

TOWARDS IMPROVED LAND GOVERNANCE



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In collaboration with
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September 2009

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ISBN 978-92-1-132210-1

Photography: Mika-Petteri Törhönen

List of abbreviations

CESCR	UN Committee for Economic, Social and Cultural Rights
CFUG	Community Forestry User Groups
CODI	Community Organizations Development Institute
DFID	UK Department for International Development
DPGL	Development Partners Group on Land
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Domestic Investment
FIPC	Free Informed Prior Consent
GIS	Geographic Information System
GLTN	Global Land Tool Network
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IFC	International Finance Corporation
JFM	Joint forest management
MDG	Millennium Development Goal
NAPR	National Agency of the Public Registry
NGO	Non Governmental Organization
NSA	Non State Actors
PBA	Programme Based Approach
REDD	Reduction of emissions from deforestation and forest degradation in developing countries
SDLM	State Department for Land Management
SIDA	Swedish International Development Cooperation Agency
SWA	Sector Wide Approach
TLIMS	Tribal Lands Information Management System
TPAC	Third Party Arbitration Courts
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UN-HABITAT	United Nations Human Settlements Programme
UNHCR	United Nations High Commissioner for Refugees

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Summary

Land is increasingly recognised as an important governance issue. The world today faces many complex challenges, including climate change; rapid urbanization; increased demand for natural resources; food, water and energy insecurity; natural disasters; and violent conflict. Many of these challenges have a clear land dimension: unequal access to land; insecurity of tenure; unsustainable land use; weak institutions for dispute and conflict resolution, etc.

Conventional technical approaches to land will not be adequate to address these issues. Part of the reason is that existing land administration tools are not able to cope with even current challenges. While reliable statistics are difficult to obtain, there is wide consensus that the majority of people in the world do not have legally recognised and documented rights to land, and that the land rights of most women are weak in quantity and quality. The other part of the reason, however, is that the nature of the problems is simply too complex for traditional linear analysis and sectoral approaches. Issues like climate change, informal settlements and food insecurity are highly resistant to resolution.

This paper starts from the assumption that the *process* of reform is as important as the *content* of the reform. Many excellent land policies, laws and technical reforms have been developed, yet, in many cases, implementation has slipped, stalled or has even been reversed. The paper argues that an understanding of land issues and the reform process from a governance and political economy perspective offers insights that can not only improve the design of reforms, but can also offer tools to support implementation.

The paper, jointly developed by staff of FAO and UN-HABITAT, represents another contribution to the broader effort to understand land governance. As a joint paper, it seeks to recognize that land issues cannot be arbitrarily separated into rural or urban sectors – such distinctions create artificial boundaries, which can impede a more holistic approach to the concept and issues.

Governance is the exercise of political, economic and administrative authority in the management of a country's affairs at all levels. Governance is a neutral concept comprising the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights and obligations, and mediate their differences.

Land governance, by extension, concerns the rules, processes and structures through which decisions are made about the use of and control over land, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed. It encompasses statutory, customary and religious institutions. It includes state structures such as land agencies, courts and ministries responsible for land, as well as non-statutory actors such as traditional bodies and informal agents. It covers both the legal and policy framework for land as well as traditional and informal practices that enjoy social legitimacy.

Fundamentally, land governance is about power and the political economy of land. The power structure of society is reflected in the rules of land tenure; at the same time, the quality of governance can affect the distribution of power in society. Tenure is the

relationship among people with respect to land and its resources. These rules define how access is granted to rights to use, control and transfer land, as well as associated responsibilities and restrictions. They develop in a manner that entrenches the power relations between and among individuals and social groups. It is no surprise, therefore, that the elites and even the middle classes have stronger forms of land tenure, while the poor and vulnerable groups have weaker, more insecure forms of tenure.

Weak land governance is a cause of many tenure-related problems, and attempts to address tenure problems are affected by the quality of land governance. Improving land tenure arrangements often means improving land governance. A land governance and political economy perspective raises some potentially interesting questions for reformers. Who benefits from the status quo and who is excluded? Who sets the agenda for reform? How do others influence this agenda? What are the interests and objectives of different stakeholders and how do these play out in the reform process? Why do reforms experience slippage during implementation? How are the benefits of the reform distributed? Who benefits; who does not and why?

An understanding of land issues from a governance and political economy perspective can be derived through a three part framework that (i) analyzes the broad country context, the types of tenure that exist, the operation of land markets and the institutions (rules and structures) that regulate both tenure and markets; (ii) examines how a governance and political economy perspective can be applied to a specific land issue or reform context, with emphasis on clarifying stakeholders, interests, influence, institutions and relationships; and (iii) explores how to manage a reform process.

While the implementation of land sector reforms has been challenging, there is a significant body of experience on which to draw. The paper examines the following land issues from a governance and political economy perspective: land policy formulation; land reform; security of tenure; women's land and property rights; forced evictions; natural resource management; informal settlements; land disputes and conflicts; and international cooperation. Examples of country experience are presented to illustrate the challenges, as well as some successes, in reform implementation.

The review of global experiences from a governance and political economy perspective reinforces the fact that many land sector problems are highly complex, politically sensitive, and difficult to resolve. At the same time, it suggests that a more flexible, long term strategy may be more appropriate for reforms in the land sector. It emphasizes the importance of blurring the distinction between reform design and reform implementation to enable reformers to take advantage of new information and understanding that is generated through the reform process. Specific strategies for reform champions, gatekeepers and challengers are required, as well as a continuous information and outreach strategy.

The conclusion of this paper is that while land sector reforms are indeed challenging, many of them can contribute to improving the overall quality of governance in a country. Mainstreaming a governance approach to these reforms is essential.

1. Introduction

The world today faces many complex challenges including the adaptation and mitigation of climate change; rapid urbanization; increased demand for natural resources; growing food, water and energy insecurity; increased natural disasters; and resolution of violent conflict. Many of these challenges have a clear land dimension: unequal access to land; insecurity of tenure; unsustainable land use; and weak institutions for land administration, dispute and conflict resolution, etc. Responding to these challenges is particularly difficult when the governance of land is weak. This paper addresses land governance primarily in developing and transitional countries but it may also be relevant to people in developed countries who are seeking to improve land governance. It also serves as a background paper for discussions in relation to the preparation of voluntary guidelines on the responsible governance of the tenure of land and other natural resources.

Land is the single greatest resource in most countries. People require land and related resources such as forests and water for the production of food and to sustain basic livelihoods. Land provides a place for housing and cities, and is a basic factor of economic production as well as a basis for social, cultural and religious values and practices. Access to land and other natural resources and the associated security of tenure have significant implications for development. The land rights of the poor and vulnerable are increasingly affected by climate change, violent conflicts and natural disasters, population growth and urbanization, and demands for new energy sources such as bio-fuels.

This paper shows that while some progress has been made in improving secure access to land and other natural resources for the rural and urban poor, a number of longstanding challenges remain. Although ancestral rights to land and other natural resources are a cornerstone of the livelihoods of indigenous people, the legal recognition and safeguarding of such rights has been uneven. Despite women being the principle farmers or producers in many parts of the world, significant gender inequities continue to exist with regard to use of and control over land and other natural resources. Reliable statistics on land ownership are difficult to obtain but there is a broad consensus that the vast majority of women in the world do not have formally registered land rights. Globally, many rights to land and other property are not legally recognised and documented. Even when land is included in a land registration system, the records of who holds rights to that land are often out of date.

Conventional technical approaches to land will not be adequate to address these challenges. Part of the reason is that existing land administration systems are, in many cases, not able to cope with current challenges, let alone those of the future. The other part of the reason is that many of the problems are both massive in scale and very complex. They are highly resistant to resolution: land reform and urban upgrading, for example, have been implemented in numerous countries in different ways, yet rural landlessness persists and informal settlements are expanding.

The paper argues that the quality of land governance is an important determinant of the number and scale of tenure-related problems; the quality of land governance, moreover, will also affect the outcome of reforms designed to address these same problems.

Weak governance has adverse consequences for society. It is found in formal statutory land administration as well as in informal and customary tenure arrangements. The poor are particularly vulnerable to the effects of weak governance as they lack the ability to protect their rights to land and other natural resources. In many cities, the poor live under the fear of forced evictions or, more commonly today, development-based eviction. Weak governance promotes gender inequality as poor women tend to be less able to secure their rights. It fosters social inequality with potentially destabilizing consequences as the rich are able to benefit from opportunities to acquire land and the poor lose their rights to land and common property resources such as grazing lands and forests. In addition, weak governance leads to environmental degradation as corrupt public officials and private interests collude to ignore controls on land use, the extraction of water and minerals, and the clearing of forests. The degradation of state land, including in national parks, and its illegal appropriation are direct results of weak governance. The evasion of property taxes reduces municipal revenues that could be used to extend infrastructure and provide basic services. The arbitrary application of the rule of law discourages investment and constrains economic development. Weak governance in land tenure tends to flourish where the law is complex, inconsistent or obsolete, where people who work in land agencies lack motivation and are poorly trained and paid, or where decision-making processes are opaque and civil society is weak. Left unaddressed, land-related grievances can degenerate into violence and conflict.

In contrast, good governance of tenure can ensure that rights in land and natural resource are recognised and protected. By doing so, it helps to reduce hunger and poverty, promotes social and economic development and contributes to more sustainable urbanization. Good governance can contribute to the achievement of a variety of development objectives, including the achievement of the Millennium Development Goals (MDGs):

- **Eradicating extreme poverty and hunger (MDG1).** Secure access to land and other natural resources is a direct factor in the alleviation of hunger and poverty. Rural landlessness is often the best predictor of hunger and poverty: the poorest are usually landless or land-poor. Improved access to land may allow a family to produce food for household consumption, and to increase household income by producing commodities for sale in the market. Secure access to land provides a valuable safety net as a source of shelter, food and income in times of hardship. In cities, security of tenure is a prerequisite for poverty reduction. An estimated 700 million urban poor live in conditions of insecure tenure and an estimated 2 million people are forcibly evicted each year. Security of tenure for the urban poor promotes investment in homes, neighbourhoods and livelihoods, including urban agriculture.
- **Promote gender equality and empower women (MDG3).** Women often have fewer and weaker rights to land for a variety of reasons including: biases in formal law, in customs, and in the division of labour in society, as well as due to the HIV/AIDS pandemic and the increase in violent conflict and natural disasters that can increase the risk of disinheritance. Land tenure initiatives that promote gender equity can serve to increase women's power in agricultural production and help secure their inheritance rights. Rights to land are also linked to other access and resource rights, including water, pasture and to timber and non-timber forest

products. Secure rights in land can also enhance political voice and participation in decision-making processes.

- **Ensure environmental sustainability (MDG7).** Through MDG7, Target 11, Governments commit to having “achieved a significant improvement in the lives of at least 100 million slum dwellers” by 2020. Today there are an estimated 900 million slum dwellers; this figure is projected to increase to 1.4 billion by 2020 and may reach 2 billion by 2030. These figures suggest that even if Target 11 is achieved, it will meet only a small proportion of existing needs and only seven percent of future estimated needs by 2020. Many informal settlements are located on hazardous land and are at risk from natural disasters and climate change. High land values in urban and peri-urban areas can also create opportunities to use the windfall gains to upgrade informal settlements while minimizing the need for relocation. Ensuring an adequate supply of affordable land is also critical to the prevention of the growth of new slums. Tenure also plays an important role in rural environmental sustainability. By defining access and security of rights to land and its resources, tenure affects how people decide to use the land, and whether they will invest in improvements to the land. Inappropriate tenure policies and inequitable access to land result in over-cultivation and overgrazing of marginal lands. Farmers are more likely to invest in improving their land through soil protection measures, planting trees and improving pastures if they have secure tenure and can thus expect to benefit from their investments over the longer term.
- Improving tenure arrangements can play a substantial role in the achievement of **MDG8 (the development of a global partnership for development)**. This goal includes a commitment to good governance both nationally and internationally under Target 8.A (“Develop further an open, rule-based, predictable, non-discriminatory trading and financial system”), and the recommendations of this paper are directly relevant to meeting that goal. There is a perceived need for a global partnership to improve coherence among donor approaches and to develop standards for the governance of land tenure. At the country level, the global partnership can also be reflected in strengthened efforts to improve donor coordination in the land sector in line with the Paris Declaration (2005).
- In addition, improved access and tenure security contribute indirectly to other goals. Legally recognized rights in land are often critical to establishing legal identity, which in turn is linked to access to other services such as education (MDG2) and health (MDG5). Secure rights also help ensure that women’s land and property rights are not at risk of disinheritance due to HIV/AIDS (MDG6).

Achieving good governance in land is not easy. Policy reforms to strengthen governance require the political will to overcome opposition from those who benefit from non-transparent decision-making and corruption. Improving governance demands the strong commitment of the people involved, and the development of capacity in order to make changes possible.

A number of countries around the world have recognised the link between improved land governance, poverty reduction and the achievement of the Millennium Development Goals. While notable achievements have been made, much of the emphasis to date has been on technical improvements of systems and procedures.

The political and policy aspects of good governance of land tenure have not yet received the same attention. This paper aims to contribute to this discussion. It is part of a programme which FAO is implementing with UN-HABITAT and other partners to assist countries to improve their governance of land tenure.

The remainder of the paper is structured as follows. Chapter 2 discusses the concept of land governance by adopting a political economy approach which focuses on the relationship between power and how it affects the allocation of scarce resources.

Chapter 3 presents a three part framework for understanding land issues from a governance perspective in a country: (i) the general context of tenure including the type of tenures that exist, and the operations of land markets and the institutions (rules and structures) that regulate tenure and markets; (ii) the specific land issues and the objectives and context of tenure reform including clarifying stakeholders, interests, influence, institutions and relationships; and (iii) the management of the reform process.

Chapter 4 provides an overview of some key issues in land governance, including: land policy formulation; land reform; security of tenure; women's land and property rights; forced evictions; natural resource management; informal settlements/"slums"; land disputes and conflicts; and international cooperation. Examples of country experience are presented to illustrate the challenges, as well as some successes, in reform implementation.

Chapter 5 provides some short concluding comments.

2. Land Governance - what it is and why it matters

There is an emerging recognition that land is a critical governance issue. Yet while both “land” and “governance” are familiar terms, their combination as “land governance” is more recent. This paper is a contribution to the broader effort to understand land governance. As a paper prepared by staff of FAO and UN-HABITAT, it recognizes that land issues cannot be arbitrarily separated into rural or urban sectors; such distinctions create artificial boundaries which can impede a more holistic approach, both conceptually and during the implementation of reforms.

2.1 Land – some important characteristics

Land is taken to include the earth’s surface as well as its various resources, including water, forests and fisheries. Oil, natural gas and minerals are also usually included as land-related natural resources. Land, therefore, is taken to include the physical land as well as related natural resources.

Five important characteristics of land are useful to recall when developing a definition of land governance.

First, *land is more than just an asset*. For many people, land is closely linked to individual and community identity, history and culture, as well as being a source of livelihoods and, for many poor people, their only form of social security. As such, decisions regarding use of and control over land and natural resources are extremely sensitive, and are often highly political with different societal groups having differing views. Resolving differences may require a negotiated agreement that reflects compromises made by the various groups. In such a context, there is rarely such a thing as a purely “rational” or “technical” reform.

Second, *multiple rights to the same parcel of land can be held by different people or groups*. Such multiple rights to the same parcel could include, for example, the right to sell the land, the right to use the land for pasture or agriculture, the right to use trees on the land, the right to travel across the land, or the right to drive cattle across the land to obtain water from a river. In an urban context, land may be privately held, however, sub-surface mineral rights (or development rights) may be vested in the state. Rights of way or easements may also exist for utilities or infrastructure as well as for other goals such as conservation. The existence of multiple rights has given rise to the concept of the “bundle of rights”: the various rights to a parcel of land may be pictured as “sticks in a bundle”, with rights being held by different parties. Some rights may be held by the landowner (which may be a private landowner, a customary political authority such as the stools of Ghana, or the state as in Mozambique), with other rights being held by people who use the land. Multiple rights reflect in part the fact that there can be multiple uses for the same parcel of land. Reconciling these multiple interests is a core governance challenge.

