



DEBRE MARKOS UNIVERSITY

INSTITUTE OF LAND ADMINISTRATION

DEPARTMENT OF LAND ADMINISTRATION AND SURVEYING

Course Title: Land Policy and Reform

Course Code: LaAd4113

Credit Hours: 4

Target Group: 4th Year Land Administration and Surveying students

Lecturer: Tilahun Dires Azmeraw (LL.B, MSc.)

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Debre Markos University

COURSE INTRODUCTION

Dear students! The course, Land Policy and Reform one of the basic courses offered to land administration and surveying students at Institute of Land Administration, Debre Markos University. It is a four credit hour course. This course does not require any prerequisite course for your learning.

Remember that this course is interesting and important because it will tell you many things about land Policy and reform. In more specific terms, the course deals with the various land reform measures and their impacts on the productivity of land. The course, Land Policy and Reform, familiarizes you with the basic concepts land policy and reform. In addition the course highlights you the contemporary issues of land reforms (redistribution, restitution, fragmentation, and consolidation) from global context in general and Ethiopian context in particular. Moreover, it introduces you principles and strategies to design and implement land reform.

In order to strengthen your understanding of the course, several activities are given . You work out these activities so that you can improve your understanding of the course. In addition, exercises are also provided at the end of each sub-unit. These exercises are also expected to further improve your conceptual understanding of the course. The summaries given at the end of each unit highlight the main idea of the unit. The summaries are very helpful for the fast review of the unit. Finally you can test your understanding of each unit by answering the checklists. If your answers are all ‘yes’, that testify your deep understanding of the unit. However, if there are ‘no’ answers, you should go back and revise the unit.

Furthermore, while you go through the course, do it with attention and prepare your own short notes of the important points of each unit. This will help you to well understand the subject matter and to get ready for future examination. It can help you save time and keep track of what you have done in the units. Finally, it is advisable to make further reading on each unit to enrich you knowledge.

COURSE OBJECTIVE

The general objective of the course is to make land administration students familiar on basic land policy and reform measures and their impact on productivity on the basis of international

and national experience and to use of this knowledge for their future career. In addition to this general objective, the specific objectives of the course are as follows:

At the end of this course, you will be able to:

- 👉 Understand basic concepts of land reform;
- 👉 Know the impacts of various land reform measures on economic development;
- 👉 Understand the nature of land reform in Ethiopia;
- 👉 Understand principles and strategies to design land redistribution;
- 👉 Recognize principles and strategies to implement land restitution;
- 👉 Know basic concepts of land consolidation; and
- 👉 Recognize the major types of land reform;

ORGANIZATION OF THE MODULE

Dear students! This is your distance material for the course Land policy and reform which consists of five units. The module is organized and structured in one module. The module is divided in to units and each unit is further divided in to sub-units. Several activities, exercises, and checklists (questions) are also provided in the module at interval at least in each unit. The first unit deals about basic concepts of land policy and reform, which emphasizes on the meaning of land policy, land reform, elements of land reform, benefits of land reform property rights and arguments for land reform. The second unit deals about land policy issues in Ethiopia. Third unit deals about land distribution, the fourth one about land restitution and the last unit i.e. unit five takes about the principles and strategies for design and implementation of land reform.

HOW TO USE THIS HANDOUT

Dear students! this module is absolutely important and applicable to your future career and daily life. As a land administrator, knowing various land policies and reform measures; principles of redistribution, restitution, consolidation, tenure reform in general is very essential. Thus, you are expected to be familiar with them through further reading. A lot of activities and exercises and worked examples have been included in this module. Study them thoroughly and try to do the activities included in the module and you are well come to comment positively or negatively the content of the module.

Land Policy and Reform (Course Code: - LaAd4113)

To check your understandings please try to practice questions that are given at the end of each unit. I hope that you will enjoy studying this module and work hard to make the best out of your study and I hope at the end of reading this material you will grasp better knowledge about land reform. Finally, I would like to advise you to spend sufficient time to study the module.

UNIT ONE

BACKGROUND TO LAND POLICY AND REFORM

UNIT OBJECTIVES

At the end of this unit, you will be able to:

- ☞ Understand the basic concepts of land reform;
- ☞ Know the main elements of land policy reform programme;
- ☞ State the central issues of land reform programme;
- ☞ Recognize the link between land reform and other policy issues;
- ☞ Understand equity and economic arguments for land reform;
- ☞ Recognize the potential benefits of land reform; and
- ☞ Differentiate the urban and rural dimensions of land reform.

UNIT INTRODUCTION

Dear students! in this unit, you will be acquainted with land policy and reform concepts. More specifically, you will be first introduced to the basic concepts about land policy and reform, the role of different stakeholders in land reform designing and implementation, the main components of land reform and the key principles of land reform design and potential benefits of land reform. This will be followed by description of the link between land reform and other policy issues. This unit will also provide an understanding of the central issues that should be considered at the time of land reform design. In this unit, you will also learn about the equity and economic arguments for land reform. Finally, you will discuss the urban and rural dimensions of land reform.

1.1. BASIC CONCEPTS OF LAND REFORM

1.1.1. What is land policy?

Dear students! Have you tried to do the question? If your answer is no, please discuss with your friends and if your answer is yes, that is very good. Write your answer on a rough paper and try to relate with the following explanation.

Policy is defined as a general principle by which a government, company, or organization is guided in its management. This term, as applied to a law, regulation, or rule, denotes a general purpose to direct the welfare of the community or a group.

Land policy falls under the national development plans of a country. In this context land policy is taken as a governmental instrument that states the strategy and objectives of a country. It is considered that a country trying to organize its land matters with the development of a land policy that fits within national objectives and leads to concrete actions.

Land policy consists of a whole complex of socio-economic and legal prescriptions; dictate how the land is to be used and how the benefits from the land are to be shared. A balance must be struck between the exploitation, utilization and conservation of the land as a resource in order to obtain the necessary level of sustainable development for the survival of humankind.

Nowadays land Policies are concerned in developing countries, because of the following three topics:

- First, providing secure tenure to land
- Second, facilitating the exchange and distribution of land
- Third, governments have a clear role to play in promoting and contributing to socially desirable land allocation and utilization.

1.1.2. What is land reform?

Dear students! Have you tried to do the question? If your answer is no, please discuss with your friends and if your answer is yes, that is very good. Write your answer on a rough paper and try to relate with the following explanation.

Due to differences in land types, farming methods, the history of land acquisition, general social and economic conditions and political aims, the definition of land reform is not easy. Due to the fact that the term “land reform” has a variety of meanings. Among these the common ones are the following:

Land Restitution: Land reform may involve the restoration of land rights to previous owners, a process known as land restitution. This occurred in countries in transition when former private rights in land were restored.

Redistribution of Land Rights: Land reform may involve the redistribution of land rights from one sector to another—for example by taking land from the State or from individual owners of large estates and giving it to people who have no land.

Land Consolidation: Land reform may also involve land consolidation in which all landowners within an area surrender their land and are allocated new parcels of comparable value but in a pattern that encourages the more efficient and productive use of the land.

Land Tenure Reform: Land reform may also involve changes in the tenure of the land that is in the manner in which rights are held, thus abolishing complex traditional and customary rights and introducing more simple and streamlined mechanisms of land transfer. The impact on the land may be pre-planned, but it may also result from property tax reforms that alter the value of land and in consequence its use.

This type of reform is used in all other above categories, but is often used as the main instrument of achieving both more efficient and equitable distribution of land and landed resources (water, etc.). The focus is on techniques and institution rebuilding that make land

tenure institutions work in a more efficient, effective and fair way. Thus, the focus is on the social, political, and economic support needed for institutionalised transactions in rights in property. The core of this approach are good legal support and effective land information systems (LIS). Over and over again it has been observed that where the cadastre and land registry are poorly maintained or non-existent, there are high costs for proper survey, valuation and creation of new land records. The transaction costs for property exchange often exceed the economic value of the property involved. Experience has shown that land owners have many tools available to frustrate the process of creating fair and open economic transactions.

Land tenure reform is usually based on the creation of unambiguous property rights in land through legal reform and land registration. First, the newly established private rights must be clear. Second, "private" refers largely to control (i.e., legal capacity): private tenure imbues the owner with control over the acquisition, use, enjoyment and disposal of the property. These rights are conditioned by the context-specific statutes and laws which limit the absolute freedom of an individual through restrictions on land use, and so forth.

The new institutionalist approach has also brought back an important observation. Property is not the same thing as ownership. Property rights (entitlements) establish a relationship between the holder and the resources on the one hand and the legitimising norms and institutions on the other. Property establishes relations and makes possible new economic activity through adaptive and culturally recognised procedures. Confirmation of title in order to verify and secure land titles for those who already have a demonstrable claim to the land and replace doubt and contention by positiveness and certainty and so inspire confidence and encourage development.

Thus many bilateral donors such as AUSAID, DANAIID, DFID and USAID, and others have concentrated on assisting countries to build modern land tenure legislation, cadastres, and land registries. However, it is becoming increasingly apparent that an active land registry is not enough. Effective farming has need of a series of temporal uses of land in order to react quickly to changing world market demands for specific agricultural produce. This means land leasing and other arrangements are very important strategy tools for modern agriculturists. In many societies it is necessary to adjust or correct the reciprocal rights between proprietors and users in response to changing economic needs (e.g., the establishment of statutory

committees or land boards to organise the use of common resources and other interests; tenancy reform to adjust the terms of contract between property owner and tenant).

Moreover, 'Land reform' and 'agrarian reform' are often used interchangeably. Agrarian reform, a construct of the Cold War to counter 'communist' land reform, embraces improvements in both land tenure and agricultural organisation. Its policy prescriptions urged governments to go beyond redistribution: they should also support other rural development measures, such as the improvement of farm credit, cooperatives for farm-input supply and marketing, and extension services to facilitate the productive use of the land reallocated. Whilst conceptually sound, the danger with these wider prescriptions is that they may discourage governments from doing anything until they can do everything.

1.1.2.1. Approaches of Land Reform

There are three major approaches of land reform. These are:

- A.** Conventional state-led land reform
- B.** Market based land reform
- C.** Negotiated land reforms

From the above type of approaches the focus in this unit will be negotiated land reform. Because, this approach is more preferable by many users, institutions and donor communities.

A. Negotiated Land Reform Approach

The language of "negotiated land reform" is sweeping through the international community. Led in large part perhaps by the World Bank, and to a lesser extent, by FAO, IFAD and UNRISD, it has gained the preliminary support among others, of USAID, GTZ, EU and Italy, and is supported by important elements of the NGO community through Asia, Latin America and Africa. The approach is being piloted in a series of World Bank pipeline projects in Colombia and Brazil, and is being applied in varying degrees in South Africa, Philippines and soon perhaps, in Guatemala. Initial findings, in particular those from Brazil, are very positive. Target objectives have been universally met and costs and implementation times are significantly lower than conventional approaches.

Nonetheless, questions about the overall utility and effectiveness of the approach remain. Pilot implementation of the approach has at times experienced delays and has required a substantial direct and indirect grant component. Elsewhere, there have been difficulties in assembling the full complement of necessary partners, in particular the private sector. Finally, governments and ministries such as Brazil's Ministry of Agrarian Reform have expressed concerns about the political risks associated with the approach. Nonetheless, the level of attention and the amount of finance being directed towards the approach suggests that Negotiated Land Reform (henceforth, NLR) will assume an important position in ongoing land reform debates.

NLR refers to a new way of "doing" reform. Its emergence is the product of convergence in both theory and practice - a conceptual language of partnership, coalition and negotiation has been sanctified by recent experiences in practice. On the one hand, it is the result of an impressive and systematic review of the failings of many previous land reform initiatives around the world. On the other hand, the potential utility of the approach has been demonstrated in a series of large scale integrated rural development projects supported by the World Bank in 10 states in Northeast Brazil. Between 1975 and 1987, 22 projects received US\$3.3 billion in commitments from the Brazilian government. Targeted on the poor, they aimed to provide a complete array of development investments, ranging from roads, water and health to agricultural credit, extension and research. A complementary and unanticipated outcome involved innovative approaches to land acquisition linking landowners, potential small producers and local municipalities.

Main Components of Negotiated Land Reform: Negotiated land reform is a highly context-sensitive approach. Its main components however, can be summarized as follows:

a. Theoretical Foundations

Objective: • the establishment of viable small productive units

- the negotiated transfer of land from large to small producers

Assumption: • the inverse relation between farm size and productivity is conceptually robust

- overly high transaction costs and a range of market failures inhibit the optimal allocation of land resources, thereby penalizing the market opportunities of small producers

- strategic public support can create an expanded productive small farm sector

b. Analysis of Past Failures

- the institutional arrangements underpinning past land reform exercises have been flawed
- large centralized public sector bureaucracies should not be the primary executing institutions for land reform
- public sector roles and responsibilities are best carried out by decentralized / or municipal authorities
- self-selecting communities possess greater incentives to succeed than externally selected groups
- sanctions against adverse rent-seeking and otherwise opportunistic behavior are designed and enforced more effectively by self-selecting communities
- negotiation between large landowners and potential beneficiaries will result in lower land prices and more timely agreements and will eliminate post facto ownership and compensation disputes
- grants to facilitate a portion of land acquisition costs may be required
- necessary productive investments should be subsidized when required
- beneficiary credit is most likely to be repaid if it is distributed at the community level thereby demanding local third party enforcement
- private financial institutions are more effective supervisors and enforcers of loans to small producers than large public sector organizations

c. Negotiated Land Reform in practice

Executing Entities: · community associations are formed through self-selection in local communities. Size and composition and entry criteria are established by the community in line with the goal of sustainable small farm production

- community associations (consisting of rural workers who do not own land or own insufficient land for subsistence) select suitable lands and negotiate the purchase with willing sellers
- communities present the owners' declarations of willingness to sell at a specified price to the appropriate local public sector authority for confirmation that a) the title

is clean and without undue restriction or easement b) that the negotiated purchase price is consistent with prevailing local market conditions

- communities present their land purchase proposal to the responsible public sector agency who verify the eligibility of all beneficiaries
- following approval, appropriate land reform funds are made available to the community
- communities decide on land allocation to individual members and corresponding payment obligations
- communities that purchase land can submit proposals to the appropriate public sector authority for financial assistance of complementary community subprojects and technical assistance to establish the settlements to improve the productivity of the acquired land (physical and social infrastructure and appropriate productive community investments)
- community labour and land constitute the counterpart contribution of the community if necessary

Responsibilities: · community associations select members

- community associations responsible for third party enforcement of repayments
- local responsible public sector authority responsible for preliminary appraisals of community proposals
- local responsible public sector authority responsible for supervision of community activities
- financial institutions responsible for assessing, monitoring and enforcing loans to beneficiary groups

Risks:

- communities may be controlled or "dominated" by local political elites, eliminating the potential benefits of self-selection
- communities may be unable to sanction against adverse rent-seeking and other forms of opportunistic behavior
- communities will be unable to negotiate equally with landowners
- communities will be encouraged to enter into price-fixing arrangements with landowners

- local responsible public sector authorities will lack the technical, financial or human resources to perform new functions effectively
- private sector financial institutions will be unwilling to participate in loan arrangements unless given excessive guarantees or financial subsidies by public sector
- sustainability of reform sector still dependent on performance of exogenous markets
- NLR will not deliver benefits to the poorest groups of the landless population
- NLR requires high levels of subsidy and will therefore be unable to avoid adverse rent-seeking
- high levels of necessary subsidy make NLR inherently unsustainable

There are then many risks. Financial support and technical assistance should clearly be directed at means of resolving these risks. The risks can be divided up into three basic sets:

1. the capacity of the communities to perform their functions effectively
2. the capacity of local public institutions to perform their functions effectively
3. the creation of sustainable financial mechanisms that create suitable incentives for beneficiary repayment and allow the long-term continuity of the approach

B. The Challenge of Negotiated Land Reform: Balancing

Equity and Productivity

The NLR exposes an important tension in current land reform debates - the increasing difficulty of marrying equity concerns with productivity. In policy-terms this translates into a choice between assisting the poorest groups and assisting less poor groups who perhaps possess a greater and more sustainable productive potential. NLR is not suited to a country's poorest groups; it provides potential small agricultural entrepreneurs with the technical and financial resources to establish sustainable production units. This does not mean that NLR is not, potentially, an important tool for poverty reduction. The intended beneficiaries of NLR are all *poor*, but they are not necessarily the *poorest* rural inhabitants. The poorest segment of the rural population rarely occupy high potential agricultural land, instead being forced to use low potential and marginal lands.

Satisfying equity demands in terms of land distribution can only really be achieved by wholesale and long-term subsidy. For this reason, it is important to explore other policy instruments that may be both more effective, sustainable and less costly. NLR however, requires a short period of subsidy directed at the creation of an expanded and sustainable small producer sector. It will result in inevitable equity improvements, but will not resolve equity problems. Policy-makers must therefore decide both priorities and the range of potential interventions. It is for this reason that Brazil's Minister of Agrarian Reform has expressed slight reservations about NLR. The current level of media and public attention attached to the land issue in Brazil generates considerable constraints on government action. NLR involves beneficiaries buying land. Likewise it implies that private sector firms (banks) will benefit economically from land reform. And finally and most importantly, it implies a considerable withdrawal from the heart of the land reform issue by the state. These three conditions are deemed to be politically unacceptable in Brazil. The public sector agrarian reform agency, INCRA, has settled 280 000 people in the last 36 months. At this stage, the government, one could argue, is less concerned about the qualitative aspects of land reform and more concerned about its quantitative dimension. The most important factor for government is that it is *seen* to be providing support to landless peasants and that the poorest groups are not being made to *pay* for their salvation. It is clear then, that a decade of political and economic liberalization have not extinguished the expedience of patronage and subsidy. In this context, NLR can only exist as an additional land reform resource - it is unlikely to be the principle instrument. Altruism is a rare commodity in government. It is therefore likely that these types of considerations will accompany most subsequent attempts to implement NLR-type approaches.

1.1.3. Links between Land Reform and Other Major Policy Areas

What are the relationship between land reform and other major policy areas?

Dear students! Have you tried to do the question? If your answer is no, please discuss with your friends and if your answer is yes, that is very good. Write your answer on a rough paper and try to relate with the following explanation.

Land tenure is at the heart of a number of rural development issues. Access to land is linked to some basic economic and social human rights, such as the right to food. Land tenure has strong linkages to poverty reduction and food security, economic development, public administration and local government, private contract law, family and inheritance law and environmental law (to mention but a few). Given the far reaching consequences of land policy reform, an explicitly multi-disciplinary approach is required to ensure that the varied implications of reform programmes are well understood and that the needs of different stakeholder groups, in particular the poor and vulnerable, can be effectively accommodated.

A. Land Reform and Poverty Reduction

The majority of poor people in developing countries still live in rural areas despite growing urbanization. Secured and increased access to land and natural resources for the landless and land-poor families is a key means of achieving food security and broadening the economic opportunities available to them. Depending on contexts, it may imply land redistribution, local rights registration, regulations in land markets and protection against land grabbing. However, improved access to land alone is not enough to improve rural livelihoods; reforms must be supported by adequate accompanying policies and related measures (access to credit and information, markets, agricultural extension, favorable economic environment).

Legislation all too often hands control over land and other natural resources to government bodies such as forest departments. Acknowledgement that rural people need to have rights to control and manage their territory is a way of guaranteeing their access to these key resources, which they have helped to maintain and preserve. Common property resources are of

particular importance to the incomes of poorer groups. Where such rights are clearly recognized and enforced, this control over local resources and their associated economic opportunities contribute to further sustainable management and improved rural livelihoods.

B. Land Reform, Citizenship, Human Rights and Social Justice

Land tenure structures mirror the distribution of power within society, and reflect the social relations between rural people, other sectors of the population and the state, and social relations within households and rural society itself. While access to land is not recognized as a human right as such, it may be considered as a means to achieve fundamental human rights, as defined by international conventions.

The case of indigenous people and some minority groups illustrates how, in many countries, land rights are closely related to the fundamental rights of citizens. Most indigenous groups have culturally distinctive land tenure regimes based on collective rights to lands and territories. Consequently, some countries' laws and constitutions, as well as certain international laws and jurisprudence, recognize these peoples' rights to their lands (including customary use or occupation) as inherent, based on "aboriginal title" or "immemorial possession". However, effective recognition of these rights is often incomplete, leading to social and political marginalization, immiserating and land conflicts. Mechanisms for securing indigenous peoples' rights to their lands are thus important for their cultural survival and for promoting equity and protecting their immediate environment. Ethnic, religious and linguistic minorities other than indigenous peoples and minority groups may also experience similar situations.

Access to fair legal process represents a legitimate expectation associated with citizenship, yet in many countries people are unable to gain protection of their rights and assets under the law. Democratic states need to guarantee the rights and assets of every citizen, even the poorest. This may imply the need for innovative legal frameworks and institutions to ensure the law is accessible to poor farmers, indigenous people and vulnerable groups, and that their rights are fairly taken into account.

Land rights can be secured in a sustainable way only where women and the poor enjoy basic civil and political rights including freedom of expression and independent media.

C. Land Reform and Gender Equality

Equal rights for both women and men to hold and use property are a cornerstone of social and economic gender equality. Women's rights require strengthening under both formal and informal systems of tenure, and constitutional and inheritance law has a role to play alongside land law and institutions. The main legal requirements are to establish women's rights to hold property and recognition of the principle of spousal co-ownership of land. These are important factors in women's economic and livelihood security, for instance in enabling women to access credit and services which may require evidence of land ownership.

In practice women's actual entitlements to land are often determined by inheritance practices – whether or not surviving female spouses and daughters are allowed to inherit land, and whether or not their rights are circumscribed by those of male relatives. This focuses attention on the need for reform of inheritance laws. The case for addressing gender inequalities in land access is particularly strong in Asia given the growing feminization of agriculture, and in Africa where women have traditionally played the role of food producers. Asian countries illustrate that legally recognized rights in land are not sufficient. The security of women's land rights depends on whether these rights are socially and legally recognizable and enforceable. Legal and institutional action alone, however, is unlikely to be enough and extension of women's land rights is likely to be a long-term process. Cultural action, together with advocacy and education in support of women's land rights have an important role to play, given the deep-rooted cultural norms and practices which underlie discrimination in land tenure, particularly in the operation of customary tenure systems.

D. Land Reform and Agricultural Development

Land policy has strong links with agricultural and economic policy. Making access to land secure is a necessary condition for encouraging investment and improvement in land. An agricultural policy that strongly supports family farming and farmers' organizations, and provides them with services offers a good way of reconciling growth in agricultural productivity with equity and poverty reduction.

But land issues are rarely the only limiting factor in raising productivity. Reasonable crop prices, access to inputs, availability of credit, and the organization of markets and processing are important features of the agricultural sector. Working to improve these issues may be a

priority before addressing land matters. When there are significant imperfections in related markets (e.g. credit, labor, products), liberalizing land markets will not improve efficiency and may be counterproductive, leading to land concentration, exclusion of small farmers and less intensive practices.

Land titling is not always the best way of increasing tenure security, and nor does it automatically lead to greater investment and productivity. In many places, land is held through unwritten, customary means, but it is not subject to insecurity. Formal credit may not be available and much investment in land in small family farms is based on labour effort rather than capital.

The choice of land policy will have important implications for different types of farmers. If, for example, policy aims to support small scale family farmers, it must provide them with secure tenure. This can be done either by protecting legitimate customary rights, or by providing land titles.

E. Land Reform, Conflicts, and Post-Conflict Recovery

Population growth, changing economic circumstances and changes to the environment (e.g. desertification, climate change) can increase competition for access to land. Competition is usually regulated by a society's tenure rules, which have developed in response to shifts in social, economic and political relationships. But this is not always the case. Conflict is likely to grow where scarcity of resources is increasing and access is reduced, where tenure rules are unable to adjust sufficiently rapidly to changing circumstances, and where different and contradictory rules co-exist, allowing people to refer to one or the other depending on where their interest lies. This is particularly the case where there is a large gap between customary or smallholder tenure systems and formal law, when powerful new (often external) economic interests start to invest in land, and where state institutions are unable to ensure a fair system of regulation (rules, arbitration, etc.). Illegal appropriation of land by political elites and forced displacement of rural dwellers (for example as a result of infrastructure development or promotion of large-scale export-oriented farming) can also lead to land conflicts.

Resolution of conflicts over land raises questions of governance and social stability, as well as of tenure security. Addressing conflicting claims will be a pre-requisite for any land registration programme, to avoid repeated challenges and disputes. Frequently, formal

conflict resolution mechanisms are weak, overburdened, inaccessible to rural people, and have a poor understanding of local land rights. There is growing appreciation of the need to recognize and strengthen mechanisms for resolving disputes, using alternative dispute resolution techniques that could be based on local structures and practices. The creation of specialized land tribunals, as in the Philippines or Costa Rica, is increasingly being explored.

In those countries which have experienced armed conflict, civil war and major displacement of populations, fair and just handling of land tenure questions will often be a central component of any reconstruction exercise, both to maintain the peace and provide conditions under which economic growth can be re-established. Major factors within such a reconstruction programme are likely to include redefining the basis on which people can claim rights over land, resolving disputes over land that has been abandoned or taken over by others, and finding ways of providing secure rights for refugees in areas of new settlement as well as security for local/customary rights and common property regimes. The case of Cambodia provides a good example of how the resolution of land claims has supported post-conflict recovery in rural areas.

F. Land Reform, Land Administration and Governance

Despite constitutional provisions, all citizens are not equal in practice before the law, due to inadequate information, limited resources, and poor contacts within the administrative system. If the poor majority are to be the primary beneficiaries of land tenure reform, the design of institutions for managing land rights must take this into account. Poorer groups will have more effective access to such procedures where they receive clear information about how the system is meant to operate, and where the bodies responsible are located close by, working in local languages, using standard units of measure, accepting oral evidence to support claims, with proper attention paid to publicity of claims before granting title, and operating with low user fees. Effective and responsive judicial and land administration systems which are accessible to poor people and vulnerable groups are therefore crucial components of successful, pro-poor land policy reform. Without such systems, the legality and credibility of land policy reform and ultimately its success would be irremediably undermined.

A land administration system is the set of structures and institutions which implement the land policy, affect rights, deliver titles and deeds, and manage information systems. These

structures can be state or local government institutions. Sometimes, customary institutions perform some land administration functions. Proximity, accessibility and accountability of land administration institutions are key issues which are also relevant for traditional authorities.

In many developing countries, there is a gap between formal and local land administration systems. The formal land tenure system has thus limited legitimacy in the eyes of local people because neither the rules (as outlined in statutory legislation) nor the structures or procedures are seen as fitting in with customary or informal ways of managing land. In other cases, gaps may exist between the law and the practices of land administration. The operation of formal structures and procedures may be poorly understood, act along principles which are alien to ordinary people, be subject to corrupt practices, and work in favour of a small elite. As a result farmers cannot exercise their legitimate rights. Given the value of land, the area of land administration provides fertile ground for corrupt practice and political patronage, whether it be in allocating rights to one user rather than another, agreeing to a change of use from farmland to building plot, or deciding in favour of a particular party in a dispute over land claims.

Discretionary authority held by government officials, traditional authorities or elected council members offers room for patronage and rent-seeking. Thus, the design of rules, structures and procedures regarding land tenure must consider how best to minimize such risks. This should be done by establishing checks and balances on how procedures are carried out, through public scrutiny and information dissemination. Such checks will be easier where everyone has information about, for example, the fee to be paid for a given service, and what process needs to be followed. Good land administration practice, as in programmes carried out recently in Central Thailand and in Guyana has sought to provide public access to documents and meetings, ensure publicity about land claims prior to titling, and put in place appeals systems to contest claims. All these are necessary features of a transparent process. At the least, an equitable system of land administration, whether or not it relies on customary rules, must always include simple procedures for citizens to appeal against local decisions.

