process for accessing land...
Improving land titling, registration [...] piloting systematic land titling and registration...
<b>GTZ</b>
Property rights, use and disposal in traditional land-management systems are clarified and documented, and the fragmented and non-transparent state land law is streamlined and restructured. <sup>96</sup>
Because clear and legal ownership of land will greatly aid the process of sustainable economic development, the objective is to secure individual land use and disposition rights for all Ghanaian citizens. <sup>97</sup>
<b>KfW</b>
The unclear legal basis is a central reason for the hesitation of potential investors in Ghana. This strongly affects the economic power of the country.
Programme goal is the construction of a functioning and efficient land administration that provides an easier and legal secure access to land.
...construction of 'One-Stop-Shops' that will unite the six inefficient sector agencies dealing with land registry to one single institution.

The focus of the LAP is clear: individual private land property as a key to economic development, which – so the argument goes - leads to poverty reduction. Two central obstacles for this are formulated by the German DC. First is the pluralistic legal frame for land administration. It is claimed that the courts are overloaded with land law cases. The second argument is the so-called dual ownership of land. The legal estate of land is in the hand of the government and the beneficiary interest is in the community. But the fact is that only two percent of the total Ghanaian surface falls under this dual ownership. The two parallel legal systems need to be replaced by a single one.<sup>98</sup>

96 [www.GTZ.de/en/weltweit/afrika/ghana/16950.htm](http://www.GTZ.de/en/weltweit/afrika/ghana/16950.htm)

97 GTZ Ghana 2006 Sustainable Development

98 GTZ programmeme description 'Improvement of Governance' [www.GTZ.de/en/weltweit/afrika/ghana/16950.htm](http://www.GTZ.de/en/weltweit/afrika/ghana/16950.htm)

Today, the GTZ is active under the programme 'Improvement of Governance'. Its timetable term is 2003-2015 and its budget is US\$ 4 million. An initial result is the elaboration of a Land Code (draft version) for future land management. In December 2006, 'Steering Committee for Joint Research on Codification of Customary Law Relating to Land and Family in Ghana' was formed, composed out of the National House of Chiefs, the Law Reform Commission and the GTZ. Its first task is to document the customary law in all ten regions of Ghana. These findings will then lead to a codification of different traditional systems, a crucial step to overcome the traditional authorities.

Ghana has always been among the KfW's most important partners in Africa. Within its project 'Institution Building: National Land Administration', the KfW contributes US\$ 6 million to the LAP. The project's objective is to construct so called 'One-Stop-Shops' that replace six sector agencies involved in land registration, set up a standardised computer database and register group-based communal demarcations. These are key components of technical land administration. Its main aim is to deliver efficient land management systems at the cheapest cost.. In fact, the LAP in Ghana is also KfW's pilot initiative for the entire region of Africa.<sup>99</sup>

With an actual budget of more than US\$ 10 million and the claim of being a pilot scheme for the entire African continent, the activities under the LAP in Ghana should be considered of paramount importance in the German land policy. It should be noted that this major undertaking in Ghana does not have any redistributive component.

The German DC looks at the plural legal system of land tenure and land rights in Ghana as a key obstacle to development and the cause of competing claims and land conflicts. For the German DC, the way to solve this is to carry out a standardised, uniform, single 'modern' (western) legal frame that 'secures' land tenure and confers the right to alienate. Full-scale individual private property, in short. The German DC considers this to be mainly a transitional problem between tradition and modernity. However, this is too narrowly considered. The mainstream assumption is that it is the traditional and customary land tenure that is causing land conflicts, rather than the increasing commercialisation or co-modification of land. The basic assumption of the German DC, therefore, is flawed.

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<sup>99</sup> KfW 2006 Projektkurzdarstellung 'Aufbau einer Nationalen Bodenverwaltung' (KfW has refused to provide additional information about their activities.).