Third, *land rights, restrictions and responsibilities are expressed through a socially constructed system of land tenure*. Land tenure here refers to the complex relationship among people with respect to land and its resources. The rules of tenure define how rights to land are assigned within societies. They define how access is granted to rights to use, control and transfer land, as well as associated responsibilities and restrictions. In simple terms, land tenure determines who can use what resources of the land for

how long, and under what conditions. Land tenure and its rules are socially constructed and thus tend to mirror the distribution of power within a given society or country. In general, the powerful enjoy more secure land rights, while more vulnerable groups have less secure land rights. Historically, land rights often came through hegemony, with their legitimacy resting on force. With democratic reforms, land rights tend to reflect agreements across a broader social base.

Fourth, *land rights can have different sources of legitimacy*. From a legal perspective, claims to land are legitimate when they are recognised in law, i.e. they have a legal legitimacy. Some claims to land lack legal legitimacy, e.g. a rich family may claim the land on which it has erected a luxury hotel in a state owned coastal area in violation of regulations. But as Figure 1 shows, there is a grey area where people do not have legally recognized rights but they have rights that can be considered socially legitimate. In some cases, people with socially legitimate rights may have an expectation that their claims will or could ripen into full legal rights. For example, a person who occupies the land of another may intend to apply for ownership when all the conditions required by prescription or adverse possession have been met. People in an informal settlement on state land may expect to receive formal recognition if the country has a policy of formalizing such settlements. Where the line is drawn between “socially legitimate” and “lacking in legitimacy” differs from one society to another and is likely to change over time within any given society.

Figure 1: Examples of the legitimacy of land rights

Legal legitimacy (legitimate through the law)	<ul style="list-style-type: none"> • Ownership rights recognised by law including rights of individuals, families, and groups, and customary rights recognised by the law; • Use rights recognised by law including leases and sharecropping agreements; • Servitudes/easements on both private and public land.
Social legitimacy (legitimate through broad social acceptance but without legal recognition)	<ul style="list-style-type: none"> • Customary rights on land vested in the state in trust for the citizens; • Customary rights on state land, e.g. forest communities; • Informal settlements on private and public land where the state has accepted that it is not possible to relocate the people; • Squatters on private and public land who have almost fulfilled the requirements for acquiring the land through prescription or adverse possession.
Lacking legitimacy	<ul style="list-style-type: none"> • Commercial developers who expect to profit by building in protected areas; • Politicians and others who illegally appropriate state land for their own benefit.

Fifth, *the tenure system is itself an institution with its own institutional framework*. Institutions have been defined as “the rules of the game in a society”,¹ and as noted above, the rules of tenure regulate the use of and control over land. These rules may be codified in statutory law and enforced by state structures such as the courts, or the police. Or, in customary systems the rules may be based on traditions and practice that have evolved over generations and are vested in structures such as elders’ councils. However, the distinction between statutory and customary tenure is becoming blurred, e.g. in countries such as Uganda which provide full legal recognition of customary rights. In some countries, particularly those where most of the land is held under

¹ North, D. 1990.. *Institutions, Institutional Change and Economic Performance*. New York, Cambridge University Press.

customary tenure, the systems of customary and statutory tenure could be considered to be merged, e.g. a customary chief may give an agreement that customary land can be used by an investor from outside the community, but a government agency may also have to give its consent.

2.2 Governance – an overview

While the term “land” has a long-established history, the concept of governance emerged in its current form only in the 1980s. While many institutions have developed their own definitions, four specific characteristics of the concept are now generally accepted.

First, ***governance is conceptually broader than government***. An inclusive approach is fundamental because, in many countries, state actors co-exist with their customary, religious and/or informal counterparts. The stakeholders in land thus reflect a broad spectrum of state actors, customary authorities, non-state actors, and the private and professional sectors.

Second, ***governance emphasizes processes and institutions***. Processes define how issues are put on the agenda, how decisions are made and by whom, how those decisions are implemented, and how differences and grievances are managed. The focus on processes also highlights the importance of different ways actors can interact: dialogue, cooperation, conflict, unilateralism, negotiation, compromise, exit, etc. As interaction can change from one mode to another, a governance paradigm also implies a dynamic system.

From an institutional perspective, governance refers to the rules and the structures that govern and mediate relationships, decision-making and enforcement. As noted above, the rules and structure of land tenure can be formal (e.g. laws, regulations, and by-laws administered by parliaments, courts and municipal councils) as well as informal or customary (e.g. elders councils, social networks, patronage, etc.) or a combination. The concept of governance fits neatly with this pluralistic institutional framework for land. This is important because the legal system in some countries does not effectively recognize or incorporate customary institutions.

Third, with its emphasis on authority, ***governance recognizes the importance of politics and power***. Politics and power relations have a significant impact on the understanding of a given context or issue, and in developing approaches for reform.

Finally, ***governance is conceptually neutral***. The quality of land governance can be good or weak, improving or declining. In order to determine whether governance is effective or weak, one must look at processes as well as outcomes.

2.3 Land governance - a working definition

The following working definition for land governance is proposed:

“land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed.”

Land governance encompasses statutory, customary and religious institutions, as well as informal institutions. It includes state structures such as land agencies, courts, and ministries and municipalities responsible for land. It also includes informal land developers and traditional bodies. It covers the legal and policy framework for land, as well as traditional practices governing land transactions, inheritance and dispute resolution. In short, it includes all relevant institutions from the state, civil society and private sectors.

Land governance is fundamentally about power and the political economy of land. Who benefits from the current legal, institutional and policy framework for land? How does this framework interact with traditional authorities and informal systems? What are the incentive structures for, and what are the constraints on, the diverse land stakeholders? Who has what influence on the way that decisions about land use are made? Who benefits and how? How are the decisions enforced? What recourse exists for managing grievances?

The answers to these questions vary from country to country, and from issue to issue within a given country. They highlight, in effect, the consequences of weak land governance and the potential contribution of improved land governance.

2.4 Land governance – why it matters

Within any jurisdiction, whether it is a community or a country, there are multiple development objectives and multiple stakeholders who have interests that range from basic survival to personal enrichment to societal well-being.

As land resources are finite within a jurisdiction, there is often competition between stakeholders over access to and use of the resources. Family members argue over who inherits the family property. Neighbours dispute the position of their boundary, with both claiming the land. Farmers and pastoralists compete to use the same land; that same land may be sought by others for residential, commercial or industrial purposes. Slum dwellers may live in an area the government has designated for airport expansion; hawkers may be in conflict with formal enterprises in the central business district. Indigenous communities and environmentalists compete with timber companies over the use of forested lands. Governments design projects which require privately owned land to be converted to public use or purpose. Promoted by policies to increase revenues and jobs, tourist resorts compete against local communities for scarce water, land and fish stocks. Town-site beautification or urban redevelopment programmes threaten low-income communities. As a result of concerns over high and volatile fuel and food prices, investors in large scale agricultural projects compete with local land users for land for the production of biofuels and food for export. Competition for land is exacerbated when people are displaced from their land and homes because of violent conflicts, natural disasters, and climate change and climate variability: their search for new land is likely to place them in competition with already established communities.

When land governance is weak, the powerful are able to dominate the competition for scarce land resources. In an extreme form, corruption can occur on a grand scale through “state capture”. The state can be “captured” by individuals, families, clans, groups or commercial companies who direct public policy for their own benefit. Those with power may illegally transfer state lands and common lands to themselves or their

allies. They may implement land redistribution policies and laws in their favour, and give unjust compensation to those whose land is acquired. They may make favourable decisions to change land use that cannot be justified on objective grounds. Agreements may be made in secret by a small number of people: by the time the public becomes aware of decisions it may be too late to intervene.

By contrast, when land governance is effective, equitable access to land and security of tenure can contribute to improvements in social, economic and environmental conditions. With good governance, benefits from land and natural resources are responsibly managed and the benefits are equitably distributed. In cities, effective land management reduces social tensions and promotes economic growth and poverty reduction. When good governance exists, decision-making is more transparent and participatory, the rule of law is applied equally to all, and most disputes are resolved before they degenerate into conflict. Improved governance can result in land administration being simplified and made more accessible and effective.

Good governance can be characterised by principles of universality of tenure security, equitable participation, adherence to the rule of law, sustainability, and effectiveness and efficiency. (See Box 1.) These issues and principles are illustrated with examples from practice in Chapter 4.

Box 1. Examples of principles of good governance

- Access to land and natural resources should be equitable. Given the importance of land for a wide range of economic, social and environmental objectives, no group within society should be legally or politically excluded from being able to access to land or related natural resources.
- Security of tenure should be provided to all members of society. Good governance ensures the legal recognition and protection of a range of land rights, including customary and traditional rights as well as intermediate forms of tenure. Evictions should be avoided wherever possible; where absolutely necessary, they should be carried out according to national law and international standards related to due process and fair and just compensation.
- Specific measures should be taken to ensure access to land for, and the security of land and property rights of, women. A gender perspective on land and property rights should be incorporated at all stages of reform analysis, design, implementation and analysis. Data regarding access to land and security of tenure should be gender disaggregated.
- Decision-making regarding land and natural resources should be transparent, with processes open to all members of society. Good governance places all decisions on land upon respect for fundamental human rights and ensures that all relevant stakeholders are enabled to effectively participate, particularly women and vulnerable groups.
- The rule of law should be applied to all. Good governance requires that no one stands above the law, and that politicians, officials, land professionals and others actors are accountable for their actions. It ensures that rules and procedures are clear, consistent, well understood and applied in a transparent manner. It requires that conflicts are managed effectively and efficiently, including through traditional institutions and through alternative dispute resolution methods.
- Land administration should be decentralized based on the principle of subsidiarity, i.e. taken at the lowest appropriate level and based on accountability. Where appropriate, it should build on traditional and informal practices consistent with other governance principles. Inclusive processes are required to ensure the equitable distribution of benefits from land and related natural resources.
- Effective and efficient land administration should be provided to all members of society. Services should be responsive to the needs of citizens. Costs of acquiring services should be affordable, and procedures should be clear and simple. Technical solutions should be based on available capacity and appropriate technology.

- Sustainability should be ensured by taking a long term perspective. Good governance requires institutional and financial sustainability. Policy decisions and administrative action should not compromise the social, economic and environmental needs of future generations.

2.5 Land governance – why it can be difficult to reform

Improving the effectiveness of land governance is not easy. Many land-related issues – like landlessness, informal settlements, and the resettlement of people displaced by violent conflicts, natural disasters and climate change – are complex, politically sensitive and massive in scale, and are thus highly resistant to resolution. They often display the following characteristics:²

- ***Difficulty to clearly define the problem***
Different land stakeholders will have a different understanding of the nature, scale and scope of the problem. Each stakeholder holds a piece of the puzzle, but, alone, none can see the complete picture, and because of their differences there may not even be a complete, unified picture. Different stakeholders will emphasize different parts of the problem and therefore propose different solutions. Some proposals will have unforeseen consequences, including negative impacts on other parts of the system. Alternatively, new opportunities may also arise in this process. This characteristic is a common feature of national land policy consultations, as well as of more specific issues like informal settlements upgrading and natural resource management.
- ***A constantly evolving problem***
Even if it is possible to bring stakeholders together to agree on how to characterize a land-related problem, the problem itself is constantly evolving. So too is the stakeholders' understanding of the problem: new evidence may be produced; political change may bring new perspectives to the table; and alliances and power relations will shift over time. Vested interests also adjust to reforms, identifying new strategies or tactics to preserve the status quo or their own interests.
- ***Lack of a clear solution***
Without a clearly defined problem and with the problem itself constantly evolving, it is difficult to find a clear solution. Land challenges may not result in verifiably “right” or “wrong” answers, but rather stakeholders must content themselves with agreement on “better”, “worse” or “good enough” ways forward. Negotiations may result in compromises that are not perfect, but the best that can be achieved at the time. This may give rise to the need to develop strategies to “manage the problem” rather than to definitively “solve the problem”. The lack of clear solutions can make it difficult for stakeholders to stay the course over the long period of reform. Fatigue, shifts in the political agenda, and lack of resources may result in the end of efforts to address the problem, even though the problem will persist.

² These characteristics are based on the work of Rittel and Webber, 1973, Dilemmas in a general theory of planning, that originally proposed ten characteristics of wicked problems and of the Australian Public Service Commission, 2007, Tackling Wicked Problems: A Public Policy Perspective..

- ***Social and institutional complexity***
Often it is the social and institutional complexity of the reform environment, rather than the inherent technical complexity of the problem, that overwhelms reform efforts. The fragmented nature of the land sector – with responsibilities divided up between multiple ministries and departments and involving a wide range of private, professional and civil society actors – presents special challenges to reform. Coordination of so many actors with multiple and often divergent interests is difficult at best, and often impossible to sustain over time. Competing sources of authority and legitimacy also present significant challenges to the reform process. Land tenure reforms are particularly complex because of the often significant gap between social and legal legitimacy of land rights and institutions. Urban land issues, moreover, while reducing the geographic scope, magnify the social and institutional complexity within a defined space.
- ***Behaviour change is critical***
Land sector reforms often require changes in the behaviour of citizens and land professionals, and in organizational culture. This can be particularly challenging when under-funded staff with low motivation operate in an environment of complicated procedures: this can create perverse incentives and enable corruption. Land professionals may have set ideas regarding technical and procedural standards that make reform difficult. The interests of the political elite or wealthy people are often advanced by the existing system; any changes to that system may undermine their source of power and influence. Civil society organizations may have developed a culture of opposition to government or a distrust of technical discussions, making cooperation and compromise anathema. The incentives of donor or bilateral staff may be tied to short term results that deny them the flexibility to adapt to changes on the ground.

Although improving land governance is difficult and challenging, this paper shows that it is possible.

3. Land governance: understanding issues and managing the reform process

Closer examination of power relationships and the political economy of land can provide important insights and tools to support land policy reform which in turn can strengthen the quality of land governance. This chapter outlines a simple three-part framework for the analysis of power and political economy that can be used by people who want to broaden their understanding of land issues in their own countries, as well as by people who are working internationally on development projects and other initiatives.

The first part is an analysis of the country context including: the broad socio-economic and political history from a land perspective; the land tenure systems that have evolved over time, including the range of land rights that exist; the operation of the land markets, including the main constraints; and the institutions (rules and structures) that regulate tenure and markets.

The second part is an analysis of the specific context of land sector reform. The framework builds on a conceptual approach of the World Bank³ and others for applying a power and political economy perspective to the particular type of reform being considered. It begins with a more detailed examination of the precise content and objectives of the proposed reform, and focuses on the stakeholders involved in the reform – their objectives, interests, relationships, sources of influence and constraints, and how they are influenced by institutions.

The third part of the framework identifies some strategies and tactics to support the process of reform management.

3.1 Stage 1: Understanding the country context

An understanding of the power dynamics and the political economy of land begins with an understanding of at least four variables: the land related aspects of a country's broad socio-economic history; the land tenure system that has evolved over this history; the functioning of the land market; and the operation of the institutions responsible for regulating land tenure and land markets. These are outlined below.

Socio-economic context for land

Understanding the broad socio-economic context is fundamental in addressing any reform agenda and is particularly critical in the context of land through understanding the land dimensions of a country's history, politics, economy, geography, culture, religion and gender relations. Some important issues include: macro-economic conditions; trade relations; poverty distribution; natural resource endowments or scarcity; urbanization rates and the predominance of informal settlements; the ethnic composition and geographic distribution of populations; a country's strategic location; history of war, occupation or colonization; type of government (federal or unitary); the evolution of its political leadership and parties; the role of traditional or religious organizations; the strength of civil society, professional groups and the private sector, etc.

³ World Bank. 2008. The Political Economy of Policy Reform: Issues and Implications for Policy Dialogue and Development Operations.