G. Land Reform, Local Government and Decentralization

Local governments usually have some power over the management of land and natural resources. National land policy needs therefore to be consistent with the powers and

responsibility of local institutions, and local government must be involved in the design of land policies.

Decentralization: offers a valuable opportunity for shifting towards greater local management of land, bringing resolution of disputes much closer to local stakeholders, and ensuring closer scrutiny of how land and the revenues stemming from it are managed. However, there is also the risk that decentralization will bring a greater politicization of land issues, and strengthen the powers of a local elite over natural resources. Moving towards more decentralized systems of government thus opens up new ways for land and resources to be managed, but it does not necessarily provide immediate answers to questions of accountability, or where power and decision-making should be located. The principle of subsidiarity should guide decisions over the distribution of responsibilities in the management of land resources between central, local and communal levels, provided that it takes place within a clear set of rules that prevents abuses of power, and includes procedures for appeal and mechanisms for accountability

H. Land Reform and Taxation

Land has long been considered a key source of revenue for local and national government. Its immobility and visibility make it a particularly easy asset on which to impose a levy, especially in urban areas. The introduction of trade liberalization has led to a substantial fall for many governments in import and export duties, making land increasingly attractive as a potential fiscal asset to meet broader fiscal policy objectives. Local land taxes may be legitimate in the eyes of local people when they are accompanied by more effective and secure rights and by effective provision of public services by the local government. Local land taxes may be an important source of income for local governments.

The practicality of a rural land tax depends very much on context. Attention needs to be paid to examining ways of classifying land according to quality and productivity, with each class paying a different rate. The likely impacts of such a tax on production strategies and levels of investment must also be considered. In marginal areas with low productivity, the revenue that such a tax might reasonably generate could well be exceeded by the costs of collection. In areas where land titling is underway, imposing a tax on titled land might be a reasonable counterpart payment in return for the advantages conferred through titling. Such a tax would also provide an incentive to put the land to effective use.

Overall, the design of a land taxation system must be coherent with poverty reduction and social equity objectives. Land taxes should therefore be understood as a means to promote social and environmental objectives, discourage underutilization of land and prevent land speculation.

I. Land Reform and Environment

Land provides for a range of ecological services which a sound land policy can contribute to enhance: water retention, pollution mitigation, soil and coastal protection all depend on the sustainable use of natural resources. Therefore, land policy has a role in preventing environmental degradation and its social and economic costs. Clear and protected rights, effective rules defining access and regulating use of land, water and other natural resources are essential means of ensuring long-term management of land and resources. Where they exist, customary and common property regimes may allow local land management decisions to priorities community needs, cultural values and long-term environmental protection.

Certain areas within a country will need protection from use to conserve biological diversity (wildlife, woodlands), reduce risks of erosion (steep slopes, river banks), and provide common public spaces (parks, greenbelt land around cities). Such areas are usually accorded special status by law, with controlled access and use rights.

Having followed a policy of strict exclusion in the past, governments are now realizing the need for joint management of many protected areas, involving a collaborative and participatory approach with rural people. Such arrangements usually establish shared monetary benefits and certain use rights (such as collection of non-timber forest products, grazing rights within game parks during certain seasons) in exchange for help in patrolling the area against outside users, and poachers. Thus, the tenure status of protected areas will need to accommodate rights of use for particular communities, conditional on their acceptance of certain obligations.

Apart from protected areas, government legislation may also impose conditions on land rights with the aim of achieving environmental goals, as when farmers must adopt certain soil conservation measures on their land, or where financial incentives are put in place to encourage new forms of land management. Legal measures should take into account the

effective ability (political power and financial means) of national/local governments to enforce land use patterns in practice.

J. Land Reform and Land Use Planning

Expansion of agriculture or rapid urban growth can generate many land-related problems. The consequences of unplanned land use are most apparent in peri-urban areas and those regions receiving a major inflow of migrants or refugees. Changes in population and patterns of land use require some form of direction to minimize adverse impacts from poorly sited buildings, loss of green spaces, the need to set aside land for infrastructural development and service provision. Thus, land policy needs to be coherent with sound land use planning and, in turn, land use planning must comply with land and rural development policies aimed at strengthening poor people's access to land. Expropriation for public interest, land consolidation, land readjustments must be implemented through an established transparent procedure, include prompt and fair compensation, and take into account effects on neighboring properties. Administrative, legislative and legal procedures should guarantee that there is no resettlement without adequate rehabilitation and compensation.

It must also be recognized that there are limits to what government can achieve in terms of enforcing planning regulations. Government may well find, for example, that people are cultivating land which is not, strictly speaking, appropriate or in accordance with land use planning guidelines. A pragmatic approach is needed whereby land use plans are used as a platform to debate land use options. Government planners will therefore need to engage and negotiate with local land users, rather than assuming that their plan constitutes a blueprint for immediate application. Equally, local communities should be encouraged to come up with their own planning processes, which build on their desire to improve the management and productivity of the resources within their territory.

1.1.4. Scope and Elements of Land Reform

Dear distance learners! Do you know the scopes and elements of land reform?

Dear students! Have you tried to do the question? If your answer is no, please discuss with your friends and if your answer is yes, that is very good. Write your answer on a rough paper and try to relate with the following explanation.

In its broadest sense, land policy reform can involve deliberate changes to the distribution of land resources or the forms of tenure under which they are held (“land tenure reform”), the rules regulating land use, and the institutions which administer and manage land and regulate land use. It may include an action on the distribution of rights itself (agrarian reform, regularization, etc.). This includes changes in policy and legislation and the programmed actions required to direct, implement and manage the reforms. Land policy reform must be based on a clear analysis of the problems to be dealt with, shared agreement amongst the principal stakeholders on aims and objectives and good knowledge of field situations. There is a consequent need to support debate within civil society, to build social and political support to the reform, and promote cross-ministerial discussion and coordination.

Although processes differ widely from one country to another, there are some broad trends which include:

- a. A desire to correct historical inequities or inefficiencies, and to bridge legality and legitimacy, by recognizing legitimate informal or customary rights.
- b. The withdrawal of tight state control over land and establishment of individual or family property rights and associated legal and administrative systems to recognize and manage them;
- c. An increasing level of cash-based land transactions with greater attention paid to ways of encouraging tenancy and other forms of enabling access to land;
- d. Recognition of the need to provide more secure rights for women and other vulnerable groups using an approach based on pragmatism rather than ideology, and

e. Recognition and/or restitution of native titles.

These trends lead to legal, institutional and technical innovations in the type of rights gaining legal status and in the way to register and manage them. Insofar as common property resources are concerned, their status in law often remains weak, with continued processes of encroachment and privatization. Many governments are now adopting the principle of subsidiary and developing decentralized approaches to land administration. While land taxes provide a major source of local government revenue in most nations, they remain limited in many poorer countries.

Depending on the context and objectives, a land policy reform programme may include one or several of the following elements:

- new tenure legislation and revision of codes, to recognize and regulate new types of rights or forms of transfer (including women's, small farmers', pastoralists', minority groups or indigenous peoples' land rights);
- land registration and titling of existing rights;
- regularization (updating formal records to take account of changes and informal transactions) of existing land rights;
- land redistribution;
- the creation of new opportunities for land access;
- restitution of land rights alienated from the original owners or users;
- privatization of collective or state land;
- improvements to the efficiency and accountability of existing land administration systems; establishment of (new) institutions and structures with responsibility for land acquisition, administration and conflict resolution;
- setting up a land-based tax system;
- designing and enacting new land use and planning rules and procedures;

For each component, there is a broad set of options. Due to this diversity, there can be no blueprint approach to land policy reform: the objectives, the political choices they reflect, and the legal and institutional options chosen are highly dependent on the specific economic, social and political context and its historical background, the institutional framework, the main issues to be dealt with, the type of agriculture and relations between government and people. Effective implementation of the options chosen depends on the institutional capacity of the public, private

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and community-based organizations involved. An assessment of these capacities must be taken into account in the design of the land tenure system.

The design of policy and institutions has also significant consequences for equity and fairness, since the choice of technology and institutions for land administration is not just a technical issue. Wrong assumptions on methods for customary registration may lead to the exclusion of youngsters, women and herders. A system of land registration based in the capital city, requiring payment of a substantial fee and based on formal survey techniques, will be much less accessible to more distant, and poorer rural populations than low cost land registration procedures handled at district or village level, and which are based on simple maps. The choices made must be pertinent (i.e. providing answers to the problems faced, and built on a sound knowledge of local conditions), affordable (i.e. coherent with the financial means of farmers, local government and state) and sustainable (i.e. provide a long term framework at acceptable recurrent costs); hence the need to specify political objectives before designing the policy and institutions.

Land administration is a public good and governments must cover the recurrent costs of land administration, drawing on a combination of public expenditure, donor funds and user fees. The advantages of a fair and efficient land administration system justify public financing. While donor funds are often necessary for preparing, designing and implementing the reform, relying on them for land administration systems would impede sustainability. On the other hand, too heavy a reliance on user fees may discourage poor people to enter legal procedures, excluding them from the benefit of the law, leading to unregistered land transactions, and to a rapid obsolescence of land information systems.

There is very limited scope for generalizing between different land reform processes, given the great differences in land relations across different countries and regions of the world. An overview of the differences between regions is given in the table below.

Region	Major Issues and Trends	Action Required
Central & Eastern Europe	Privatization of state and collective agricultural enterprises over last 10 years, by establishing private farms.	Strengthen land administration; consolidate holdings through participatory procedures and

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Ex-CIS	<p>small and fragmented holdings</p> <p>Privatisation of state and collective farms through issue of shares, rather than division of estates.</p> <p>Growing concentration of shares in some places.</p> <p>Weak incentives to increase productivity.</p> <p>Limited land markets.</p>	<p>innovative approaches.</p> <p>Exchange of holdings, use of land reserves.</p> <p>Help set up mortgage systems to enable purchase of land by poorer groups.</p> <p>Improve understanding of gender roles and prevent rising poverty among women</p> <p>Encourage installation of young farmers</p>
Latin America	<p>Large inequities in land distribution, despite longstanding land reform programmes. Failure of market based reforms.</p> <p>High number of landless. Large number of squatters and others with informal holdings, no legal status.</p> <p>Major areas in which indigenous peoples and minority groups claim rights.</p> <p>Shift from deeds to title registration, but widespread failure to keep register up-to-date.</p>	<p>Political will and economic resources needed to pursue land redistribution more effectively</p> <p>Failures of market-assisted land reform mean new approaches needed.</p> <p>Means sought to formalise land claims of informal sector, minority groups and indigenous peoples</p> <p>Support recognition of collective ownership rights.</p>
Africa	<p>Strong customary and colonial legacy, colonial administration, structures and legislation. Very low % of land subject to title.</p> <p>Legal pluralism with many conflicting and overlapping law and systems for land</p>	<p>Land redistribution and restitution where great inequities remain.</p> <p>Gradual formalisation of local land rights through decentralised land administration and more accountable</p>

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<p>administration, establishing land claims and conflict resolution.</p> <p>Common property resources key to poorer groups.</p> <p>Majority of urban dwellers living in slums</p> <p>Major disparity within the continent between:</p> <ul style="list-style-type: none"> • E & S Africa where large scale alienation of land by colonial powers, commercial farmers, and national parks. • W Africa, where limited white settlement, continued strength of customary powers, overlaid by sequence of legal, political and institutional changes. • North Africa, where a legacy of strong central government control has meant few incentives for local management 	<p>processes.</p> <p>Build bridges between customary & statutory rights, to provide greater security to former.</p> <p>Provide greater security to poor and vulnerable groups</p> <p>Address implications of high HIV/AIDS prevalence on land issues.</p> <p>Strengthen alternative sources of credit</p> <p>Establish and protect rights over common property.</p> <p>Support negotiation between state and local people to enable consensus reo new rules.</p> <p>Strengthen women land rights in both local/customary and formal systems</p> <p>Reflect land policy in PRSPs</p>
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<p align="center">Asia</p>	<p>Continued duality of customary and statutory systems.</p> <p>Relatively little land Subject to title.</p> <p>Population pressure, declining size of holding, growing landlessness.</p> <p>Strong centralised systems of land administration.</p> <p>Lengthy bureaucratic procedures and backlog land disputes</p> <p>Exploitative tenancy arrangements, unresolved indigenous rights claims, conflicts between titling and common property system of regulating access to land</p>	<p>Recognise farmers' rights Introduce simpler decentralised systems of land administration.</p> <p>Land redistribution in some countries</p> <p>Land tenancy reform</p> <p>Strengthen women land rights in both local/customary and formal systems</p> <p>Develop rental markets for the poor</p> <p>Reflect land policy in PRSPs.</p>
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1.1.5. Central Issues for the Design of Land Reform/Policy

Dear distance learners! What are the debates on issues of land reform and policy?

Dear students! Have you tried to do the question? If your answer is no, please discuss with your friends and if your answer is yes, that is very good. Write your answer on a rough paper and try to relate with the following explanation.

Debate on land tenure has been subject to the ebb and flow of intellectual currents for decades and positions have followed familiar lines of thinking, whether strongly pro-market, state-managed collectivism, or based on ideas of social equality.

In spite of a general consensus on the scope of and approaches to land policy reforms, there remain quite divergent views regarding issues such as the appropriate role for government in moderating market forces, conditions that warrant a more vigorous intervention in land re-

distribution, and how and at what level land rights should be administered. The most significant of such issues for poverty reduction are analyzed below in this subunit

A. Securing Rights Over Land and Related Resources

To improve equity and promote agricultural productivity, policy must improve access to land and security of land-related rights. Rights are secure if they are not contested without reason and if, in case of contestation, they can be confirmed by the legal or arbitration authorities (whether these be customary, or governmental or both). Securing land rights is thus largely a question of having effective institutions and enforcement of rules for the management of land rights, and not merely a question of the formal legal nature of the rights themselves.

There are a wide range of property rights over land and related resources, and a variety of tenure arrangements. Some natural resources, (in many cases those with low value per unit area and irregular or unpredictable productive potential, for example semi-arid rangeland) can be efficiently managed as a collective or common property. In many rural areas, farming societies are based on a mix of individual rights and collective regulations, the combination of which may differ depending on the setting and the resources in question. These informal tenure systems are generally dynamic and evolving, but they can (although not always) be efficient and adaptable, within limits to changing economic and technological conditions. Customary and informal tenure systems, whether based on individual or collective rights, or a combination of these, should not be assumed to be a constraint impeding agricultural intensification. High levels of investment and rising agricultural productivity have been observed on farmland under informal customary regulation, as in Northern Nigeria, the Kenya highlands, vegetable gardens around towns, and other cases.

In other circumstances however (for example in northern Ethiopia, Bihar in India and in the groundnut and cotton cultivation areas of Sahelian countries), customary tenure systems have had opposite results and have contributed to the continuation of unsustainable agricultural practices. Furthermore the efficiency and effectiveness of customary or informal tenure arrangements may be limited in situations with very unequal land distribution and/or unchecked discretionary power over land rights.'

B. Building on Existing Rights and Practices

Land policy reform aims to change land use practices, but the diagnosis is often poorly informed, so that the policy misses its objective. In-depth qualitative analysis of local practices and regulations over land, problems of insecurity, type of conflicts, and modes of transfer are required to understand the nature of the problems faced and how they might be addressed.

In the past, land tenure systems in rural areas have been considered backward, insecure and a constraint on productivity growth. The aim was therefore to replace them by a formal, state-led system based on private ownership. But, in fact, informal and customary tenure systems have usually proved to be very dynamic. In most cases, there is no major inefficiency in customary land management systems which could justify their replacement. Moreover, tenure changes imposed by the state often lead to conflicts a generation later. Thus, even if the aim of the state is to develop a formal system of individual titles, the focus should be on favouring progressive evolution which builds on existing rights and gives them legal recognition.

When formalizing these rights, as in Ghana and Ivory Coast, new participatory land registration systems may be needed, based on the systematic recording of socially recognized rights, through field-based visits and surveys to identify, test and validate the claims made and ensure that no new barriers are being created. New forms of statutory rights may also be necessary, which combine both individual and family rights. But tenure systems are more than just a question of rights, and involve rules and authorities as well. Thus, in formalizing local rights, the modes of regulation, norms and values, authorities and arbitration mechanisms must be taken into account. A right for local communities to define the rules of access to and use of resources within their own territory should be recognized, so long as they are consistent with broader legal provisions, including those on gender equality.

C. Titling May or Not Be the Solution for Insecurity of Land Rights

Land registration or titling was thought necessary to achieve security of rights, increased productivity, and access to credit, but experience shows that titles may be neither necessary nor sufficient to achieve these aims.

- Firstly, land rights are the product of recognition by both government and local community. Informal land rights may not be insecure if they are locally recognized and not contested.
- Secondly, investments in land depend on a favorable economic context, so that changes in land rights alone may not make any difference. Moreover, programmes of land titling in a macroeconomic context which undermines the viability of smallholders can induce distress sales of land causing landlessness for many, land concentration and accumulation for few, and resulting in increased poverty and inequality.
- Thirdly, while titles had been considered essential as collateral for accessing official sources of credit, in practice banks, in the absence of a functional market, have been in most countries unwilling to lend money in rural areas even against titles to plots of land, which they may find very difficult to sell in case of default. Moreover, land registration programmes are reliable only if the registry is regularly updated. This involves considerable costs that have to be covered by either government or land users. Farmers will only make use of these programmes if they perceive real benefits and if the procedures are simple, inexpensive and perceived to be reliable. Too often, titling programmes have been so costly to maintain that the register of titles falls rapidly out of date. Access, affordability and maintenance of land administration should be the main focus for discussion when choosing whether and how to opt for land titling.
- Finally, the implementation of titling programmes particularly in the absence of active local involvement can lead to increased insecurity and inequity where unreliable procedures or oversight of power issues during the surveys allow for political manipulation in favour of wealthy individuals.

Titling can bring increased hardship for poorer people where land rights are complex and information about the procedures as well as their cost and accessibility mean that the most vulnerable groups do not have effective access to such processes.

This does not mean that titling and cadastres are never useful. They may play a valuable role in a number of circumstances, such as where there are rapidly evolving land markets, involving many people from outside the local community, where farming systems require substantial amounts of capital at a level that decentralized credit cannot offer, and where

urban encroachment is a major threat. However, given the costs and risks involved, a careful analysis has to be made in terms of benefits to a broad spectrum of land users. A broad view of cadastral systems and titling methods is needed, in order to establish reliable and appropriate records of village, family or individual land rights, and register broad sets of rights, at low cost. Innovative systems are being designed and tested, which offer new solutions. Alternative options also require serious attention, such as providing government recognition to different forms of land transaction, including simple written contracts drawn up locally. These already operate to some extent, as in the case of Burkina Faso and Benin, where those engaged in land transactions take their documents to local authorities for validation.

D. Land Rights Administration: Lowering Transaction Costs and Securing Rights

Land administration involves a range of different functions: information on rights and transfers, adjudication, and arbitration supported by systems for land survey, mapping, land information, valuation, registration of rights, recording of transactions, issue of title, and collection of fees or rents. These functions can be fulfilled at different levels, by a range of bodies, such as customary and traditional authorities, village level committees, district assemblies, local officials from the national administration, private sector operators, NGOs, and so on, under the supervision and control of national bodies.

The design of the land administration system is a crucial issue: too often, centralized land administration is heavy, inefficient, and costly. The complexity of procedures and the opacity of the practices make access to them impossible for farmers. Clearly, some degree of subsidiary helps to achieve more effective land and natural resource management, since more relevant and detailed knowledge regarding land rights is held at local level. The key to any devolution of authority is to ensure that the chosen system includes adequate checks, balances and accountability, including oversight by higher bodies, given the risk of corruption and patronage coming to dominate local land administration.

The objective of a land administration system should be to offer effective security to the rights on land and natural resources, held by rural people and to promote sustainable land management. It has to provide people an easy and low cost access to fair and transparent procedures, avoiding transaction costs due to distance, bureaucratic bias and delays. Key

aspects to consider in land administration include removing contradictions between norms; offering simple, accessible procedures, with well-known rules that address the problems faced by farmers; promoting efficient arbitration systems which are accessible to people; removing inefficiencies in land administration and ensuring accountability; maintaining an open public record of land claims; ensuring effective publicity of land claims prior to their registration and conversion to title; avoiding opportunities for corruption presented by difficult and complex procedures; and providing avenues for appeal. A user-oriented system of land administration could make a significant contribution to securing the rights of the majority,

lowering transactions costs, and favouring the circulation of rights, while demonstrating better forms of governance.

Provided that they are seen as tools to further a user-oriented system, new technologies can improve the quality and efficiency of land information systems. GPS and GIS, while they do not solve the issue of the rights to be surveyed, can help to make accurate maps at lower cost as in the Philippines, Peru, Bolivia or Bhutan. Similarly, communal/village participatory mapping combined with customary land administration systems can significantly cut costs while providing a useful tool for land use planning and the management of local disputes, as they facilitate agreements on boundaries and provide a better understanding of land use. The combination of geographic, land use and tenure information can help in land use planning, but the gain in productivity needs to be set against questions of cost and financial dependence

There are also important issues of accessibility, in terms of where such facilities are located and whether use of such technology excludes local people from understanding and taking part in identifying and establishing land claims.

E. The Role of Rental Market to Enhance Productivity and Access

Land transactions transfer rights to land between users, enabling those with resources to invest to gain access to land and helping to increase the efficiency and productivity of land use. However, land sales markets may be inaccessible to those with limited purchasing power and are distorted by imperfect information and lack of financial services in rural areas. As a result land sales markets can lead to greater inefficiency and inequality through speculation, acquisition of rural land by urban or outside entrepreneurs, and distress sales by the poor.

By contrast, land rental markets can be more efficient and fair, and there is evidence of fewer problems associated with markets in tenancy and secondary rights. Rental markets, given adequate guarantees of security for the transacting parties, provide flexible means whereby users can increase or decrease land holdings according to changing needs, without permanently reassigning underlying rights. When the term of the contract is longer than the time required to provide a return on the investments in land, there are no or few inefficiencies in rental cultivation. Sharecropping arrangements may also be an efficient way to address increased risks or cash shortages. Rental markets facilitate land access for the poor, as cash needs are lower, and offer a means of temporary or partial withdrawal from farming without

loss of land as a capital asset. Procedures for legal validation by local authorities of written contracts by farmers can help in securing land rental agreements, as attempted in Bangladesh. However, these solutions are limited in case of high asymmetry between owners and tenants. Therefore, clarifying the rules (e.g. level of fees, length of contracts), giving access to credit and advice to the poor contributes to encourage the emergence of effective rental markets.

F. Land Redistribution

Land redistribution is a major issue wherever land rights are highly polarized and access is very unequal, land is underused by large owners, or historical injustices are to be addressed. A very biased distribution of land ownership can rightly be seen as constituting an obstacle to the country's economic, social and political development, as well as providing a constant reminder of historic injustice. It may also impede productivity if large landowners invest little in land and practice very extensive land use. Inequitable land distribution may also spur rural migration of landless farmers into environmentally vulnerable areas. As a result, agrarian reform and land redistribution have long since been seen as a key issue for poverty alleviation and social justice. Redistributive land reforms are ongoing in a number of countries although they do not currently receive strong emphasis in donor policies due to their political risks, high financial cost, and concerns about limited opportunities for the poor in agriculture.

As a result of more effective utilization of labour and lower costs, production in small and medium-sized farms can be more efficient than in large ones; there are therefore limited economies of scale in agriculture. On the other hand, there are economies of scale in processing, distribution and marketing of goods in competitive global markets: large-scale mechanized farming frequently benefits from greater access to and integration with commercial supply chains. Research shows that the redistribution of land from a situation where 80-90% of the land is held by a few, to one where there is a much larger number of small- to medium-size farms will result in a considerable increase in output and productivity if such a process is accompanied by proper support for the new landholders and adequate agricultural policies.

Land redistribution is a clear policy choice where inefficient large farms co-exist with small farms and landlessness. However, land redistribution by itself is not sufficient and may produce a temporary decrease in productivity if there are insufficient economic incentives and institutional support and inadequate financial and technical measures to help new farmers

develop their holdings and get access to markets. Furthermore, intensification of cultivation in highly fragile lands may be accompanied by environmental degradation in the absence of adequate land use planning particularly if land is redistributed to landless people with no experience of farm management and of the local ecology. Land redistribution should thus take place within a sustainable agricultural policy that supports family farming and allows it to prosper and express its potential.

Historically, land reforms have been implemented by governments, by expropriating large owners. This type of land reform has been criticized as being politically difficult and creating conflicts. “Market assisted land reform” has then been tested, on the principle of willing buyer/willing seller. Experience, however, is not very conclusive: due to shortages of land on the market, it can slow the pace of land reform. Both traditional and market assisted land reforms can encourage price escalation, inflated demands for compensation and the disposal of marginal land by landowners, which can in turn lead to significant debt burdens for beneficiaries or high costs to the state.

In a number of cases large land holdings have been created through violence or illegal appropriation, and should not therefore be eligible for compensation or disposal on the free market. Reasonable compensation corresponding to the value of improvements to the land and its productive use and potential should be the leading principle in the case of expropriation. Such measures should however never lead to the eviction of indigenous and local peoples from their traditional land or restrain their access to vital resources. Political will, national consensus on the legitimacy of land redistribution, support from rural social organizations and from urban population are thus political conditions. Strong financial and technical support from donors is also needed. Given the political implications of land redistribution, independent monitoring and evaluation should be put in place to ensure transparent and equitable procedures and avoid political manipulation.

Where land redistribution by the state is not politically or financially feasible, outstanding problems concern how such a transfer of land ownership is to be achieved, the extent to which it must rely on a market-based process and the principles of willing buyer/willing seller, or whether the state is justified in taking a more interventionist approach. While market-led reforms avoid some of the risks and difficulties of forced acquisition and redistribution, the

availability of land for sale and funding constraints greatly limit both the speed and impact of such reforms on the poor.

Thus, to be equitable and successful such processes require transparent procedures, the political will to enforce them and strong donor support. In cases it may not be possible to correct extensive inequality through market-based mechanisms, state led agrarian reforms may still be necessary. Other means to influence the distribution of rights may however be explored: land taxation, negotiating long term leases for the landless, regulating land sales markets giving priority to local farmers, subsidized credit for land purchases targeted towards the poor, are all alternative ways to discourage the accumulation of idle land in the hands of few and to favour access for smallholder farmers.

1.1.6. The Need and Arguments for Land Reform

There is no single argument for land reform, nor is there a single universal policy prescription. Land reform should be a context-driven initiative, directed at specific national (or sub-national) problems, needs and capacities. Land reform should seek to correct specific distortions, compensate for local informational asymmetries and improve the opportunities of target groups to engage in economically sustainable productive activities. Preliminary stakeholder analysis demonstrates that wide-ranging constituencies both support and oppose land reform. Likewise, evidence demonstrates that similar groups may adopt very different positions in relation to reform initiatives at either different times or in different countries - large landowners were the principle opponents to historic land reform initiatives in Guatemala yet are amongst its most forceful supporters in some areas of contemporary Brazil. There is then, a very clear geography of land reform.

Future support to land reform must be sensitive to this geographical dimension. Successful assistance involves balancing normative models and general rules with the specificities of local conditions. This suggest that international technical support for land reform should be conducted at the country and local levels, and should eschew the seeming attractiveness and efficiencies of regional initiatives and programmes. In the case of land reform, the differences between countries outweigh the similarities. Meaningful support to a country's land-related programmes is contingent on the creation of a robust and long-term relationship. Assistance must be predicated on deep local knowledge and strong relations with different stakeholder groups in individual countries. The celebration of the local however, should not lead to the

eviction of considerations of generality and commonality from the policy-making process for there are indeed distinct threads that unite the land reform experiences of most countries in the region.