It is no wonder that there is no evidence for any explicitly pro-poor bias or impact of the land policy intervention by the German DC in Ghana. Of course, the usual claim is that privatisation of land property rights is likely to lead to economic growth in the countryside; and economic growth will have a trickle-down effect in favour of the poor. In reality, significant anti-poverty efforts do not work that way. The 'pro-poor' phrase in this context signifies efforts directly addressing the poor's need to secure and enhance their access to land. In Ghanaian history, access to land has not been a major problem. Now landlessness seems to have become a growing problem, an issue not addressed by the German DC. Its projects do not assign concrete mechanisms to protect the poor that might come heavily under pressure by getting individual land titles; no measures are adopted to provide or enhance access to land by the poor as formulated in the 'human right to adequate food'; because of the heavy opposition of local chiefs, it is not yet clear whether the approach through group/ community titling can be implemented successfully. Nevertheless, community titling might be a strategy to secure access for the rural communities facing pressure on land by outside interests such as corporations seeking land for large scale agrofuels plantations.

German DC's activities are openly formulated as an investment strategy.<sup>100</sup> A central motivation of German DC is to open up the rural area for investment. On the other hand enhanced tenure security is a central motivation. An underlying contradiction of this strategy approach is not clearly addressed by German DC. Tenure security requirements of the rural poor and smallholder rural population differ strongly from the ones of private investors. A key aspect of the mainstream economic growth-oriented development strategy is the transferability of land. Demanded by private investors, history shows that local communities might come under additional pressure, which might lead to a further deprivation of land for smallholders.

Overall, the Ghanaian case shows a scenario similar to what is described in the European Guidelines on Land Policies (Sections 5.3.1 & 6.0.2). The German DC should be more aware of this fact and aspire to prevent such policies that can result in anti-poor outcomes.

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<sup>100</sup> Address given by the German ambassador to the inauguration of the steering committee for joint research on codification of customary law 12/15/2006

## 5. Concluding Discussion

Land policy is an issue that has always been important within the German DC, at least theoretically and in formal policy statements. Historically, significant actual land policy intervention and support got started in the mid-1990s. Before this period, support to land policies and agrarian reform seemed to have been a simple rhetoric. Nevertheless, while it is laudable that the BMZ have laid down its policy to support land policies, it has to be pointed out that it is primarily framed within supporting generally apolitical, technical approaches to land administration and management. It has certainly avoided politically contentious land policies such as land reform. While it was exceptional that the department supported - at least for a while - a redistributive land reform programme in the Philippines with encouraging outcomes, it stopped the support for technical reasons despite appeals from the local community. Instead, it shifted their support to technical land administration projects in the Philippines. In Namibia, German DC explicitly avoided redistributive land reform and supported the 'willing-seller-willing-buyer' approach to land reform, essentially supporting the landed elite, most of whom are white and of German origin. In Ghana, it is directly involved in technical land administration project aimed at promoting western individual private property rights regime, despite the long tradition of customary land tenure in that country. The key driving force for German DC's land policy support is to pave the way for investors, rather than a clear strategy for direct support to the poor.

The approach being adopted by the German DC in the Philippines, Namibia and Ghana and in many other countries as demonstrated in Table 1 is not surprising. It is the same approach as that of the World Bank. There is indeed a very close institutional and ideological relationship between the German DC and the World Bank. In addition to its close link to the World Bank, the BMZ plays a central role in the Global Donor Platform on Rural Development.<sup>101</sup> One of its central tasks is to reverse the negative trend in terms of funding in the Official Development Assistance (ODA) in the field of rural development. Another focus of the GDRPD is 'aid harmonisation'. It should be closely watched whether this leads to further neglect of programmes and projects related to land reforms focusing on redistribution, and to an even stronger focus on the 'willing-seller-willing-buyer' formula and administration programmes.