These factors broadly shape the reform context. They provide a perspective for identifying future trends based on past experience. They also provide insights that will help identify stakeholders, institutions, relationships, sources of influence and conflict, etc. that will be important during the reform process. A failure to take these factors into account can undermine even well-designed reforms.

There are a variety of tools for this initial level of analysis. Several adopt a power or political economy analysis including: DFID's Driver's of Change, Sida's Power Analysis and the World Bank's Social, Policy and Institutional Analysis methodology (see Box 2 below). Other tools, such as Civicus' Civil Society Index can help assess the strength of civil society and its capacity to maintain momentum for governance reforms over the long term.

Box 2. Tools for assessing the socio-political context for reforms

- **Civil Society Index (Civicus):** A self-assessment and action planning tool, the CSI aims to enhance the strength and sustainability of civil society, and to strengthen civil society's contribution to positive social change. See <http://www.civicus.org/csi>
- **Country Policy and Institutional Assessment (World Bank):** Conducted by in-house World Bank experts, the CPIA reviews the ability of countries to make effective use of aid and includes sections that address property rights and public institutions. See <http://go.worldbank.org/EEAIU81ZG0>
- **Democracy and Governance Assessment (USAID):** The framework examines four issues concurrently: political system, actors, institutions and implementation to enable USAID field offices to develop appropriate support programmes based on a country's history and political evolution. http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/dg_office/assess.html
- **Drivers of Change (DFID):** An approach for understanding how change happens, it was developed to make the link between political processes and donor programming. It focuses on power relationships, institutions (formal and informal) and structures. See <http://www.gsdr.org/go/topic-guides/drivers-of-change>
- **Governance Questionnaire (GTZ):** The tool uses a multi-disciplinary approach to examine six areas: state-society relations; the political system; political culture, change agents and development paradigms; gender; economy and markets; international integration. It includes a special emphasis on "informal" rather than "formal" rules. See Faust and Gutierrez (2004) Governance Questionnaire
- **Poverty and Social Impact Analysis - PSIA (World Bank):** PSIA combines multidisciplinary analysis (qualitative and quantitative) with policy dialogue to understand the distributional impacts of policy reforms. See <http://www.worldbank.org/psia>
- **Power Analysis (SIDA):** The approach examines power and its distribution within society, as well as relationships between key actors. It also emphasizes informal relationships between key actors. See http://www.sida.se/sida/jsp/sida.jsp?d=118&a=24300&language=en_US

Source: Adapted from Nash et al. (2006) Mapping Political Context; and Holland (2007) Tools for Institutional, Political and Social Analysis of Policy Reform.

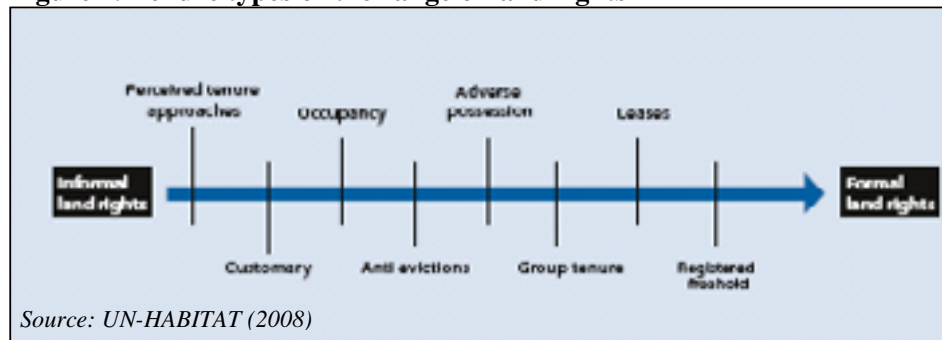
While many of these tools have been developed by international organizations seeking to better understand the reform context, they can still offer valuable insights, particularly if the tools are adapted by national stakeholders and if the assessment process is driven by national champions using a transparent and inclusive process. Sharing the results of such analysis with all stakeholders can be an important step in the reform process.

Land tenure system

The country context determines the types of land tenure (i.e. the relationships between people with respect to land and related natural resources) that exist. As mentioned earlier, these relationships reflect the power relationships in society and so are an important source of information regarding power and the political economy of land.

In any country, the types of tenure can be expressed as a “continuum of tenure” or as a range of land rights. These rights vary greatly with regard to what a person holding such a right can do with the land (i.e. what right of the bundle of rights is held by the person). For example, does the person have the right to live on the land and to grow seasonal crops, but not to plant trees or to build a permanent house or to lease the land or sell it to someone else? The rights also vary with regard to the certainty – or the lack of it – that a holder of land rights can continue to enjoy those rights in the future. Uncertainty may arise for reasons such as a threat of eviction, the vagueness of the conditions under which a person is occupying the land, or with a short term lease where the person is not certain if the owner will renew of the lease. Figure 2 illustrates the situation found in many countries where land rights range from informal and insecure rights through to formal, registered private ownership of land (i.e. “registered freehold”), but it should be noted that land is owned by the state in a number of countries and as a result the most secure form of rights that a person can have in such countries is something other than ownership. Tenure security, in terms of the recognition and protection of land rights, can be provided by the formal state, and in some countries through customary institutions and structures, to groups such as communities, and to individuals often within a group or community context. A range of group rights can exist, including community, cooperatives and condominium arrangements. A variety of “joint” or “shared tenure” options also exist for women including joint title, customary communal tenure and corporate ownership. A number of countries have “squatter rights” or legislation on adverse possession or prescription which enables people to transform their occupancy rights into legally recognized land rights after a set period of time, usually stipulated in the law, of uncontested, continuous occupation. Some countries are coping with rapid urbanization by providing temporary occupation rights (usually 2-5 years) or by adopting anti-eviction laws.

Figure 2. Tenure types or the range of land rights



The different types of tenure have different strengths and weaknesses. Table 1 provides an overview for a select group of tenure types. It is important to note that the relative strength or weakness of any tenure type will vary from country to country and even within a country (from one neighbourhood or region to another). In some

countries, individual freehold tenure may offer the greatest security, freedom of use, collateralization and potential to realize value increases, but it may be difficult to provide such rights on a large scale for the poor because of the cost of doing so, the capacity required, the potential for gentrification, etc. Other forms of individual and group tenures may provide many of the benefits of formal private ownership (security of tenure, increased investment in home, farm or community, citizenship, etc.) but in a more cost-effective and appropriate manner.

Table 1. Tenure systems and their characteristics

Tenure System	Characteristics	Advantages	Limitations
Freehold (private ownership)	Ownership in perpetuity.	High security; freedom to use, dispose, inherit; use as collateral for loan; maximizes commercial value and enables holder to capture value-increases.	Expensive to access. Requires high technical standards, strong Government capacity to administer, clear incentives to register transactions. Risk of gentrification if applied piecemeal.
Registered Leasehold	Ownership of a leasehold estate for a specified period (sometimes up to 999 years). The landowner has to create the leasehold estate and transfer it to the leaseholder.	Almost as secure as freehold, however, time-bound. The leaseholder can sell the lease, and the remaining years on the lease will be transferred to the new leaseholder.	Requires legal framework and costs of access generally high.
Rental (Public or Private)	Two options (i) Public: occupation of state-owned land or house; (ii) Private.	Both have good security, however, a legally enforceable contract is more important for private rental. Mobility depends on supply, which is often better in private.	Public rental can be limited in supply and poorly located. Private rental may be open to abuse. Both have maintenance issues. Private rental is dependent on the lessor having freehold ownership.
Cooperative and Condominiums	Ownership vested in cooperative or corporate body of which residents are co-owners.	Good security; maintains group cohesion; advantages for group repayment of housing loans.	Legal framework required; restrictions may reduce incentive to invest; double registration required – land and association. The corporate bodies may suffer from weak management.
Customary/ Traditional	Ownership vested in family, community, group or tribe. Land is managed by leaders on behalf of community. A variation is religious tenure.	Wide acceptance and practice in certain parts of the world. Simple to administer. Social cohesion maintained.	Under pressure from rising land values and commercialization of land. Accountability of traditional authorities may be weak.
Intermediate tenures	Pragmatic arrangements, often of short term nature (e.g. certificates, occupation permits, etc.)	Provide reasonable security, while protecting long term public interest and options for change of land use.	Government becomes liable for compensation in event of relocation; this may inhibit redevelopment. Often

			perceived to be insecure because of short term nature.
Non-formal tenure	Squatting, unauthorized sub-divisions, unofficial rental, etc.	Often a response to failure of public land allocation; may operate with elements from “formal” system (eg. contracts).	Risk of eviction; exposure to corrupt practices; hazardous location; inadequate shelter;

Source: Adapted from UN-HABITAT (2008)

Land markets

Studying land markets, both formal and informal, can reveal much about power relationships and incentives, and importantly, why problems such as landlessness and informal settlements persist.

Land markets are the way in which many people gain access to land, although other means of access, such as inheritance and land allocations through kinship, remain important in much of the world. Land markets are mechanisms by which rights in land and housing, either separately or together, are voluntarily traded through transactions such as sales and leases. These transactions may take place on the formal land market, or may happen through informal channels such as informal land developers. Rural and urban land markets both operate on the principles of demand and supply, yet the drivers of demand and supply vary. On the demand side, both market sectors are shaped by population growth, the rate of household formation, purchasing power and access to credit (particularly in urban areas) and location factors. House rental is a very common option for urban poor. The supply side, by contrast, depends significantly on the annual production of serviced land (particularly in urban areas), the amount of land withheld from the market and the type of use to which land can be put (zoning). In many cities in developing countries, however, the formal land market delivers only a fraction of the serviced land required by growing populations. As a result, informal land development is often the most common way that poor people access land. This land is often poorly located, sometimes hazardous, and often with no access to infrastructure or services. The price or rent paid in rural areas tends to depend on physical factors (soil quality, access to water, natural resources, etc.) as well as location (access to roads, irrigation and drainage, markets, etc), while urban land market prices or rents tend to be determined largely by location and real or potential land use.

From a power and political economy analysis perspective, understanding land markets is important for several reasons. First, there are many types of land markets that are derived from the range of land rights that exist: formal, informal, illegal and even customary (where land values are rising and land is being commercialized often in contravention of customary norms). Each market has its own set of “professionals” whether these are the state’s land administration officers, private sector land professionals, or informal developers and their agents. More formal markets trade in the most secure land rights and are backed by the state’s mechanisms for contract enforcement. These markets tend to conform to laws, land use regulations and rental agreements. More informal markets, by contrast, operate outside the formal land administration system and often not in compliance with the laws and regulations regarding land use or rental agreements. As such, people in these markets often do not have access to the state’s enforcement mechanisms. As with tenure, the elite and

wealthier population segments will rely on the more formal land markets, while poorer and more vulnerable communities tend to use land informally. Elites often act as landowners in both formal and informal markets, deriving benefits from both.

Second, the operations of land markets reveal the institutions (rules and organizations) that regulate them. Markets expose the gap between the formal and informal institutions. By tracing the flow of payments for different services and by examining how these are factored into prices, formal – and in particular informal – markets can say a lot about power relationships and the political economy of land. Some interesting questions include: who pays whom for what service; how are profits distributed – narrowly to a few individuals or broadly within society as a whole; and what sanctions and enforcement measures exist?

Third, markets are characterised by imperfections and these imperfections rarely serve the interests of the poor. The limited availability of legally supplied land means that the poor are often forced to pay prices equivalent to or more per square metre for unserviced, unplanned, unregistered land (sometimes located on hazardous land) than the prices paid by wealthier groups for serviced, planned and registered land. Information regarding new developments, infrastructure projects or investment is often in the hands of government officials, investors, developers, professionals and their networks. As a final example, the concept of “highest and best” use of land can often result in the de facto prioritization of more profitable uses of land than social uses, such as social housing, schools, clinics, etc.

Institutions

A careful analysis of a country’s history, its tenure system and land markets will offer many insights into the institutions that regulate relationships.

Formal, customary, religious and informal rules and organizations should be considered. As with tenure and markets, there is no hard and fast rule to determine whether an institution is formal or informal; in different countries, different institutions will be regarded as formal or informal. In some cases, institutions may even be hybrids, borrowing from formal as well as informal practice. In general, however, a formal institution is something that has legal recognition and support, while an informal institution does not enjoy full legal recognition or support.

Important structures for land governance include parliament, the judiciary, local government councils, traditional councils, land boards, professional bodies, user-group committees (natural resource or urban services), etc. These represent important forums for decision-making and are governed by mandates and rules that affect the freedom of choice for actors.

Important rules for land governance include laws, policies, regulations, bye-laws, procedures, religious rules such as contained in the *Shari’a*, customary or traditional practice and customs, as well as hybrid practices that draw on both “formal” and “informal” or “traditional” rules and procedures.

An initial institutional analysis should aim to identify all the relevant institutions regulating land tenure. These institutions will also reveal the broad canvas of stakeholders and offer some general insights into their relationships, interests, incentives, constraints, sources of legitimacy and potential areas of conflict, potential change champions and potential vested interests. It may also help to identify potential

land sector reforms that can enhance the quality of land governance. A stakeholder analysis or stakeholder mapping exercise (discussed below) can be valuable tools to support policy reform.

3.2 Stage 2: Understanding the context of a particular land or reform issue

The analysis of stage 1 should provide a broad overview of land governance and offer insights into potential entry points for reforms. The analysis of stage 2, while somewhat similar in nature to that of stage 1, is a narrower and more detailed examination carried out in the context of the particular type of land sector reform. The land issues under consideration for reform might include, for example, land policy formulation or review; land reform; security of tenure; eviction and relocation; women's land rights; natural resource management; informal settlements upgrading; land administration; land disputes and conflict; and international cooperation. These issues are further explored in chapter 4.

Issue and reform content

The content refers to the specific issue under analysis or the objectives of the proposed reform. The type of assessment of the context described for stage 1 should be applied in more detail to the land issue being addressed in order to identify all the potential linkages to other issues and policy objectives.

Stakeholders, interests and relationships

The analysis of the issue and reform content should help identify the specific stakeholders that are likely to be impacted by specific issues in a reform process. See Box 3. As noted earlier, the greater the complexity and sensitivity of the land issue being considered, the more resistant it will be to finding solutions that can be easily implemented. In these cases, extra efforts must be made to identify linkages, potential externalities and implicated stakeholders.

Box 3. Examples of stakeholders in land sector

Public sector

- Politicians at national, regional, municipal and local levels;
- Officials in land administration and state land management at the national, regional and local levels;
- Judges.

Customary authorities

- Community leaders;
- Land authorities;
- Council of elders.

Private sector (formal and informal, international and national)

- Commercial investors (agriculture, forestry, mining, petroleum, etc.)
- Real estate agents or brokers, formal and informal;
- Land developers and construction businesses, formal and informal;
- Bankers and money lenders;
- Lawyers and notaries;
- Surveyors;
- Business advisors;
- Media.

Civil society (international and national)

- Non-governmental organizations;
- Community based organizations;

<ul style="list-style-type: none">• Civil society organizations;• Associations of farmers and water-users;• Religious organizations;• Academia. <p>Citizens</p> <ul style="list-style-type: none">• Landowners as users of the land or as lessors;• Lessees, sharecroppers and other users;• Squatters;• Refugees and internally displaced people;• Investors. <p>International Organizations</p> <ul style="list-style-type: none">• United Nations agencies and missions• World Bank and regional development banks (AfDB, ADB, IADB)• Bilateral development agencies• Surveying agencies with international departments• Corporations and contractors• Private foundations• International civil society organizations

It is important to understand the interests, objectives, the sources of legitimacy, the relationships and the likely strategy of key stakeholders in the reform process.

In this context legitimacy can have statutory or social sources, or some combination of the two. For example, the lead ministry for land may have the legal mandate for land administration, but may lack the authority or capacity to implement it on a systematic, nation-wide basis. In addition, if the system is perceived to be fraudulent, the statutory authority may count for little in the eyes of investors or the public. Conversely, if municipal authorities have failed to make adequate, well-located and affordable land available to the urban poor, informal developers may enjoy more legitimacy. The legitimacy of an actor may also change over time during the process of reform.