Certain sets of common assumptions drive the call for land reform. At its most simple, support for land reform is predicated on the belief that the unequal structure of land ownership is one of the prime determinants shaping the inequitable distribution of rural income and wealth in contemporary third world countries. It is argued that long-standing distortions in land, labour and product markets mean that in many countries the distribution of land is highly unequal with vast tracts of potentially land lying idle while small producers are forced to scrape a living on fragile and often environmentally fragile lands.

The unequal distribution of land not only effects productivity but is often linked to social unrest and violence. These claims are grounded on a series of often linked beliefs:

- **Asset** - land is one of the principle determinants of individual and household wealth
- **Distributive inequity** - current patterns of land ownership are socially uneven
- **Distribution and Poverty** - skewed land distribution patterns are one of the principle causes of poverty in developing countries
- **Productivity** - small farms possess higher land and capital productivity
- **Income** - net income streams from agriculture are higher than from other possible forms of economic activity for the rural poor
- **Benefit incentives** - beneficiary engagement will only take place if the perceived economic benefits to the producer are greater than associated transaction costs
- **Security**- tenure insecurity is a significant disincentive to agricultural investment and reduces access to credit.

In addition to the benefits stemming directly from equity and productivity gains for beneficiaries, advocates of land reform often cite a range of possible benefits that serve the interests of larger groups, or even society as a whole. These include:

- sponsor greater household and national food security
- protect and strengthen the rights of indigenous groups
- strengthen the rights and wellbeing of women, leading to greater gender equity

- provide direct support to vulnerable groups, including the old, youth and those affected by physical and mental disabilities
- encourage the conservation and management of fragile ecological resources
- foster the improved management of common property resources such as forests and pastures
- relieve population pressures on urban areas

These broader potential benefits highlight a range of possible "special sector" land reforms. In these instances, land reform need not be driven exclusively by equity or productivity concerns. The most common concerns of this type of approach are indigenous groups, women, the poorest groups and for environmental concerns. This type of initiative however, is more apparent in the preamble of policy statements than in practice. Recently however, a combination of national and international pressure has encouraged governments to embrace these specific goals more directly. Land reform initiatives directed towards protecting the rights of indigenous peoples are underway in both Ecuador and Nicaragua, and of course, are central to the peace process in Guatemala. Likewise, in March 1998, the Ministry of Agrarian Reform in Brazil announced that the location of agrarian reform settlements would be based on a tough new environmental audit, focusing in particular, on the non-destruction of forest resources. This type of programme however, is very much a minority group.

Nonetheless, land reform possesses significant development potential. In theory it can contribute to direct livelihood improvement for substantial parts of the rural poor and can also inspire collective benefits for vulnerable groups. Grand theory however, is vulnerable to the vagaries of both time and space. The historic failures of land reform in Latin America either mean that it is unsuited to the region's prevailing conditions or that it has been poorly conceived or implemented. One of the challenges facing policy-makers is to improve conventional land reform models or to identify new policy instruments for confronting persistent rural poverty in the region.

A. Equity and Economic Arguments for Land Reform

Equity Arguments for Land Reform: Property rights define and delimit the range of privileges granted to individuals with specific assets, including parcels of land. Property rights assign wealth through the control of these valuable assets. They enable individuals and households to capture or increase rental streams from land use. The denial of both these rights

and the assets themselves to a large proportion of the population is a barrier to poverty alleviation. Stated simply, advocates of land reform believe that current equity levels in developing countries are incompatible with poverty alleviation, and most crucially, that land reform is the most efficient and effective mechanism for correcting these distortions.

a. The Causes of Distributional Inequity

The vast majority of the rural population in developing countries are denied access to land. In most cases, grossly unequal patterns of land distribution were established during the colonial period. This initial unequal distribution of land has been maintained, and in some cases, accentuated. The interests of large landowners have been historically protected, despite the frequently subordinate position of agriculture in overall policy matrices. To compensate for a policy mix that often taxed the agricultural sector directly and indirectly through industrial protection and overvalued exchange rates for example, rural elites were favoured in the allocation of property rights, public investment, services, credit and subsidies. And as already noted, occasional government efforts to wrest land away from large landowners have failed.

Equity distortions cannot however, be attributed solely to path dependent explanations (i.e. that the present is merely a mirror to the past). Many commentators argue that the political and economic reforms of the 1990s have contributed directly to the grossly unequal distribution of income and assets throughout the region. Although reforms were not directed at equity improvement, many of the central elements of the process - trade, liberalization, fiscal adjustment, labour markets, domestic capital markets and capital account of the balance account of the balance of payments - are non-neutral with regard to changes in income and asset distribution. Alterations in the relative prices of tradable and non-tradable goods, importable and exportable and for the main factors of production, coupled with a shift in public and private sector contributions to the provision of goods and services, leads to inevitable negative distributional consequences. Indeed, the depth of inequity in the region is testament to the depth (and success) of many of the reforms. Furthermore, additional factors contribute to continuing equity distortions:

- productive restructuring and trade liberalization did not lead to significant increases in employment

- Many public safety net policies were not effective (insufficient capacity, limited efficacy and low spending because of budgetary constraints etc.)
- These types of policies often lead to short-term regressive effects, because of their initial effects of adjustment on real wages, real interest rates, employment levels and public expenditure levels.

b. The Effects of Distributional Inequity

The majority of the rural poor lack assets. In addition to the quotidian struggles implied by this situation, distributional inequities imply immediate economic consequences for the rural poor, including that:

- they lack insurance or other means of smoothing consumption over fluctuations in income
- they are denied the benefits of economic growth

Consumption smoothing Consumption smoothing refers to the reduction of the negative impact of income variations on consumption patterns through the use of other resources to either satisfy needs or provide an alternative source of liquidity. The consumption smoothing effect of land on small producers and the rural poor is demonstrated by the frequent dormancy of land markets (both formal and informal) between smallholders. Several recent studies have suggested that in some areas, land accounts for up to 60% of total household assets. Parcels of land used for subsistence-type production are often indivisible (in practice if not in theory). Poor households tend to only sell land when the prospects of doing so are very promising or absolutely necessary. They rarely dispose of land merely due to the possibility of increased future consumption - the potential risk associated with asset reduction tends to dominate decision-making.

Empirical evidence supports the view that poor households sell their land only at times of severe economic crisis, when short-term imperatives outweigh all available alternatives. In the absence of insurance and in cases such as this, land acts as the only mechanism capable of smoothing consumption at times of drastic income decline. This example demonstrates a) the equity dimension of improved land distribution b) the utility function of land for poor households. In other instances, dynamic local land markets (frequently informal) for individual plots (but not complete household holdings) attest to the both the utility of marginal

land trades and the imperfection of non-local markets. In the former case, sub-holding trades of land enable producers to otherwise acquire other forms of capital or invest marginal returns. This is reinforced by the imperfection of most rural markets that are frequently characterized by high transaction costs within the community but high with the outside, highly asymmetric information (leading to both adverse selection and moral hazard), fragmented oligopolies, absent formal collateral and highly covariant risks. The result is that transactions in the community are often very complex, invoking for example, both price and non-price arrangements and a range of interlinked and / or sharecropping contracts. In instances where holdings are sufficiently large to be divisible, land acts as a readily tradable and convertible commodity. Once again, the equity arguments for improved land distribution are made clear.

Denied land, an asset less person owns little more than potential labour power (and perhaps a residue of social capital.). Conversion of potential power into actual power can only be realized if the person finds the means of making the conversion, not otherwise. Uselessness, and in particular, landlessness, means that the laborer is entirely dependent on the labour market and at times of crisis is often forced to uproot completely and head to the seeming security of the city.

The non-benefits of economic growth complete dependence on exogenous demand means that asset less people are unable to reap the direct benefits of economic growth. Wages reflect the trade-off between supply and demand and are not linked directly to indices of economic growth. As a result, wage increases are rarely in direct linear relation to increases in surplus value. Income growth is transferred directly to the owners of the means of production rather than to labour. Land reform therefore enables the poor to benefit directly from both production improvements and overall economic growth (in cases where it provides positive consequences for the agricultural sector, implying therefore, a large demand elasticity for agricultural products).

c. The Equivocal Case for Land Reform

Land reform sits somewhat uncomfortably within the equity discussion. It is both an instrument of hope and a testament to failure. In addition to general arguments grounded in notions of social justice, we have seen that there are very clear substantive reasons why asset distribution through land reform can improve equity conditions. Nonetheless, land reform has consistently failed to make any discernible impact in terms of equity for example in South

America. The region remains the most inequitable in the world, in terms of both income and land holding. This raises three immediate questions:

2. Can land reform improve equity
3. If yes, why has it failed to have a positive impact
4. Do new models exist that hold more promise in terms of equity gains?

Economic Arguments for Land Reform

a. Productivity and Welfare

A substantial number of seemingly robust economic arguments justify land reform. They rest on four main claims:

- Inverse relationship between farm size and productivity
- Employment generating potential of expanded small-farm sector
- Consumption smoothing effect of land
- Improved access to credit.

These arguments are examined below. The interrelatedness of the issues means that it is not possible to examine them individually. Stated simply, it is argued the conjunction of these different arguments generates compelling economic reasons for land reform that translate into direct benefits to both households and national economies.

A large body of research seemingly demonstrates the existence of a strongly negative relationship between farm size and productivity largely due, it is suggested, to the supervision costs associated with employing hired labour. This implies that redistribution of land from large to small farms can increase productivity. Following Bauer's pioneer work on the issue, studies repeatedly point to the *potential*, often realized, of small producers to exceed the productivity levels of their larger farm counterparts. Productivity arguments are of course scale dependent. In the case of most plantation crops for example, including bananas, sugar and tea for example, it is recognized that scale economies associated with the processing plant are transmitted to the farm because the harvesting and processing of the crops must be closely coordinated. For the majority of other crops and ruminant livestock however, empirical evidence rarely shows economies of scale transcending the size of farm that can be operated by a family. It is claimed that this is because the supervision costs advantage of small farmers

usually exceeds the credit costs advantage of large farms. Elsewhere it is argued that the inverse relation between farm size and productivity is a function of the land and labour misallocation arising in imperfect markets. If this is indeed the case, the call for land reform coincides with the market failure hypothesis. All these arguments point to the same conclusions - under certain conditions, small producers can enjoy higher productivity levels than larger producers.

The implications for land reform are clear. In cases where agriculture is labour intensive, one would expect to find evidence for the inverse relationship between total factor productivity and farm size, justifying redistributive land reform in terms of both potential equity and potential efficiency gains. In instances of highly capital intensive agriculture however, with labor-saving technologies associated with increasing farm sizes, redistributive land reform can achieve equity gains, but at the cost of efficiency losses, making land reform an ineffective approach to income redistribution.

There are further strong arguments supporting the economic justification for land reform under certain conditions. It has been argued for example that the operation of the inverse relationship means that a more equitable distribution of land could result in an increase of anything between 10 and 30 per cent in food production. This should be compared with the overall dietary energy gap reported for many poor countries, which is in the region of 10-20 per cent of gross energy requirements. In this instance then, the call for land reform is based on the simple argument that a reduction in the proportion of landless households in an economy in which the distribution of land is overly concentrated to begin with increases the scope for family farming, and family farms have an easier access to food.

These seemingly robust arguments sponsor inevitable counter claims. The most immediate challenge is that *if small farms are indeed more efficient than large ones, why do large owners not subdivide their land and sell it at a profit to small farmers*, obviating the need for land reform, or confining government assistance to small farmers to the provision of mortgage credit at market interest rates. This challenge however, can be easily rebutted: there are strong reasons explaining why small producers are excluded from rural land markets. Firstly, land value is a composite of different rents, only one of which is related to the discounted present value of agricultural profits at the market interest rate. As a result, despite higher agricultural income streams, small farmers are unable to purchase land at market prices. Poor people

without equity or access to grants cannot buy land and repay the mortgage or loan from the net income generated by farm profits, even if they have access to credit at the discount market rate used to discount future profits. In order to buy land, they would have to reduce their consumption and welfare level below that available to them in the labour market. This implies that under such conditions a significant grant component is necessary if the land sales market is to be relied upon as the driving mechanism for a land reform process that benefits poor people. Secondly, small farmers are inherently risk averse; land acquisition, whatever the potential rewards, implies risk and uncertainty. Thirdly, it is well known that credit is often rationed to small producers, even those owning appropriate collateral.

There are two common causes of credit rationing. Firstly, there are psychological constraints; despite evidence to the contrary, financial institutions are reluctant lenders to small farmers because of supposedly high default rates. Secondly, the risk of adverse selection and moral hazard stemming from asymmetric information and imperfect markets increase sharply with geographical distance. As a result, markets for (both insurance) and credit are typically fragmented and exclusive. High screening costs added to enforcement problems combine with the large covariance among household incomes to make credit an unlikely option for risk-averse financial institutions and poor households. For these reasons, small producers and in particular, the landless, are unable to overcome the basic barriers of entry to the rural land market. Many other local factors can mitigate against the inverse relationship, including circumstances in which credit is available only in relatively large quantities to wealthy producers or when irrigation, a non-divisible form of capital, is required but needs costly infrastructure; or similarly when certain (often higher value crops) require higher technological inputs and imply greater processing costs.

There have been further challenges to the inverse relation arguments. Some people have questioned the universal validity of highly selective case studies. Whilst these criticisms are applicable to all forms of inductive research, it is indeed difficult to equate the experiences of a small and highly efficient small farm sector in, for example, post-reform Thailand, with the quotidian struggle of the semi-subsistence producer in perhaps the Amazon lowlands. Indeed, farming systems approaches have taught us to respect the immense heterogeneity of the small farm sector. It is unclear whether the productive efficiency generally assigned to this sector is applicable to all small farmers or just a sub-set of small but highly entrepreneurial producers. It is important therefore, to ascertain the precise reasons and interplay of

exogenous and endogenous factors that contribute to these instances of heightened efficiency and to determine the reasons for the persistence of seeming "under-achievers". This question is of central importance to this discussion in that it draws attention to the differential needs of the poor versus the poorest groups in rural society. Focusing on a specific sector of high potential small producers implies an inevitable exclusion of lower potential producers.

The central question stemming from these productivity arguments is whether the intended beneficiaries are able to attain sustainable livelihoods from post-reform patterns of agricultural production. In substantive terms, this relates to whether beneficiaries are able to translate increased landholdings into regular, predictable and sustainable income streams. The capacity of beneficiaries to benefit sufficiently is contingent on local market conditions. Even if potential productivity levels are higher, it is necessary to explore whether small and poor producers are able to access these potential benefits. In many instances the prevalence of barriers to entry coupled with a wide range of constraints prevent many beneficiaries from enjoying the benefits of land reform. Development practitioners must explore the extent to which these constraints are controllable and whether sufficient incentives to engage in post-reform agricultural production can be created. Reality often muddies the theoretical purity of productivity arguments - stated simply, many small and poor producers throughout Latin America are unable to reproduce the output efficiency of the commercial (and large farm) sectors.

Finally, and as noted above, land ownership provides benefits as an insurance substitute to smooth consumption intertemporal and is associated with improved access to credit markets. Enabling the poor to undertake indivisible productive investments (or preventing them from depleting their asset base) this could lead to higher aggregate growth.

b. Market Barriers

The second set of economic arguments for redistributive land reform are centered on the recognition that market failures, distortions, inefficiencies and unequal terms of competition prevent the poor from participating equally and sustainably in the market. Adherents to this approach argue that land reform is needed because the markets that should guarantee the optimum allocation of resources, and ipso facto, improved land distribution to small producers, are either absent or grossly distorted. There can be little doubt that many important markets are absent in rural areas throughout the developing countries (e.g. credit, capital and

insurance) and that the acquisition of many commodities vital to household production (drinking water, fuel and fodder etc.) is a timely and costly process. It is argued then, that these market conditions either block entry or impose transaction costs that rarely exceed the opportunity costs associated with market participation.

For this reason, it is argued that redistributive land reform provides beneficiaries and the reform sector in general, with the opportunity to overcome these barriers. In the most extreme case, necessary factor inputs for productive agriculture are provided on a complete grant basis (most importantly, land). In other cases, a virtual subsidy situation prevails, in which beneficiaries are enjoined to repay all "loans" but in a context of nil repayment incentive and minimal supervision and enforcement. Elsewhere, land reform can provide the impetus to overcome market barriers and the imperfections of distorted markets, providing beneficiaries with a basic foothold in the marketplace. In this case, the grant element is minimized to the bare minimum, or may be directed at other non-land costs such as necessary productive investments.

Whilst the overbearing presence of distorted markets and entrenched barriers for example in many Latin American contexts is undeniable, it is possible to challenge the extent to which these factors are determining forces shaping economic activity and *ipso factor*, access to land. Firstly, they understate the extent of the economic reforms that have taken place during the 1990s. In many cases the institutional foundations of capitalism are in place and markets *do now exist*. Claims of oligopolistic excess and profound informational asymmetries refer to a bygone age. Although it remains true that many elements of the market are rationed to small producers and the landless, markets are *freer* and barriers to entry have been dramatically reduced. Secondly, it is easy to overstate the role and effect of imperfect markets. The inter likeness of most markets, accentuated by ever-increasing globalization, mean that market conditions can change dramatically in very short periods.

Incentives and constraints, barriers and inducements are far more fluid than previously. As a result, it is wrong to think of barriers to entry as entrenched and intractable - they can appear and disappear very quickly. Price liberalization, tax reforms and capital market developments can trigger immediate and profound changes in rural factor markets. As a result, it is possible to question the need for conventional top-down, high cost land reforms as a means of overcoming what are, in many instances, no longer entrenched barriers to market entry. It is

clear however, that these changes are not universal. In some situations, persistent market imperfections continue to prevent land sales and rental markets from achieving a fully efficient resource allocation. In these cases, there remains a strong case for some form of redistributive intervention. In many cases, a smaller level of intervention may be more appropriate. Minor market barriers may, for example, not require a full-blown redistributive programme to be overcome. Instead, small loans or grants to assist land purchase (i.e. to bridge the gap between potential beneficiary earning capacity and land prices) or to support necessary productive investments may be more effective, quicker and less costly. Elsewhere, policy interventions directed explicitly at the (causes of the) exogenous price distortions may be more effective.

1.1.7. Potential Benefits of Land Reform

Dear distance learners! What are the benefits of land policy and reform?

Dear students! Have you tried to do the question? If your answer is no, please discuss with your friends and if your answer is yes, that is very good. Write your answer on a rough paper and try to relate with the following explanation.

Given that land is the primary source of income, security and status for hundreds of millions of families, it is not surprising that decisively improving their relationship to the land can serve a number of development purposes. Land reform can, and often has, led to increased crop production, improved nutrition for poor households, a foundation for sustained and inclusive economic growth, more democratic societies, reduced social unrest and instability, better environmental stewardship, reduced urbanization, and improved access to credit.

A. Increased Crop Production and Nutritional Welfare

As to crop productivity gains resulting from land reform, there is cogent international evidence on four points. First, smaller holdings generally out produce larger ones, hectare for hectare. Second, and related, family-operated farms generally out produce collective farms and those largely dependent on wage laborers. Third, on any given holding, a cultivator with

ownership or secure, long-term owner-like tenure is far more likely to make long-term capital and "sweat-equity" investments that improve and conserve the land than will a cultivator with insecure tenure. Finally, a cultivator with ownership or owner-like tenure is also more likely to use improved (and more expensive) seeds, fertilizer, and other inputs than will a tenant in the typical tenancy arrangement where the tenant pays for all inputs and receives only a portion of the output.

Additionally, even apart from potential increases in crop productivity, research shows that access to land has a substantial impact on nutritional welfare. Land reform in traditional settings improves the lives of beneficiary families, typically among the poorest of the poor, by letting them keep a significant portion of the crop that would otherwise go to the landlord or plantation owner.

B. Foundation for Economic Growth

Land reform also has generated increased overall economic activity. As a broad base of agricultural families benefiting from land reform receive higher incomes, they enter the marketplace to purchase goods and services, ranging from improved housing to schoolbooks, from bicycles to sewing machines. This increased demand stimulates the creation of nonfarm employment. Thus, a dynamic agriculture has significant forward and backward linkages to broader societal development. Research confirms that a broad-based distribution of land assets not only benefits the poor, but becomes a solid basis for sustained and inclusive economic growth.

C. Facilitating Democracy and Reducing Conflict

As land-reform beneficiaries increase their incomes and become more economically secure and confident, their ability to participate in the political process is strengthened. Initially, land reform beneficiaries may be empowered to make demands for a fairer share of government administered programs and services. Land reform creates more secure and self-confident producers who are willing to challenge the inertia, elitism, and neglect that frequently characterize the politics of underdevelopment.

In addition, land reform has had fundamental consequences for reducing political instability by eliminating basic grievances arising from the relationship with the erstwhile landowner. Many of the past century's most violent civil conflicts ensued where land issues were ignored.

Land reform can address the most basic rural grievances and increase commitment to a system in which new demands are energized and negotiated. With the fading of

revolutionary marxism as a mobilizing ideology, outright civil war (as happened in Mexico, Spain, China, and Vietnam) may be less likely, but “low intensity” violence can still create great instability as a result of unmet grievances over land — whether through land invasions in Zimbabwe or Brazil, peasant-supported alliances with drug lords in Colombia, or desperate migrants seizing indigenous lands in the Philippines.

D. Foster Environmental Stewardship and Sustainable Farming Practice

Long-term, transferable secure rights to land foster environmental stewardship and sustainable farming practices. Moreover, in specific settings such as Brazil, Indonesia, or the Philippines, reallocation of secure rights to existing cultivated land may also have an important environmental impact through forestalling landless peasants from descending on, cutting down, and burning the forest in the desperate search for a piece of land to farm.

E. Reduce Premature and Excessive Urbanization

Many other landless families are driven by their poverty into the cities. Effective land-reform measures give landless peasant families a stake in their village society, reducing pressures that lead to premature and excessive urbanization.

F. Acquire Predictable Market value

Secure land rights that are transferable also acquire a predictable market value, and can be used as collateral, “cashed out” for non-agricultural investment or retirement, or passed on as wealth to the next generation. The benefits of land reform described here apply, in general, not only for land reforms carried out to benefit tenant farmers and agricultural laborers in traditional less-developed-country settings, but also for land reforms that permit former collective-farm workers in the transitional economies to obtain secure rights to land of their

own. They, too, invest, increase production, gain income, consume more, become empowered and less aggrieved, increase their stewardship, and strengthen their rural attachments.

G. Tool for Poverty Reduction

The eradication of poverty is the biggest single challenge facing policy makers in developing countries. It has proved an elusive goal. Political and economic liberalization throughout developing countries in the 1990s has engendered a new generation of institutions rid of historic distortions and inefficiency, able to respond to the shifting contours of demand rather than the whim of oligopolistic supply and state subsidized demand. Governments have mobilized the metaphors and machinery of markets whilst their policy makers have struggled to establish the legal foundations of a modern reconstituted capitalism. Planners throughout the region have embraced the certitudes of normative economics and the convictions of social optimality, thereby seeking to implant the preconditions for sustained economic growth. These reforms however, have had little discernible impact on poverty. The absolute level of poverty in the region has remained resolutely fixed at around 150 million during the 1990s.

The stubbornness of poverty has prompted renewed interest in explicitly welfares policy instruments. Many practitioners now recognise that the market alone is unable to bring succor to the millions of people suffering the daily igrorous of poverty and hunger. Instead, they argue that firstly, the state, *assisted* by the market, remains responsible for minimum standards of well-being and social welfare. Secondly, it is claimed that poverty can only be reduced through direct and explicitly poverty-orientated interventions: in many instances, the neoliberal belief in inevitability of the "trickle-down" effect has been abandoned, or at least suspended. This understanding has led to a corresponding broadening of interest in land reform.

Land reform is invoked as an instrument for both direct and indirect poverty reduction. At the direct level, advocates claim that it results in greater asset ownership and improved income streams for beneficiary households and generates increased employment opportunities in the reform sector. In other instances, it ensures security and increased access to credit and other factor markets for small rural producers. In theory then, successful land reform can lead to direct benefits for poor rural producer households. It can also sponsor more indirect benefits.

Increased agricultural incomes for example, lead to increased demands for tradable commodities and manufactured goods, stemming from both expanded agricultural potential and general increased consumer demand (i.e. demand for fertilizers, construction inputs, small-scale repair services and basic consumer goods). These increased demands yield geographically dispersed growth through linkages with other sectors of the rural economy. Research on the multiplier effect of agricultural growth in sub-Saharan Africa for example, concludes that it is the order to 1.5 (i.e. every £1 increase in agricultural income generates £0.5 additional income, primarily among suppliers of non-farm goods and services). Elsewhere, recent research suggests that the unequal distribution of income, but in particular assets, can hamper economic growth.

Four interwoven arguments link poverty and land reform:

1. Enduring poverty levels in the contemporary developing countries that *result from*.
2. High distributional inequalities, in terms of both income and assets (in particular, land) *highlight*
3. The importance of improved asset distribution for poverty reduction and ...*emphasize*
4. The potential of land reform to extend the asset base of the rural poor

Support for land reform is based on the circular logic underpinning these claims. The following sections will unwrap the more important theoretical and conceptual arguments fueling these assertions. The effectiveness of land reforms however, depends on the robustness of the claims *in practice*. Case study evidence will therefore be examined in order to determine whether land reform is indeed able to fulfil its potential in terms of both distributional equity, increased productivity and poverty reduction.

Further caution however is required. Some commentators have made strong arguments against the continuing validity of land reform, arguing that 1) agriculture is no longer the most important sector determining national, or even rural, livelihoods and 2) that land ownership is no longer the dominant source of inequality in the region. These challenges cannot be rebutted easily. Certainly, much of Latin America is no longer shaped by the fortunes of the agricultural sector; much of the region is dominated by industrial capital and is deeply urban in character. In reply however, it can be noted that the majority of the region's poor continue to be found in rural households engaged in biomass-based subsistence economies, in that their welfare is obtained from what can be extracted directly from plants and animals. For this

reason, it is argued that land reform should remain within the poverty reduction policy portfolio of most Latin American governments.

Secure long-term land rights are not always, by themselves, sufficient to achieve all of these multiple goals, but in most settings — both traditional and transitional — they are necessary for the achievement of all or most of them. Perhaps no single, identifiable measure comes as close as land reform to cutting the Gordian knot of underdevelopment in so many societies.

UNIT TWO

LAND REFORM IN ETHIOPIA

UNIT OBJECTIVES

At the end of this unit students will be able to

- ☞ Summarize the land tenure system before 1975 in Ethiopia;
- ☞ Understand the weakness and strength of the land tenure system the Dergue regime;
- ☞ Evaluate the current land policy

INTRODUCTION

Dear students! this chapter provides an overview of land reform in Ethiopia. The chapter then tries to highlight the land tenure reform of the three periods. Focusing on the current land policy, the unit provides you some insight about the debates of the land ownership policy. Land policy in Ethiopia has been controversial since the fall of the military socialist Dergue regime in 1991. While the current Ethiopian government has implemented a land policy that is based on state ownership of land (where only usufruct rights are given to land holders), many agricultural economists and international donor agencies have propagated some form of privatized land ownership. This unit traces the antagonistic arguments of the two schools of thought in the land reform debate and how their antagonistic principles – fairness vs. efficiency – are played out. It then goes on to explore how these different arguments have trickled down in the formulation of the federal and regional land policies. In addition the unit provides you some highlight on agriculture development led industrialization policy of Ethiopia(ADLI) in relation to rural land tenure policy.

2.1. LAND TENURE SYSTEM IN ETHIOPIA

Dear distance learners! Do you know the historical and current land tenure system in Ethiopia?

Dear students! Have you tried to do the question? If your answer is no, please discuss with your friends and if your answer is yes, that is very good. Write your answer on a rough paper and try to relate with the following explanation.