<sup>101</sup> The GDRPD is geographically located in Bonn and the BMZ holds the co-chair (its head of department Rural Development)

The BMZ claims that the minimal involvement by the German DC in redistributive land reform is largely due to the absence of demand for support for such kind of policies by the partner countries. However, it may not be as simple as the BMZ claims. Many countries formulate their projects based on what they estimate are projects that are favoured by the donor community. Many countries today are not formulating land reform projects for a possible funding through ODA largely because these countries know that donors are not interested in such projects. Meanwhile, it is not a mere coincidence that most countries put forward technical land administration projects – they know that it is the kind of projects that donors want to fund. The issue of ‘project national ownership’ is a problematic concept, and is often used as an excuse by the donors for not going for particular types of projects.

Some critical reflections:

(a) The overarching policy statements of the German DC place land policy within the broader context of poverty reduction. In reality, its actual support for some projects does not always make any direct and explicit support to the poor, or does not always consider poverty reduction as the key goal. Financial investments and economic growth remain the key considerations. The latter is very clear in the land privatisation drive in Ghana. In Namibia, we have seen how the German DC favours willing-seller-willing-buyer approach to land sales transactions. In this context, one can argue that the department supports the landed elite, mainly of German origin, more than it supports the poorest of the poor. In the Philippines, while some of its moves were genuinely pro-poor, it stopped the project for technical reasons.

(b) Human rights feature as one of the key components of the official statements issued by the German DC or the European Union. Yet, in all three case studies we have analysed here, none of the interventions by the German DC adheres to a human rights approach to land. As a state party to the International Covenant on Economic, Social and Cultural Human Rights (ICESCR), the German state also has an obligation to support the fulfilment of the ‘right to food’, in particular through its international cooperation.<sup>102</sup> Moreover, universal human rights principles must be respected and fulfilled at all stages of development cooperation.<sup>103</sup> These binding legal obligations are fortified by the additional commitments of the KfW,

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<sup>102</sup> See Covenant on Economic, Social and Cultural Rights and the related General Comment Nr. 12

<sup>103</sup> For detailed information see e.g. UNDP 2003 The Human Rights Based Approach in Development Cooperation

the GTZ and the BMZ to human rights. This raises serious questions related to land policy.

(i) To operationalise human rights, civil society actors must have the ability to hold governments accountable. Transparency of state institutions is not only a universal human rights principle<sup>104</sup> but also the precondition and basis for accountability. For this research, lack of transparency has to be emphasised. Despite an open dialogue with the Ministry, the BMZ refused to provide requested basic information about its activities. The KfW Entwicklungsbank acted entirely non-transparently. It refused to provide any relevant information on its activities in land policy, which would have been highly relevant because of its central role in Ghana and Namibia. The GTZ Sector Approach Land Management, as well as GTZ Namibia, did provide some relevant information. GTZ Ghana and Philippines, on the other hand, did not share any information and evaluation of their activities. With this lack of transparency, the data for this research was very patchy. This makes a debate on accountability of the German DC in the field of land policies very necessary. The need for pro-active transparency of the institutions is already recorded in the Bonn Statement: “There is a need to support greater exchanges of information and knowledge on land access issues. Such exchanges should go beyond the current sharing of technical information so as to build public awareness and solidarity, share experiences and lessons, and allow choices.”

(ii) The participation of poor landless and land-insecure people (and their organisations and movements) as primary stakeholders in land policies has been emphasized. Participation and non-discrimination are universal human rights principles. Overall, it is very hard to validate the role of promoting local communities, peasant and landless organisations – interest groups campaigning for agrarian reforms – within German activities, since detailed information was not available. Exchange of information (often titled as ‘participation’) is in some cases part of the projects. Substantial support to this component, however, is most certainly missing. Only in the case of the Philippines was there a clear direct support to civil society for land claim making activities. However, the pullout by the German DC from the community despite an enormous appeal to retain some modest support, demands some kind of accountability of donor agencies to local communities. DC’s support to peasant organisations and NGOs in the Philippines constituted a very important political resource for the social movements there that made them take the risk to challenge violent landlords. Just when the poor

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104 See e.g. Covenant on Civil and Political Rights, Art. 19

peasants started to gain political momentum in their land reform campaign, the DC pulled out from the project, paving the way for a violent retribution by landlords immediately after such a pullout.