Each actor, moreover, will have their own interests in the reform issue. The specific interest may relate to various factors including: preserving or strengthening authority, mandate or position; strengthening democracy or enhancing stability in the country; preserving or enhancing revenue streams (legal or illegal); adherence or strengthening of normative standards (e.g. surveying, administrative procedures, etc.); advancing the issues of vulnerable groups; or simply using the issue to weaken the existing government/authority.

The interests of actors will in turn affect their objectives during the reform process as well as their strategies for achieving their objectives. Objectives may be short term or long term in nature. There may be those objectives that are explicitly stated, while others may be more difficult to perceive.

By understanding the substantive linkages of the reform and the interests of different individuals, alliances within and between the stakeholder groupings, and their institutional relationship to each other, it is possible to begin to understand the relationships among the stakeholders affecting the potential for reform. This will help identify the sources of influence that each actor can bring to bear on other stakeholders. This will be important when it comes to building coalitions for change, as well as for identifying important change agents or policy champions who can

influence the process and gatekeepers who can impede the flow of information and the opportunities for change. See Table 2.

Table 2. Analysis of actors and interests

	Some Key Land Actors	Policy Objective		Justification	Expected Benefits		Constraints		Source of legitimacy	Interest	Degree of Influence
		Explicit	Implicit		Short-term	Med-term	Short Term	Med Term			
1	Politicians										
2	Traditional Authorities										
3	Land Ministry										
4	Other Govt										
5	Municipalities										
6	Slum dwellers orgs.										
7	Land developers										
8	Estate Agents/ brokers										
9	Bankers/Finance										
10	Lawyers/Notaries										
11	Surveyors										
12	NGOs/NSAs										
13	Investors										
14	Landowners										
15	Smallholder Associations										
16	Renters										
17	Vulnerable Groups										

Source: Adapted from World Bank (2007)

Institutions and incentives

While stakeholders can be individuals or groups of people, their actions are influenced by the rules and structures within which they operate. The institutions create a system of incentives and sanctions that can create constraints and present opportunities in the reform process. The type of assessment of institutions described for stage 1 should be carried out in more detail in order to uncover the formal and informal structures and rules that affect the land issue or proposed reform being addressed.

3.3 Stage 3: Managing the reform process

Reform processes are often complicated and unpredictable. Experience in the land sector and elsewhere suggests that a range of strategies and tactics can support the reform process.

Flexible approach

The departure point for politically sensitive reforms such as those found in the land sector is to adopt a flexible approach. This may seem counter-intuitive in an age of logical frameworks and critical path theories, but there is a growing recognition of the need for a different type of engagement from, for example, infrastructure projects. Rather, reformers need to be able to adapt to a constantly changing environment. In practical terms, this may mean blurring the distinction between policy/reform development and implementation, and adopting a learning-by-doing approach. An element of uncertainty must be accepted as part of the process.

Long term strategy

Land governance reforms often involve long consultative and/or technical processes, (multiple) changes in legislation, establishment of new structures or the reform of existing ones, etc. These processes will be mediated by the ebb and flow of actors and interests. There will be times when the reform process is characterized by inaction. Reformers – whether nationals or international support organizations – need to take a long term strategic approach. Commitments to reforms in the land sector should not be

undertaken if there is not the political will to see them through. This commitment must come first and foremost from national actors, including reform champions from politics, the private sector, land professionals and civil society.

Evidence-based analysis

Accurate and reliable data can be extremely useful to support policy reform. The importance of a shared understanding of land issues, their causes and the potential impacts of reforms cannot be over-stated. Without strong analysis, opponents of reform can ultimately question the very basis and need for reform. Baseline studies, the sharing of comparative international experience, study tours, regular monitoring and impact evaluation can demonstrate the potential benefits of reform as well as the cost of inaction. The analysis may even challenge the original assumptions of the proposed reform, as happened in Zambia (see Box 4). In Kenya, as part of the implementation of land policy, including the re-engineering of the land administration system (an exercise estimated to cost USD 250 million for the first six years), it has been recommended that Kenyan land professionals prepare a business case for reform, emphasizing that the reforms will not only help restructure and transform the economy, but also contribute to poverty reduction. Evidence-based policy-making, including identifying risks and safeguards, can be critical to convincing sceptical politicians and civil servants. However, it should be recognised that data collection and analysis can be difficult, expensive and time-consuming, and that assistance may have to be provided on how to prepare robust business cases.

Box 4. Land reform in Zambia

In Zambia, some 94 percent of the land is held under the customary system. Several years ago, the Ministry of Lands proposed an initiative to title, register and convert a portion of customary land into state-owned land. The Government's motivation was the belief that the initiative would encourage investment, development and productivity through increased access to land and improved security of tenure. Part of the assumption was that access to land was the single most important aspect of livelihoods. At the request of the Government, the World Bank initiated a Poverty and Social Impact Assessment (PSIA). Ultimately, enough evidence was produced through the PSIA analysis to lead policy-makers to rethink the necessity for a massive titling programme. The rationale for privatization, particularly at scale, was reconsidered after it was found that the majority of benefits could be achieved through alternative means.

Source: World Bank (2007)

Information campaigns

The importance of an information and outreach strategy cannot be over-stated. People will not support reforms if they do not know what is happening. Every effort should be made to inform stakeholders regarding progress, particularly at important implementation milestones. Messages need to be targeted for specific audiences. The language must be accessible and appropriate. Translation into local and vernacular language is critical. Ensuring that feedback from the campaigns informs problem definition and policy evolution is critical. Such campaigns can also play a critical role in political risk management, ensuring that policy decisions are owned not simply by a narrow group of technical elites, but also by the general population. Box 5 below highlights an example from Mozambique.

Box 5. Mozambique: Information campaigns for land rights

Mozambique's experience of giving legal recognition to customary tenure shows that informing people of their new rights is an immense task. The 1990 Constitution maintains the principle that ownership is vested in the state but it required the state to recognise rights acquired through inheritance or occupation. The end of the civil war in 1992 and a shift to a market economy resulted in increased competition for land: communities claimed rights to land that was being allocated by the state to national and foreign investors. To address the problem, a national land policy and Land Act were prepared which secured the rights of Mozambican people over land and other natural resources while promoting new investment and the sustainable and equitable use of the resources. Great importance was attached to consultation and consensus-building during development of the national land policy and the Land Act.

Despite a substantial civil society campaign to raise awareness and understanding at the local level once the Land Act was approved, there is an ongoing need to assist people to understand their rights and responsibilities and what they could mean for their lives. Assistance is also needed to enable people to assert their rights. While the law provides for communities to negotiate with investors for the use of their land, many communities lack the skills needed to negotiate on an equal footing, or even to ensure that the negotiation takes place. One response is to train paralegals to work with communities. Also critical has been the provision of training to judges and district officials on how to apply the new law. Without a clear understanding of the principles of the new law, it is easy for people responsible for the implementation to apply outdated rules when problems arise.

Diversify interventions

Developing a broad menu of interventions will enable governance reforms to proceed on a variety of tracks. This is important as reform is not linear; there will be delays and set-backs and in some cases these issues will have to be resolved through national processes. Outsiders should allow this process to take place and can focus their attention and efforts to less controversial areas. A broad roadmap for reforms creates opportunities for the Government, donors and non-state actors to pursue a reform agenda that allows for flexibility, while maintaining the overall reform momentum.

Timing and sequencing of interventions

It is critical to build momentum for policy reform, starting with some of the less controversial issues and building the skills and confidence necessary to tackle the more thorny issues. Incremental approaches, including pilots or demonstration projects, may be important tactics for mobilizing support for taking interventions to a national scale. For some governance issues, such as land administration reform, it may be necessary to engage in significant capacity-building before undertaking any pilots. At the same time, reforms should be prepared for resistance and fatigue.

Link technical and legal approaches to grassroots

Policy-making in the land sector can often be dominated by technical specialists and other land professionals who look at the issues from a narrow technical perspective. Equally, policy-making can be dominated by politicians who ignore technical recommendations. While technical and political requirements need to be addressed, grassroots realities and community solutions should also be understood and incorporated in the reform process. In Kisumu, Kenya, for example, a local NGO, Pamoja Trust, adapted the Slum/Shackdwellers International methodology for enumeration to survey some 60 000 people in the largest single enumeration conducted to date. One of the challenges of that process, however, has been linking the data collected by informal settlement groups to the municipal geographic information system (GIS). This linkage, though, would raise important governance issues regarding

who controls the data and the purposes and conditions in which it can be used. Other challenges to the development of a national land policy relate to being able to bring the voices of the poor from all around a country into an effective policy-making dialogue with politicians and technical specialists.

Strategies for champions and challengers

It is important to identify and support change agents from as many stakeholder groups as possible. Building and maintaining alliances is critical, particularly as reforms increase in complexity and as they start to challenge existing power structures. Resistance will increase. Specific strategies may be required to support particular champions (for example particular politicians) as well as for less powerful stakeholder groups (such as for example, non-state actors and women). In Madagascar, for example, “Platform SIF” was established as a mechanism to coordinate civil society and NGO inputs to the Government’s rural land certification programme. In Kenya, the Development Partners Group on Land (DPGL), working with non-state actors (NSA), have established a separate NSA basket-funding mechanism.

Risk management strategies for reform challengers

Certain interest groups may be threatened by reforms, such as corrupt officials, large scale landowners, land speculators, some land professionals, informal land developers, etc. This is to be expected; conflict is inevitable and should neither be feared nor avoided. Rather, specific strategies should be developed to allay legitimate concerns, while maintaining an overall focus on the objectives of the reform. Such strategies can include alliance-building, information campaigns, local level consultations and changes to incentive structures.

Alignment of development partner policies

External development partners can have significant influence, both publicly and behind the scenes, on the implementation of land sector reforms. Their effectiveness, however, can be undermined if they offer conflicting advice to Government, particularly if such advice is also backed by project funds. Their effectiveness can be further undermined if it is not clear that there is national ownership of policies and they play too visible a role in driving the reform process. Interventions should be limited, specific and occur at critical junctures of the reform process.

4. Improving land governance: some issues and experience

Land governance issues are challenging; reforms to improve land governance are often complex and controversial. While there is a considerable body of experience with policy, legal and technical reforms in the land sector, not all the experience is good: the political nature of land makes reforms difficult to implement at scale.

This chapter highlights the governance dimension of several important land issues:

- National land policy;
- Land reform;
- Security of tenure;
- Eviction and relocation;
- Women's land rights;
- Natural resource management;
- Informal settlements;
- Land administration;
- Land disputes and conflict;
- International cooperation.

These issues have been selected for their illustrative purposes. The list is not comprehensive: there are many other issues that have a clear governance dimension or that are affected by political economy factors during reform processes. Nor are these issues separate: in many cases, they are interlinked.

The chapter demonstrates how these policy issues represent entry points for strengthening land governance. It explores why it can be difficult to find solutions to some of the problems, and how the political economy of land can affect the reform process.

Several caveats are in order. While the governance dimension of land is increasingly recognized, very few case studies have been prepared explicitly from a governance or political economy perspective. Most of the real experience in this area is captured only in the internal documents of development organizations (the so-called "grey literature"), or more often simply as tacit knowledge in the heads of practitioners. The pressures of the reform process and the sensitivity of the information mean that the experience is rarely captured in real time, or even after. In addition, the space limits of this paper ensure that the geographic scope of the examples is not comprehensive or in all cases representative. A secondary objective of this chapter, therefore, is to encourage the documentation of issues and reform processes so that other experiences can inform the debate.

In addition, the challenge of developing an "objective" picture of the reform process should not be under-estimated. As such, the examples presented in this chapter are meant to promote debate and discussion. It is only through the analysis of issues from a wide variety of perspectives that some facsimile of "reality" can be produced.

4.1 National land policy formulation

National land policy formulation is the most fundamental level of decision-making with respect to land. In this sense it represents the ultimate land governance process. All major land governance issues should be discussed and debated, including access to land, tenure security, control of natural resources, women's land rights, institutional roles and responsibilities, resolution of disputes, etc. All stakeholders should be involved in the identification of issues and potential solutions. The outcomes from this process are intended to have far reaching impacts on who can use land, how and for what development objectives.

National land policy processes are often triggered by major historical events such as changes in the distribution of power in the international system (for example, the end of the Second World War or the Cold War), changes arising from the end of violent conflict within a country, or simply a change in government.

It should be recognized that many countries do not have a comprehensive land policy; rather, they have different policies for different types of land and other natural resources: urban, agriculture, forestry, water, etc. This paper focuses on national land policy processes in order to highlight the governance and political economy dimensions that can be found in any decision-making process related to land and, in this way, it has broader relevance to the debate.

There are several important governance and political economy issues associated with a national land policy processes. (See Box 6 for an overview of a generic approach to managing a land policy process). Foremost is the design and implementation of a credible and inclusive process of consultation. A related challenge is to ensure that specific efforts are made to support the effective participation of women and vulnerable groups such as pastoralists, indigenous groups, informal settlements residents, sharecroppers, etc. In addition, maintaining the momentum and collaboration required for land policy processes – often lasting some five years – can be daunting. Finally, but no less importantly, it must be acknowledged that implementation of national land policies has not yet been realized in many countries that have otherwise produced progressive policies through credible processes.

Box 6. The land policy process – an overview

Managing a land policy process is a complicated task and may involve some or all of the following elements:

- Establish a Coordination Unit to plan and manage the process. This can be based in a lead land Ministry, in an independent body such as a Land Commission or another multi-stakeholder entity. There are trade-offs in terms of influence: anchoring in a strong Ministry may make the process more efficient, but may be vulnerable to the influence of powerful interests. An independent entity, on the other hand, will not have such strong influence and will have to constantly manage relations to secure support for the process, but possibly resulting in a more drawn-out process and a less-polished final draft.
- Collect background information. Land touches many development issues and creates many stakeholders. Gathering information on the laws, institutions, issues and actors is critical to create a common understanding of issues and options. Short issue papers can be helpful. Expect positions to evolve over time as information is gathered and positions change.
- Consult extensively. All stakeholders should be enabled to contribute their perspective to the debate. It is important to take the debate out of national or regional centres and directly to the grassroots. In some cases, stakeholder groups may wish to have separate consultations to prepare their own

positions.

- Ensure all stakeholder groups are represented. Participant ownership and buy-in to the process is critical. Strong civil society participation should be seen as an asset, not a liability. In many cases, the participation of specific groups, such as women, landless groups or renters, will need financial support.
- Do not shy away from politics. It is important that political positions are tabled early and understood by everyone. Without dealing with the politics, trust will be difficult and it will not be possible to move to the technical issues. Position papers, issue papers, capacity-building, retreats, exchange visits can all help to move issues from politics to compromise.
- Develop an action plan. A road-map of both political and technical outputs should be developed to guide the reform process. It can provide many entry points for action that can accommodate slippage by refocusing from one area to another.

Source: Adapted from UN-HABITAT (2007) How to develop a pro-poor land policy

Critical questions include: who designs and leads the process; how is the agenda set, by whom; who decides who can participate in the process; how are the specific views of women and vulnerable groups incorporated; who is able to influence the debate and how; whose interests are advanced; who may perceive their interests at risk; when is the process “complete”; and how are grievances addressed?

While many countries have undertaken land policy development or land tenure reviews, Africa as a continent has been particularly active since the 1990s. Whether through new laws, commissions of inquiry, national conferences, land commissions or policy processes (or some combination of the above), national land processes have been initiated in many countries, including: Angola, Burkina Faso, Burundi, Cote d’Ivoire, Ghana, Kenya, Liberia, Malawi, Mali, Mozambique, Namibia, Niger, Rwanda, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, Uganda and Zimbabwe. Experience in these countries has varied widely, from exclusively nationally-led processes such as South Africa to the extensive engagement of the international community in cases such as Sudan.