2.1.1. Land Holding System before 1974 Land Reform

Until the 1974 revolution, Ethiopia had a complex land tenure system. The existence of so many land tenure systems, coupled with the lack of reliable data, has made it difficult to give a comprehensive assessment of landownership in Ethiopia. However, the tenure system can be understood in a rudimentary way if one examines it in the context of the basic distinction between landownership patterns in the north and those in the south.

Historically, Ethiopia was divided into the northern highlands, which constituted the core of the old Christian kingdom, and the southern highlands, most of which were brought under imperial rule by conquest. This north-south distinction was reflected in land tenure differences. In the northern provinces--particularly Gojam, Gonder, Tigray, parts of Welo, and northern Shewa--the major form of ownership was a type of communal system known as rist. According to this system, all descendants (both male and female) of an individual founder were entitled to a share, and individuals had the right to use (a usufruct right) a plot of family land. Rist was hereditary, inalienable, and inviolable. No user of any piece of land could sell his or her share outside the family or mortgage or bequeath his or her share as a gift, as the land belonged not to the individual but to the descent group. Most peasants in the northern highlands held at least some rist land, but there were some members belonging to minority ethnic groups who were tenant farmers.

The other major form of tenure was gult, an ownership right acquired from the monarch or from provincial rulers who were empowered to make land grants. Gult owners collected tribute from the peasantry and, until 1966 (when gult rights were abolished in principle), exacted labor service as payment in kind from the peasants. Until the government instituted salaries in the twentieth century, gult rights were the typical form of compensation for an official.

Other forms of tenure included samon, mengist, and maderia land. Samon was land the government had granted to the Ethiopian Orthodox Church in perpetuity. Traditionally, the church had claimed about one-third of Ethiopia's land; however, actual ownership probably

never reached this figure. Estimates of church holdings range from 10 to 20 percent of the country's cultivated land. Peasants who worked on church land paid tribute to the church (or monastery) rather than to the emperor. The church lost all its land after the 1974 revolution. The state owned large tracts of agricultural land known as mengist and maderia. Mengist was land registered as government property, and maderia was land granted mainly to government officials, war veterans, and other patriots in lieu of a pension or salary. Although it granted maderia land for life, the state possessed a reversionary right over all land grants. Government land comprised about 12 percent of the country's agricultural land.

In general, absentee landlordism in the north was rare, and landless tenants were few. For instance, tenancy in Begemdir and Simen and in Gojam was estimated at about 2 percent of holdings. In the southern provinces, however, few farmers owned the land on which they worked. Southern landownership patterns developed as a result of land measurement and land grants following the Ethiopian conquest of the region in the late nineteenth and early twentieth centuries. After conquest, officials divided southern land equally among the state, the church, and the indigenous population. Warlords who administered the occupied regions received the state's share. They, in turn, redistributed part of their share to their officers and soldiers. The government distributed the church's share among the church hierarchy in the same manner. Officials divided the rest between the traditional leaders (balabats) and the indigenous people. Thus, the loss of two-thirds of the land to the new property owners and the church made many local people tenants (gebbars). Tenancy in the southern provinces ranged between 65 and 80 percent of the holdings, and tenant payments to landowners averaged as high as 50 percent of the produce.

In the lowland periphery and the Great Rift Valley, the traditional practice of transhumance and the allocation of pastoral land according to tribal custom remained undisturbed until after World War II. These two areas are inhabited by pastoralists, including the Afar and Isa in eastern Eritrea, Welo, and Harerge; the Somali in the Ogaden; the Borana in Sidamo and Bale; and the Kereyu in the Great Rift Valley area of Shewa. The pastoral social structure is based on a kinship system with strong interclan connections; grazing and water rights are regulated by custom. Until the 1950s, this pastoral life remained largely undisturbed by the highlanders, who intensely disliked the hot and humid lowland climate and feared malaria. Beginning in the 1950s, however, the malaria eradication programs made irrigation agriculture in these areas possible. The government's desire to promote such agriculture, combined with

its policy of creating new tax revenues, created pressure on many pastoralists, especially the Afar and the Arsi (a division of the Oromo). Major concessionaires, such as the Tendaho Cotton Plantation (managed until the 1974 revolution by the British firm Mitchell Cotts) and the Wonji Sugar Plantation (managed by HVA, a Dutch company), acquired large tracts of traditional Afar and Arsi grazing land and converted it into large-scale commercial farms. The loss of grazing land to these concessions significantly affected traditional migration patterns for grazing and water.

In the northern and southern parts of Ethiopia, peasant farmers lacked the means to improve production because of the fragmentation of holdings, a lack of credit, and the absence of modern facilities. Particularly in the south, the insecurity of tenure and high rents killed the peasants' incentive to improve production.

2.1.2. The 1974 Land Reform Process

With the existing pattern of land ownership system existing in Ethiopia, the improvement of the agricultural sector in terms of increase in productivity and development of the overall condition of the peasants was almost impossible. This situation gradually culminated into a stage where formulation and implementation of land reform program became indispensable for the economic growth of the nation. Towards the middle of the 1960s, different sections of Ethiopian society became in favour of land reform and encouraged it highly. This awareness spread equally among the University students as well. Under their initiatives, campaigns began on the land reform programs. These students not only campaigned for the initiation of reform programs in Ethiopian agrarian sector, they provided leaderships to land reform movements in the country as well. In fact by 1974, these land reform movements made it clear that presence of outdated land occupancy system was responsible for the underdeveloped conditions of the Ethiopian agricultural sector.

Inspired by the land reform movements undertaken by the students in Ethiopia, commencement of land reform program was declared in the rural sector of the country on 4th March 1974. Under this program, the government nationalized all the land in the rural sector. It was under the initiative of the national government that the system of land tenancy was completely eliminated and hiring labors in lieu of wages on private farmland was forbade too. Moreover, the government passed an order to ensure that all commercial farmland would

strictly remain under the control of the state. Further, the land reform measures also allowed the peasant families to be owners of maximum ten hectares of land. The government nationalized rural land without compensation, abolished tenancy, forbade the hiring of wage labour on private farms, ordered all commercial farms to remain under state control, and granted each peasant family so-called "possessing rights" to a plot of land not to exceed ten hectares.

Since the 1975 land reform, the right to own land is vested in the state. Farmers access land through state-mandated peasant associations. Farmers have open ended usufruct rights (the right to use another's property) to land in peasant associations where they reside, but subject to proof of permanent physical residence, and ability to farm continuously and meet administrative dues and obligations. These use rights are inheritable.

The common practice was to allocate land according to the number of household members. Other factors such as quality of land, size of family workforce and ownership of farm assets, which have substantial influence on ability to use land, are not given as much prominence as family size. Hence, there are farmers who hold equal size of land per household, but with significant variation in factor intensity, such as land per adult labour, land per oxen and land per working capital. As new claimants for land arise, these associations have continuously to meet the new demands for land. However, their ability to meet the growing demand for land, especially their capacity to balance other factors at farm level, has been limited.

2.1.3. Impacts of the 1974 Land Reform Program in Ethiopia

The land reform programs had altogether different impact in the northern and southern parts of Ethiopia. While the southern Ethiopian tenant peasants welcomed the reform measures, it did not receive much appreciation in the northern parts of the country, which was dominated by the communal property owners. Farmers living in the southern parts appreciated the reform measures, as the rate of rents they used to pay to the landowners was as high as 55%. Besides, they were highly oppressed by the landowners. So the initiation and implementation of land reform programs brought immense relief to them. Since the same reform measures did not suit the interests of the northern property owners, so it received high disapprovals among the property owners of Northern Ethiopia.

Tenant farmers in southern Ethiopia, where the average tenancy was as high as 55 percent and rural elites exploited farmers, welcomed the land reform. But in the northern highlands, where communal ownership (rist) dominated and large holdings and tenancy were exceptions, many people resisted land reform. Despite the special provision for communal areas (Article 19 of the proclamation gave peasants in the communal areas "possessing rights" to the land they were tilling at the time of the proclamation) and the PMAC's efforts to reassure farmers that land reform would not affect them negatively, northerners remained suspicious of the new government's intentions. The reform held no promise of gain for most northerners; rather, many northern farmers perceived land reform as an attack on their rights to rist land. Resistance intensified when zemecha members campaigned for collectivization of land and oxen.

Land reform had the least impact on the lowland peripheries, where nomads traditionally maintained their claims over grazing lands. The new proclamation gave them rights of possession to land they used for grazing. Therefore, the nomads did not perceive the new program as a threat. However, in the Afar area of the lower Awash Valley, where large-scale commercial estates had thrived, there was opposition to land reform, led mainly by tribal leaders (and large landowners), such as Ali Mirah, the sultan of Aussa.

The land reform destroyed the feudal order; changed landowning patterns, particularly in the south, in favor of peasants and small landowners; and provided the opportunity for peasants to participate in local matters by permitting them to form associations. However, problems associated with declining agricultural productivity and poor farming techniques still were prevalent.

Government attempts to implement land reform also created problems related to land fragmentation, insecurity of tenure, and shortages of farm inputs and tools. Peasant associations often were periodically compelled to redistribute land to accommodate young families or new households moving into their area. The process meant not only smaller farms but also the fragmentation of holdings, which were often scattered into small plots to give families land of comparable quality. Consequently, individual holdings were frequently far smaller than the permitted maximum allotment of ten hectares. A 1979 study showed that around Addis Ababa individual holdings ranged from 1.0 to 1.6 hectares and that about 48 percent of the parcels were less than one-fourth of a hectare in size. Another study, of Dejen

awraja (subregion) in Gojam, found that land fragmentation had been exacerbated since the revolution. For example, during the pre-reform period, sixty-one out of 200 farmer respondents owned three or four parcels of land; after the reform, the corresponding number was 135 farmers.

The second problem related to security of tenure, which was threatened by increasing pressure to redistribute land and to collectivize farms. Many peasants were reluctant to improve their land because they were afraid that they would not receive adequate compensation for upgrades. The third problem developed as a result of the military government's failure to provide farmers with basic items like seeds, oxen, and fertilizer. For instance, one study of four communities in different parts of Ethiopia found that up to 50 percent of the peasants in some areas lacked oxen and about 40 percent did not have plows.

2.1.4. The Current Rural and Urban Land Policy of Ethiopia

Ethiopia is one of several post-socialist countries undergoing an ambivalent transformation process towards some kind of capitalist economy. This applies in particular to land tenure regimes. After the fall of the *derg* (military socialist) regime of Mengistu in 1991, privatization of farm collectives took place rapidly. Many international observers expected that in this process of 'post-socialist transition', a move towards privatization and registration of land titles would follow, which was regarded as a means to increase productivity of Ethiopia's small-holder agriculture. However, these expectations were soon disappointed. The Transitional Government of Ethiopia, despite being committed to the liberalization of the economy, decided not to question state ownership (Adal, 2001a; Belay and Manig, 2004; Jemma, 2001). In its declaration on economic policy in November 1991 (TGE, 1991), it announced the continuation of the land policy of the *derg* regime. A referendum that was promised to decide the future of the land tenure system never took place (Jemma, 2001). Instead, the new constitution of 1995 approved and confirmed the state ownership of land in Ethiopia (FDRE, 1995).

Land policy has remained controversial in Ethiopia since the fall of the *derg* regime in 1991. Observers note that the debate is influenced by ideological considerations rather than being based on substantive empirical data (Adal, 2001a; Jemma, 2001; Hoben, 2000; Rahmato,

2004). Broadly speaking, we can distinguish two antagonistic political discourses on the land question:

- The discourse of fairness and state protection that is arguing for state ownership, and
- The discourse of privatization and efficiency.

The former is the position of the government that remains critical of privatizing land holdings. The government expects privatization to foster the concentration of land ownership in few hands by crowding out poor, destitute farm families from their land. Critics of the government's position, such as the Ethiopian Economic Association (EEA), argue that state ownership of land prevents the development of a land market and thereby holds down productivity (EEA/EPRI, 2002). In addition, international policy discourses on decentralization and community empowerment have infiltrated the political debate and subsequently land policy documents.

A. Land policy as it is stipulated in the constitution

Immediately after the downfall of the Dergue, no one was certain what course the new government would take regarding land tenure. The Transitional Government of Ethiopia had declared that the issue of land tenure (then defined as a choice between private and public ownership) would be settled in the process of developing the new federal constitution. When the new federal constitution was adopted in 1995, the issue was settled in favour of public ownership of land and secured as one of the articles of the constitution requiring not only the full agreement of regional parliaments but also a two-thirds majority in a nationwide referendum. In so doing, the government effectively eliminated land policy as a variable instrument that could be used to address the changing circumstances that affect the rural economy.

Article 40 of the 1995 constitution (which concerns property rights) provides that the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the state and in the people of Ethiopia. "Land is a common property of the Nations, Nationalities and peoples of Ethiopia and shall not be subject to sale or other means of exchange" (Sub Article 3). Sub Article 4 also states that "Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession." Another important provision regarding property rights (Sub Article 7) states that "Every

Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labor or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it."

The constitution also states (Article 51) that the Federal Government shall enact laws for the utilization and conservation of land and other natural resources. Article 52 also states that Regional Governments have the duty to administer land and other natural resources according to federal laws. Such law was enacted in July 1997 on "Rural Land Administration Proclamation, No. 89/1997". This law vested Regional Governments with the power of land administration (defined as "the assignment of holding rights and the execution of distribution of holdings"; Article 2, Sub Article 6). Holding rights were also defined as "the right any peasant shall have to use rural land for agricultural purposes as well as to lease and, while the right remains in effect, bequeath it to his family member; and includes the right to acquire property thereon, by his labor or capital, and to sell, exchange and bequeath same" (Article 2. Sub Article 3).

There are no fundamental differences between the legal framework of the Derge and the present government on rural land issues. Moreover, if those belated policy change made by the Derge following its 1990 "mixed economy" reform are taken into consideration, more has stayed the same than has changed. In practical terms, there are more similarities in land administration between the two regimes than differences.

However, control of land administration has now been taken away from regional governments and is now directly under the responsibility of political bodies rather than technical ministries. Land redistribution practices, which were also halted by the Derge in 1989, have been started under the present government. The recent land laws mentioned above also contain provisions for land redistribution. However, in some regions it seems that no further redistributions are anticipated (e.g. in Tigray). For many economic issues, current policies are a continuation of those changes introduced towards the end of the Dergue government.

B. The Government's Position

The government's position builds on a social equity paradigm and tenure security considerations, which can broadly be subsumed under the fairness as egalitarianism principle.

In this, state ownership is regarded as the most appropriate means to protect the rural peasantry from the negative side effects of market forces. In particular, the government claims that state ownership prevents accumulation and concentration of land in the hands of a small number of urban and bourgeois land owners, who acquire large tracts of land through distress sales by poor peasants, which would lead to:

- Subsequent peasant eviction and poverty,
- The resurgence of exploitative tenancy institutions, and
- Undesirable rural-urban migration of the then landless peasantry.

The government maintains that its policy is tailored to equally distribute land to all who claim rights to ensure access for the needy, to provide them with the means to make a living as farmers in rural areas, and to protect them from selling or mortgaging their land, thereby safeguarding them from the grabbing hand of an urban bourgeoisie and rural elites. The government also explains that this land policy is aimed at preventing political unrest (MOIPAD, 2001). The government's position is supported by arguments pertaining to principles of fairness as historical justice. Some argue that privatization of land would lead to a 'total reversal of the 1975 agrarian reform measures' and would negate the positive effects of the Dergue reforms for the rural peasantry by giving way to the eviction of the poor and the re-emergence of feudal landlords (Bekele, 1997, cited in Jemma, 2001:48). This anti-imperial narrative can be detected in the following quotation that places imperial landlords and capitalist farmers on equal par:

[...] the proposed agenda of privatization of land will indeed open the floodgate for a massive eviction of peasants and the displacement of pastoralists. [...]. Moreover, the pre-reform period land lords, who battered on the meager 'surplus' produced by the peasants, mostly tenants, will now be replaced by 'capitalist' farmers who will alienate small peasants from their land'(Mersha, 1998, cited in Jemma, 2001).

The argument exposes a historical narrative that links the imperial regime with oppression and exploitation of the rural peasantry (thereby indirectly saluting the land reforms of the *derg*). But in order to be effective and consistent, the argument also needs to make the implicit assumption that the rural peasants would immediately sell off their land and, in order to avoid

this folly, would therefore need to be protected by the state (Rahmato, 1994; EEA/EEPRI, 2002). This illustrates a patrimonial attitude of the state towards its rural populace.

C. Major Problems of the Existing Land Tenure System

A group of specialists from universities (local and abroad) had assessed rural land tenure issues in Ethiopia after the fall of the Dergue (Bruce and Shem Migot- Adholla, 1993). The major issues identified by the study include: many people are considered as landless by their community; inheritance, sharecropping, cash rentals, disguised land sales and possessory mortgages (antichresis) have also been important means of gaining access to land.

Other researchers have also concluded that there are problems with the current land tenure system. From his recent studies in Amhara, Oromia and Tigray regions, Tekie (2000) considered that the government had only one imperative policy option: a movement away from the existing insecure tenure system towards a more stable and secured system. In a related work, Hoben (2000: p. 7) concluded:

"there was a consensus that the current system, because it does not guarantee security of tenure and undermines incentives, has detrimental effects on agricultural productivity and natural resource conservation... current land policy does not give farmers secure rights over the land they use, does not maintain equitable access to land over time, does not provide incentives for investment in improvements or conservation, and does not encourage farmers' entrepreneurial and experimental efforts to better their lot. From a policy perspective, it does not foster agricultural intensification, improved environmental management, accretion capital formation, or rural development."

D. The Current Debate on Land Tenure and Policy

The dismissal of the *Dergue* regime on 28 May 1991 created a period of uncertainty about the future of land rights in Ethiopia. In this political void, both the option of privatization of land ownership and the continuation of some form of state ownership were discussed. However, already in its November 1991 declaration on economic policy, the Transitional Government of Ethiopia (TGE) announced the continuation of the land policy of the *Dergue* regime (TGE, 1991). In 1995, state ownership of land was instituted in Ethiopia's new constitution (FDRE, 1995), but despite the passing of the constitution, the debate over land

ownership continued until the 2000 elections (Jemma, 2001; Adal, 2001a). However, the debate was partly suppressed thereafter with the Prime Minister publicly declaring land policy a 'dead issue' in meetings with donor agencies. After the 2005 elections, some of the proponents of privatization have been jailed as members of opposition parties. The Ethiopian land policy debate focuses on the needs and economic pressures of the peasant economy of highland sedentary farming and is less concerned with the problems of pastoralist land tenure or the development of land markets in other parts of the country.

The constitutional provision that securely vested the ownership of land to the state, rural land policy in Ethiopia has remained one source of disagreement and focus of debate among politicians, academics and other stakeholders. An assessment of the land policy debate in present-day Ethiopia shows that there is an unfortunate focus on ownership issues and a dichotomy of views on state versus private ownership. The government and the ruling party advocate state ownership of land whereas experts and scholars in the field, Western economic advisors, international organizations such as the World Bank (World Bank, 1992) and opposition political parties favour private ownership. The main plank of the view advocating state ownership is that private ownership will lead to concentration of land in the hands of few people who have the ability to buy, resulting in the eviction of poor peasants and thus aggravating landlessness and potentially leading to massive rural - urban migration of people left without any alternative means of livelihood. The empirical validity of this claim is one of the issues that the survey addresses.

E. The Critics of State Ownership

Those critical of the government's proposals on state ownership of land are most forcefully represented by some economists of the Ethiopian Economic Association (EEA/EEPRI 2002), donor agencies (e.g. IMF, 1998) and a number of Ethiopian and international researchers. Most of those propagating privatization of land ownership emphasize efficiency considerations (Deininger et al. 2004; EEA/EEPRI, 2002). Broadly speaking, it is argued that state ownership of land yields negative effects on land productivity and therefore produces lower efficiency levels than would be achievable with the working of a private land market. In particular, those in favor of private property rights assert that state ownership provides barriers to full-scale efficiency, because:

- It prevents the emergence of a dynamic rural land market that allows entrepreneurial agents to access credit and land,
- It discourages farmers on marginal land to out-migrate and ties the farmer to inefficient uses of his land, which subsequently leads to fragmentation of plot size, overpopulation in the rural areas and resource degradation, and
- It perpetuates the legacies of the *derg* regime's redistribution programmes that are creating tenure insecurity and discouraging land owners from investing in sustainable resource use.

These arguments build on neo-classical economic theories of property rights (Barzel, 1997; Demsetz, 1967; Posner, 1973) and suggest that privatisation raises the incentives for long-term investment on land both increasing productivity and sustainability of land use, and encouraging accumulation of land in the hands of entrepreneurial and economically successful farmers, thereby increasing productivity. In turn, this allows the out-migration of labour (economically less successful farmers) to other economic sectors in urban centres. Rahmato (1994, 1999, and 2004) has been a particularly forceful critic who does not employ the state ownership vs. privatization dichotomy, but suggests a third way of community or 'associative' ownership of land (Rahmato, 1994:13-15). He argues that state ownership would have significant detrimental social and environmental effects, thereby creating the 'conditions for a Malthusian disaster' (Rahmato, 2004). He sees insufficient incentives to invest in sustainable land use practices and to adopt modern technologies due to tenure insecurity and small plot sizes coinciding with an increasing rural population and inter-generational struggles over access to land. However, these arguments are seldom based on comprehensive empirical evidence.

In addition, some critics of state ownership have also brought forward fairness as historical justice considerations. Ethiopian land rights have traditionally been tightly linked with the exercise of power over the rural peasantry – in the imperial period where large parts of the peasantry were denied land ownership and lived in precarious tenancy relations as much as during the *derg* regime, where collectivization and the increasingly tight grip of the state on the local peasant associations meant increasing state control of farmers. Adal (2001a:58), therefore, argues that privatization of land holdings means the fulfillment of peasants' self-determination as part of the 'unrestricted economic rights' any farmer should enjoy. Several authors ascertain that since the *derg* reforms in 1975, peasants have become the 'tenants of

the state' (Rahmato, 1992; Abebe, 1998) and therefore have been deprived of their (human) right to freely decide what to do with their farm land.

In general, critics of the current landholding system and those who advocate freehold largely base their arguments on the behavior of economic agents and familiar property rights arguments, partially backed up by empirical results from Ethiopia and other countries. Because most of the arguments are variations on the same theme, they can be summarized using the more coherent formulation in Barrows and Roth (1989: p. 4):

- Individualization of land tenure (leasehold and freehold ownership) increases tenure security of the landholder, thereby reducing economic costs of litigation over land disputes.
- Individualization increases investment by increasing tenure security and reducing transaction costs. Higher tenure security increases expected investment returns, thereby increasing the demand for capital (including credit) for fixed-place investment. The supply price of credit decreases because the cost of lending is reduced by improved credit worthiness of projects, and higher collateral value. Both supply and demand effects increase investment.
- Individualization will cause a land market to emerge. Land will be transferred to those who are able to extract a higher value of product from the land as users who are more productive bid land away from less productive users.

UNIT THREE

REDISTRIBUTION OF LAND RIGHTS

UNIT OBJECTIVES

At the end of this unit, you will be able to:

- ☞ Understand the basic concepts of redistributive land reform;
- ☞ Know the main policy options of redistributive land reform;
- ☞ State the roles of redistributive land reform for sustainable development; and
- ☞ Summarize some past success and failure experiences of redistributive land reform.

Introduction

Dear distance student, this unit explains the concepts of redistributive land reform and major intervention types by the state. It also highlights the particular importance of redistributive land reform for economic development, poverty reduction, environmental protection and in general for sustainable development. Finally, this unit summarizes some past success and failure experiences of redistributive land reform.

4.1. Concepts of

What are the concepts of Redistributive Land Reform and policy?

Dear students! Have you tried to do the question? If your answer is no, please discuss with your friends and if your answer is yes, that is very good. Write your answer on a rough paper and try to relate with the following explanation.

According to the conventional definition, redistributive land reform is a public policy that transfers property rights over large private landholdings to small farmers and landless farm workers. The universally accepted definition, implicitly and explicitly, excludes non-private

lands (ie, 'public', 'state' or 'communal' lands). The underlying assumption in the dominant land reform literature is that lands that are officially classified as 'public/state' properties, especially those used to open up resettlement areas, are lands that are generally not cultivated and inhabited, and are without pre-existing private control.

In such conditions, it is logical to conclude that land policies that concern these lands do not recast any land-based production and distribution relationships. The literature on land reform is strong on this point, and rightly so. Yet, it becomes problematic when the use of the same lens is stretched as far as to examine 'public' lands that are, in fact, under varying degrees of cultivation, imbued with private interests and marked by production and distribution relationships between the landed and the landless and land-poor, between the elite and non-elite, often not captured by official census. The failure to recognize the potentially and actually contested nature of much of 'public lands' risks removing them from the reach of redistributive reform, and so risks the continuation of many of the economic, social and political problems associated with an agrarian structure that is dominated by the landed classes as well.

Much of the lands in many developing countries today that are defined as 'public' in public policy practice do not actually fit the basic criteria used in theory to define public land. In the conventional land reform literature, 'public' lands are defined as unproductive and uninhabited lands without existing land-based production and distribution relationships. In fact, in many agrarian settings, public and private lands are differentiated from each other only by their formal property rights categories; both land types in reality have developed comparable pre-existing land-based production and distribution relationships and even farm-productivity levels over time historically.

The formal categories that initially informed official state policies have, over time and in many instances, been rendered obsolete or meaningless by human activity, much of it (though not all) passing unnoticed by central state authorities in distant national capitals. And because redistributive land reforms are aimed precisely at adjusting pre-existing social and production relationships by transferring the effective control over land-based wealth and power from the landed to the landless and near-landless classes, then they should be applied, in theory and practice where appropriate, regardless of whether the land in question is officially classified as private or public. As will be shown in this paper, when it has occurred, the land reform

process in public lands, like that in private lands, has frequently proven to be highly contentious politically. Indeed, successful redistribution here appears to require the same complementation of mobilization by autonomous peasant groups 'from below' and initiatives by reformist state actors 'from above' that is required in land officially recognized as under private ownership.

4.2. Major Intervention Types by the State

There is wide variation in the objectives, circumstances and conduct of land reform. Just how extensively the state should intervene has long been the subject of debate by welfare economists. Economic arguments favoring land redistribution focus on the diseconomies of large-scale enterprises and on the need to increase returns to land. However, decisions on whether to proceed with land reform are essentially political. When growing landlessness, chronic indebtedness, and eviction of tenants threaten stability, the state has often intervened to regulate ownership rights, sometimes with the tacit agreement of landowners seeking to prevent land invasions. Four principal types of intervention by the state in the operation of the land market can be distinguished:

I. Land Tenure Reform: - designed to adjust or correct the reciprocal property rights between proprietors, in response to changing economic needs (e.g. the establishment of statutory committees or land boards to organize and supervise the use of common rights and other interests; the conversion of more informal tenancy into formal property rights; tenancy reform to adjust the terms of contract between landlord and tenant).

II. External Inducements: - or 'market-based' incentives offered by government for social and economic reasons and leading to the restructuring of existing property rights or the creation of new ones, e.g. the distribution of public lands; state expenditure on land reclamation and subsequent allotment as private property; state sponsored credits channeled by a land bank through cooperatives; support to institutions to administer the necessary land acquisition and distribution mechanisms.

III. External Controls: - or prohibitions imposed by law on property rights (i.e. non-market measures), for instance: nationalization and collectivization; restitution; redistribution policies involving expropriation of land (with or without compensation) on grounds of excessive size, underutilization, ownership by absentee landlords and/or foreigners. By

contrast, gradual redistribution policies operate e.g. through death duties. Other external controls can act against redistribution, e.g. laws preventing land fragmentation below certain minima.

IV. Confirmation of Title:- to verify and secure land titles to those who have already a demonstrable claim reduces doubt and contention and so sets for the foundations for development.

