

A TIME FOR CHANGE? Consulting Communities on a Draft Land Code in Chad

EXECUTIVE SUMMARY



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BACKGROUND

This research aims to critically evaluate the current draft of a new land code in the Central African country of Chad. In January 2014, the government of Chad presented Tearfund and four of Tearfund's partners¹ with a draft of the proposed new land code and requested constructive feedback. Research was undertaken in response to this request and is presented here.

The aim of this research is to ensure the new law gives fair consideration to the rights of those who depend on the land for their livelihoods – approximately 80% (USAID 2010) of the current 12.83 million population in Chad (World Bank 2013).

The current land law has not been updated since 1967 and, according to USAID (2010), '*does not reach critical issues of land tenure*' (p 3). The majority of the Chadian population are unfamiliar with the content of these laws and they are not available in local languages.

¹ L'Entente des Eglises et Missions Evangeliques au Tchad (EEMET), Programme Chrétien d'Animation Rurale (PCAR),

Customary land tenure systems are used by most landholders in Chad. This presents the challenge of an uneasy coexistence between state and customary law, which often puts communities at a disadvantage, especially regarding ownership of land and eviction procedures.

Revising this land law presents an opportunity for these issues to be addressed.

RESEARCH QUESTIONS

Building on a review of background information and existing literature, this work aimed to examine three core sets of research questions:

1. Does the proposed new land code recognise customary rights, and what provisions does the law make with regards to eviction and compensation?
2. Are there any important aspects that are missing or loopholes which could potentially have a negative impact on communities?
3. How well does the proposed new land law match up to the Food and Agriculture Organization of the United Nations' 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO Guidelines)'?

Service Chrétien en Milieu Rural (SCMR), Centre Chrétien d'Appui au Développement Communautaire (CECADEC).

METHODOLOGY

Initial issues for clarification, discussion and consultation were identified through a preliminary overview of the proposed new land code, drawing on legal expertise from the UK and Chad. A series of consultation meetings were then organised with a range of stakeholders from local communities in three regions across the country: Béré, Pala and Bouso.

This was followed by a workshop in N'Djamena in order to discuss the recommendations put forward through the community consultations.

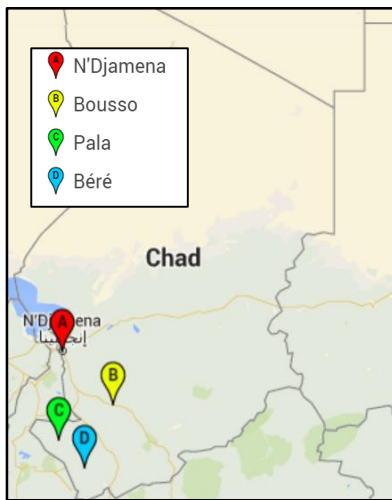


Figure 1: Map showing location of consultations and workshop.

Semi-structured interviews were also held with civil society organisations and government officials during the process. Overall around 130 participants were consulted with.

RESULTS

Clarification required

The draft code appears to recognise customary rights and goes some way towards protecting them. **However, concerns were raised at the lack of definition of customary rights and further clarity could offer communities greater protection.** The code seeks to allow customary rights to be changed into property rights, although farmers have to prove that they possess and use the land.

The intention and rationale behind this may be promising, but, without clearer guidelines, how this is implemented in practice could present challenges. Further clarity is also required for the conditions in which the varying levels of government can allocate different plot sizes.

In addition, the draft code states that people can be expropriated when 'public interest' requires this. However, without a clear definition of 'public interest', multiple interpretations may arise in practice.

Obtaining a land title

It is not clear whether the draft code will improve the existing process of obtaining a land title. Registering land ownership under the current law requires 'six procedures, an average of 44 days, and payment of 23% of the property value' (USAID 2010 p 6), and participants in the consultation expressed frustration from their experiences of this process.

Under the new code, this procedure should be simplified, the services responsible should be decentralised, and the cost of obtaining a land title should be reduced. This would enable a greater number of holders of customary rights to obtain an official land title and could give them greater bargaining power in the process of obtaining compensation when faced with expropriation or eviction.