Burkina Faso’s land policy process is widely regarded as exemplary. A consultative group, the “National Committee for Rural Land Tenure Security,” was established, consisting of line ministries, farmers’ organizations and civil society representatives. The Committee’s responsibilities included guiding the process and drawing on independent experts to support the dialogue on the ground. Stakeholder groups organized separate consultations to develop their own visions. These visions were then brought together at the local, regional and ultimately the national level. Based on agreements made during this process, a framework land law is under preparation.

By contrast the experience of South Sudan, however, has been less positive. FAO, UNHCR, UNDP, UN-HABITAT, USAID and the Norwegian Refugee Committee have all actively supported the formulation of a coherent national land policy, but with limited success. Part of the explanation is due to competing interests within the Southern Sudanese Government, complicated by the discovery of significant natural resources and petroleum. Legitimate capacity issues also exist in such a new country. But part of the explanation also lies in the lack of a coordinated approach among UN Agencies, the lack of clear guidance from the UN mission and weak coordination between the UN system and bilateral donors.

Kenya's land policy process (2004-08) also offers some insights. There, donor coordination is recognized as contributing to the pro-poor orientation of the draft land policy and to supporting the participation of poor and vulnerable groups in the process. Towards the end of the process, in 2007, the large scale landowners felt their views were not being reflected in the national land policy. They established the Kenya Landowners Association and sought to revise certain aspects of the draft policy, including, for example, the proposal to reduce the maximum period for long term leases from 999 years to 99 years. The Government, led by the Ministry of Lands, refused to extend the debate and presented the draft policy to Cabinet for approval in late 2008. Later that year, however, political disagreements turned violent in the aftermath of a disputed election. With the divisions in Government, the land policy remains before Cabinet and has not yet been presented to Parliament for ratification.

As the examples above illustrate, while credible processes are possible, managing them presents substantial governance and political economy challenges. Even if these are managed, external factors or even the challenge of implementation can undermine even well drafted policies.

4.2 Land reform

Land reform has a long history: almost 21 centuries passed between the first and last land reform proclamations to be made in the city of Rome. A programme was initiated in 133 BCE by the Roman Republic to recover land acquired by the wealthy and redistribute it to small farmers. Following the Second World War, the Italian Republic launched a programme to do much the same thing.

With a long history, and with a global adoption, land reform has resulted in a wealth of experience unmatched by many other land issues. Land reforms have been implemented by military governments, by one-party states, and by multi-party democracies. They have been used to introduce communism, to prevent the spread of communism, and to usher in market economies. Land reforms have confiscated land, expropriated it with and without fair compensation, purchased it through the market; nationalized it, and privatized it (the same land in Central and Eastern Europe and elsewhere being nationalized and privatized under different land reforms). Land reforms have been used in an attempt to stem the flow of people from the countryside to cities and, in the particularly perverse case of the Khmer Rouge's Cambodia, to accommodate people expelled from urban areas in an attempt to create an agrarian paradise. The beneficiaries of land reform have been workers on state farms; members of collective and cooperative farms; indigenous groups; and private farmers, in groups and individually, who have received ownership rights, leasehold rights, or use rights to the redistributed land. In some cases, beneficiaries have been the people who farmed the land before the reform, while in other cases, beneficiaries such as the landless or urban and political elites lacked farming and farm management experience. In some land reforms which restituted land to its original owners or their heirs, the land had been nationalized and was owned by the state at the time of the reform, while in other reforms, the state had to acquire such land from private owners before it could be returned to the original owners. With such diversity of experiences, it is perhaps not surprising that the outcome of land reforms has been mixed.

A thread woven throughout this paper is the recognition that land tenure arrangements reflect the power structure and politics of a society. The greater the asymmetry of

power in an agrarian society, the greater the concentration of rural land in the hands of a relatively small number of large landowners. In an urban context, the asymmetry of power is also manifest: in Nairobi, Kenya, for example, informal settlers make up 50 percent of the city's population, yet occupy only 5 percent of the land. It is not just that the powerful are able to acquire large landholdings; their political influence allows them to create incentives to hold on to the land, for example through the introduction of distortions such as credit subsidies, tax exemptions, and favoured access to input and output markets, as well as to infrastructure such as major irrigation systems. Elites are also able to capture the land registry, controlling who does – and who does not – have legally recognized land rights. A highly unequal distribution of agricultural land, and a strong demand for that land by the landless and land poor make for a volatile mix: the Gracchi brothers who launched the first land reform in the Roman era, and their supporters, were killed for their efforts, and that pattern continued over the millennia. Today it is widely recognized, including in the work of the World Bank, that without some form of equity in land distribution, poverty reduction and economic growth will remain elusive.

Governments whose members benefited directly from the concentration of land and the capture of benefits of market distortions were usually highly resistant to calls for land reform. Some governments were caught in the middle, fearful of the reactions of the large landowners and of the peasants and landless. Hesitant to move against one group or the other, they would take action sufficient only to relieve the political pressures of the day; when the protests died down, so too did the government action. This remains true today.

The bond between land tenure and political power has thus meant that land reforms on a large scale have tended to occur when there has been a dramatic transfer of political power, for example, through revolutions, and with the defeat in war and occupation by the victors, the end of colonial rule, or the rapid unravelling of communism in Europe and parts of Asia. The incoming governments usually intended to transform the entire social, economic and political landscape: new constitutions were drafted and new government structures were designed as the reforms encompassed everything from social welfare to the military. Changes to land tenure were a central part of the agenda of the new governments, but only one part. Tenure reforms had to compete with other reforms for resources. In addition, there was often great political pressure to show rapid progress, but a rush to deliver often meant ineffective design and inefficient implementation. For example, the Bulgarian land restitution law and its regulations were changed repeatedly within a short time, causing confusion and difficulties, and it was some time before the situation stabilized.

Flaws in the design of land reforms often led to unintended consequences. For example, proposals to introduce land ceilings (i.e. whereby land owned above a maximum limit could be expropriated and redistributed) were ineffective when landowners circumvented the legislation by transferring land to relatives. Some unintended consequences had highly negative effects. Proposals to transfer land to tenants caused landowners to take pre-emptive measures and evict their tenants, replacing them with hired farm workers or increased mechanization. Other land reforms resulted in the eviction of farm workers without any provision for their future.

The implementation of land reforms was frequently hampered by problems with land administration. Land administration systems that were weak, inefficient and under-

resourced at the best of times could not cope with the increased demand placed on them. Out-of-date and incomplete land registration and cadastre records added to the costs and difficulties of identifying which parcels of land were eligible for redistribution, and who their owners were. The slow processes of resolving problems often meant that when the reforms ended, many beneficiaries had not received registered titles, formal leases, or other legal documents which confirmed their rights to the land allocated to them.

Many land reforms failed because they were incomplete. Land reform is not only about changing tenure; it is also about changing production and supporting services.⁴ The focus of too many land reforms has been solely on land redistribution with little or no provision of support services to beneficiaries. The sustainability of new farms is dependent on support for inputs and markets, training and advisory services, farm development, and even housing. The costs of providing adequate support to beneficiaries far exceed the costs of acquiring and transferring the land: recent estimates show that support costs essential for the success of new farms can account for 60-70 percent of the total costs of a land reform.⁵ The provision of support services was often not well coordinated with the movement onto the land by beneficiaries, sometimes because responsibilities were divided between different ministries or agencies. Frequently, the budgets of land reforms simply failed to allow for these additional costs. Land reforms were often incomplete in other ways. Through omission, ineffective measures, or obstruction from large landowners, reform attempts failed to address the distortions in markets, taxation and subsidies which favoured large owners. As the conditions did not favour smallholder production, land reform beneficiaries had an incentive to sell their land to large landowners. In the case of Chile's land reform, it has been estimated that some 57 percent of beneficiaries sold the land they had received.⁶

Land reforms have typically been designed and implemented in societies dominated by males. The identification of beneficiaries as the male heads of households ignored the role played by women in agriculture, and left female family members without protection if the legally defined male beneficiaries decided unilaterally to sell the land. Environmental considerations also typically were not considered in many reforms.

In today's debates on land reform, there is now a general consensus that models such as state farms, collectives and production cooperatives have largely fallen out of favour. With the exception of land reforms involving indigenous groups, the most common model involves private farms, often with a strong bias towards family farms based on research showing that farms which rely on family labour have higher productivity levels than do farms that use mainly hired labour. (The concept of a family farm is based not on farm size but on the supply of labour – family farms can be large in area or small.) Land reforms are still advocated to serve two main purposes:

⁴ The 1969 Special Committee on Agrarian Reform, appointed by the Director General of FAO, defined the concept of agrarian reform as "all aspects of the progress of rural institutions and covering mainly changes in: tenure, production and supporting services". Agrarian reform and land reform are usually used interchangeably.

⁵ Binswanger-Mkhize, H., Bourguignon, C., & van den Brink, R. eds. 2009. Agricultural land redistribution: towards greater consensus.

⁶ Echenique, J. 1996. Mercados de tierra en Chile.

- Social justice: providing land to the landless and land poor including women; ending semi-feudal conditions; restituting land that had been confiscated; and recognizing land claims of indigenous groups;
- Economic development: bringing idle lands of large estates into production; and increasing productivity levels through the transfer of land to family farms.

Of the land reforms that targeted family farms, the most successful – and by far – were reforms such as those of Japan and the Republic of Korea. While a number of factors contributed to the success of these “land to the tiller” programmes, a critical element was that the beneficiaries were tenants who farmed the land. Viable farming operations were already in place: the key point of the reforms was to transfer ownership of the farms from the landlords to the farmers. There is little opportunity for such reforms now: today’s land reforms have to create new farmers and farm operations as well as to provide the farmers with land. As noted above, the costs of providing adequate support for new farmers exceeds the costs of providing land for them.

The growing global consensus that changes in government should take place peacefully further impacts on how land reform is carried out. The violent overthrow of governments now seldom provides the trigger for land reform, and instead democratically elected governments find that they have to respond to calls for more equitable distribution of land in ways that respect the rule of law, and create social cohesion and economic growth. Models of land acquisition such as confiscation or nationalization have been largely abandoned, leaving available two main approaches: expropriation and “market assisted land reform” (also known as “willing buyer – willing seller”). Currently, the most heated debate in land reform is on the choice between expropriation and market based approaches. While this debate has at times been highly divisive and unfruitful given the ideological and other differences between parties, it does show the growth of a new consensus on land reform: the previous highly divisive and unfruitful debates as to whether production should take place on collective and cooperative farms or on privately owned farms have largely died out.

The differences between expropriation and market assisted approaches are, to some extent, a matter of degree. Experiences with land reform projects show that to be successful, both approaches require that:

- Owners who give up ownership of their land must receive reasonable payments in exchange, either in the form of compensation for expropriation or as the prices paid by willing buyers. Failure to provide for reasonable payments in return for land sends signals that due process is being avoided, which, in turn, can lead to disinvestment in, and contraction of, all sectors of the economy.
- Beneficiaries who acquire land cannot take on an unaffordable debt load. The controversy of market assisted approaches rests in part on the idea of making beneficiaries pay for their land, but many land reforms involving expropriation also required beneficiaries to make some payment for the land although not usually for its full value. To be effective, market assisted reforms must provide grants to beneficiaries who lack savings and the ability to use loan financing for the purchase of the land and subsequent farm development. As noted above, land reforms tend to have several objectives, and they can thus have several target groups of beneficiaries. South Africa’s land reform identifies four categories of beneficiaries and the programme aims to be responsive to the specific needs of each category. All beneficiaries are required to make a contribution, in kind or in cash, but a sliding scale grant system allows for differentiation between poorer

beneficiaries and those who are able to make greater financial investments in their new farming operations. In addition, over the years, the size of the grants given to beneficiaries has increased to ensure that the new farmers have sufficient capital to acquire land.

Despite the sometimes vitriolic tone of the debate between expropriation and market assisted approaches, experiences from the field indicate that both approaches can result in positive changes. It is not a simple case that expropriation is automatically better than market assisted reforms: there are many examples of failed land reforms which transferred land through expropriation. Rigorous analysis of the two approaches is still to be done, but there is some evidence that land acquired through expropriation is more costly, in part because landowners exercise their right to appeal to courts when they are dissatisfied with the level of compensation offered, and because transaction costs in a market assisted approach can be reduced if land is transferred directly from seller to purchaser, and without going through an intervening period of state ownership.⁷

The lesson of land reforms is that there is no short cut. To be done well, land reforms require time and financial resources to build widespread national consensus on, and support for, the reforms; to prepare the needed policies and legislation; to identify and select beneficiaries; to enable the beneficiaries to acquire land under secure tenure condition, and to develop their farming operations; and to establish conflict resolution mechanisms. Time and resources are also needed to remove the distortions that provide incentives for large landowners to hold on to land and which will encourage beneficiaries to later sell the land they receive. If land reforms are rushed and under-resourced, they will be chaotic, incomplete, and ineffective: large landowners may obstruct the reform process or use their power to capture the benefits, and if targeted beneficiaries actually receive land, there will be a strong chance that they will be forced to abandon it because they cannot make a living.

Because large scale land reforms are lengthy processes, it is possible for them to be derailed because of changes in government and in the balance of power in society, the emergence of other competing priorities for resources, economic downturns, etc. Sustained pressure from social movements and government leaders are needed to ensure that land reform remains on the country's agenda, that adequate funding continues to be allocated for the reforms, and that approaches are continually reviewed and revised in order to overcome problems that emerge during implementation.

4.3 Security of tenure

Providing security of tenure for a wide range of land rights has proved surprisingly resistant to resolution. For example, there are an estimated 700 million people living in informal settlements without security of tenure.⁸

In addition, new factors emerge to cause tenure insecurity. For example, recent concerns over high and volatile fuel and food prices prompted large scale investments in the acquisition of agricultural land for increased production of biofuels as well as food for investor countries with limited water and arable land. Although the prices of fuel and food have decreased, the new patterns of land investment are likely to continue. Farmers on state owned land often have use rights that depend on the

⁷ Binswanger-Mkhize, H., Bourguignon, C., & van den Brink, R. eds. 2009. Agricultural land redistribution: towards greater consensus.

⁸ UN-HABITAT. 2003. Global Report on Human Settlements: The Challenge of Slums.

“productive use” of the land: governments may take the land and allocate it to others if productive use requirements are not met. These land rights are precarious when legislation does not define what constitutes productive use. The situation is even more insecure for the vast numbers of rural farmers who lack official proof of their land rights, often held under customary tenure. The lack of legal recognition of land rights has led to a perception that some countries have abundant land which can be used for large scale agricultural investments, but in reality there is little land that is not already being used or claimed. As yet, few countries have adequate institutional mechanisms in place to protect the livelihoods of rural land users when large scale land acquisitions for agricultural investment are being considered.

Security of tenure refers to the degree of certainty that one’s land rights will be recognized by others and protected in case of specific challenges. One major component of security is thus effective protection against the arbitrary curtailment of land rights with enforceable guarantees and effective remedies against the loss of these rights. A second component is a reasonable duration of rights appropriate to the use to which the land is being put. A right to use land for a six month growing season may give a person sufficient security to invest in vegetable production, but the tenure is unlikely to be secure enough to encourage long term investments such as planting trees or building irrigation systems. However, the relationship between tenure security and investment is complex: in some circumstances, people who have insecure land rights may strengthen their claims by planting valuable trees or building substantial houses that are difficult to destroy. In some urban areas, showing power or utility bills is sufficient to provide security of tenure.

There are wide ranging arguments to support the extension of security of tenure to include a broad range of land rights and forms of tenure. The benefits of tenure security include: increased investment by people in their homes, farms, villages, and neighbourhoods; increased agricultural productivity, food security and more sustainable use of natural resources; improved livelihoods for the urban poor, particularly for women, through home-based enterprise and less time spent protecting their asset (home); increased incentives for inward investment in both rural and urban areas; more efficient land markets; improved health and quality of life, particularly in informal settlements; increased Government revenue from land-based taxes that can be reinvested in improved service delivery; and improved social solidarity.

With so many potential gains for a wide variety of development objectives and Millennium Development Goals, why is tenure security so elusive?