(iii) The human right to food binds its state parties individually and through international cooperation to take measures to realise the right to food 'by developing or reforming agrarian systems'<sup>105</sup>. The FAO Guidelines on the right to food detail this obligation. 'Where poverty and hunger are predominantly rural, States should focus on sustainable agricultural and rural development through measures to improve access to land, water, appropriate and affordable technologies, productive and financial resources, enhance the productivity of poor rural communities, promote the participation of the poor in economic policy decisions' (Guideline 2). Guideline 8a calls to 'advance land reforms to enhance access for the poor and women'<sup>106</sup>. The German DC acknowledges this link between access to land by the rural poor and the human right to food. But on the project level, no commitment to this causal relation has been found.

If the German DC is to achieve its formally declared goals around poverty reduction and human rights, the key contradictions outlined above - in particular those that are directly linked to the human rights approach to land policies - will have to be resolved in favour of the poor. By rural poor, we categorically mean landless rural labourers, small scale farmers, tenants, sharecroppers, poor pastoralists, and indigenous peoples, female and male, rather than rich farmers, local chiefs, commercial investors and other local elites who do not live in poverty and who can easily manipulate apolitical and technical land administration projects.

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<sup>105</sup> See Covenant on Economic, Social and Cultural Rights, Article 11

<sup>106</sup> See FAO 2004 Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security.



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The **LAND POLICY WORKING PAPER SERIES** is a joint publication of the Belgian Alliance of North-South Movements (11.11.11) and the Transnational Institute (TNI). Activist researchers from various non-governmental research institutions have come together to carry out this collective undertaking.

Three quarters of the world's poor are rural poor. Land remains central to their autonomy and capacity to construct, sustain and defend their livelihoods, social inclusion and political empowerment. But land remains under the monopoly control of the landed classes in many settings, while in other places poor peoples' access to land is seriously threatened by neoliberal policies. The mainstream development policy community have taken a keen interest in land in recent years, developing land policies to guide their intervention in developing countries. While generally well-intentioned, not all of these land policies advance the interest of the rural poor. In fact, in other settings, these may harm the interest of the poor. Widespread privatisation of land resources facilitates the monopoly control of landed and corporate interests in such settings.

Local, national and transnational rural social movements and civil society networks and coalition have taken the struggle for land onto global arenas of policy making. Many of these groups, such as Via Campesina, have launched transnational campaigns to expose and oppose neoliberal land policies. Other networks are less oppositional to these mainstream policies. While transnational land campaigns have been launched and sustained for the past full decade targeting international development institutions, there remains less systematic understanding by activist groups, especially their local and national affiliates, about the actual policy and practice around land issues by these global institutions.

It is in the context of providing modest assistance to rural social movements and other civil society groups that are engaged in transnational land campaigns that this research has been undertaken and the working paper series launched. It aims to provide a one-stop resource to activists engaged in global campaigns for progressive land policy reforms. The research covers analysis of the policies of the following institutions: (1) Food and Agriculture Organization of the United Nations (FAO); (2) World Bank; (3) European Union; (4) International Fund for Agricultural Development (IFAD); (5) UK Department for International Development (DFID); (6) Belgian Development Aid; (7) German Technical Assistance (GTZ); (8) Australian Aid (AusAid); (9) Canadian International Development Assistance (CIDA).

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The official development assistance (ODA) of the German government's development cooperation (DC) is the fifth largest in the world. Since the mid-1990s, the German DC has become actively involved in land policy issues in more than 20 countries around the world. It is also an important actor in multilateral land policymaking.

The official aim of the German land policy is purportedly to effect poverty reduction. The expression of this policy is the commitment and support to technical land administration and management. However, engagement in redistributive land policies like land reform is almost non-existent.

A neglect of political issues — equity issues, redistribution, meaningful participation, human rights — is unlikely to lead to any significant positive impact on the rural poor in developing countries worldwide.