4.3. Policy Options for Redistributive Land Reform

Demands for redistributive land reforms remain strong. It is possible to identify three distinct policy options for redistributive interventions:

- A.** Conventional state-led redistributive land reform
- B.** Market based redistributive land reform
- C.** Negotiated land reforms

A. Conventional State-Led (Imposed) Redistributive Reforms

No discussion of land reform would be complete without a coverage of imposed redistribution of land. This is the kind of land reform that most people would first think of when hearing the term. In a redistributive land reform, the land is taken from large holders and given to landless and poor farmers. Therefore, land reform refers to conventional representations of land reform - the transfer of land assets from one group, either the state or more often large private landowners, to either landless or small producers. It will be shown that despite immense economic and administrative investments that this type of approach has failed repeatedly to attain its objectives. Vast distributional inequities remain, distorted markets continue to conspire against small producers whilst poverty remains deeply entrenched in the region's rural areas.

The call for redistributive land reform is typically based on two sets of related claims. Advocates argue that it can lead to a) direct equity gains and b) clear productivity improvements. These benefits lead to greater security and consumption smoothing and increased income streams and heightened employment opportunities. Combined they can

generate improved access to credit and can generate greater household and national food security.

From an institutional side this normally includes nationalization; redistribution policies involving expropriation of land on grounds of excessive size, underutilization, and ownership by absentee landlords and/or foreigners. This type of land reform often (but not always, e.g. Chile) grows out of a post-crisis situation such as a war or civil war. The police power of the state is used to redefine the property rights of land holders. Thus, such a land reform requires an exclusive control on political power. It can succeed only where the power of the existing rural, land-based elite is either transferred or eliminated. It is not at all surprising, therefore, that such land reforms have been often directed more by ideological fervour than sound technical planning. A brief digression to examine in a few sentences the different Regional experiences with imposed land reform will serve as to put current efforts into perspective and is provided as an example in the box below.

It is interesting to note that this category represents both the most successful and the most unsuccessful examples of land reform. The failures to emulate elsewhere the successes in Asia of Japan, the Republic of Korea and Taiwan (Province of China) probably led more than anything else to the general disenchantment with land reform among the donor community. Several of the major multilateral donors such as the World Bank and the European Union have adopted governing rules that require them to refrain from lending for land purchases.

Contemporary advocates of land reform are opposed by a lengthy litany of historic failure. Analysis of these past failures however, coupled with new theoretical developments and the endurance of asset inequities show that

- the concept of redistributive land reform remains popular
- that modern conceptualizations of land reform differ profoundly from earlier models
- further testing of new models is required

Justification

- restructured institutions with technically strong staff already in place
- decentralised, financially responsible and trustworthy public sector institutions in place

- lower political risk (not excluding traditional stakeholders)
- continue state's role as principle agent for land reform
- continue state's responsibility for monitoring and supervising and for third party enforcement where necessary
- state can absorb short-term costs, can smooth repayments through time and can provide grants and subsidies where necessary
- seen to be providing benevolent bilateral support to society's poorest segments
- large number of possible interventions for TA and / or financial assistance
- institutional reform is an area of clear UK strength

Risks

- simply providing some short-term liquidity to financially constrained institutions
- reinforcing paternalistic welfare interventions targetted at politically rather than socio-economically vulnerable
- beneficiary and site selection - state always vulnerable to risks associated with adverse selection and moral hazard
- time and cost (ref. premium land prices)
- absent exogenous markets (factor input, credit, marketing etc.) threaten sustainability of smallholder production
- antagonise World Bank and its other NLR partners

Assessment

Interventions could be considered in cases where

- there is a clear indication that government intends to continue with traditional large-scale distributive reforms
- there are clearly identified target groups
- there are transparent financial mechanisms in place
- Necessary institutional supports are in place (regularisation, legalisation, registration, legal, judicial etc.)
- there is a low risk of opposition (from large landowners)

Possible Interventions

- **Institutional support / TA** to executing agencies, at both central (policy / programme formulation) and local level (implementation, monitoring etc.)
- **TA** to beneficiaries to encourage more efficient and sustainable production strategies
- **Financial Institutions** - examine modalities for increased participation of private sector financial institutions in conventional redistributive reforms, with focus on both land repayments and subsequent credit payments.
- **Land Conflict Resolution** - assist in the development of local institutions for land conflict resolution

B. Market-Led Redistributive Land Reform:

This is a type of land reform that combines very naturally with the realization that when they work properly, markets are the best arbiter of supply and demand of goods and services. The question is quite naturally raised: why could we not get land markets to function in a way that those who really want to farm and are the best farmers would get land, and inefficient land holders and absentee land owners would be driven out by market forces? This usually involves direct government intervention in the market by making assets available to those too disadvantaged to enter into normal land market transactions. This includes the distribution of public lands; state expenditure on land reclamation and subsequent allotment as private property; mortgage interest tax relief; support to institutions to administer the necessary land acquisition and distribution mechanisms and to advice services to prospective land owners.

A land market always requires some state intervention. A land market by itself will not do much to transfer land to the poor who want to be independent, land owning producers. This is because where the former owner has to be compensated at market or near market value by the purchaser, a poor farmer cannot repay out of farm profits alone. Land always contains a premium value over and above the value of its agricultural productivity due to its collateral value in a market economy and preferential access to credit. It has been the unfortunate observation that where the market is not sufficiently monitored after distribution, land distribution is quickly followed by land return to the former owners.

It goes without saying that a market-led land reform requires an active land market. That is, there have to exist willing sellers and buyers (in established market economies, we anticipate that around 5 percent of the national privately owned land will change hands annually through the market).

While negotiated and market-led land reform programmes are the "flavour of the month" in the donor community, there is a need to keep the results in perspective. For example, if we take the figures for 1998 in the case of Brazil, the estimates of INCRA (National Land Settlement and Reform Agency) is that 100 000 families will be settled through the "traditional" compulsory purchase processes and that they will exceed the target of 120 000 families next year. For the same period the negotiated and market-led programmes are targeting a total of 15 000 families (i.e., 7.5 percent of the 1998 total). Thus, as was emphasized in the beginning of this section, Member Nations are turning to a number of approaches that are used in conjunction with each other.

The same magnitude of difference between the poor getting access through the market and compulsory purchase will be found in the Philippines and in the emerging land reforms of southern Africa. This does not mean that these new approaches are not successful, rather than they are additional tools available to a nation for addressing its needs for a reform of land tenure. The lessons learned will be applicable to the post land reform agrarian situation. The success of any modern land reform will be measured by the fact that small rural producers will be able to fully compete in national land tenure institutions like the market, the land registry, the mortgage system and so forth as full political and economic participants.

Land markets: FAO has been working with researchers from numerous member states on the underlying nature of land markets. This work has also been augmented by a strong cooperation between IFAD, the World Bank and FAO to work together developing a better understanding why land markets so often do not function as an access route for the rural poor. First, a land market differs significantly from a commodities market. Since land is both finite and fixed, a market in real holdings has more similarity to an art market. You cannot always buy the land you want, but rather are constrained by what is offered on the market. Second, land always carries an additional value over and above its productive utility. This added value appears in the added social status that comes with being a land owner. It also includes the added access to credit and services. Thus, the sale price of land always includes some recognition of this added value to land ownership. Therefore, the poor cannot possibly pay back a mortgaged land purchase from the productivity of the land by itself. They will need support or mortgage relief at least up to the amount necessary to cover this additional value.

This means that a land market has to have a strong service component available to the poor, if it is to serve as a land reform tool. We have already mentioned that some sort of mortgage relief service will be needed. But a modern land market requires a whole set of institutional services to function at all. First there has to be some way of removing any ambiguity over what is being sold and who has rights to do so. This is why modern economies invest so heavily in land registries and cadastres. Second, land sale transactions transfer the ownership rights. Thus there has to be a transparent method of doing so, that firmly establishes the legal capacity of the new owner to invest in and enjoy the acquired property. This is why all modern economies have developed conveyancing services and institutions. Examples of these would be valuation, real estate brokering, property rights inscription, and so forth. Finally, in no modern economy does a land purchaser have full and undisturbed rights in landed property. The society at large, through state institutions, always reserves the right to administer its territory and to intervene in land use. Common examples would include enforcement of environmental codes, land taxation, adjudication of land conflicts, etc.

For all the above reasons, the use of a land market as a land reform tool will require by necessity extensive institutional and service development.

C. Negotiated Redistributive Land Reform

This refers to a process where the emphasis is on the negotiated transfer of land from large owners. The clearest use of this is the very different processes that took place in Colombia, Brazil and South Africa. In all cases it is the alliance between landless and near landless farming families and civil society who are directing government where when and how to focus their negotiations on their behalf. That is, the land seekers negotiate what they need, as opposed to a more traditional approach to land reform where the recipients get what is given to them.

Justification for NRLR:-

- overcomes many problems of traditional state-led redistributive reforms
- proven potential for success, although based on limited evidence
- improved beneficiary identification
- improved negotiation strategies with landowners, encouraging willing buyer / willing seller scenario, thereby reducing ex-post risks and conflicts

- repeated negotiation will strengthen the capacity of regulators to introduce effective incentive compatible mechanisms to discourage moral hazard inflating land prices
- emphasis on development of individual beneficiary production plans, increases sustainable potential
- reduced grant component in land purchase increases sustainability
- possible private sector involvement increases possibility of full / partial cost recovery
- emphasis on productive investments (not just land purchase)
- reduced unit costs of beneficiary settlement (in Brazil, 50% lower)

Risks

- in most cases, NLR relies upon new institutional arrangements
- capacity of communities to fulfil their responsibilities, in particular, regarding blocking adverse rent-seeking and other forms of opportunistic behaviour
- local informational asymmetries can lead to high risk of a) adverse selection in terms of beneficiary selection and b) moral hazard in terms of ex-post beneficiary behaviour
- local political elites can dominate and control communities
- subsidy / grant component encourage beneficiaries to sell reform sector holdings in market place
- do not challenge the dependency culture / culture of inevitable subsidy
- insufficient emphasis on monitoring and evaluation of community
- there is a clear risk of moral hazard affecting the price negotiation process negatively if regulators are unable to introduce adequate incentive compatible mechanisms to ensure sufficient benefits to participants adopting desired pricing strategies
- dysfunctional credit markets will inhibit the capacity of beneficiaries to establish viable production systems
- governments will be unable to accept the political costs of pushing the rural poor away from conventional subsidies towards the market place
- high subsidies on productive investments can encourage further moral hazard and undesired opportunistic behaviour
- abandonment

Assessment

NLR possesses significant positive potential for intervention when

- government establishes clear goals and objectives
- government publicly accepts political risks associated with approach
- local public sector / municipal institutions are in place
- local public sector / municipal institutions are technically and technologically equipped
- it is clear that local political / economic elites will not monopolise community formation process
- there are few incentives for adverse selection of beneficiary groups
- close relations are established between all clients and stakeholders at different levels and stages of the process
- private financial institutions are willing to participate in either collection of land repayments or provision of credit to beneficiaries
- local NGOs are supporting process / not actively opposed (i.e. Philippines)

Possible Interventions

- **Institutional support / TA** to executing agencies, at both central (policy / programme formulation) and local level (implementation, monitoring etc.)
- **Institutional support** to local communities, to strengthen their capacity to plan and execute responsibilities
- **Dialogue building** with potential private sector partners from financial sector
- **Pilot projects** - providing direct financial support to implementation of NLR pilot projects in either new areas
- **M&E** of ongoing NLR initiatives in Brazil, Colombia (and Guatemala)
- **Local Land Conflict Resolution Institutions** Guatemala
- **Support to NLR Network (WB/IFAD/FAO/bilaterals/INGOs/NGOs etc.)** - provide support to creation of field coordination unit, based in Brazil or elsewhere (US/UK)

4.4. Regional Experiences of Redistributive Land Reform

A. Asia:

Japan probably represents the archetypical representation of a successful land reform. Implementation was enforced by the United States occupation forces following WWII as a

means of breaking the power of the large land owners who had been the pillars of the militaristic developments in Japan in the pre-war period. Land holding ceilings were established at one hectare. The landlords were compensated in a combination of cash and development bonds. The rural producer populations largely stayed on their previous holding, but were now given full ownership rights and a highly subsidized mortgage. Key factors that are often overlooked in the literature, but are critical to understanding the success or failure of other land reforms were the existing well developed extension service, land records and efficient bureaucracy.

The Republic of Korea represents another of the post-WWII success stories in land reform. DPR Korea had imposed a thorough land reform in 1944. This and other factors led to growing tension for similar opening up of access to land in the South. Thus, the Republic of Korea's sweeping land reform was the result of the crisis created by the alleged communist aggression from the north. A critical factor in its success has been the equally thorough development and support to local village government to assume the land administration functions. Thus the Republic of Korea has been able to maintain a local dynamic for continuous agricultural development that is lacking in the North and in most redistributive land reforms.

On the island of Taiwan the successful land reform was imposed by the Nationalist Government which had just been exiled from the mainland. The new government therefore had no obligations toward the local indigenous landowners. Also important were accurate land tenure data and a non-indigenous bureaucracy. Land tenure ceiling of one hectare was imposed and the former land owners were paid in industrial bonds. Thus their future lay in the urban-industrial zone.

If Japan, Korea and Taiwan (Province of China) served as models for a role to be played for land reform in the development of industrial democracies, China provided an equally graphic model for socialist countries. In 1949 all the agricultural land was equally distributed. The immediate results were impressive. This was the largest national land reform in history. Food production went up by 15 kg per person (total population) each year until the collectivization that started in 1956. This proved to be a policy disaster and the destruction of the family farm system created by the world's largest land reform resulted in one of the world's greatest famines.

B. Latin America:

Latin America has been a region that has had its fair share of land reform programmes. Starting with the Mexican revolution of 1910 there had been a series of attempts to impose a land reform in the region (Bolivia, Chile, Colombia, Cuba, El Salvador, Honduras, Nicaragua and Peru). While there has been much justified criticism of these reforms, they did benefit many thousands of poor rural families and did receive wide support in the society at large. They did not, however, result in the kind of transformation envisaged in the original design. In general, governments were either unable, or unwilling to implement the kind of full land reform of their Asian colleagues. Cuba is the sole exception. The programmes were universally under-funded so that needed services, inputs, and institutional development could not take place, or took place too late. Finally, they were bureaucratically top heavy and did not build on (or create) a self-sustaining farming system

C. The Near East/North African Region:

The Near East/North African Region also saw the attempts at major land reforms. Egypt, North Africa, Iraq and Iran all undertook major land reform projects in the period from 1950 to the mid-1970s. Again, though the literature emphasizes the failures, there is no denying that again, as in Latin America, the benefits reached many thousands of impoverished rural families. Egypt was by far the most thorough going and benefited the most people.

Finally, one should mention all of the land and agrarian reforms inspired by the Soviet model of command economies: the entire agrarian reform policy of China, the former Soviet Union and other command economies (Angola, Cuba, Eastern and Central Europe, Ethiopia and Mozambique) was predicated on a concept of social, as opposed to individual, property rights in rural resources. We have to remember that it was the promise of an agrarian reform that led to much grassroots support for these governments in the initial period. Today the emphasis in all these countries is to reverse this process. This is a complex and slow process which will be discuss below.

4.5. Functions of Redistributive Land Reform

The redistribution of land can fulfill a number of functions in more sustainable development. Dozens of land reform programs were carried out after WW II. In looking back at the

successes and failures, we can distinguish between what might be called 'genuine' land reforms, and the more 'window dressing' or even 'fake' reforms.

When a significant proportion of quality land was really distributed to a majority of the rural poor, with trade, macroeconomic and sectoral policies favorable to successful family farming in place, and when the power of rural elites to distort and 'capture' policies was broken, the results have invariably been real, measurable poverty reduction and improvement in human welfare.

The economic successes of Japan, South Korea, Taiwan, China and Cuba resulted from such reforms. In contrast, when 'reforms' gave only poor quality land to poor families and failed to support them with favorable policies, credits, prices and access to markets, or failed to alter the rural power structures that work against the poor, land reform failed to affect broad-based changes.

The more successful reforms triggered relatively broad-based economic development. By including the poor in economic development, they built domestic markets to support national economic activity (Sachs, 1987). The often tragic outcome of failed reforms was to condemn the 'beneficiaries' to marginalization from national economic life, as they frequently assumed heavy debts to pay for the poor quality land they received in remote locations without credit or access to markets and in policy environments hostile to small farmers.

Today we have a new opportunity to learn the lessons of past reforms and apply them to the practical goals of development. Land reform is no longer a taboo subject in the discourse on development, thanks in part to the 1996 World Food Summit, and to the somewhat unfortunate initiatives of the World Bank. We are witnessing a worldwide upsurge in people taking matters into their own hands via land occupations, both spontaneous and organized, on both small and large scales. From the land crisis in Zimbabwe, to the massive land takeovers in Chiapas in the wake of the Zapatista rebellion, and the MST in Brazil, "land reform from below" is increasingly a reality even as policy makers dither. These grassroots movements, together with a wide array of civil society organizations, are increasingly challenging national governments and World Bank land reform policies, and putting forth alternatives.

Here we look at the important roles redistributive land reform can play in the move toward more sustainable development.

4.6. The Failure Stories of Redistributive Land Reform

Experience from Latin America

Redistributive land reform has failed to attain its prescribed goals throughout Latin America. The historic achievements of European land reforms (Denmark, Prussia, and post-War Italy) and the more recent successes of land reform in Southeast Asia (Korea, Thailand, Japan) and even in parts of Africa (Kenya) have not been reproduced in Latin America. Land distribution patterns remain the most unequal of all the world's regions, rural and overall poverty levels remain largely unchanged, and small producers continue to struggle for market entry. Despite these failings, and the immense financial, administrative, political and social costs associated with these failures, the call for land reform remains strong within the region.

Attempting to explain the causes of land reform is a Sisyphean task. There are almost as many attempts to explain the failures of land reform as there are abandoned *assentamientos* in the region. Interpretations however, focus on:

- the inefficiency of state bureaucracies, reflected in slowness, costliness and weak enforcement capacities
- the impossibility of avoiding opportunism and destructive rent-seeking behaviour amongst beneficiaries
- the lack of control exercised by beneficiaries in terms of site selection
- the stringency of overly strict tenure controls that can encourage informality
- the lack of supportive technical assistance (henceforth "TA")
- the weak managerial capacities of many beneficiaries
- the continuing dysfunction of vital factor and output markets, especially credit and marketing
- the strategic guile (and bullying) of large landowners to outwit reform initiatives
- the weakness of government commitment to break up the holdings of the (politically and) economically strong in favour of the (politically and) economically weak.

These conditions reflect 4 types of constraints:

1. Political
2. Institutional;
3. Market-related
4. Beneficiary-related.

1. Political Constraints:

Many of the region's land reform programmes emerged in direct response to social unrest or the perceived risk of conflict, or were intended to deflect critical public attention away from other troublesome issues. Their design was driven by the demands of political expedience rather than the rigours of technical precision. Inevitable weaknesses resulted. They were often *ad hoc* in design, lacking the necessary institutional and financial resources to implement the initiatives. Similarly, reforms were often targeted at politically significant groups rather than those with authentic socio-economic needs and capacities. The frequent absence of robust beneficiary selection criteria meant that there were few checks against opportunists and free-riders - the large grant component of almost all these reforms presented ample rent-seeking opportunities to both the rural poor and non-poor groups. Finally, politically-driven policy interventions are susceptible to the caprice of all political discourse - enthusiasm and support can wane dramatically once sufficient support is garnered or the perceived political risk is removed.

It is impossible to avoid the political dimension of land reform and policy-making in general. Land itself is inherently vulnerable to politicization. Land and power have been inseparable since the early colonial period. Indeed, despite decades of industrialization and urbanization throughout the region, power can still often be measured in terms of land. It is no coincidence then, that in most rural areas throughout the region, the most powerful groups and individuals are also the largest landowners. In Guatemala, Brazil, Honduras and Peru, the struggle for land reform has involved a parallel struggle to wrest power from landed elites. It has been said in Brazil for example, that the main constraints to effective land reform are not to be found in fragmented rural markets or a fragile credit system but in the corridors of government and in the ballot boxes of Congress. Land reform then, cannot escape the imprint of politics. It is for this reason, that future land reform interventions should incorporate a clear understanding of land/power relations and should work with them, rather than *against* them.

2. Institutional Constraints

Land reform is not just a process. It is also a complex institutional arrangement requiring extensive support. It requires an appropriate legal environment and demands effective executing agencies and organizations. Expropriation procedures for example, have been extraordinarily long and complex, seeking to both respect and protect the principles of private property rights whilst simultaneously subjugating them to a perceived greater public interest. In these cases, the expropriation process, where necessary, is often resource heavy in terms of both time and money.

Land reform is simultaneously labour and capital intensive. It consumes immense amounts of capital and requires large administrative supports. Too often, a combination of general public sector malaise coupled with a shrinking fiscal environment and inter-organizational competition has meant that land reform has been denied the necessary organizational and institutional supports. Grandly eloquent land reform proposals stumble on the reality of understaffed, underpaid and under motivated local offices. The institutions of public sector land reform, especially at the local level, have been consistently unable to offer the practical supports needed by land reform programmes. It is for this reason that a substantial amount of future land reform investment should be directed at the institutional domain.

3. Market Constraints

In many cases, market constraints are either too great or are ignored to permit the attainment of land reform goals. The costs of land reform for example, are often increased by continuing distortions driving land prices above the capitalized value of agricultural profits. These distortions increase the costs of land reforms, create additional obstacles to beneficiary repayment, make the reform sector susceptible to rent-seeking from the non-reform sector, thereby fostering greater rather than less land concentration and challenge the overall sustainability of land reform.

Similarly, a continuing lack of credit in the post-reform period has restricted the productive capacity of beneficiaries. Credit restrictions typically stem from a combination of factors including credit rationing on the part of financial institutions and tenure restrictions introduced into the reform process, rendering the collateral value of beneficiary landholdings very low. (It should also be recognized that a 2ha plot, 7 miles from the nearest road, lacking irrigation in an area of abundant vacant land is not the most attractive form of security for a rational financial institution). Nonetheless, one of the key differences between the post-War

land reforms in Taiwan and South Korea and those in Latin America concerns beneficiary access to credit. In many cases, the Asia reforms involved the redistribution of ownership rather than the redistribution of land - the vast majority of beneficiaries in Asia were already farming the land they received, whereas in Latin America the majority of beneficiary land was acquired during the land reform process. Credit institutions were already active in these Asian small producer sectors and where they were absent, governments invested heavily in their development. As a result, few efficient small producers were denied access to credit in the post-reform period. This was not the case in Latin America. Instead, small farmers received little support in the form of credits and agricultural extension services. Governments for the most part helped modernize medium- to large-sized farms and ranches by awarding them tax advantages, selective price-support programmes, subsidized credits, and investments in infrastructure. For example, the largest 1 per cent of farmers received 50 per cent of public credits in Colombia, whereas the smallest 50 per cent of farmers received less than 4.2 per cent. The percentage of farm households receiving institutional credits amounted to only 27 per cent in Colombia, 22 per cent in Venezuela, 20 per cent in Honduras, 16 per cent in Mexico and 6 per cent in Peru.

4. Beneficiary Constraints

It has been reported that over 60% of land reform beneficiaries in Brazil have sold or abandoned their reform parcels. These levels of abandonment are typical rather than atypical for the region. The causes of abandonment are diverse. For some, it is the short-term rent seeking opportunities offered by the usually unauthorized sale of reform plots, for others, abandonment is an expression of their inability to establish either sustainable income streams from the land reform process or to match the income-generating potential of other household strategies.

In most cases, beneficiary abandonment stems from competing incentives and disincentives. In some cases, the quality of land, the distance from (absent) markets, the precariousness of small farming and tenure restrictions made farming an unattractive opportunity. It is certainly true that much of the land released through INCRA in Brazil was at best marginal, at worst, unusable.

The mechanics of land reform do not always work in favour of small producers. The transfer of land from large to small farmers generally requires a change in the pattern of production,

subdivision of the estate or original farm and construction of complementary infrastructure. Second as the main productivity advantage from land reform is linked to the increased incentives by owner-operators, realization of the full social benefit from such an intervention requires a mechanism to settle additional beneficiaries - over and above the workers that may already have been working on the estate.. Lack of family labour and / or capital in most cases prevents beneficiaries from significantly increasing efficiency of production- and may, in the case of well-run plantations, even have reduced productive efficiency. Third, beneficiaries, even if they are workers of the former farm, are generally not accustomed to making independent entrepreneurial decisions, a constraint that is particularly important if realization of the benefits from land reform requires significant modifications in the farm's cropping pattern. I.e. when farms were underutilized, run down or decapitalized, or highly mechanized, neglect of simple works or the need for some start-up capital can often be linked to beneficiary desertion. (Despite the frequency and inherent logic of these claims, there is very little empirical evidence to suggest that small producers and wage-earners make poor managers). Similarly, many conventional land reform measures have focused exclusively on land transfer, and have ignored pressing complementary reforms (training, TA, resources)

UNIT FOUR

LAND RESTITUTION

UNIT OBJECTIVES

At the end of this unit, you will be able to:

- ☞ Understand the basic concepts of land restitution;
- ☞ Recognize the link between land policy and land restitution;
- ☞ Know the relationship between land restitution and land market;
- ☞ Understand the objectives of land restitution;
- ☞ Recognize the instruments for land restitution; and
- ☞ Summarize country experiences on land restitution

Introduction

Dear students! this unit will provide the theory behind the implementation of Land restitution. For such purpose several concept are discussed. This chapter also includes a theoretical review on land restitution, objectives, driving forces, and processes. Furthermore a review on international experiences, country case studies, have done to gather lessons learned on the implementation strategies of a land restitution policy. This chapter will provide a general criteria and methodology for the evaluation of the land restitution policy implementation.

4.1. Basic Concepts on Land Restitution

What are the basic concepts of land Restitution?

Dear students! Have you tried to do the question? If your answer is no, please discuss with your friends and if your answer is yes, that is very good. Write your answer on a rough paper and try to relate with the following explanation.

Restitution is "an equitable remedy under which a person is restored to his original position prior to loss or injury, or placed in the position he or she would have been". Thus, Land Restitution is the process by which land and other property that was forcibly removed from its owners is restored or compensation of equivalent value provided. Land may have been forcibly removed from its owners in a variety of circumstances. Collectivist governments expropriate land so that individual ownership is replaced by ownership by the state.

Colonization can result in land possessed or controlled by native peoples being granted to colonists, for example, as farms. Wars and internal conflicts can result in peoples being driven off their land, for example, through ethnic cleansing, or the ownership of land, formerly possessed by the vanquished, being granted to the victors. None of these processes are new and have been going on throughout human history. What is relatively new is that during the past two decades some governments have adopted restitution policies to reverse past expropriations.

Land Restitution as a land policy, addresses a political objective or/and achieves social justice. The definition is very much country oriented. United Nation ECE defines it as process that involves the restoration of land rights to previous owners, a process known as land restitution (ECE, 1996).

It happens some times that land rights cannot be restored due to many reasons, so compensation for those lost rights is provided. A definition that includes the concept of compensation is more suitable due to 'world' experiences. Restitution is the process by which land and other property rights that were forcibly removed from its owners, is restored or compensation of equivalent value is provided.

Restitution as a phenomenon is important for two main reasons:

- Firstly, from an economic point of view, it has significant implications for the functioning of the property markets in the countries where it occurs, including an impact on foreign investors, who have invested in real estate. It means that owners, who previously thought they had good title to a property, no longer enjoy this. The wealth of the previous owner is destroyed or, at least, reduced. Restitution is therefore

associated with the redistribution of wealth. Often the owner, who had previously enjoyed good title, is the state and the new owner is a private individual. Restitution is therefore one of the means by which private property markets and individual decision-making over real estate has been created in transitional economies.