From a governance and political economy perspective, several important questions are raised: what does “security” mean, for whom, and against what threats; who benefits and how from the present situation; how can security of tenure be realized at the scale of the challenge; what rights should be secure; and are there any risks associated with the process of providing tenure security? As discussed below, countries have adopted different strategies for addressing these questions.

One strategy has been to provide legal recognition of customary forms of tenure. While this has occurred in many parts of the world, it has been particularly evident in Africa, where many countries have legally recognized customary tenure, including Burkina Faso, Ghana, Mali, Mozambique, Namibia, Niger and Uganda. In Mozambique, for example, the 1997 Land Act gave legal recognition to land use rights

that had been acquired through customary occupation, through “good faith occupation” (unquestioned use for ten years or more), or through a formal request to the state for new rights to be allocated. Uganda’s 1998 Land Act recognises customary tenure as a legal form of tenure, and customary rights holders can be individuals, families or communities. Customary forms of tenure are also recognized in Indonesia, Thailand, several Pacific Island states, including Papua New Guinea, and in several Central and Latin American countries including Brazil, Ecuador, Honduras and Mexico. “Indigenous” land rights can represent a special form of customary tenure. While there is no internationally accepted definition of “indigenous people”, the term has emerged as a distinct category of human societies under international law and in the national legislation of many countries. In Cambodia, the rights of indigenous peoples had historically not received recognition but the 2001 Land Law explicitly grants collective land rights to indigenous communities.

Another strategy has been to provide or recognize intermediate forms of tenure (land certificates, rights to occupy, short term leases, etc.) in both rural and urban areas. Such rights have been extended to people in many countries, including for example Brazil, Cambodia, Colombia, Ethiopia, Kenya, Mexico, Tanzania and Trinidad and Tobago. In Ethiopia, for example, the Government has issued approximately 20 million rural land use certificates to some 6 million households in less than two years. In Colombia, a range of intermediate tenure options exist that act as stepping stones enabling poor households to strengthen their land rights progressively over time while securing land for housing.

A third strategy has been large scale land titling programmes. In these examples, incremental approaches are replaced with a direct leap to the strongest available form of land rights, often individual freehold title. In Peru, for example, the COFOPRI programme regularized 1.5 million titles between 1996 and 2004 in urban and peri-urban areas. Other examples include the well-known example from Thailand, and more recent experiences in Armenia and the Kyrgyz Republic.

The principle governance challenges that have arisen from these programmes include the following: delivering security of tenure at sufficient scale in a way that is affordable, accessible and sustainable; large scale adjudication of land rights to prevent the unintended dispossession of land rights from legitimate rights-holders; avoiding other unintended consequences associated with recognition, for example, gentrification in urban areas; securing the land rights of specific groups such as renters, sharecroppers, pastoralists and other secondary rights holders.

Part of the challenge lies in the fact that there are no technical solutions that enable the large-scale adjudication and registration of a range of land rights, including in particular in relation to overlapping rights and claims. Capacity and sustainability issues are also legitimate areas for concern. Large scale registration also requires a long period of time (15 to perhaps more than 30 years) and in the process, people may not feel there are sufficient incentives to justify registering subsequent transactions, sometimes rendering the registry records out of date before they are even completed. This can result in a drift back into the same insecurity and informality that the registration process was supposed to address.

Yet another part of the answer may lie in the fact that there are vested interests that benefit from a lack of certainty. Powerful elites, developers or speculators can use this

uncertainty to grab land that is otherwise held under socially recognized forms of tenure. Some professionals may benefit from a steady demand for title searches or other services.

4.4 Eviction and relocation

The example of eviction and relocation illustrates the challenges of competing interests with respect to land. Few people would deny the legitimacy of the need to promote economic development; fewer still might challenge the view that eviction is a traumatic experience that can have significant long term social, economic and livelihood impacts. At issue is the process by which decisions are made regarding evictions, making the subject a contentious land governance issue.

Forced evictions are the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. In some cases, evictions are accompanied by social safeguards in the form of relocation and compensation. It is worth noting that evictions involving the use of force, which are carried out in accordance with national law and are consistent with international standards, are not considered “forced evictions” (see Box 7 below). It is estimated that worldwide some 5 million people are victims of forced evictions each year.

Box 7. Procedural protections when forced evictions are unavoidable

The UN Committee for Economic, Social and Cultural Rights (CESCR) adopted General Comment Number 7 on forced evictions in 1997, significantly expanding the protection against forced evictions. While it does not ban outright every possible manifestation of eviction, it strongly discourages the practice and urges states to explore “all feasible alternatives” prior to carrying out any forced evictions. It outlines a series of eight prerequisite procedures, including:

- (i) offering an opportunity for genuine consultation with those affected;
- (ii) providing adequate and reasonable notice for all affected persons prior to the scheduled date for the eviction;
- (iii) providing information on the proposed eviction and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- (iv) especially where groups or communities are involved, Government officials must be present during an eviction;
- (v) all persons carrying out the evictions must be properly identified;
- (vi) evictions cannot take place in bad weather or at night, unless with prior consent;
- (vii) provision of legal remedies;
- (viii) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

Forced evictions can arise when governments exercise their power to compulsorily acquire private rights in land without the willing consent of its owners or occupants in order to benefit society. This power is often necessary to acquire land for a public use or public purpose e.g. infrastructure projects (highways, dams, large scale energy projects, mining or extractive industry investments), activities associated with urban renewal (slum upgrading, city beautification); major international business or sporting events; and measures deemed necessary to reduce the risks associated with natural hazards. Compulsory acquisition requires finding the balance between the public need for land on the one hand, and the provision of land tenure security and the protection

of private property rights (use and occupancy rights as well as ownership rights) on the other hand. (See FAO Land Tenure Studies 10: “Compulsory acquisition of land and compensation”).

Development-linked evictions raise fundamental governance and political economy questions. Who determines what is in the “public interest”? By what process? According to what rules? Have all alternatives been exhausted, and according to whose judgement? Who benefits and how from an eviction? Who receives compensation; how is this compensation calculated; is it fair and just; according to whom? Who monitors the process? What scope is there for appeals and grievances?

Too often, the answers to these questions reveal a perversion of the “public interest” for private or other non-disclosed interests. In other cases, however, the answers are complicated by the reality that there are legitimate scenarios in which eviction is unavoidable. For example, if an area is prone to flooding, earthquake or another natural hazard, relocation may be unavoidable.

Even in these cases, however, the situation may not be so straightforward. Following the 2004 tsunami, for example, public interest was cited in Sri Lanka to justify the establishment of a 200 metre buffer zone between the ocean and the nearest settlements. Had it been implemented, it would have devastated the livelihoods of the fisher folk who occupied the area, often for generations. The situation was further complicated by reports that communities were being relocated to make way for new hotels and other tourism amenities. In another example, following the Pakistan earthquake in 2005, experts concluded that the entire town of Balakot had to be relocated as the area was too hazard-prone. Speculation arose in some quarters regarding how the proposed site for the new city would be identified, and who might benefit. Needless to say, many citizens remain unconvinced regarding the need to move. This is also the case in the Zambezi area of Mozambique, which has experienced recurrent flooding for decades. Several attempts at relocation have not been entirely successful, with many residents returning to hazard-prone river areas for livelihoods reasons.

Elsewhere, several countries and multilateral organizations have adopted laws and regulations governing forced evictions, including for example, Colombia, the Philippines and South Africa. Under Colombian law all citizens are entitled to receive service irrespective of their tenure status. South Africa’s Bill of Rights states that no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances, and no legislation may permit arbitrary evictions. South Africa provides two contrasting examples of how the compensation of squatters has been dealt with. In the well-known Grootboom case (2000), the Constitutional Court ruled that evictions could not take place without the provision of a suitable alternative. The next year, however, in the Bredell case (2001), the High Court ruled against a group of squatters who had been evicted from a settlement near Johannesburg.

At the international level, there have been other developments. The United Nations Committee for Economic Social and Cultural Rights has adopted General Comment 7 providing detailed guidelines for forced evictions and the office of the Special Rapporteur on Adequate Housing has published a set of guidelines for development-linked evictions.

Other organizations, including the International Finance Corporation (IFC) and the World Bank, must comply with their own Involuntary Resettlement Guidelines in any projects that involve the relocation of individuals or communities for development projects. One of the issues regarding the IFC/World Bank guidelines, however, is that the procedures may be perceived to be time-consuming and expensive. In any case, the procedures only apply in instances in which loans from such organizations are taken by Governments. These same Governments can elect to undertake relocations using their own resources (or from less regulated funding sources) and under national laws that may be less stringent than those of the relevant resettlement guidelines.

4.5 Women's land rights

The issue of gender and property rights raises profound governance challenges. Land and property rights have evolved over millennia and involve sensitive social and cultural issues and deeply rooted power relations. Just as land tenure mirrors the distribution of power within broader society, so too does it reflect the distribution of power within households. The issue of women's rights to land and other property demonstrates how difficult it can be to translate laws into practical improvements. In reality women's land rights are often determined by practice and custom, rather than according to law. Legal reforms, therefore, are a necessary, but insufficient condition for ensuring women's land rights are recognized in practice. These will involve profound behaviour change at the individual, institutional and societal levels.

Women's land and property rights remain insecure, whether in statutory or customary systems and, while reliable statistics are difficult to obtain, there is wide consensus that the vast majority of women in the world do not have secure land rights. Under customary and religious forms of tenure, women's land rights are to be protected within the context of the family or the community, but this is not always the case. Rising land values, the increasing commercialization of land, armed conflict and the HIV/AIDS pandemic are all factors that are making women's land rights more insecure.

Efforts to strengthen women's land rights have included: joint registration of land rights in the name of men and women (or women only); legal changes to the "head of household" concept; information and legal aid campaigns to inform women of their land rights; and measures to protect against disinheritance. Some examples from different countries are presented below.

Several countries have undertaken legal and policy reforms to promote equal land rights for women and men. In Mozambique, for example, the 2005 Family Law enables women to inherit property and recognizes traditional marriages. In Latin America, countries such as Bolivia, Honduras, Peru and Venezuela have introduced amendments to modify the concept of 'head of household' to enable women to be legally recognized as such. In Ethiopia, the Government initiated a large scale certification process whereby 20 million certificates were issued, including photographs of both husband and spouse. In some areas, women have felt more secure in their land rights and therefore more confident to rent out their land for farming.

In many cases, information campaigns have played a critical role in translating rights into reality. In Laos, the Lao Women's Union began an active information campaign which resulted in a much higher level of women appearing as landholders, whether

individually or jointly with their spouse. In Mozambique, traditional healers have been trained to disseminate messages regarding the new Family Law.

Elsewhere, for example in Kenya, efforts have moved beyond information campaigns to institutionalizing mechanisms within local land administration structures to safeguard against the disinheritance of women. Local “Watchdog Groups” have been created in Kakamega District of Western Kenya to increase women’s awareness of land rights and to protect them from landlessness. Women now receive free legal advice from paralegals and, as of 2006, the Kakamega District Watchdog Group has had a representative on the local Land Tribunal, a widowed grassroots woman who has had experience with the situation many women are facing.

At the global level, partners of the Global Land Tool Network have developed criteria for evaluating the design and implementation of land programmes from a gender perspective (see Box 8).

Box 8. GLTN Gender evaluation criteria

The International Federation of Surveyors, the Huairou Commission, the University of East London and UN-HABITAT have been collaborating under the umbrella of the Global Land Tool Network (GLTN) to develop a framework to assess the gender-responsiveness of new or existing land tools. The following criteria have been proposed:

1. Equal participation by women in the design and development of the tool;
2. Capacity-building, organization and empowerment of women and men to use the tool;
3. Inclusion of legal and institutional considerations;
4. Inclusion of social and cultural considerations regarding access to land;
5. Recognition of economic considerations regarding access to land;
6. Addressing issues of scale, coordination and sustainability.

Source: Summarized from GLTN (2009) Gender Evaluation Criteria for Large Scale Land Tools.

Measurement of women’s access to land should involve both qualitative and quantitative parameters. The assessments should address the quantity of land rights (e.g. the range of rights held by women within the overall bundle of rights), and the quality of those rights (e.g. the protection of those rights). See FAO Land Tenure Studies 4: “Gender and access to land”.

4.6 Natural resource management

The livelihoods of the poor, and particularly the rural poor, are often diversified, with household members cultivating crops, keeping livestock, engaging in fishing, and collecting food, firewood and medicines from forests. In addition to access to land for shelter and cultivation, their livelihoods are thus based on access to a variety of natural resources, including pastures, forests, fisheries and water. A given area will have its own (if not multiple) forms of tenure operating. For example, a forest may contain a variety of timber and non timber products, while at the same time being a watershed, fish hatchery and wildlife reserve. This creates a complicated web of resources, users, rights, restrictions and responsibilities.

As with land, an important aspect of governance related to other natural resources concerns the interface between formal and informal or customary tenure. In many parts of the world, access to the various natural resources is dependent on customary rights. For example, on paper, most forest land is publicly owned: a global estimate is that 85

percent of forests are public, with the figure rising to 95 percent in Africa, most of which is legally owned by central governments.⁹ The reality is that much of the public forests are managed not by public agencies, but instead by rural people who gain access to forest resources through customary rights which are not reflected in legislation. An emerging issue is climate change: the reduction of emissions from deforestation and forest degradation in developing countries (REDD) is a significant opportunity both for climate change mitigation and sustained financial benefit flows, as emission reductions are expected to be matched by performance based financial compensation – whether market or non-market based. Addressing tenure issues is essential to achieve REDD. Unclear tenure can aggravate deforestation and degradation: deforestation is a way of claiming rights to land, and degradation arises when tenure does not provide incentives to invest in improvements. Tenure reforms, including the legal recognition of customary rights, are a necessary part of introducing sustainable forest management practices in many countries, and to ensure that local communities who are the *de facto* managers of forest lands are able to benefit from REDD payments.

Another important aspect of governance is that the formal administration of natural resources is typically sectorial, with little coordination or interaction across the sector boundaries. Land policies, water policies, forest policies, and fisheries policies are prepared independently from one another. Responsibilities for administration are often housed in different ministries or agencies. Specialists in the different natural resource sectors come with different technical backgrounds, and speak different technical languages.

A third key aspect of governance is the increasing investment in natural resources by both domestic and foreign investors. In 2007, Foreign Domestic Investment (FDI) in developing countries reached USD 500 billion, their highest levels ever, and developing countries, principally in Asia, gained importance as sources of FDI. Record inflows of FDI were recorded for Africa (USD 53 billion), Latin America and the Caribbean (USD 126 billion) and South East Europe and the Commonwealth of Independent States (USD 86 billion), with a large proportion of these investments being driven by a strong demand for natural resources.¹⁰ With most investments in natural resources being made in metallic ores and non metallic minerals such as oil, gas and coal, the projects tend to result in increased competition between the investors and the local communities over the land in which the minerals are located.

With the new investment flows come increased concerns regarding how deals are being made, by whom, for whose benefit, with what impact on the existing land rights on the ground, and with what impact on related communities and natural resources, particularly water. How will conflicts between competing uses be resolved? There are no simple answers to these questions; however, there is significant body of experience to be used as guidance.

Different countries are adopting various approaches to the management of natural resources, with or without the added complication of these new investments. The Mozambique experience offers many valuable lessons (see also Box 5): The 1997

⁹ FAO. 2008. Understanding forest tenure in Africa: opportunities and challenges for forest tenure diversification. Forest Policy and Institutions Working Paper 19.

¹⁰ United Nations Conference on Trade and Development. 2008. World Investment Report 2008: Transnational Corporations and the Infrastructure Challenge. Geneva.

Land Act aims to protect local communities from losing their land by requiring investors to consult them regarding land to be used in an investment project. The consultation is intended to ascertain that the land has no occupants, and to facilitate the negotiation of mutually beneficial agreements between communities and investors applying for the land. Experience has shown, however, that communities require considerable support in order to be able to negotiate effectively with investors. The process can be time-consuming and create transaction costs that may discourage some investors.