Figure 2: Local authorities at the consultation in Béré.

The expropriation process

Concerns were raised about the expropriation process laid out in the draft code. The code states that once a declaration has been made that a piece of land is required for 'public interest', the owner is forbidden from undertaking any construction on the land. This potentially puts the owner of the land at a significant disadvantage while they wait for the expropriation procedure.

Additional concerns raised included the potential costs incurred by the farmer in the appeal process, the failure to take into account loss of future earnings in determining compensation, and the relatively low notice period (one month) to evacuate a building once the process is finalised.



Figure 3: Consultation held in Bousso

Local mediation

One aspect participants considered to be missing from the land law is a provision for settling land disputes using mediation techniques at a local level. Participants also felt that having one land code that is supposed to be applicable to both rural and urban contexts may put some communities at a disadvantage.

FAO Guidelines

The draft code goes some way towards aligning itself with the principles of the FAO Guidelines, however alignment could be strengthened in a number of areas, including eviction and expropriation processes and local level mediation.

CONCLUSION

This draft code has the potential to benefit the 80% of Chadians (USAID 2010) who depend on land for their livelihood, though improvements and amendments are required, as outlined above. It is critical that due care is taken for the law to be implemented effectively.

It will be of paramount importance that rural farmers are made aware of their rights under the proposed new law – both rights that are remaining and new rights.

It will be particularly important to consult with women's groups; though the draft code itself does not discriminate based on gender, there may be challenges implementing this principle at a local level.

It is important to recognise that 63% of the Chadian population are illiterate (World Bank 2012) and that additional tools are required to raise awareness. In order to address these challenges and aid the implementation of the land code in rural areas, a rural land service should be established at the sub-prefecture level with the purpose of specifically addressing the land needs of rural communities.

Questions remain about whether sufficient funding has been allocated to the implementation of the proposed new land law once it is passed. The international community will have a significant role to play in supporting the government of Chad in this process.

Finally, further research should be undertaken to enable a wider participation of stakeholders, ensuring greater diversity of input into the formation and implementation of this proposed new law.

RECOMMENDATIONS

Based on this research on the draft land code, the following recommendations are presented:

1. For clarification:

- The term 'customary rights' must be clearly defined.
- The definition of 'permanent and evident' ground coverage must be clearly defined.
- The term 'public interest' should be clearly defined.
- Clarification is required for the conditions by which the Council of Ministers can allocate land over 10 hectares.

2. For amending:

- The process for obtaining land titles should be simplified and the costs significantly reduced.
- The article forbidding any construction, planting or improvements on land during the expropriation process will put the owner of the land at a significant disadvantage and should be revised.
- Loss of future earnings should be taken into consideration as part of compensation.
- A longer notice period (than one month) should be given once the compensation ruling is finalised.

References:

- Food and Agriculture Organization of the United Nations (2012) 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.'
- Government of Chad (2013) Draft Land Code.
- Maps courtesy of Google Maps.
- USAID (2010) USAID Country Profile, Property Rights and Resource Governance: Chad.
- World Bank (2012) Literacy rate, adult total.
- World Bank (2013) Country Data: Chad.

3. For further consideration:

- The articles outlining the consultation process (which occurs prior to any compulsory purchases) should be further developed.
- The expropriation process must not be drawn out and costs of appeal should be covered by the state.
- The state must ensure it has sufficient funds to effectively implement this law (including the expropriation costs) effectively.

4. For provisions to be added:

- The code should contain articles specific to rural land and articles specific to urban land.
- A provision should be included that supports mediation as a mechanism for resolving land-related disputes.

5. For implementation:

- Community participation is absolutely essential for the development and implementation of this code and further research should be undertaken to help strengthen it.
- Communities must be made aware of their rights under the code – both remaining and new. Local officials must be trained to help implement them.
- A rural land service should be established at the sub-prefecture level.
- Sufficient funding must be in place for all areas required to implement this code effectively.

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