- Secondly, restitution can have important socio-political consequences. Expropriation involves the denial of human rights and is often associated with other violations of these. Restitution can be used as a means of achieving closure to conflicts. Their settlement can involve the restoration of property to those who have been dispossessed. Restitution can enable refugees and internally displaced persons to return home. Without restitution, they may have no home to return to. Restitution is one means by which the perpetrators of human rights abuses can make reparation and undo some of the harm that has been done. The key issue in such circumstances is how to achieve a sufficient measure of support from all those involved so that the conflict can be resolved.

Purpose of Land Restitution: The main objective of Land Restitution is to achieve social justice. Land Restitution policies have to do with the need to make correction of the past, solve or rectify unfair situations. These correction must be fitting with the own political objectives of a country. It is concerned with the policy of providing Land Restitution to those whose real estate was forcibly removed without receiving adequate compensation. It has to do with situations in which one group has unjustly enriched itself at the expense of other groups or individuals, through the forcible removal of property from its owners. And it is also concerned with the recognition of property rights of minorities such as indigenous people who have their own way and right to use and usufruct the land that has belonged to them since long time in history.

The forcible removal of property, the loss of the property rights and not recognition of property rights of minorities, individually and/or collective, can happen in a variety of ways including:

- Colonization
- Ethnic cleansing in which a social group is driven from its property
- Forced sales at below market prices
- Treaties in which land transfer was not the result of informed consent as one

party had different concepts of land rights from the other

- Collectivization so that individual property is expropriated and replaced by ownership or control by the state or collective organization
- The dispossession of the vanquished in a war, civil war or internal conflict by the victors
- The dispossession of those branded as the enemies of the state or of society

Driving Force for Land Restitution: The main driving force for a country to implementing such policy is concerned mainly with social justice by the restitution of land property rights. But it is not the only one; Land restitution is a policy that is taking place in several countries in the world with different driving forces that goes from recognition of indigenous and minority's rights to moving from command economy to market economy.

Some of the driving forces are the following:

1. Recognition and protection of indigenous land rights:

Indigenous rights in the past decades have been a matter of continental and international discussion. In Latin American many countries have been recognized as multi ethnic and multicultural societies that provides special protection for indigenous lands. In the ILO indigenous and Tribal Peoples Convention N. 169 on what is related to land, between others it is established that the states must:

- a. Identify indigenous lands and guarantee the effective protection of rights of ownership and possession.
- b. Safeguard indigenous right to participate in the management and conservation of resources.
- c. Consult with indigenous peoples over mineral and surface resource development and any policy that could affect them.
- d. The possession and property right will have to be recognised the towns interested on the land or territory that they had traditionally occupy.

2. Internal Displaced People

The property rights of displaced people are protected by international law. The property is protected from destruction and illegal appropriation which could end in a restitution of

Property rights. The reasons that motivate the displacement of people are many: could be policies of apartheid or ethnic cleansing, armed conflict, large-scale development projects, in cases of disasters or when it is used as a collective punishment. In any case the Human Rights Guiding Principles on Internal Displacement protect their property rights as it is stated:

- I. No one shall be arbitrarily deprived of property and possessions.
- II. The property and possessions of internally displaced persons shall in all

Circumstances be protected, in particular, against the following acts:

- (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;
 - (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.
- III. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use (Human Rights, 1998).

Only the guarantee of the end of the causes that motivate the displacement and the security of displaced people to return to the place they left and the restitution of their property rights could ensure their right to return home.

3. Environmental Protection

This driving force is very much related to the right and recognition of indigenous land rights and the right they have to claim back the lands they once owned. There are three main conceptual approaches to indigenous land rights.

- ✓ Protective approach: indigenous people need special protection
- ✓ Right based approach: indigenous people have special rights to land and resources under

the parameter of multicultural and multiethnic states

- ✓ Environmental approach: argues that indigenous people have great capacity to manage natural resource in fragile areas

The environmental approach takes the protection of the environment as its main point, some environmentalists see indigenous people as the best keepers or protectors of the rain forest and fragile ecosystems. It is recognized as a special value the relationship indigenous people have developed with the land, not seen a commodity, but as the space that supports it.

- e. Whenever it is possible, these towns must have the right to return to their traditional earth as soon as they let exist the causes that motivated their transfer and relocation.

The UN Draft Declaration on Indigenous Rights reiterates the preference for restitution of land, but leaves open the possibility of alternative compensation; Article 27, notes:

"Indigenous peoples have the right of restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used. Which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to have an compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size, and legal status."

4. Human Rights Violations:

One of the Human rights stated under the Universal Declaration of Human Rights Article 17 says as follow:

1. Everyone has the right to own property alone as in association with others
2. No one shall be arbitrarily deprived of his property (UN, 1948)

In the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of Human Right restitution appears as the way to protect these human right and restoration as compensation is included.

Restitution should, whenever possible restore the victim to the original situation before the

violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship, return to their own residence, restoration of employment and return of property.

5. Conflict Resolution

Land Conflicts are very complex problems and they usually don't have one single origin, they have multiple causes that articulate juridical, cultural economic, political, ethnic and religious facts. Usually all these facts have an historical evolution and have different shapes through time. In social sciences, conflict is a general denomination for the differences such as tensions, rivalries, discrepancies and disputes. Fights of different intensity could happen between different social units.

The natures of the land conflicts are many:

- As the result of Land Policies: Collectivization, expropriation, policies of apartheid or ethnic cleansing etc.
- Overlap between customary and statutory law
- Unclear definition of property rights, double titling
- National, District, Local or Parcel boundaries not defined; etc

In some of these Conflicts, Land Restitution is a way to solve this conflicts that in some cases are the beginning of a process of reconciliation of a country.

Development; physical, cultural and religious. Under this environmental approach land restitution becomes a driving force (Plant & Hvalkof, 2001).

5. Poverty alleviation

Land policy which main objective is, fight against poverty and uses the Recognition, Restitution and Regularization of individual or communal property rights, as a way to raise from poverty providing tenure security that enables owner's access to financial markets.

6. Economic Growth

Due to world globalization of the economy and the change of political regimes in the world especially in formerly communist's countries; land restitution is seen more as a privatization

of properties. From an economic point of view, it has significant implications for the functioning of the property markets. In countries where these occurs, it has an impact on foreign investors, who have interest in invest in real estate.

It means that owners, who previously thought they had good title to a property, no longer enjoy this. The wealth of the previous owner is destroyed or, at least, reduced. Restitution is therefore associated with the redistribution of wealth. Often the owner, who had previously enjoyed a good title, was the Government and the new owner is a private individual. Restitution is therefore one of the means by which private property markets and individual decision-making over real estate has been created in transitional economies.

4.2. Land Restitution Related Policies

Land Management: Land management includes the formulation of land policy, the preparation of land development, land use plans, and the administration of variety of land related programs. It also included the processes of decision making whereby resources are allocated over space and time. This according to the aspirations and desires of man within the framework of his technological inventiveness, his political and social institutions, and his legal and administrative arrangements.

Land management is the process by which the resources of land are put into a good conception. It covers all activities concerned with the management of land as a resource both from, an environmental and economic perspective. It can include farming, mineral extraction and estate property, estate management, and physical planning of towns and the countryside. (ECE, 1996)

Land Administration: Land administration helps to fulfill the distributive function of land management. The main task are organizing, directing and controlling the land registration systems. In turn, land registration is the major means by which the information management of land administration is achieved.

The UN-ECE defines land administration as the processes to determining, recording and disseminating information about the tenure, value and use of land. When implementing land management policies it is to considered include land registration, cadastral surveying and mapping, fiscal, legal and multi-purpose cadastres and land information systems (UN-ECE,

1996).

Dale and McLaughlin (1999) define land administration as the process of regulating land, property development, the use and conservation of the land. Part of this definition, is gathering of revenues from the land through sales, leasing, taxation and the resolving of conflicts concerning the ownership and use of the land. They identify three attributes of land: Ownership, Value and Use. Furthermore they divide the land administration in four functions: Juridical, Fiscal, Regulatory and Information management.

Components of Land Administration: The following definitions of the components of land administration:-

- **Land Registration:** Land registration provides the means of recognizing formalized property rights and regulating the character of transfer of these rights. Land registries document assure the certain interests in land included information about the spatial extent of this interest. They also provide the names of the individuals, to whom these interests are related.
- **Land Valuation:** Land, seen as a resource is one of the basic elements from which a Country can obtain wealth. Land as capital and labour are considered by classic economy as the major generators of wealth for the economy. One of the ways to generate this wealth is the use of taxes. The claims of taxes on land property are based on the value of the land. This value is defined by a variety of factors that include the quality of land, legal constrains, the intended use of the land and the general state of the local economy.
- **Land Use:** Land use has many definitions and interpretations for example in the context of sustainable development. Defined as a economic and cultural activities practiced upon the land. These activities are object of regulation and restriction according to the authorities. From a land administration perspective all this activities and restrictions which take place in the land, should be recorded.
- **Cadastral Surveying:** Cadastral surveying is the term generally used to describe the gathering and recording of data about parcels. Cadastral survey is concerned with geometrical data, size (significant one), shape and location of the parcels.

4.3. Land Restitution and Land Markets

The equitable principle in contracts and quasi contracts is that one party shall not unjustly enrich itself at the expense of another. The party that has unjustly enriched itself may be obliged to make restitution to the other party. In principle, the party who has been unjustly enriched could be either the vendor or the purchaser. However, in situations in which governments have adopted restitution policies, it is normally the "vendor" who is compensated on the grounds that it was his property that was unjustly expropriated through an enforced transfer. The key to the notion that restitution is an appropriate response is that the enrichment of one party has been *unjust*.

The enrichment of one party to a transaction is not by itself reason for restitution. In an efficient property market, transactions are voluntary between willing buyers and willing sellers. Each party in its own estimation judges the transaction to be in its own best interest, otherwise what a voluntary act is will not take place. Each expects to be enriched by the transaction. Of course, the expectations of one party may not subsequently be realised but, unless the reason for this is fraud, negligence, or misrepresentation, there is no reason for there to be restitution. Bad judgement does not necessitate compensation of the sharing of another party's profit. The enrichment of the other party in such instances cannot be said to be unjust.

Efficient markets require the activities of arbitrageurs. They buy at one price in anticipation of selling at a higher price or sell in the expectation of a price fall. Their activities serve to equalise prices between different parts of a market so that a single market-clearing price prevails. They can trade profitably only if they have access to information that is not available to the other parties with whom they deal. In buying and selling, they cause demand and supply to change, which alters the market price. In this way, they are obliged to share their knowledge with the market as a whole so what was private information becomes public knowledge. For example, a housing developer may purchase land from a farmer at its agricultural value in the hope that in the future a new town plan will rezone the land as development land, thus causing its price to increase. The developer is relying upon his experience to enable him to judge the probability of gaining town planning consent for a change of land use more accurately than the farmer. He is also likely to have a portfolio of several pieces of land around a number of different towns so that his profit is not dependent on the probability of gaining consent for a

change of use on a single piece of land, but rather on the probability that consent for change of use can be obtained on a proportion of his portfolio.

Buying and selling at a profit or selling ahead of a price fall cannot be regarded as unjust enrichment providing that the transactions are voluntary. Governments may be obliged to police markets to ensure that they are fair to both buyers and sellers and to market insiders and outsiders. Unjust enrichment can still take place in an efficient market, but this is likely to be the result of fraud, negligence, malfeasance, duress, undue influence, or misrepresentation, for which there ought to be appropriate legal remedies for those individuals affected. Vendors and purchasers have only themselves to blame if they fail to take appropriate professional advice or if they fail to acquire the necessary Information, for example, by not commissioning a survey of a property or searches of title. One cannot argue that there has been unjust enrichment if enrichment has come about because of one's failure to act prudently.

This module is not concerned with individual claims for restitution that may, for example, be based on one party to a voluntary transaction claiming misrepresentation by the other party, or failure of consideration, or breach of contract. It is a function of government to ensure market efficiency by putting in place the legal infrastructure to deal with such cases. Rather, it is concerned with the policy of providing restitution to those whose real estate was forcibly removed without their receiving adequate compensation. It is concerned with situations in which one group has unjustly enriched itself at the expense of other groups or individuals through the forcible removal of property from its owners.

The forcible removal of property and the resulting unjust enrichment of a group can happen in a variety of ways, including:

- Collectivization so that individual property is expropriated and replaced by ownership or control by the state or collective organization;
- Forced sales at below market prices;
- The dispossession of the vanquished in a war, civil war or internal conflict by the victors;
- The dispossession of those branded as the enemies of the state or of society;
- Ethnic cleansing in which a social group is driven from its property;
- Colonization;

- Treaties in which land transfer was not the result of informed consent as one party had different concepts of land rights from the other.

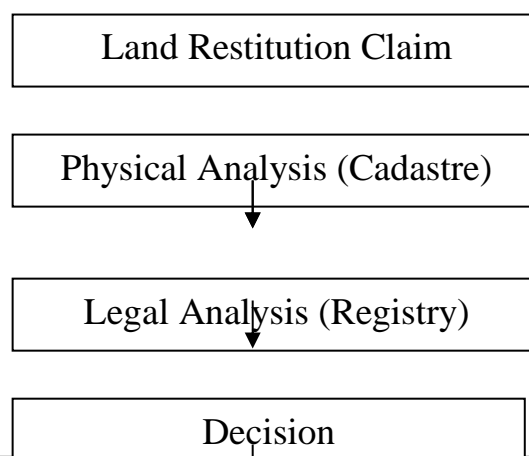
Restitution policies are concerned with:

- rectifying expropriations where no, or inadequate, compensation was paid;
- situations where the expropriation was discriminatory, and;
- situations where the expropriation was unjust.

Individuals or groups can be deprived legitimately of their property if this came into their possession as a result of criminal or illegal activities. Such expropriations can be regarded as reversing unjust enrichment. Those who cause wars or other conflicts can be obliged to make reparations to those who have suffered as a result. Not all expropriations can be regarded as unjust or to require restitution. The central question behind restitution policies is whether they are necessary and/or appropriate to correct past injustices. This means determining whether the past enrichment of a group has been unjust. Specifically, it means determining whether past expropriations were legitimate or whether they were discriminatory or unjust. Expropriation can be argued to be unjust if it is done in a manner that violates the human rights of those who were dispossessed of their property.

4.4. Land Restitution Instruments

As it was stated in the definition of land restitution, the main purpose for Land Restitution is the achievement of social justice. The reparation in cases when people lost their property rights is not only land restitution, but also compensation and reallocation. As it was stated in the definition of land restitution, it is not only the restoration of property rights when possible but also the compensation or reallocation of the same value of the lost property. Figure 5.2 shows the ways of restitution.



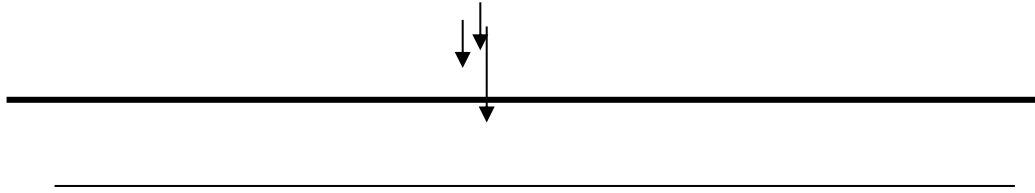


Figure 1 and Restitution Processes.

4.5. Country case studies

Land Restitution is a policy that has been implemented in various countries all over the world. A review of some of these international experiences is conducted in order to identify the way this policy was formulated and implemented.

The countries selected for the case study, are countries in some cases with more than ten years' experience running land restitution process (Bulgaria, South Africa, Peru and Chile. This is to say, a countries define as multicultural.

Bulgaria: Land restitution in a country of moving economy, from command economies to market economies.

South Africa: Land Restitution in a country where discriminatory law stripped indigenous people from their land and addresses injustices from apartheid.

Peru: Land Policy implementation in the Latin America context, land restitution used to restore property rights of indigenous communities and natives, the main task was the improvement of tenure security as a way to rise from poverty.

A. Restitution in Bulgaria

Bulgaria, like all the countries of central and Eastern Europe is undergoing rapid change, politically, socially and economically. Bulgaria is moving towards a market oriented economy the classical economic theory identifies the resources of capital. Such are labor and land as the basic components which will determine their future wealth. The status of private property is a major difference, perhaps the main force between capitalism and communism. For Bulgaria the land restitution is seen as privatization process.

There are significant differences between the general definition of the word "restitution" and its meaning within the context of Bulgarian land reform. In Bulgaria, "restitution" does not stand for the process of returning all seized or expropriated property by the Communists during their rule; legislators concluded this option was logistically impossible. Rather the restitution process has been a narrow program, designed to provide compensation for the people who are able to satisfy several necessary preconditions. A sizable number of Bulgarians who apply for restitution cannot meet this heavy burden.

Historical Background: The pattern of land tenure and ownership in Bulgaria has been as complicated as the country political history, it is a sequence of different historical and political facts that evolved and change at the present day.

- 1904, the first Nation's law on real property rights based on the French Civil Code, by Law of Properties, Ownership and servitude's.
- 1944, after the Russian occupation, many changes concerning the ownership rights to all types of property were made. The private means of production was expropriated and State ownership became predominant. Private ownership was prohibited and replaced by the concept of public ownership, accompanied by making allowance for "personal ownership". This allowed individuals to possess only certain limited real property and other objects needed specifically to satisfy their personal needs.
- 1951, a new Ownership Act was adopted formally replacing the earlier 1904 Law of Properties and by 1956 the first agricultural co-operatives were organised.
- 1971, the old "Dimitrov" constitution of 1948 was replaced with a new version. Contain articles specifically allowing the expropriation of property in a variety of instances. Though "personal property" was still theoretically allowed, in practice "the State could base on the
- Build-up and Regulation Plan (BRP). Expropriate any 'personal property' at any moment even if this was the person's only property.
- 1989, the quarter-century Communist dictatorship collapsed together almost half century of Communist dictatorial rule.
- 1990, the Bulgarian Constitution, as well as the Ownership Act were amended and supplemented. In July 1991 replaced by a new Constitution. Bulgaria continued on its transition from totalitarian dictatorship to democracy and from centrally planned system to free market economy.

Strategy and Policy: Bulgaria as many countries of central and eastern Europe are

undergoing rapid change, politically, socially and economically. It is moving from command economies towards market oriented economies. Classical economic theory identifies the resource of capital, labor and land as the basic components which will determine their future wealth. The status of private property is a major difference, perhaps the major difference, between capitalism and communism. The transition from a centrally planned economy to a free market economy in the Republic of Bulgaria called for changes in the agricultural sector. In the early 1990s Bulgaria launched extensive reforms. The principles of private real rights and liberalized land markets were restored in the legislation. Several land restitution laws were passed, affecting farmlands, forests, nationalized immovable properties, and expropriated properties. The land restitution policy implemented in Bulgaria is seen as a process of privatization and as a way to move from command economy to a market oriented economy.

Legislation: In February 1991 a Law of ownership and use of farming land were passed. This law stated that the land expropriated by the State would be returned to the rightful owners or heirs before 1946. Land is to be returned in equal quality and quantity to the legitimate proprietor. The main objective of the Law is restitution of private property rights to the rightful owners or their heirs. Under the Law of Ownership and Use of Agricultural Land (LOUAL) land can be restituted in the following two ways:

1. Restoration within existing or restorable old boundaries. Actual old boundaries that have been preserved on the terrain are defined with respect to topographical features.
2. Under plans for land reallocation which will take place in cases where it is impossible to provide evidence of boundaries but in which the former owners or their families are deemed entitled.

Organizations: The Land restitution in Bulgaria is conducted by three organizations: Municipal Land Commissions, Cadastre and Registry. The cadastral and land registration function is in radical transition. The old land administration structure does not efficiently perform its tasks, the major problems are:

1. Legal land records generated by land reform and especially by the subsequent conveyance are still kept in an outdated negative personal deed registration system. Covering only private land transactions.
2. The cadastral survey/mapping and land reform output information are kept by either the Municipal Land Commissions (MLC, Ministry of Agriculture and Forestry) for agricultural and forest domains, or by the Technical Services (TS, Municipal

Administrations) for the urban areas. As a rule there are conflicts between the records at the LC.s and at the TS.s, especially the edge-matching issues of land domains.

3. Maintenance of the cadastral survey/real rights record is now insecure; due to the registration system is not mandatory for transactions between public bodies.

In January I, 2001 the new Cadastre and Property register Law start taking place. The changes include the integration of the current fragmented cadastral survey/mapping records. Along with transformation of real right records into two institutions: the Cadastre Agency and the Registration Offices (RO) at the District Court combined with a parcel-based deed system. The development objective of project is to improve the coverage, completeness, accuracy, and responsiveness of the cadastre and real property registration systems. Therefore contribute to the development of secure tenure of real estate, the reform was broken-up into four components:

1. The first component is cadastre system development consisting in the design and implementation of a national cadastre system.
2. The second component is property registration system development. The purpose of that is there is a start-up of a new real property based system in all 112 district courts.
3. For the third component of the project there will be cadastre and property registration operations. Introducing the property-based registration system and the creation of an effective data link exchange between all agencies.
4. The last component of the project management and development of a policy and legal framework. It will finance the cost of project implementation unit which is responsible for training activities and technical assistance.

Process: The institutions primarily responsible for the initiation of land restitution process throughout Bulgaria are the 30 I Municipal Land Commissions (MLC). The procedures for restitution of property rights are of long term. The following stages are involved in the land restitution process:

1. Former landowners or their heirs petition the relevant MLC for restitution of their property.
2. Within one month of receiving of the petition, the MLC should issue a decision on the reinstatement of property rights, this is either:
3. A sketch for each plot must be prepared by the MLC with reference to existing or new cadastral maps. Owners are considered to be granted into possession. On receipt of the

sketch from the MLC.

The notary office issues a legal deed of ownership based on the MLC final decision and the sketch of the plot. After the amendment of the law in 1991 final decisions issued by the MLC along with the sketch of the plot. Juridical power corresponding to the notary deeds. Landowners can use them as collateral for any land transactions.

B. Restitution in South Africa

It is well known that the political history of South Africa has given rise to inequalities in the ownership of land. South Africa was a site of prolonged struggle between native peoples, and European colonists throughout the eighteen and nineteenth centuries, which saw the defeat and subjugation of the African chieftaincies and the loss of the majority of territory to white settlers in the twentieth century, under policies of segregation and apartheid. The separation of people along racial lines was accompanied by massive forced removal of African, Indian and colored people. Together with the widespread dispossession of land and other properties, the severe restriction of social economic and political rights. The result was one of the most unequal societies in the world with a relatively small white minority enjoying high standards of living. The great majority of the black population consigned to a life of extreme exploitation and poverty.

Historical Background: South Africa suffered a long history of colonization, racial domination and land dispossession. Resulting in a bulk of agricultural land owned by the white minority. Black people resisted being dispossessed but were defeated by the superior arms of the newcomers. Although dispossession of black people initially took place through conquest and trickery it came to be a major policy of the state supported by an array of laws from the early days of colonization. The most systematic land dispossession by the state came into effect after 1913.

The 1913 The Native Land Act apportioned 8% of the land area of South Africa as reserves for the Africans and excluded them from the rest of the country, which was made available to the white minority population. Land available for use by Africans was increased by 5% in 1936 bringing the total to 13% of the total area of South Africa. Thus 80% of the population was confined to 13% of the land while less than 20% owned over 80% of the land. Black people were prohibited from buying land in areas outside the reserves. The objectives of this Land Act were mainly three:

- Firstly to make more land available to white farmers.
- Secondly, it was to impoverish black people through dispossession and prohibition of forms of farming arrangements that permitted some self-sufficiency and they became dependent on employment for survival, thus creating a pool of cheap labour for the white farms and the mines.
- Thirdly, there was also the purpose of enforcing the policy of racial segregation, which had previously not been consistently enforced.

The 1950 The Group Areas Act, passed soon after the National Party took over government in 1948. Used by the apartheid state to carry out forced removals of black people from land declared to be white areas. To complete so the policy of racial segregation by removing colored" and Indian people from so-called white areas. Remain black farmers who had escaped the 1913 Land Act because they had title deeds to their land.

In 1951 The Prevention of illegal Squatting Act augmented the Group Areas Act and other racially based land laws. Making provision for the eviction of people who had no formal rights on land. It authorized the state and private landowners to evict people and demolish their homes without court orders. It is estimated that 3.5 million people were forcibly removed under various apartheid laws between 1960 and 1983.

In 1994 the transition to democracy, liberation and democracy were ultimately not won through armed struggle. But won through negotiated settlement which necessitated compromises on the issue of land. The policy of the incoming government of the African National Congress (ANC) was to effect land reform that would be a significant extent, ameliorate the injustices of deprivation and denial of access to land. In the policy document, the Reconstruction and Development Programme (RDP) the ANC undertook to carry out, land reform under three major strategies: restitution, redistribution and tenure reform.

Strategy and Policy: Land its ownership and uses has always played an important role in shaping the political, economic and social processes. Land is an important and sensitive issue in South African Past. Land policies were a major cause of insecurity, landless citizens and poverty in the country. The policy for the country as a corner stone for reconstruction and development was meant to deal effectively with:

1. The injustices of racially based land dispossession of the past

2. The need for a more equitable distribution of land ownership
3. The need for land reform to reduce poverty and contribute to economic growth
4. Security of tenure for all
5. A system of land management that will support sustainable land use patterns and the rapid release of land for development.

With the advent of majority rule in South Africa following the 1994 elections, the government was under constitutional obligation. Making land reform as a priority by means of redressing the inequalities of the past. The White Paper on Land Policy was drawn up in 1997 as the policy document that would facilitate the redress of this inequality.

Land Reform Policy Objectives:

I. Redress the injustices of apartheid

2. Foster national reconciliation and stability
3. Underpin economic growth
4. Improve household welfare and alleviate poverty

It listed its objectives under what is called the Three Pillars of Land Reform: Redistribution, Restitution and Tenure Reform (Commission of Restitution, 2003).

Redistribution

Objective: Provide the landless, disadvantaged and poor with the ability to acquire land for residential and productive uses.

Beneficiaries: The poor and marginalized communities as well as those who wish to acquire more land to benefit the rural and urban poor, labor tenants, farm workers and new entrant's to agriculture. Mechanism: The Settlement Land Acquisition Grant of R 16,000 per family for the purchase of the goods and services.

Restitution

Objective: Enable people who have been dispossessed of their land to receive compensation in the form of the land they lost, alternative land or alternative land and cash settlement.

Beneficiaries: Those dispossessed of their land through racially biased legislation.

Mechanism: Land Claims Court and Commission.

Criteria: A person or community dispossessed of property after 19 June 1913 as a result of

racially discriminatory laws or practices.

Tenure Reform

Objective: Strengthen land rights of people with insecure land rights.

Beneficiaries: Those people who hold on farms, those who were moved to or lived in the old Bantustans and Colored Rural Areas, those living as residents on church-owned land etc.

Mechanism: Land Rights Bill is being developed, interim Protection of Land Rights Act was passed in 1995. There is also the Land Reform Act which protects labor tenants and their families. The Transformation of Certain Rural Areas Act which will transfer 1.7 million hectares of land to those people in the former "colored" reserves. The Extension of Security Tenure Act protects the more than 6 million people living in the former Homelands

Legislation: South Africa's land restitution process was born out of the Constitution of 1993. This Constitution conferred upon persons who were dispossessed of their land under racist legislation. The right to claim restitution against the State. Further it mandated the establishment of a Commission on the Restitution of Land Rights and a Land Claims Court to give effect to this process.