In Papua New Guinea, where some 97 percent of land is vested in customary rights holders, the Government plays a mediator role between investors and communities. Under its “lease, lease-back” system, the Government identifies the “legitimate” land rights holders and brokers an agreement with the investor. In some cases, however, local communities may be unaware of these agreements or may not understand the implications and negotiations may have to be re-opened.

Other experiences from the forestry sector in Asia and Africa also provide some useful governance models. In Nepal, for example, some 20 percent of forest resources (1.1 million hectares) are managed through Community Forestry User Groups (CFUGs) who prepare operational plans that include conservation, management and use rules, fix prices for selling forest products and define sanctions if rules are broken. Another initiative in Nepal used secure long term leases to provide groups comprising poor landless families with exclusive use rights to forested areas based on an agreed management plan: the arrangement meant that women spent less time collecting fodder and firewood, and so could engage in other activities which created income. The initiative has thus helped to reduce poverty and generate reforestation of hills. In the Philippines, the local government has been granted devolved powers through the Local Government Code (1992) that gives it an additional role in management and conflict resolution. In Viet Nam, private small-holders as well as common property regimes are supported.

In many African countries, common property regimes have proven effective for both conservation and poverty reduction objectives. In other cases, traditional forest management systems have been weakened by inadequate legislation, insecure access rights, and the increasing commercialization of land. In response, some countries (The Gambia and Tanzania) are introducing a package of reforms that includes legal recognition of common property, capacity-building for community decision-making and management of forest resources, and an agreed division of revenue streams. Other countries (Senegal, Ghana and Tanzania) are experimenting with joint forest management (JFM), whereby the state retains ownership of the forest, but shares the responsibility for managing it with the community. Communities receive shares of the benefits from forest resources. JFM arrangements, however, can be undermined by powerful groups that are reluctant to share their authority, by arrangements that favour conservation over poverty reduction objectives, or by revenue-sharing plans that result in a net decrease in revenue compared to the pre-JSM arrangements (for example, Tanzania). A common challenge in countries like Cameroon, Senegal and Mozambique, is that complex rules and procedures make the implementation of well-intentioned laws and regulations difficult.

Vested interests can be a major stumbling block to reforms. In Uganda, for example, pressure from politicians (in addition to the absence of proper implementation

guidelines) has discouraged communities from applying new legal provisions that allow them land ownership through community land associations. Alternatively, in countries like Ghana, illegal logging generates revenue for people who may perceive that they have few viable livelihood alternatives and are aware that private concessions are earning significant profits. The lesson is that reforms may be opposed if perceived interests are threatened without adequate safeguards.

The land rights of pastoralist groups also present specific governance challenges. In Francophone West Africa, local agreements (conventions locales) have been developed as shared arrangements for access and management of land and natural resources that are negotiated by the full range of stakeholders, including pastoralists. These agreements overcome the tendency of village-based natural resource management schemes (*gestion de terroir*) that can result in the exclusion of pastoralists through the granting of “exclusive” rights to the villagers. Elsewhere, in Niger and Mali specific legislation has been developed to protect the access rights of pastoralists. Niger’s *Code Rurale*, for example, introduces the concept of *terroirs d’attache*, that gives pastoralist communities priority access to the resources whilst ensuring they remain open to other users. Mali’s *Charte Pastorale* gives pastoralists similar priority rights to defined resources, but not ownership of the land.

Another strategy has been to legislate in favour of the right to information regarding land-related issues. In several countries, for example, Australia, Belize, Bolivia, Canada, Greenland, The Philippines and Venezuela, legal reforms are explicitly incorporating the concept of Free Informed Prior Consent (FIPC) that requires the consent of indigenous communities prior to the approval of activities in indigenous areas.

In India, Public Interest Litigation has been introduced whereby State action may be challenged not simply by the aggrieved party, but by a third-party. In one of the most well-known judgements, *Public v. State of West Bengal*, the court ordered the State to take the public’s environmental concerns into account in its urban expansion plans for the wetlands area to the east of the city of Kolkata. Subsequent rulings, however, indicate that competing interests are in play: an alliance between NGOs and pro-conservation elements in the Government, and city officials arguing in favour of the city’s need to expand.

As the above examples illustrate, the raft of competing interests, complicated inter-linkages between different resources, the real risks of negative externalities, a complicated social institutional environment and significant coordination issues, make effective natural resources management extremely difficult as well as a critical governance challenge.

4.7 Informal settlements

Informal settlements – whether they are called slums, shantytowns, bidonvilles, gecondo, favelas or by another name – have been defined as lacking one or more of the following five conditions: access to water; access to sanitation; security of tenure; durable housing quality; and sufficient living area. According to UN-HABITAT, some 900 million people live in informal settlements. Without major policy reforms, that figure is expected may increase to 1.4 billion in 2020 and to 2 billion by 2030. Given

these figures, the MDG Target of improving the lives of 100 million slum dwellers by 2020 may seem rather modest.

The political economy of informal settlements poses some interesting questions: why do such settlements exist, and persist; who benefits, how; what are the costs of informal settlements, and who bears them? They also raise some important governance challenges: how to develop a credible and viable strategy for upgrading at scale and in a way that changes systems – land, service delivery, planning, building codes, housing finance, etc; how to manage their further growth; how to coordinate the wide range of inputs required from diverse stakeholders; who will contribute what financial or other resources; how will maintenance issues be addressed; how to protect the land rights of women and vulnerable groups such as renters (who may make up a significant portion of residents); how to manage the risk of gentrification (whereby the poor either sell their land and move elsewhere or are forced out by increased rents); how to deal with the land rights of squatters, of people who are living on hazardous land; etc.

There is general agreement among practitioners that addressing informal settlements requires a two-track approach: upgrading existing settlements and taking measures to prevent the growth of new informal settlements. Both approaches require solutions that address underlying land issues. Both approaches, however, also require a more detailed understanding of land markets and the political economy of land in informal settlements. Simply put, this means following the flow of payments to find out who pays how much to whom and for what. It also requires innovative approaches to issues of building and zoning standards and their cost implications.

For example, in the highly valued informal settlement of Kibera, in Nairobi, Kenya, some 80 percent of the occupants are renters. A significant percentage of structure-owners are absentee landlords, some of whom may own multiple structures, and some of whom work or have worked in Government. Structure owners may pay up to 24 percent of the total construction price as a “fee” to local officials (traditional and local authorities) in return for which they can secure a piece of land on which to build a structure. These costs are simply passed on to the tenant. At prevailing rents, the investment can be paid off in approximately two years, making this a very attractive business model. While the Kibera model may have some unique characteristics, it demonstrates how vested interests can make a problem resistant to a resolution.

Similarly, in Latin America, many cities are facing up to the reality that the “regularize and upgrade” model only perpetuates informal settlements and does not address the fundamentally dysfunctional nature of urban land markets. Formal markets offer limited amounts of land at high prices, involve time consuming and expensive registration and transfer procedures and the need to comply with planning and building codes. Informal markets, led by informal “pirate” developers take advantage of this situation to purchase, for example, peri-urban land at rural land prices and then re-sell it on the informal market. While free of costly and time-consuming procedures and compliance issues, the purchase is not without its costs. Prices in the informal market are still high (both in absolute terms and also with respect to the limited (or no) services provided with the land) and tenure remains insecure. In the “regularize and upgrade model” that has predominated in Latin America, it is the Government and the community that must pay, post facto, the costs of registering the land, extending infrastructure, providing services and re-planning irregular settlements. It has been

estimated that this retrofitting can cost between 3 and 5 times the cost of providing serviced land up front. The developer, meanwhile, takes home a significant profit.

The Kenya and Latin America examples illustrate some of the political economy issues that contribute to the perpetuation of informal settlements.

Some of the more innovative solutions to these issues involve complicated partnerships and governance relationships. Two general approaches are described, followed by some brief examples of different approaches from Latin America.

In a *land sharing* model, government or private sector owners negotiate with residents of informal settlements to develop a joint strategy to develop public or private land occupied extra-legally. The community obtains rights to a portion of the land to be used for in situ upgrading, while the Government or developer uses a portion for commercial purposes. The developer avoids eviction or court and can profit from the development, while the community's land rights are made secure; in some cases, relocation of some members and/or infrastructure investments can also be funded. In order to be successful, however, the informal settlement must be located on high-value land. Variations of land-sharing have been used with particular success in Asia, particularly in Thailand and India.

Through *land readjustment* several adjacent pieces of land are joined, property boundaries are eliminated and a new development is planned and implemented, with the original holders receiving a pro-rata share of their original land in the new development. In addition, services and amenities may also be provided as part of the scheme. This requires careful consultation among land-holders and with local authorities and often involves compromises on all sides: beneficiaries receive security of tenure, but on smaller plots and must pay for services; Governments often must accept sub-standard plot sizes and roads and forgo other development plans for the area. Box 9 below provides an example from Asia demonstrating how the concepts of land sharing and land readjustment can be combined for slum upgrading.

Box 9. Public land for slum upgrading – Thailand's CODI Initiative

An interesting example of the use of public land for low-income housing is the Baan Mankong Community Upgrading Programme. The programme is based on strong cooperation between government land-owning departments to help poor communities to regularize their land rights under long term land lease contracts to their community cooperatives, as part of projects designed to upgrade their houses, infrastructure and living environments. Implemented by the Community Organizations Development Institute (CODI), public land upon which hundreds of informal settlements have been squatting is being transformed into "developed land" which generates a modest rental income, without relying on financing from any of the country's key public land-owning agencies.

These public landlords in Thailand, with whom long term community lease contracts are being negotiated (mostly for a 30-year renewable term, and with very nominal rental rates), were not always so cooperative or friendly towards the poor. Like many other Asian countries, Thailand has had serious problems of "stiff" public land-owning agencies, reluctant to allow their land to be used for poor people's housing, even though in so many Thai cities, most slums are already on public land. In the past, this attitude made it extremely difficult to negotiate upgrading and secure tenure arrangements on any significant scale. These public landlords had to be convinced along the way, through long efforts of creative diplomacy and negotiation by the communities, CODI, local governments and NGOs.

But two things were necessary for breakthroughs with these public landlords: the upgrading process had to happen on a huge scale (in over 220 cities around the country), and communities had to have

access to flexible, affordable finance (in the form of infrastructure development subsidies and soft housing loans through CODI) to achieve this scale. As of September 2007, some 957 community housing projects in 226 have benefited 52,776 households.

Source: CODI cited in UN-HABITAT/UNESCAP (2008)

Two examples from Brazil and Colombia illustrate other innovative approaches to addressing the challenge of informal settlements. These experiences describe a common urban challenge: that between the public interest and private interests. Box 10 provides a contrasting experience with value capture from China.

Box 10. The challenge of rapid urbanization in China

China's urban population has increased from 19 to 43 percent between 1980 and 2005. China's local authorities are heavily dependent on revenue from land-related transfers and from land-related financing. A common strategy has been to use legal powers to expropriate peri-urban land and then sell it on to developers. In so doing, the local government captures the increment arising from the change of use from rural to urban uses. These expropriations have become contentious, with the Ministry of Land and Resources reporting that two-thirds of the complaints-received concern disputes related to expropriations and low compensation. Field reports suggest that farmers are generally uninformed about the process and their rights, and unaware or unable, to effectively access grievance redress mechanisms. While the Central Government has tried to address these issues through new policies and guidelines, implementation has been weak.

Source: Li, Guo et al (2008), China: Integrated Land Policy Reform in a Context of Rapid Urbanization, ARD Notes, World Bank.

In Colombia, Law 388 of 1997 states that land value increments (the price difference from land values resulting in a change of land use or the likely extension of services) must be used for social investments. The city of Bogota is using the law to try to manage its urban expansion towards the environmentally sensitive southeast sector in the Nuevo Usme project. To get ahead of the illegal "pirate" developers the city has done several things: first, it has frozen real-estate prices at their pre-project rural levels; second, it has produced a partial plan for the area using land readjustment principles that allow the Government to reserve a portion of the land for infrastructure, public facilities and social housing; third, it is capturing between 30 and 50 percent of the increased land value due to the expectation of future investments through the *plusvalias* mechanism to pay for the investments. The approach, therefore, is trying to shift the balance of power away from the pirate developers and back to the public officials.

The shift in power has not gone uncontested however. In fact, between 1970 and 1989, 17 progressive urban reform projects were submitted to the Colombian Congress, but all failed due to opposition from the conservative party backed by the influential private sector, including the construction industry and real estate developers. The turning point came when the city of Cali proposed to expropriate a large area of urban land held by only a few owners and to use that land, in part for social housing. Developers and builders decided to create an association to develop social housing on their properties. The change in the attitude of the private sector has stimulated similar processes in other cities.

In Brazil, the federal Government has enacted the "City Statute" that recognizes the "social function" of cities, that is, the public interest in parks, services and infrastructure. The Statute builds on and reinforces a wide-range of experiments to

improve cities. In Porto Alegre, for example, where some 26 percent of the city population of 1.4 million lives in informal settlements, the city has adopted the “Social Urbaniser Act” in 2003 to restructure incentives (and sanctions) to encourage illegal ‘pirate’ developers to put their skills to the benefit of the city. The city builds on the developers specialized knowledge and through open negotiations reaches agreements on new developments, structuring the agreement in such a way as to ensure that serviced plots are provided at affordable prices.

A similar formalization of informal developers and informal development processes is one of the main conclusions of a six city study of informal land markets in Africa.¹¹ In many African cities, formal land delivery models have been replaced by informal land markets. The study demonstrates that informal land delivery models are based on user-friendly characteristics and their socially accepted institutions for regulating transactions, based on (but evolved from) customary practice. These systems are able to deliver significant amounts of land, but sometimes in inappropriate locations, with poor layouts and in the absence of infrastructure and basic services. The study concludes, however, that these deficiencies can be overcome and that the principle challenge remains its integration with the formal system.

The experience in informal settlements highlights several important perspectives from a governance and political economy perspective: the importance of understanding urban land and rental markets for the design of reforms; the need for innovative partnerships between unlikely allies, but firmly anchored in sound business models; and the complicated coordination mechanisms required not only to upgrade existing settlements, but also to get ahead of the curve and anticipate future growth.

4.8 Land administration

Reforming the organizations and practices responsible for land administration is one of the most difficult governance challenges in the land sector. Legal or policy reforms in any other area ultimately must be operationalized through the system of land administration. Or, efforts to improve land governance may directly target the land administration system. In either case, reform may require the transformation of systems that have been operational in their current form for a long time and changes to an organizational culture that has developed around existing rules and procedures.

Land administration includes the systems for land registration, land use planning, land management and property taxation. Each of these topics has clear governance dimensions, but to treat them all with the attention they deserve is beyond the scope of this paper. Moreover, many examples of technical reforms (see Box 11) to improve land administration can be found in other publications (for example, FAO Land Tenure Studies 9: “Good governance in land tenure and administration” or Zakout et al. “Good Governance in Land Administration”). Rather, this paper focuses on two specific policy issues: the organizational transformation aspects of State systems for land administration, and improvements to public or state land management.

¹¹ Rakodi, Carole (2005) Land for housing in African Cities, paper prepared for the World Bank Urban Research Symposium in Brasilia, Brazil.

Box 11. Examples of technical improvements to governance

- Land registration: introducing the “front office/back office” concept which restricts the access of customers to staff who carry out the registration activities;
- State land management: maintaining up-to-date inventories of state land and its use;
- Property taxation and valuation: updating valuations on a regular basis using objective methodologies;
- Land use planning: ensuring public participation and avoiding conflict of interests;
- Management of customary lands: improving record-keeping and simplified mapping of boundaries.

Organizational transformations

Georgia presents an example that illustrates several important areas for organizational transformation: financial autonomy, depoliticizing technical services, reducing organizational and institutional complexity and the need to introduce a new organizational culture. It shows the magnitude of the transformation challenge, but also demonstrates that such reforms are possible.