One of the very first pieces of legislation that the new government promulgated was the Restitution Act No 22 of 1994 as amended. The main aim of the Act was to provide for the restitution of land rights to persons or communities dispossessed after 19 June 1913 as a result of past racial discriminatory laws or practices. The Restitution of Land Rights Act was amended by the Land Restitution and Reform Laws Amendment Act 63 of 1997 by the inclusion of a new Chapter III A. The chapter allows claimants to approach the Land Claims Court directly without first going to the Commission.

The restitution process enables individuals (or their descendants) and communities who were dispossessed of their rights of land. In terms of racially discriminatory laws or practices have the right to claim restitution against the State? All claims must first be submitted to the Commission on the Restitution of Land Rights whose role is to investigate the merits of claims and attempt to settle them through mediation. Where a claim cannot be settled through mediation, the Commission must prepare a comprehensive report. Refer the claim to the Land Claims Court for final determination. Successful settlements must also be referred to the Court in order for the Court to scrutinize them and give them the status of court orders. Thus all restitution claims ultimately reach the Land Claims Court. (White, 1998)

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Organizations: To investigate and adjudicate on land claims South African Government order to implement the land restitution policy based on the Land Restitution Act. Which provides the establishment of an independent Commission for Land Restitution and Land Claims Court. The main objectives of these two organizations were:

- Provide equitable redress and restoration to victims of these dispossessions; particularly the
- Landless and rural poor.
- Contribute towards equitable redistribution of land in South Africa.
- Promote reconciliation through the restitution process.
- Facilitate development initiatives by bringing together all relevant stakeholders, especially the Provincial Government and Municipalities.

One of the objectives of the constitutional principle of restitution is the restoration of land. Lost by parties dispossessed by virtue of racial legislation. Other forms of restitution such as monetary compensation and provision of alternative land are possible.

Land Claims Court is to decide which form of restitution is appropriate and fair in each case. Restitution can take the form of returning the original piece of land that was taken (this is called restoration). If this requires expropriation of the current owner, he or she is entitled to fair compensation. Restitution can also take the form of granting the claimant alternative state owned land or monetary compensation. Where compensation is payable either to a claimant or to a current owner who is being expropriated. It is also the task of the Land Claims Court to decide on the amount of compensation. South African Land Registry Organizations
The Department of Land Affairs (DLA) is mandated with the distribution of Geo Information in South Africa. It consists of the National Mapping Organization (NMO) and the Deeds Office. The two departments are under different ministries but share their information. The NMO is reorienting its services in order to meet the land information requirements of all South Africans especially the Landless.

The Deeds Office maintains centralized modern deeds registers, which are computerized and form part of a Wide Area Network (WAN). Processing of Deeds, changes and enquiry's are done from eight deeds offices. The department provides an online enquiry facility where users can access the deeds database. The National Mapping Organization and the Deeds Department form the Land Registry Organization in South Africa.

The relative successes of the Restitution and Redistribution policies can be attributed to their association with the existing cadastral system. Redistribution is simply a transfer of ownership through the current registration system. Restitution although more complex, involves either a transfer of ownership or the valuation of historical rights. With a view to comparable redress through either financial compensation or alternative land. (Dylan RAWLINS, South Africa) **Process:** Clear Restitution Claims Process. The Commission crystallized the manner in which claims are to be processed and this includes the following phases:

1. Lodgment and Registration (closing data 31/12/98. establish database)
2. Screening and Categorization (initial screening, preliminary option, advanced screening, preliminary feasibility, batching and prioritization, preliminary field research)
3. Determination of qualifications in terms of Section 2 of the Restitution Act (assessment of gazette needs, assessment of notification needs and the gazetting/notification of the interested parties),
4. Preparation for negotiations (project plan for claimants, representation of claimants if required, research in order to obtain any outstanding information, valuations, Monitory Value of Claim (MVOC), verification, preliminary planning, preliminary case report, negotiation position, prepare and obtain mandate.)
5. Negotiations (agreement, preparation of memorandum for approval, Deed of Settlement, deal with disputes, obtain Ministerial approval/Court Order)

Implementation/Settlement support and development planning (detailed land planning, transfer of land, development funds, grants, post-award support and handover. Financial

C. Restitution in Peru

The History of Peru is not much different than the others countries in South America. Peru was firstly populated by Andean civilizations until the 12 of October of 1492 when was conquest by Spain. The process of colonization was slow and last until 28 of July of 1821 when Peru obtains its Independence from Spain. To the original Andean population was added the Spanish and different times of History the Africans and the Asians. The Andean civilizations were disposed of their lands in the Spanish conquest. The process of recovery of their lands was slow and in some cases were product of social mobilizations that reach certain levels of violence. The land matters in Peru runs from the recognition of customary lands possessed by Andean Communities (Andes Region), Peasant Communities (Coast

Region) and Natives (Rain Forest). The restitution of land what was Displaced People by Terrorism and Drug Cartels. Has to do also with the registration of lands, which is one of the objectives of the latest governments as a way to raise from poverty, providing secure tenure, formalizing informal tenure and giving the possibility to access to financial markets. The latest land projects in Peru where related to the formalization of informal tenure in urban areas but in the last years it has done also in rural areas.

- 1824 - 1825 the first legislation of the Republic considered that the Andeans were the legitimate proprietors of the lands. This legislation gathered under the Customary Right statement "the single land possession and operation by the Indians of the Land, turns them into owners". Nevertheless, this attempt of legitimating did not have the opportunity of being protected through a registry. This made possible that the land lord groups found mechanism which they allowed them to neutralize the principle of the Customary Right and to undress of land to the minorities.

- 1920 The new Constitution considered that the best way to protect the indigenous rights and the lands occupied by them was concentrate into Communities. The land property rights of these Andean communities were declared imprescriptibly, untouchable and inalienable. With this, the Government far from solving the problem which was done to confirm despoliation previous to this date. Forcing the Andeans to resign the right of individual property and imposed to a communitarian system the so called operation of the Earth.

- 1950 The relation between land lords and Andeans still continue with difficulty. Land Lords continue expanding land. This turn into conflict and became critical until it reach levels of violence especially in the south region of Peru. This conflict continues till 60's. The legal answer of the State was the Agrarian Reform.

- 1964 and 1969 The Agrarian Reforms tend to solve unequal distribution of land and the high levels of concentration. The Agrarian Reformation almost imposed a system of collective property creating near 1500 companies. Associated by farmers, without considering the opinion of the own farmers. This Agrarian Reform established minimum and maximum sizes of rural properties. Under the state 'the land is for whom works it' land expropriations took place. In most of the cases the expropriations processes were not ended and land was re allocated. This made almost impossible the registry of the new

owners.

- 1980 As from the 80's two new problems appear, terrorism and drugs cartels. In both cases violence caused the displacement of communities of Andeans and Natives. The results of this violence and displacement of the communities was the lost of properties which in many cases was not registry due to reasons above explained.
- 1991 As many other Governments looking for the modernization and development of the economy, Peru put special emphasis in the subject of the security this means in the social, political and legal aspects. In the Peruvian case it was necessary to generate the conditions for a climate of legal security that allow investment and open rural market. This was possible with the Law of the Agrarian Transformation. The base for this modernization of the agricultural sector was based on the provision of tenure security. This means the formalization of property rights the registration of rural properties was at that moment not more than the 8% of the total rural lands.

Strategy and Policy: The main task of the Peruvian Government to achieve economic growth and heal poverty was between several parties, the provision of tenure security. This task was conducted first in urban areas and then to rural areas. This project was initiated in the 90's and continues running nowadays. The project of formalization of informal tenure included the urban and rural informal lands. The project included three action lines:

- A. Reinforcement and creation of organizations charged to conduct the policy as Cadastre and registry organizations
- B. Modification of the current institutional and legal frame work
- C. Program of regularization of land property rights in country scale that will reduce individual costs

The implementation of the policy took several years and included also several phases as follows:

- 1990 - 1993 Pilot project "Land Titling and Registration Program" for the formalization and registry of informal property in urban and rural areas. This included the development of Procedures, Methodologies, Technologies and Systems for that purposes. It also includes the creation of new institutions charged to conduct the process.

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- 1993 - 1996 Creation of the institutions charged to conduct the Land Titling and Registration Program, for the Rural Lands: SUNARP National Superintendence of Public Registries and PETT Special Project for Land Titling (Rural Cadastre). In the case of urban areas: RPU Urban Property Registry and COFOPRI Commission for the Formalization of Informal Property (Urban Cadastre)
- 1997 Peru presents this Titling and Registry Program to the World Bank in order to ask for financial support. The main topics to be assessed were Procedures, Methodology, Technology and Systems.
- 1998 World Bank agrees in the provision of financial support for this Land Titling and Registry Program.

Legislation: A key element of the structural reforms launched in 1991 was the government's plan to afford certainty as to ownership rights to land, formalize land tenure, particularly in rural areas, and expedite title registration. In pursuit of those policies a set of important laws was passed governing ownership rights. A corpus of laws liberalizing individual ownership of land was put into place in the early 1990s, but the kind of institutional support and financing needed to implement the legislation on a large scale was not forthcoming.

- Legislative Decree 667 of 1991 regarding the Rural Property Register, which established an administrative procedure for acquisitive prescription and revamped the Rural Property Register
- Decree-Law 653 of 1991 Agricultural Sector Investment Promotion Law, which guarantees private ownership of land and permits its sale, lease, and use as mortgage security
- Law 26505 of 1995, aimed at spurring private investment in rural land and doing away with maximum and minimum land-ownership requirements
- Law 26845 N° - Law of Degree of Territories of the Communities Farmers of the Coast, published the 26 of 1997 July
- Law N° 24656 - General Law of Communities Farmers, published the 14 of April of 1987
- Law N° 24657 - National Necessity and Social Interest Declare of Deslinde and the Degree of the Territory of the Communities Farmers, published the 14 of April of 1987

Organizations: To implement the land policy in Peru that will provide and improve tenure

security it was necessary the creation of new organizations that will carry out the policy. The policy will cover informal urban tenure and separately rural informal tenure. For that reason were created two different cadastral organizations and also two different property registries, one for rural areas and the other for urban areas.

Cadastral Organizations: COFOPRI Commission for the Formalization of Informal Property: COFOPRI is a decentralized public organism of the Ministry of Justice that acts like Technical Secretariat of the Provincial Commissions of Formalization of the Informal Property making the physical and legal cleaning of urban estates at national level. The purpose of providing the population with land titles is to improve legal security that allows the access to financial markets to thousands of families of limited resources.

PED Special Project for Land Titling: The PETT is the technical and normative organ of the Ministry of Agriculture that is in charge of the formalization of rural land tenure at a National level at a Legal and Physical level. This work is developed in three areas: Rural Informal Lands, Vacant lands dedicated to agriculture and Native and Peasant Communal Lands. Also, the PETT is the organism in charge to carry out the, modernization, consolidation, conservation and update of the Rural Cadastre of the country.

Registry Organizations: RPU Urban Property Registry: Urban Property Registry is in charge to register properties located in slums and popular urbanizations at national level and rural estates in the Department of Lima. Account with offices interconnected at national level, which allows the accomplishment of proceedings from and for any part of the country in where the Registry has offices. It is transitorily an organ dispersed that has national competition, with registry, economic and administrative autonomy.

SEPR Special Section for Rural Property: This is a registry for rural property attached to the SUNARP (National Superintendence of Public Registry) charge for the registry of rural properties.

SUNARP National Superintendence of Public Registry: Is the organization in charged for the property registry and the one who is carrying out the process of integration of the urban property registry and the rural property registry.

Process: The formalization of property rights in rural areas is a program conducted by the state. So between deferent parties done by the cadastral organization has three main phases

(www.cofopri.com.pe).

Preliminary analysis:

1. Identification of informal tenure rural areas
2. Compilation of existing graphical information of the area
3. File with preliminary information of the area, legal and graphical

Physical Analysis:

1. Generation of graphic information and maps (Aerial flight, ground control and triangulation, photogrammetric restitution, editing, unique identifier)
2. Identification of restricted areas (archeologically, reservoirs and risky areas)
3. Identification of registered areas
4. Definition of final maps

Legal Analysis:

1. Identification of parcels and boundaries
2. Definition of legal file
3. Pre evaluation of legal file
4. Cadastral certificate
5. Registry of the property
6. Issuance of titles of ownership

D. Restitution in Chile

Chile's complex history arose in early 1520 after the discovery of the Magellan Strait. The strategic geo-political location of the country presented an ideal post for those who traded by sea and its vast mineral resources made it a prime target for colonization and economic exploitation (Contreras 1983). In addition, the geography of Chile allowed for a wide range of climatic conditions making the country rich in natural resources (Derbyshire and Derbyshire 1999). During that time Chile was under Inca rule and became part of the Spanish Empire twenty one years later. Importantly, several tribes of indigenous peoples, which had high levels of sophisticated skills, inhabited the extreme latitudes. Amongst them were the Mapuche, long renowned for their resilience and their resistance to the influence of the first Europeans who colonised Chile (Contreras 1983).

History tells us that it was as a direct result of the clashes between the seafarers and the Mapuche, that the latter were relocated away from the strategic shipping routes to lands where they could be contained by the colonizers (Barros et al 1983). Legendary battles between the Mapuche and the Spanish conquistadores ensued resulting in considerable losses by the latter

(Contreras 1983). In 1818 Chile won its independence from Spain and later became renowned for her long parliamentary tradition, its advanced social welfare system, its European-influenced culture and for having one of the most advanced education systems in Latin America (WUS/CCHR 1982). It should be noted that, since those early turbulent times, Chileans resulted from a mixture between the Spaniards and the indigenous Indians (mainly the Mapuche) (Latin American Bureau 1983). In spite of that fact, Chile has throughout remained highly bound and divided by class differences (Derbyshire and Derbyshire 1999).

From the above it can be argued that dispossession of real estate started when the conquistadores and the first colonisers arrived in the country. In the first instance, the indigenous peoples were dispossessed of their land, their lifestyle and of the prospect of perpetuating their culture for future generations. The result of such a deprivation has meant that some of Chile's indigenous peoples (such as the Onas) have become extinct. In spite of recent legislation designed to benefit the Indigenous Peoples of Chile, poverty and exclusion have kept the Mapuche at marginal levels of socio-economic subsistence and at the periphery of educational attainment (Gacitúa-Marió 2001). Foreign ownership of natural economic resources (such as copper, nitrate, iron, timber and arable land) stripped the native population of the benefits that could have resulted from partaking in their exploitation and management.

Indeed, in the early nineteenth century, significant social discontent by the dispossessed forced successive governments to consider the issue of social and economic reform. Various political factions put forward electoral proposals designed to redress the deteriorating conditions of the peasants and the indigenous minorities and, although popular with the minorities and the liberal intellectuals, were resolutely quashed by military force. It must be noted at this point that the military have always been the traditional preserve of the middle classes. They have had connections with foreign powers, with strong interests in the political and economic control of their newly acquired investments.

A programme of agrarian reform was commenced in 1964 by the Christian Democrats. These reforms were slow and ineffective. Thus, it was not until the election of Salvador Allende in 1970 that a radical programme of social and agrarian reform was put into effect. The programme received Congressional approval and included the nationalization of foreign owned industries (like copper) and the expropriation of vast amounts of arable land from rich owners (mainly German) to be redistributed amongst co-operatives of land workers who, until then, had long worked in semi-feudal conditions (WUS/CCHR 1982). In addition, a social

housing programme was created. Until the Allende housing programme was put into effect, Chile's dispossessed had followed in the tradition of spontaneous land take-over much in evidence in countries of the (then) Third World. The programme of agrarian reform permitted the possession of a maximum of 350 hectares of arable land by a single owner.

When the nationalization of foreign-owned industry took place, the Allende Government compensated American corporations for the return of the copper mines to Chilean ownership. Extensive foreign intervention resulted. On 11th September 1973, a brutal military coup d'état suspended Congress, banned political parties and trade unions, and replaced civilian law with military law. Nationalized industries were privatized, their managers and employees lost their jobs, and anyone who professed sympathy towards the ideological programmes of the Allende Government (even if not a supporter) was tortured, taken to concentration camps, charged with offences under military law, disappeared, or was killed, or sent or forced into exile. In addition, the Mapuche were dispossessed of any land that had been restituted to them under the Allende Government.

Since the official end of military rule and a slow transition into democracy was started, various attempts have been made by the victims and their relatives to secure reparation and restitution. These attempts were informed and initiated by the findings of investigations carried out as part as the Chilean National Commission on Truth and Reconciliation (1993) which recommended a series of proposals for reparation. Importantly, while the crimes of the perpetrators were identified in what became known as the Rettig Report, the perpetrators themselves have been protected by an amnesty law (Flores-Bórquez 2000). There have been international attempts to secure reparation and restitution, as for example, when in 1998 General Pinochet was arrested in London and lengthy legal efforts for his extradition were made by several European countries (JUSTICIA 1999-2001). On the other hand, the torture victims and their relatives, the relatives of the disappeared and killed, as well as those who were charged under military rule, and those who were sent into exile have been excluded from making claims for reparation and restitution. Equally, returning refugees have faced difficulties in recovering their real estate and a significant number have had to resume life in exile. All these run counter to the van Boven Principles.

Those who during the military rule of General Pinochet benefited from unjust enrichment have continued to enjoy the proceeds from their unjust acquisition of various forms of real estate. Restitution has been partial and only affected a very few individuals who have

previously had the status of a *cause celebre*. Moreover, the award of partial restitution has prevented the recipients from pursuing other forms of reparation recommended in the van Boven Principles. In addition, those who in the early 1990s were sent into exile by Presidential Decree, still cannot return legally to Chile or be eligible for claims for reparation.

UNIT FIVE

PRINCIPLES AND STRATEGIES TO DESIGN AND IMPLEMENT LAND REFORM

UNIT OBJECTIVES

At the end of this unit, you will be able to:

- ☞ Understand the key principles of land reform design;
- ☞ Recognize the role of different stakeholders design and implementation land reform and other policy issues;
- ☞ Understand procedures to assess land reform;
- ☞ Know how to define a strategy and set of interventions; and
- ☞ Recognize monitoring and evaluation mechanisms of land reform.

Introduction

Dear students! given the multisector implications of land policy, land policy reforms cannot be addressed in isolation. Poverty Reduction Strategy processes provide a key opportunity to highlight the links between access to land and poverty and initiate reform where necessary. Land policy reform can make substantial contributions to poverty reduction, in removing obstacles on access to land for the poor, in giving those legal rights and access to credit through collateral, in giving people access to assets and economic opportunities linked to agriculture or natural resources, in forbidding land grabbing, encroachment and other processes of exclusion. Such mechanisms can strongly influence the poverty patterns in medium term. This unit provides detailed guideline information to support land reform implementation in developing countries.

5.1. Principles for Successful Land Reform

Dear distance learners! Can you mention all the principles of successful land reform?

Dear students! Have you tried to do the question? If your answer is no, please discuss with your friends and if your answer is yes, that is very good. Write your answer on a rough paper and try to relate with the following explanation.

Most countries have been engaged in various land-related measures, both to address perceived weaknesses of existing systems, and to establish new mechanisms for land management believed to be necessary to encourage greater growth, equity or environmental sustainability. Certain key lessons can be drawn from this varied experience and can be considered as principles. Detailed explanation about the principles is explained below:

Long Term Processes: Processes of land policy reform, changes to legislation, land rights registration and establishment of new structures with responsibility for land management and administration are likely to be long-term, complex and highly political. The choices made today will have long term consequences for the distribution of economic and political power, and access to economic opportunity for decades to come. Consequently, governments, donors and other groups involved in supporting these processes must be willing to take a long-term strategic approach, and make a commitment to see it through.

Promote Inter-Ministerial Work, With In-Depth Analysis Of Current Situations:

Land issues are multidisciplinary, and involve different ministries and institutions. Constructing a common framework of analysis, based upon field research, is necessary to achieve a consensus on the reforms needed, achieve a shared diagnosis of the causes of the problems, and work towards relevant and effective solutions. The range of sectoral policies having a bearing on land needs harmonizing to avoid fragmentation and contradictions.

Promote a Participatory Approach to Policy Making: There are many stakeholders in the land tenure debate. Governments need to listen to and engage with different actors, and understand the diverse range of interests at stake, providing them with a platform for discussion of policy options. If tenure policy is to be effective on the ground, it needs to respond and be “owned” by the many land users which it will affect. Strong political support for the reform is needed which has to be built over time. Supporting the interest groups campaigning for reform can contribute to build ownership and political backing. While such a consultative approach is essential to providing a voice to different constituencies, it is ultimately the duty of the government to make the political choices necessary.

Take Into Account The Distance Between Statutory Law And Local Practice: In many countries there are substantial gaps between what the law states and what actually happens on the ground. Such gaps can be the source of conflicts. Legal changes are more effective when they recognise and support broader social changes as in this case they can guide behavior in directions sought by government. Hence, new legislative provisions need to take into account the broad range of current land practices, aiming at their progressive adaptation rather than their mere replacement.

Identify Key Principles and Allow for Diverse Solutions within Them: Different situations require solutions appropriate to their specific circumstances. Land issues differ widely within a single country, as regards the pattern of land use, population density, strength of local structures and systems for regulating land rights. This argues for a focus on priority areas, where land must be tackled with urgency, and a readiness to tailor interventions to suit local circumstances, while conforming to the key principles formulated in the policy.

Take Implementation Costs into Account in the Design of Land Tenure Reform Measures: The costs involved in establishing new structures and procedures can be very substantial. A balance needs to be sought between designing a comprehensive set of structures and processes for managing land, and a minimalist approach, which is affordable. It may be better to opt for building on existing institutions, where possible, and establishing pilots to test out approaches for later replication. Similarly, it makes more sense to focus on areas of greatest priority rather than try for universal coverage. When titling or registering programmes are involved, costs of maintenance must be built into the calculations, as well as costs of the initial registration process. Similarly, the choice of technology will have to consider accessibility, effective use, the level of capacities needed, and the recurrent costs that it will generate.

Carefully Craft the Rules and Tools: As is wisely said: “The devil lies in the detail”. Rules, tools and procedures have to be carefully discussed, designed and tested, to avoid loopholes that could make the reform collapse or lead to unintended negative effects. Simple and robust methods are the key, while remembering that different stake-holders are likely to try to manipulate procedures to further their own interests.

Recognize That the Impact of Reform Depends on Changes in Practices and not on the Legal texts alone: A change in legislation is not in itself sufficient to achieve the broader

objectives sought by many reforms to land policy. For example, where land is redistributed to the landless, there may be a need for considerable financial and technical support for some years to enable new landowners to take advantage of market and other opportunities. Equally, the population needs to be familiar with new laws and procedures, if they are to benefit from them. This argues for the dissemination of texts in a form which is comprehensible and relevant to people's needs.

Ensure Widespread Dissemination of Information on the Scope and Content of the Reform As well as on the Policy, Legislation and Procedures: Failure to disseminate information properly about such laws negates the whole purpose of the reforms. The language and terminology of legal texts can be a major hurdle; therefore help is needed to translate the new provisions into the appropriate local languages and terms. However, given the high level of illiteracy among rural populations and particularly among women, non-written means of communication (radio, workshops, and extension work) will be required to inform all stakeholders of changes in their legal rights and associated implications.

Gender Issues Need a Careful Approach: Despite broad agreement in principle on the equality of men and women in land laws and policies, few countries have translated this into legislation and even when laws exist (as in Uganda) they have not been easily enforced. Reforms to the rights of women are unlikely to change the position they face in rural areas without parallel measures to promote awareness of these legal changes and to support those who stand up for their rights. While legislation makes it possible in theory for those who feel aggrieved to claim rights with judicial sanction, not everyone will gain by pursuing their formal rights in this way. Typically, women and men uphold traditional gender roles and relationships rather than formal rights and women lack the confidence, information, experience and resources to get what they are entitled to by law. Although the knowledge that they can ultimately turn to the law may help strengthen their negotiations. In some customary tenure systems women only have access to land, housing and property as daughters, mothers or wives? Many women therefore face the constant insecurity of losing their homes, land and livelihood if their relationship ends. Policy provision to increase access by women must be accompanied by the necessary support mechanisms (e.g. credit, information, training) to enable them to access, control and utilize land successfully.

The Rights of Minorities and Indigenous Peoples Are to Be Adequately Recognized: Measures to secure the rights of minority groups and indigenous peoples must be based on

the respect of their own laws and tenure regimes. Capacity building measures may be required to overcome entrenched prejudices in national administrations and to allow effective participation of these groups in the design and implementation of policy and legal reforms.

Land Policy Has To Include Sound Land Use Planning: Land is hugely variable, whether in quality, value, location or vulnerability to degradation. Land policy needs to take such diversity into account, in terms of tailoring rules and procedures for particular settings. A land use planning approach is sought which offers a consultative process, allowing provision for change of use, alienation of land for infrastructural needs in exchange for compensation, and incorporation of environmental principles and objectives.

5.2. The Role of Different Stakeholders

New land reform must fit within the reality of states establishing more democratic forms of governance at national and local levels, and should offer all citizens a guarantee of their rights and ways of addressing the problems they face. Given the current socio-economic context in rural areas, and the diversity of people and interests, policy should aim to provide a broad set of solutions, which can be tailored to the needs of different stakeholders and local circumstances.

It is government's responsibility to provide a system of land administration which is accountable, transparent and cost-effective, and responds to the diverse needs and characteristics of the population. It is a public good that warrants public investment. The system of administration needs to be especially oriented towards ensuring that the rights of poorer and less powerful groups are respected and confirmed since it is these groups which usually suffer during periods of growing land scarcity and land registration if land distribution is left to market forces alone.

The Role of Central and Local Government: It is the right and duty of government to draw up policies, and establish the legislation, structures and procedures for the protection of rights in property for all the population, as well as civil rights more generally. But the property rights protected by the State should not result in the exclusion of people from access to basic needs and rights. The Constitution of the country sets out the distribution of power between different branches of government, the safeguards and appeals against abuse of power, provisions to maintain accountability and representation through regular elections at national and local

levels, and the fundamental principles governing relations between citizens and state. Land and property rights constitute a plank of central importance in the construction of good governance for any government. Ensuring a fair and secure distribution of rights to land lies at the heart of economic, social and political life. Decisions taken today regarding changes to land policy will have long-term ramifications for how power is exercised and the opportunities and life chances available to those yet to be born. The existence of a gap between many formal statutory provisions and how land rights are managed in practice constitutes a persistent problem for the legitimacy of government action in this field.

Given the centrality of land rights and policy, government needs to set out its proposed agenda for change in this field by proposing a timetable for consultation and review of policy and subsequent legislative, structural and procedural provisions. While it is the government's duty to specify its priorities and make a choice among them, such decisions will benefit from broader public debate, such as offered by the drafting and review of a national land policy document. Receiving inputs from a wide range of interested parties should help government to gain a clearer idea of priorities, and the nature of the choices faced.

Given that "you cannot please everybody all of the time", government must decide on the trade-offs between different objectives. National land policy documents often fail to make such choices explicit, and provide an undifferentiated list of everything the government might wish to achieve. However, clear choices need to be made, such as between a tenure system geared to securing the ownership rights of large-scale commercial farmers, as opposed to securing the use and access rights of smallholders, landless poor and vulnerable groups. If governments are truly to espouse the principle of poverty reduction before all else, this will have major implications for the design of rules, structures and procedures to ensure the land tenure system operates in favour of the majority of its users and particularly the poorest among them.

Furthermore, current processes of decentralization create new roles for local government in supporting participation in policy formulation and implementing systems for low-cost land administration. To address land issues constructively and minimize conflict requires adapted responses at the local level and a legal framework flexible enough to deal with the heterogeneity of local situations. This makes local government a 'natural' partner in land policy to both central government and other stakeholders. However, legislation needs to

establish and enforce adequate controls to ensure the impartiality of local authorities and the consistency of their decisions with national policy.

In designing and implementing the new policy, a government has to ensure the coordination between the different Ministries and public departments involved in land issues. It has to remove incoherence between sectoral policies. It is also government responsibility to provide efficient institutions for land administration and maintenance of land information.

The Role of Private Sector, Civil Society Groups and Local Communities: There are a wide range of groups with an interest in land, whether as direct users, those seeking access, or those representing a professional interest, such as surveyors. Government needs to engage with them to benefit from their views, by providing a platform to discuss proposed changes to policy and interventions, identify priorities and think through the longer term implications of a particular course of action. Government should be encouraged to see such inputs as a valuable element in any process to review policy and legislation, even though it is likely to involve criticism and generate a wider array of options than considered feasible.

On a subject as important as land, it is vital that policy and changes to the land tenure system be seen as the outcome of a broad political process that has gathered views in a representative fashion. Getting the process right, and demonstrating its transparency, will be essential to provide the emerging policy with greater legitimacy and avoid accusations that the process has been captured by a particular set of interests. Private sector and civil society groups have differing powers to influence the policy process and ensure its transparency. This may be more to do with informal personal networks than the excellence of arguments and size of group membership. While economic interests have their own ways of lobbying, pressure from civil society may be a crucial factor in initiating reforms or accelerating their pace and overcoming the resistance of those groups opposed to land policy reform.

Participatory consultation processes are now widely used in many countries, (e.g. to draw up national environmental action plans, or to review new policy proposals). But often these exercises are largely empty due to limited commitment by government to respond to the comments received, and uncertainties regarding how to incorporate in practice the diverse observations and counter-proposals that such a process can generate. Government may therefore find it easier politically and practically to rely on a small group of experts and consultants to formulate its plans. But experts cannot replace public debate and the knowledge

and experience of stakeholders who can greatly contribute to identify key issues and innovative solutions. Moreover, strengthening public debate with people supporting the reform is the best way to build ownership and to ensure that the reform is not drifting away from the interests of small farmers.

Organizations and movements of poor landless and land insecure people should be considered as primary stakeholders in policy development and implementation, and extra efforts (including resources) should be dedicated towards supporting their participation, in order to ensure that land policy reform brings about poverty reduction. The example of Senegal shows how a participatory process run by farmers' organizations with the help of local facilitators can lead to very accurate design. Ensuring the active participation of both men and women, either jointly or separately, in the design and implementation of land policy reforms should favour a more detailed understanding of local tenure systems including issues related to gender and the gender-specific imperatives and consequences of transforming tenure systems.

Similarly the case of the Philippines' agrarian reform has shown how effective alliances with autonomous peasant organizations are essential for the implementation and, to some extent, the design, of agrarian reforms. Farmers' groups are now engaged in facilitating the provision of support services, and have provided a successful model for community development, including capacity to negotiate for community's needs. Such experiences show that decentralized approaches involving civil society action are effective in increasing people's bargaining power and advocacy in land reform processes.

Private sector, civil society groups and local communities should not only contribute to designing and implementing policy, they must also be closely involved in monitoring and reviewing the way the new rules, structures and procedures are performing. External monitoring and evaluation, associating research, civil society, private sector and beneficiaries can be a powerful instrument for ensuring independent assessment and improving the effectiveness of the policy by monitoring its implementation.

The Role of Donors: Lessons Learnt and Key Principles: Land policy reforms are extremely case specific. Donor should support tailor-made solutions, strongly linked to local social and institutional context and avoid blueprints.

- Land policy reforms are complex undertakings which require: firm political commitment by the state and support from society at large. Donor support must be

non-dogmatic, non-intrusive and well informed on the situation prevailing locally. Programmes must be appropriate to the local social and institutional context

- Donor support must be accompanied by an in-depth dialogue with the state at the highest level, and must encourage large inter-ministerial coordination and debate.
- Land policy reforms are long-term processes, going through a series of successive phases requiring an iterative approach. Donors should stand ready to accompany such processes over the long period. Sector approaches can provide some safeguards against the risk of one or the other donor discontinuing support.
- Gender-aware legislative reforms are essential, though not sufficient to secure enforceable access to, control over and use of, land resources by both women and men.
- Information and awareness are key. Donors must contribute to the understanding of different stakeholder interests and strategies and should encourage the search for consensual solutions.
- Research can be a powerful tool for understanding and steering national processes. Donors can be instrumental in accompanying implementation with research and encouraging feedback and debate of emerging issues.
- Donor support for land reform should in no case result in further deprivation for women and poor people from access to and control over land or in the dispossession or eviction of ethnic minorities or tribal and indigenous peoples from the territories they traditionally occupy.

In the past, many donors have been reluctant to get involved in the politically highly sensitive field of land policy reform. Most of the time their support, as with other donors and multilateral agencies, has been limited to promoting titling and land information systems, non-contentious activities believed to be technical, neutral and universal. This neutrality is only apparent, and this position often lead to choices unable to fit local realities, thus excluding the poor. In the meantime, policies and approaches have evolved and there is now greater recognition among donors of the importance of addressing land issues. While land policy reform is a long and complex process, requiring broad political debate inside the country, donors can make a major contribution, if they play a cautious role. They can facilitate the public debate, support processes without forcing the pace, and offer to fund the costly parts of preparing and implementing land policy reforms, including in particular the purchase of land for redistribution, without taking over from government. They can contribute to

research, institutional and capacity building for the different actors involved (government departments, land administration bodies, local government bodies, farmers' organizations, etc.) and monitoring and evaluation of the processes.

5.3. Procedures/Guidelines Land Reform

A. Situation analysis: Land and natural resources and key Development challenges

Land reform programmes do not exist in a vacuum. This subunit is intended to provide the background and information required to understand how land is related to wider development issues and objectives, and the constraints which problems of land tenure or land access may impose.

Identification of the main land issues in terms of forms of land tenure, mechanisms for land access, structure of land ownership and land holding, responsibilities for land management and management of the associated rights, proportion of land subject to formal title deed and registration, public land ownership, and the development of land markets. In addition the presence of customary or traditional forms of land tenure and management, tenure and other problems faced by different social/ethnic groups in securing access to land, and the factual background highlighting gender and other social disparities and regional differences in access to land and security of land rights. Identification of the most vulnerable groups, their claims and the specific problems they face.

What is the relation between land tenure and poverty? What are the main development challenges being faced by the country, how and to what extent are they related to questions of land tenure and access?

- In political terms: interests in questions of land policy, access, security and equity in government, amongst political parties and other political forces in society; current and recent political debate about land policy and law; existence and nature of conflicts, social, ethnic and regional disparities involving land, and potential risks of wider (possibly violent) conflict where the land issues involved are not dealt with.
- In economic terms, how land issues relate to productivity, investment and employment: what changes in land policy may be needed to improve productivity and investment, such as greater security of land rights, improvements in land distribution, easier access to land, land-based opportunities to access credit and to facilitate the operation of land markets

etc. A particularly important issue is whether or not land scarcity can be offset by agricultural diversification and creation of nonagricultural employment opportunities.

- In relation to equity, social justice and poverty: extent of landlessness, evictions, land tenure or access problems faced by particular social groups including women, pastoralists, minority groups and indigenous people or regions, land grabbing and illegal appropriations of natural resources, degree of landownership concentration, share of idle land.
- In terms of environmental sustainability: the role of land policies and laws, planning and regulation of land use and other natural resource use, land management.

Fiscal and financial issues: Value of land and property, taxation either by (local) government or customary rulers, role of land purchase and rental markets in the economy, cost of agrarian debt.

Physical characteristics. Land quality assessment and land use planning. Trends in land use and land degradation.

B. Analysis of Policy, Legislation and Institutional Framework

New land policies should be integrated into efforts by states to establish more democratic forms of governance at national and local levels, and should offer to all citizens, a guarantee of their rights together with ways of addressing land related problems they face. A genuine and inclusive participatory policy design is a condition of broad acceptance of a new policy which must respect the rights of minorities and provide equal rights to men and women.

Historical Background on Land Issues and Policies: What has been the past experience with land issues, legislation and interventions concerning land in the more distant past as well as over the last 10-20 years? Is there analysis available of how such interventions have affected actual practice in different areas? What impacts have these interventions had on vulnerable groups and gender equality? What implications does this provide of policy design and implementation?

How have major areas of policy changed over the last 10-20 years, especially economic strategy, and tenure policy? How have these changes affected the role of central and local government, and the various institutions responsible for administering land? How far have policy measures been able to address the main recent/current economic challenges? Have

these policy measures contributed to combat hunger and poverty, to improve gender equality and environmental sustainability?

What have been the State policies and practices concerning indigenous land ownership and possession?

Analysis of Policy and Legislative Framework: The national land policy, content and process has the government formulated a land policy and strategy to reform land tenure and natural resource management? If so, have environment, gender, HIV/AIDS issues and their impact on social relations and agriculture, been taken into account in the design of the policy? Has due account been taken of indigenous peoples' land rights and land claims? Was the design participatory? If not are there calls to do so within government or society or from outside agencies? Is there or has there been any sort of structured process, such a formally constituted Commission of Enquiry into land issues and how they are to be addressed? Have different groups, in particular women, been consulted? Where they part of the formal consultation process (e.g. the Commission of Enquiry)? Are people (particularly in rural areas) aware of and informed about the content of the new policy? Is it broadly accepted across society? Have the views of minorities and marginal groups been requested? Are they reflected in the policy?

Land and development strategies: How does tenure policy link to other broad development policies and strategies, such as development policy, poverty reduction strategies, policies on gender equality, agricultural policy and land use planning at local and regional levels? Is there a mechanism to achieve these linkages? Are land issues reflected in the PRSP? Are there contradictions between land policies and other policies?

Land legislation: What is the content of current or planned legislation relating to land rights, land tenure, land and natural resource management, land markets and land institutions? Are they coherent with each other? More specifically:

Land rights: What range of rights is covered by legislation on land tenure and natural resource management? What status is accorded to local/customary rights within the legal framework and how do these relate to statutory provisions? Is it possible to register joint ownership of land and natural resources, e.g. at community level? Do the poor have effective access to the information regarding legal procedures for the registration of rights and/or

transactions? How are secondary rights protected under the new regulation? To what extent are land rights of indigenous peoples and minorities recognized and effectively protected?

Laws and socio-political rights: Does legislation meet the expectations of different key actors as regards providing secure rights and access to land? Does the land policy and legislation guarantee the land rights of the poor (whether these are established formally or informally through transactions or relationships with other land users) and assist them to access fundamental rights of citizenship, and means of shelter and livelihood? Is there provision for joint spousal ownership of land and property or are the rights of wives restricted and subordinated to those of husbands or male relatives? Do government policies or actions undermine existing access to land of vulnerable groups? Does government protect vulnerable groups of being deprived of their access to land by third parties (male relatives, companies, landlords, etc.)? Does government give access to land to the landless?

Are there sufficient incentives for investment in land improvements, including for tenants and sharecroppers? How do law and practice deal with the rights of typical disadvantaged groups – women, widows, migrants, herders, indigenous peoples, minorities? To what extent does legislation enable or restrict land transfers and transactions, in particular rental markets, as a means for people to access land, gain income and adjust their holdings of land assets?

The application of the law: To what extent is this legislation and associated decrees easy to apply in practice? Is there a large gap between legal provisions and what actually happens? Why? Does government have the institutional capacity to implement the law? What is the role of the judiciary and the courts in resolving land disputes, settling land claims and how do they respond to these in practice? Are farmers' organizations allowed to play a role in resolving land conflicts?

C. Analysis of Institutional Framework and Land Administration Practices

Central government: Are responsibilities for carrying out land policy combined under one Ministry or distributed amongst various sectoral Ministries? Which different sectoral ministries play a role in dealing with land issues and delivery of land related services? How are these powers exercised in practice? Are there a number of different specialist agencies responsible for e.g. land administration, survey, land use planning, urban and rural or other categories of land? How do the different land agencies relate to one another? Are the

approaches taken by different parts of government coherent, or do they operate in contradiction?

Land administration: How is the land tenure administrative system structured? What are the principal functions and activities undertaken and by which bodies: issue of title, management of land information, register of changes, adjudication, arbitration, and conflict resolution, etc.? How effective and efficient are such bodies in practice? Can they respond to the needs of different kinds of land rights holder, in terms of accessibility, cost, appropriateness, etc.? What are the major limitations and problems experienced with the delivery of land administration services?

The roles of local government and traditional rulers: Has government administration been decentralized and to what level? Is local government involved in land management? Are their roles clearly defined? Does it have adequate financial and human resources? How are customary rights managed? What is the role of customary rulers, traditional authorities and institutions? Are they reliable, impartial and non-discriminatory? Are they likely to respect the interest of the majority? What incentives do they have to manage land in the interests of the local population and to respect their rights? Are there checks and balances (e.g. through peer pressure, social accountability or formal legislation) on the actions of customary or traditional authorities?

Financial aspects of reform: Do land policy and tenure reform feature in the government's budgetary planning and what are the expected financial implications of carrying through the proposed measures and interventions relating to land? Have different options been assessed/costed?

D. Analysis of Opportunities for Changes in Land Reform

In order to identify possible donor interventions it is necessary to assess the entry points beforehand and identify any ongoing processes where specific opportunities can be seized:

1. *Ongoing reform processes:* Is there currently any government project or process related to land policy, legal, institutional or tenure reform? If so, who is responsible for it and what is the focus? What stage has the process reached? Have clear objectives been defined?

2. *Stakeholder participation:* Are there processes of policy debate currently underway aimed at changing the way in which land tenure or other aspects of land policy are handled? What are the main issues emerging in the debate and what is being proposed to address them, in particular by government? Who is leading the process and what broader constituencies are involved? What role are national stakeholders (state bodies, NGOs, farmers' and women's organizations, researchers, private sector) and international actors (donors, World Bank, UNDP, IFAD, FAO, private sector) playing in this process?
3. *Emerging pressures:* What pressures are emerging from different social and economic groups regarding changes to land distribution, land tenure and administrative provisions? Do civil society organizations focus on land issues? Particularly, do farmers/herders' organizations have their own views on land issues and policy? What are the main positions and perspectives and which groups are leading this process? Do indigenous peoples' organizations have policy proposals for land restitution, titling, demarcation?
4. *Political factors:* How does the process of reforming land policy and legislation fit within the broader political context and associated timetable (electoral cycles, political tensions and conflicts, re-formulation of other major related strategies, etc.)? Does government promote or suppress debate and possibilities for change? Is the political climate favorable for achieving changes to land policy and interventions? Are land issues considered to be too sensitive politically and too loosely bound up with risks of conflict to accommodate change? Is the process geared to strengthen access to and control over land to the most vulnerable groups?
5. *Government commitment:* How far is the government committed to achieving significant changes in land policy, access, tenure and administration, and in favour of which social and political groups? Which political pressures are driving changes or, alternatively, hampering implementation of agreed measures?
6. *Donor support:* What donor programmes or support measures are currently underway in the field of land tenure and administration? On which issues and aspects and in what regions? Is land policy and land administration a focus for other donors? On which topics do field projects/NGOs work in the field of land tenure, land access and land resource management? Are there innovative frameworks or methodologies that are experimented on the field and which could feed back policy debate? Is there any

assessment of these works? Is there a mechanism for donor coordination? Is it Government-led? How effective is it? Are other stakeholders involved?

7. *Available research:* Has there been recent research carried out on land issues in the country? Is there a means to track changes in important social, economic, political and environmental variables relating to land? Is there any research on or analysis of the impacts of land reforms and policy change? Are there (national/international) researchers, consultants capable of providing relevant insights and expertise?

E. Analyzing Adequacy, Affordability and Sustainability of Land Interventions

Economic Sustainability: Analyzing the **economic sustainability** of the policy implies looking at the cost and benefits of implementing the reform or other interventions which policy intends. In putting in place or reforming land administration – on which successful reforms to land tenure, distribution or resource management all partially depend, the greatest chances of success lay in the establishment of a reliable system, cheap, easily accessible to users. The information provided must be easy to update and remain reliable over time.

- What are the additional costs and benefits that the reform will generate? To what extent they can be sustained in the current macro-economic framework? How do they compare to the costs of not undertaking a reform?
- To what extent are constraints such as market failures in input/output marketing or the lack of infrastructure considered when assessing the productivity of land? In this light, have the constraints that may be imposed by land tenure or other land problems, and therefore the economic returns from the proposed reforms, been realistically assessed?
- Are the sequencing and timeframes for reform appropriate?
- Is the government monitoring and evaluating impact of the reform based on an agreed set of indicators and regular data collection? Is there a base for comparison (baseline data)? Do the results of M&E feed back into the assessment of economic impact?

Financial sustainability: Analysis of financial sustainability deals with the cost of land reforms and the land administration system and the capacity for Government and users to cover the recurrent and investment costs incurred:

- Is the system proposed adequate to the needs of the users? Is there a demand for the “product”?

- What approach has the government adopted to cost recovery for land services? Is it implemented effectively? Are resources collected accounted properly and do they result in decreasing budgetary allocations? Is it affordable for the poor?
- In programmes of land access or redistribution, is finance available for land acquisition or to provide compensation to land owners facing expropriation or compulsory purchase?
- How is land acquired for redistribution, by the state, by intermediary bodies or directly by beneficiaries? To what extent can costs be recovered? Are land acquisition credit or rental payments affordable? Is donor financial aid or other forms of concessionary finance available?
- How is government dealing with taxation of land? If it is not in force, are there plans to introduce one? Is such a tax (or will it be) pro-poor (i.e. will it penalize highly concentrated land ownership and/or inefficient utilization of land by large landowners)?
- If a land tax is in force, what is the extent of tax evasion?
- Is government addressing problems of corruption and rent seeking in land administration land reform programmes, and any mismanagement of associated funds and revenues? When culprits are identified are they brought to justice? Are land agencies subject to regular independent audits of their accounts?

Institutional Sustainability: *A sound land policy requires appropriate institutions to*

- I. enable and monitor its implementation,
- II. provide security to land users, allocate and deliver land rights, and provide services required to facilitate and record transactions
- III. regulate land use and
- IV. Act as a honest broker in the case of conflicts.

The implementation of land policy must often rely on local institutions and reinforce their role to ensure beneficiaries' participation in the management of land rights.

- Has government reviewed the role and function of land related institutions (land use department, land registration and titling office, local government, parastatals) as well as community-based, private sector and civil society organizations? How well does the reform refocus government activities on its core functions?

- What progress is government making in implementing agreed institutional reforms? What about training/upgrading for staff? Does the Ministry have a staffing plan matching human resources with tasks and activities?
- Do local administrations have adequate capacity? If not, what remedial action is being taken by government? Is posting in local administration attractive to civil servants, to both men and women? Is there a deliberate policy to encourage posting of staff to provinces and districts?
- Do monitoring agencies and judiciary bodies dealing with resolution of land conflicts have adequate capacity and independence? Are staff members well acquainted with the land rights of the poor and human rights law?
- Is the technology (e.g. for land information and cadastral systems and for land survey) appropriate for the existing/planned capacity? Is it too costly or ambitious for what can realistically be achieved, or do limitations in available technology create bottlenecks in realizing policy objectives?

F. Analysis of social Impact

Social impact: Given the importance of land as a productive asset, land reform can have massive impact on social relations both at the level of the communities (by modifying relations amongst land users, between land owners and workers or tenants, and between traditional rulers, national/local administrations and individuals) and at the level of the household (by modifying relations between men and women or between generations).

- To what extent the reform process allows to bridge the gap between legacy, legitimacy and practices and to provide effective support and legal protection to the rights of farmers and herders? Does it provide for a gradual transition from traditional tenure to private ownership? How will the provision of the law secure the rights of the poor?
- Will the land policy reform effectively rule out forced evictions? Is the land policy reform sufficient to effectively protect the land rights of vulnerable groups from threats by third parties? If not, what complementary measures are needed? Will the land policy reform stop land grabbing and illegal appropriation of natural resources? Are complementary measures needed? What benchmarks have been set for land redistribution? What kinds of policies have been implemented for land redistribution?
- To what extent the reform process allows to overcome landlessness?

- How does the land policy take into account the specific needs of women? Are women allowed to own land and acquire a title? Are they consulted on the content and involved in the implementation of the reform? Are informally determined secondary rights?
- On which many women and poor households depend, protected or not? Are indicators and data collection disaggregated by gender?
- Does the reform respect the rights of ethnic minorities and indigenous peoples? Does the reform adequately cater for the needs of landless people and the poor?

Environmental Sustainability: Land reforms are powerful tools to improve natural resource management and reduce soil fertility decline. However, for land reforms to contribute meaningfully to improve natural resource management, objectives relating to environmental sustainability must be built into the reform programme from the start and tradeoffs such as those between agricultural productivity and land management must be openly addressed.

- What measures have been taken to ensure that land reform will lead to a more sustainable use of natural resources? Has a Strategic Environmental Assessment been carried out? Have recommendations been put into practice?
- Do land use regulations treat land productivity from an environmental point of view, (incorporating questions of soil fertility) as well as from an economic perspective?
- How does the government address illegal exploitation of natural resources on common land (e.g. forestry, fisheries)? Is existing legislation adequate and enforced?
- Have regional issues, such as the shared management of common resources between neighboring countries, been discussed/addressed?

5.4. Defining a Response Strategy and a Set of Interventions

Defining Possible Interventions: The range of intervention as a response strategy is very broad. The choice should consider Government priorities, main development challenges, issues raised by civil society, other interventions planned or already underway, donor capacity and strategic policy directions. Capacity building in civil society organizations and public institutions should be an integral part of all donor support programmes.

Possible Interventions:

1. Research and analysis: to improve knowledge and understanding of land policy, land rights and ownership, and maximize impact on the poor.
2. Policy formulation: participatory processes for policy formulation, public debate with stakeholders, provision of expertise, exchange of experiences and best practices (local/national/international), facilitation. Pilot testing of innovative approaches. Supporting the capacity of marginal groups to participate and voice their interests. Support government role as mediator among conflicting interests between stakeholders. Support the engagement of farmers' organizations and other civil society groups in the public debate.
3. Legislation: Support to the development of new tenure legislation and revision of codes, to recognise and regulate new types of rights or forms of transfer. Gender sensitive revision of inheritance law. Balancing short term legal reforms to address urgent problems, with longer term legislative development. Support to the judicial system to resolve land disputes. Capacity building in the judiciary and support for legal assistance for marginalized groups.
4. Land administration: Improvements to the efficiency of land administration systems, specifically:
 - Registration and titling: Establishment of systems for land registration and titling of existing rights, cadastral services, land surveying, capacity building in local communities to support identification and management (including registration) of customary rights.
 - Formalizing and securing land transactions, regulation of land markets: Establishment of simple and fair procedures for land transactions and their formal registration; mechanisms for regulation of land markets (giving priority to farmers, allowing local bodies to define rules about land sales outside the community, etc.); maintenance of land information systems; regular land valuation exercises
- 5. Land Management:**
 - Land redistribution and resettlement: Land purchase and redistribution, by government, directly by beneficiaries or by land trust funds or other intermediary bodies; funds for compensation of landowners facing expropriation; provision of rural infrastructure, support to services and productive support in newly settled areas.

- Restitution: Restitution of land rights alienated from the original owners or users; support to judicial and negotiation processes. Restitution of lands to indigenous peoples according to their ancestral rights.
- Privatization: Privatization of collective or state property (land condominiums, etc.), infrastructural development.
- Resolution of land disputes and land adjudication: in land registration programmes or following land reforms, restitution or privatization processes.
- Institutional development: Establishment of new institutions and structures with responsibility for land acquisition, administration and conflict resolution.
- Taxation: Designing, testing and setting up a land-based tax system.
- Land use and planning: Provide support to develop and disseminate appropriate land use plans as a basis for a sustainable use of land and water.
- Environmental impact: Impact assessment of reform processes and projects; development and application of environmental and land use regulations.
- Monitoring and evaluation: development of M&E systems, expertise for the identification of indicators on policy relevance and impact. Support civil society engagement in participatory monitoring of land policy reforms.

An appropriate strategy will combine the above activities in a logical sequence and an adequate timeframe. It would set out realistic objectives and outcome/impact indicators. It would foresee systematic testing of reform options in pilot projects.

Defining Donors Intervention: Key principles for donors' engagement;

- Land reforms are extremely case specific. Donors should support **tailor-made solutions**, strongly linked to local social and institutional context and avoid blueprints.
- Land reforms are complex undertakings which require **firm political commitment** by the state and support from society at large. Donor support must be non-dogmatic, non-intrusive and well informed on the situation prevailing locally developing programmes and approaches that are appropriate to the local social and institutional context.
- Donor support must be **accompanied with an in-depth dialogue** with the state at the highest level, and must encourage large inter-ministerial co-ordination and debate.
- **Land reforms are long-term processes**, going through a series of successive phases requiring an iterative approach. Donors should stand ready to accompany such

processes over the long period. Sector approaches can provide some safeguards against the risk of one or the other donor discontinuing support.

- **Gender-aware legislative reforms** are essential, though not sufficient to secure enforceable access to, control over and use of, land resources by both women and men.
- **Information and awareness are key.** Donors must contribute to the understanding of different stakeholder interests and strategies and should encourage the search for consensual solutions.
- **Research** can be a powerful tool to understand and inform national processes. Donors can be instrumental in accompanying policy debate, design and implementation with research and encouraging feedback and debate of emerging issues.
- Donor support for land reform should **in no case result in further deprivation for women and poor people** from access to and control over land, nor in the **dispossession or eviction of ethnic minorities or tribal and indigenous peoples** from the territory they traditionally occupy.

G. Coordination and collaboration

As most land reform programmes will contain one or more of the above activities, the execution of which falls substantially within Governments' responsibilities, land reform programmes are ideal candidates for Sector Programme-type of approaches and provide good opportunities for budgetary support.

Integration with broader development planning: Analytical work on the place of land in poverty reduction strategies and programmes, and horizontal and vertical integration with sectoral policies and programmes: e.g. for agricultural development, including production and marketing, investment promotion; housing and urban development; service delivery; natural resource management and utilization; decentralization; regional and local economic development; programmes for good governance, gender equality and access to justice.

5.5. Monitoring and Evaluation of Indicators

Indicators are a powerful tool to measure the extent to which the new land reform is meeting agreed objective. They are by nature very case specific. The list provided below is not exhaustive and is intended only to serve as a guide to define a specific set of indicators relevant in the national context. "Outcome indicators" which provide information on how the

policy is performing should be preferred to “input indicators” which detail inputs such as finances and human resources.

Indicators of tenure security:

- Trends in land ownership, access and utilization by both men and women. Size of plots.
- Equity of land distribution (Gini coefficient). Number of landless and related trends.
- Share of land (number of parcels and total area) registered individually and communally.
- Cost of registration (time and money) to land owners/communities and duration of registration process.
- Level of protection of rights of indigenous peoples, pastoralists, minorities.
- Number and extent of land conflicts, localization. Number of new conflicts over the year. Prevalence of forced evictions, land grabbing and illegal appropriation of land
- Existence and effectiveness of conflict/dispute resolution mechanisms. Existence of appeal mechanisms.

Trends in land market

- Development of a land market: number and volume of transaction
- Relative price of land for different categories.
- Comparison with agricultural profits.
- Differences between rural and urban land.
- Evidence of land fragmentation, average size of plots.
- Availability of information on land prices
- Equity of inheritance laws/regulations in particular to women.
- Level of informal land transactions
- Restrictions to land sales both administrative and on price.
- Cost (time and money) of a land transaction.
- Existence of mortgage financing for the purchase of land.

Environmental impact and Natural resources management

Trends in land degradation/desertification. Hectares of degraded land. Agricultural productivity in marginal lands.

- Size of protected areas. Extent of encroachment. Protected areas under sustainable community management.

Regulatory framework

- Tax rates on land. Collection and use of taxes. Collection efficiency (share of taxes actually collected). Information on the use of taxes.
- Existence and timely availability of cadastral/registry information/maps.
- Cost of cadastral service to user and as a percentage of the actual cost of the service.
- Number and duration of court cases.