The Georgian agency responsible for land registration had inherited a large bureaucracy of people who were poorly paid and many lacked motivation. People wanting to register transactions were required to pay bribes. Following the “Rose Revolution” of 2003, Georgia took the opportunity to transform the registration agency into a self-financing agency under the Ministry of Justice. The new agency was put at arms length from its parent Ministry, giving it greater autonomy in decision-making, but leaving the Ministry responsible for budget oversight and the approval of the head of the agency. The number of posts was reduced from 2,100 to about 600. A new recruitment process was introduced in order to ensure that people in the agency had the required skills. New job descriptions were created, and an open competition with qualifying examinations was held to select personnel for the new structure. Staff cuts were complemented by capacity-building for retained staff and improved wages. The average monthly salary increased from 57 lari (about USD27) in 2004 to about USD450 in 2006. The increased salaries for retained staff were funded in part by reducing the number of staff, and in part by revising the registration fees. In effect, the bribes that people had paid to register transactions were “formalized” and included within the published fee schedule. As a result of the reform, the budget of the agency increased from about USD300 000 in 2004 to about USD7 million in 2006. These figures show how under-resourced the agency was originally. The improved budget situation led to the agency making substantial contributions to the state budget: in 2006 it paid USD1 million in Value Added Tax, USD600 000 in social tax and USD350 000 in income tax. These amounts far exceeded the budget that the state provided to the agency prior to the reform. One of the hardest aspects of the reform was cutting the staff posts, but that was necessary because the original over-staffed agency was neither efficient nor effective.

Experiences from other countries offer additional examples. In terms of financial autonomy, in the Kyrgyz Republic, 50 rural land registration offices are self-financing as of 2007, leaving only the Central Agency to be supported from the state budget. In other countries, however, such as Madagascar rural land markets are not as active, and cost-recovery is an issue for the sustainability of the newly established rural land offices (*guichets fonciers*). Cross subsidy from urban land market transactions is an alternative strategy. In Armenia, transactions in the capital, Yerevan, accounted for over 50 percent of all registrations until 2001 and still represented over 40 percent of

4.9 Land disputes and conflict

Disputes over land are common the world over: for example, neighbours disagreeing over boundaries, two parties disputing ownership over a piece of land, conflicts between landlords and tenants, disputes over use rights on common property or collective land, intra-household disputes, inheritance disputes, etc. The critical governance issue regarding disputes, however, is not whether there are disputes, but rather what rules, processes and mechanisms are in place to address grievances, manage disputes and to enforce agreements.

For many countries, a key governance issue determining the likelihood and duration of conflict is the interface between the formal and customary laws and structures related to land. The lack of clarity regarding the relationship between customary forms of tenure and institutions and the formal or state institutions can itself create widespread insecurity of tenure. Experience from different countries suggests that strengthening security of tenure is essential to reducing land disputes. Ethiopia's large scale certification process, for example, has significantly reduced conflict, according to some 80 percent of the respondents to a recent large household survey. In Botswana, where some 70 percent of land is held under customary forms of tenure, a Tribal Lands Information Management System (TLIMS) was implemented in 2005 and has significantly reduced the number of ownership disputes.

The use of traditional and alternative dispute resolution techniques has proven effective in dealing with land disputes in a number of countries. One challenge concerns women's ability to access justice through such mechanisms. A second challenge is ensuring that these mechanisms are clearly linked to State systems for both appeal and enforcement: where this does not occur, a permissive environment for "forum shopping" is created, i.e. parties seek to use the decision-making body that is likely to decide in their favour. In Tajikistan, Third Party Arbitration Courts (TPACs) have made an important contribution to reducing the incidence of land-related disputes. The TPAC system also includes a provision for parties to appoint female mediators or arbitrators, one of the common weaknesses of alternative dispute mechanisms around the world. It has also established formal linkages between decisions made through these courts and the formal enforcement mechanisms of the state. What remains, however, is to enact special legislation to institutionalise the TPACs within the broader legal framework.

While land disputes occur in all countries, even those at peace, they are particularly problematic in cases of violent conflict. The causes of violent conflicts are typically complex. Some violent conflicts are directly linked to competition for land and other natural resources. Growth in population without increases in productivity or new opportunities to acquire off-farm income tends to place increased pressure on natural resources, and the resulting environmental degradation may cause still greater competition for the remaining natural resources. As access to land is often related to social identity, the rights to land of people may be used in the political exploitation of tenure. Other violent conflicts arise without scarcity of land and other natural resources being a fundamental cause, although land disputes may become merged with other issues, and different sides in the conflict may attempt to gain control over natural resources such as oil, diamonds and timber in order to finance their activities. The discrimination against groups in a society can have an impact on land tenure through "ethnic cleansing" in specific areas. While the number of armed conflicts around the

world has dropped 40 percent since the early 1990s, the risk of land-related conflict and violence, remain ever-present. Preliminary findings from a UNEP analysis of intra-state conflicts over the past sixty years provide two sobering facts: first, at least 40 percent of all intra-state conflicts can be associated with natural resources; second, that conflicts associated with natural resources are twice as likely to relapse into conflict within the first five years of a peace agreement.

Widespread conflicts often result in the displacement of vast numbers of people, and as violent conflicts may last for decades, displacement can be repeated. Host communities in safer areas may face increased competition for access to land, forests and water. At the end of the conflict, people returning home may find that others occupy their property: there may be several competing, legitimate claims to the same land as a result of successive waves of displacement. At the same time, violent conflicts usually results in significant changes to land tenure and its administration. Land administration systems may have suffered the loss of personnel, land records and facilities, adding to the challenges of resolving disputes.

A governance and political economy approach can offer some important insights into the sources of conflict, insights that can then be used to inform both efforts to prevent disputes from degenerating into conflict, as well as post-conflict peace-building efforts. Economic incentives or opportunities, for example, are rarely the principle motivations for conflict; often economic motives interact with social or political grievances. Finally, changing the economic and political incentive structures that underlie conflicts can make an important contribution to peace-building.

Rebuilding the institutions for dispute and conflict resolution is also critical from a peace-building perspective. This may take different forms. In Rwanda, land and property disputes have been handled through local Gacaca courts, a traditional institution that was restored in the aftermath of the genocide. Specialized land courts can have a role also; however, they often suffer from a lack of capacity, procedural complexity and high costs, coordination issues. In Afghanistan, for example, a special Land Dispute Court was established to deal with cases involving the loss of private property since 1978. Since its establishment in 2003, however, it has dealt with only 5 percent of the registered cases before it. Moreover, these cases tend to involve claims made by wealthier people.

4.10 International cooperation

The land sector has received significant international support over the past decades, in terms of technical advice, grants and loans. The nature of land sector reforms is such that they have proven to be time-consuming, relatively expensive and often highly technical in nature. Two aspects of international cooperation warrant attention from a governance and political economy perspective: issues related to overall aid effectiveness, in line with the Paris Declaration of 2005; and issues related to scale and impact.

The Paris Declaration emphasizes the need for improved donor coordination in return for increased Government accountability. The lack of alignment and coordination between donor policies has proven to be a critical governance issue in the land sector. At the extreme, for example, there have been several occasions in which donors have funded parallel approaches to land administration (see for example Georgia's

experience in Box 12). Even in places where coordination has been strong initially, it can be hard to sustain. In Cambodia, for example, there was strong collaboration in the initial years after the end of the conflict, however, the long reform process, combined with changes in personnel and the political environment, have combined to reduce the effectiveness of coordination.

Box 12. Donor coordination in Georgia

After independence in 1991, Georgia suffered from internal conflict, corruption and poor governance and high poverty levels. Some of the contributing factors included: the concentration of decision-making power in a single entity (State Department for Land Management - SDLM); unclear division of responsibilities between the SDLM and local government; a vague legal framework, the absence of a land policy or clear development strategy. Georgia received significant donor support; however, because these were often driven by donor imperatives, their implementation followed several different approaches and standards. There were no unified technical specifications or standard instructions. Donor coordination itself was very poor. Following the 2003 change in leadership and the replacement of the SDLM with the National Agency of the Public Registry (NAPR), donor coordination was explicitly identified as an area for reform. A donor coordination council was established. Working groups with representatives from the different donor-funded projects were created to address four issues: (i) registration database and software; (ii) development of legislation; (iii) registration procedures/instructions; (iv) administrative structure and human resource strengthening. The result has been that donor efforts have become more results-oriented and consensus oriented, with improved levels of accountability, participation and inclusiveness.

Source: Dabrundashvili (2007) Property Rights Registration System Reform in Georgia

From a governance and political economy perspective, there are several factors that contribute to poor coordination within the international community with respect to land, including: competition for scarce development resources at the global and national levels; disagreements over the most appropriate normative or policy approach; a mismatch between the time horizons required for reforms and the programming cycles of development organizations, sometimes less than two years in duration; tension between competing incentives – delivery and local ownership – particularly when funding is time-bound; the need to promote domestic companies or technologies; issues of personal career advancement; and the need for visibility during programme implementation, sometimes to help justify continued development assistance support from sceptical domestic parliaments.

These interests, however, are rarely openly acknowledged and discussed in the context of an overall reform programme. As such, specific measures are rarely taken to mitigate the risks that these interests might present to overall programme effectiveness.

A particular challenge is working with recipient countries where there is weak leadership and management in government and land agencies, and no clear definition of national priorities in the land sector. In such cases, people responsible for negotiating for international financial support may accept all donor proposals without question. While improving donor coordination is important, so too is supporting the development of capacity in the recipient countries to develop their own priorities and the strategies for achieving them. Interventions that lack the ownership of the recipient countries are seldom sustainable: when the donor funding ends, too often the donor funded activities cease as well.

There are some positive developments on the horizon, however, including the increasing use of multi-year sector-wide approaches (SWAs) and programme-based approaches (PBAs), which enable a more holistic, coordinated and long term engagement.

In Kenya, a donor coordination mechanism has been established based on the principles of the Paris Declaration. Areas of coordination include: preparation of a coordinated position prior to regular meetings with Government; the establishment of a basket-fund mechanism for support to the land sector; the establishment of a separate basket-fund mechanism to provide dedicated support to non-state actors (NSAs, including NGOs and the private sector); streamlined reporting; and less transaction costs for Government in terms of meetings with development partners. The coordinated approach is seen to have contributed to the manner in which pro-poor and gender-related issues were addressed within the national land policy process. Lessons from the Kenya case, combined with experience from other countries and sectors, have been documented in a simple guide for establishing a land sector (see Box 13 below).

Box 13. Establishing an effective land sector – some guidelines

When implementing a harmonization process, consideration should be given to the following points:

1. Perform a Stakeholder Analysis. The lead partner (usually a Government Ministry) can carry out a preliminary stakeholder analysis, identifying all relevant actors (including donors, implementing agencies and state and non-state actors) and their interest in engaging in harmonization.
2. Outline the Roadmap.
3. Consultation Workshop: All identified stakeholders can then be invited to a consultation to identify and discuss issues of common interest, to agree on a joint vision for the process, to map the way forward and assign roles and responsibilities.
4. Identify a Focal Point: The lead Ministry should nominate a focal point to spearhead the process, ideally a senior civil servant familiar with both the technical and political landscape.
5. Establish a Coordination Unit: The coordination unit can support the elaboration and implementation of the road map for institutional harmonization.
6. Agree on the roles of non-state actors: Non-state actors will have to determine their roles and responsibilities within institutional harmonization. NSA's may need external support in order to fully engage in the process.
7. Set up Coordination Groups: Donors may wish to establish different coordination groups (technical cooperation, funding, etc.) or opt for a single coordination group.
8. Establish Task Forces to work on specific technical issues to improve efficiency and effectiveness.
9. Form a Joint Steering Committee, including representatives from Government, development partners and non-state actors consult, approve work plans and budgets and agree on the way forward.
10. Apply a Demand-Oriented Approach. Harmonization processes will always depend on sector needs, range of stakeholders involved as well as the political and administrative context of the country. It is important to remain flexible, while maintaining the overall direction for reform.

Source: UN-HABITAT (2007) How to establish an effective land sector

5. Concluding comments

Policy reforms to improve the governance of land and natural resources can enhance the lives of the poor and vulnerable by recognising and protecting their rights to land, and by ensuring that the benefits from these resources are equitably distributed and that the responsibilities for their effective management are equitably shared.

The various examples described in chapters 3 and 4 demonstrate that it is possible to introduce policy reforms to bring good governance to land and natural resources. They also show that reforms are often not easy to implement.

Substantial reforms may take years and even decades to implement. Preparing and debating a policy may require several years, as does the preparation of new laws and regulations. Fundamental reforms to land administration systems are critical to institutionalising legal and policy reforms, yet require enormous investments to secure the behavioural change required to sustain them. Improving natural resource management is an ongoing task, as is the challenge of upgrading existing slums while ensuring that sufficient serviced land can be provided to mitigate the risk of new slums emerging. Strengthening women's land and property rights is a multi-generational governance challenge.

Other issues, such as evictions and relocation may be of much shorter duration; however, their governance implications are no less important. Addressing disputes to ensure that land issues do not generate into conflict requires early and effective action. In both cases, a failure to effectively deal with the underlying land rights can result in social unrest or even violent conflict.

Political will, a broad coalition for change and sustained grassroots engagement are fundamental for reforms to succeed. The participation of all legitimate stakeholders is needed if problems are to be defined holistically, rather than in narrow sectoral terms, and if the solutions developed are to take into account the inter-linkages and potential consequences of reforms in one area on stakeholders in another. A shared understanding of land problems is critical, but, like the challenge of sustaining political will beyond a politician's term of office, often proves elusive.

The national ownership of reforms is essential if they are to be implemented. National ownership requires strong leadership and institutional capacity, and the tailoring of donor proposals to align with national priorities. Donor support is often essential, however, for broadening the consultative processes and for providing additional technical inputs.

As shown by some of the examples, major policy reforms are often introduced at critical moments of history, e.g. with the rebuilding of countries following the end of civil war and the arrival of peace. The introduction of good governance, however, does not require major societal changes. What is necessary is for the issues to be on the political agenda.

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the country's registrations in 2006. Cross-subsidy allows a higher level of service to be provided in rural areas than would be possible if the rural registration offices had to rely only on locally-generated revenue.

Reducing institutional complexity is a critical governance challenge for the land sector. In Laos, for example, the merging in 2006 of land administration functions from all or parts of three previous departments into a single agency was designed to simplify greatly policy-making, implementation and administrative activity in the land sector to the benefit of all users.

The merging of the functions of agencies, however, is often difficult. When the agencies have offices in different locations, merging of functions may require some offices to be closed and their staff reassigned to other locations. There may be a lack of political agreement for mergers. Agencies that were created to manage particular sets of data may find a merger threatening. Clients may resist a merger because of a desire for custom and familiarity. In such cases, benefits may come from mergers at a technical level. For example, Finland achieved the merger of its title and mortgage registers through technical reforms to computerize records and then interlink cadastral and registry data. Parallel and duplicate functions were removed and functions were merged. The technical integration of the registers and cadastre demonstrated the value of a simplified administrative framework and in 2008, the title and mortgage registers became part of the national cadastre. Sweden also followed a similar approach where technical integration laid the foundation for the subsequent administrative integration of its land registers and cadastre.

Public/state land management

The issue of public or state land management is another area for interest from a governance perspective. In countries where landownership is vested in the state, the decisions regarding land use and its disposal can be extremely contentious. Often, there is no complete inventory of state land holdings, their location, size or their value, creating an enabling environment for the transfer of state land into private hands. In many countries, and particularly in post-conflict situations, land allocation is used to secure or repay political support. In rural areas, the allocation of land for agriculture, forestry or mining may create conflicts between government and community land rights.

In Egypt and Albania initiatives are underway to improve the Government's capacity to manage state land and to reduce the possibility of land being illegally leased or sold. In Egypt, the Government has recently initiated a process to reform the system of state land management, bringing responsibilities under one agency (Ministry of Finance), undertaking an inventory of all state land and the development of new procedures for the transparent management, lease and transfer of state land. In Albania, new laws have been passed regulating the transfer of state public land to local governments. The laws will control the types of properties that will be transferred, the nature of local government's rights over these properties and the process of transfer from central to local government. All properties that will be transferred will be registered in the Immovable Property Registration Office.

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