Better land access for the rural poor

Lessons from experience and challenges ahead

Lorenzo Cotula, Camilla Toulmin & Julian Quan

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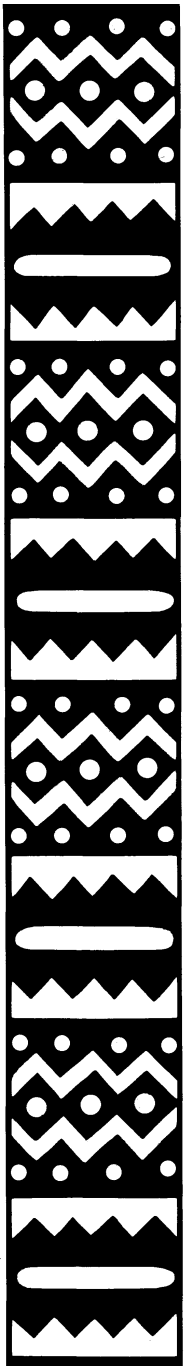

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BETTER LAND ACCESS FOR THE RURAL POOR. LESSONS FROM EXPERIENCE AND CHALLENGES AHEAD

Lorenzo Cotula, Camilla Toulmin & Julian Quan
October 2006

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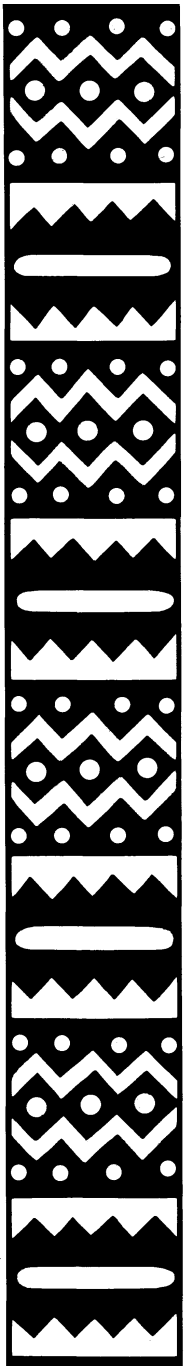
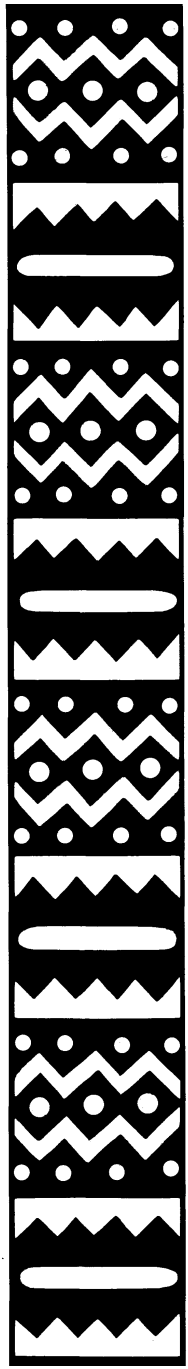




EXECUTIVE SUMMARY

This study highlights lessons from recent policy, law and practice to improve and secure access to rural land for poorer groups. It focuses on Africa, Latin America and Asia, while also referring to experience from Central and Eastern Europe and the Commonwealth of Independent States. The study examines the links between land access and poverty reduction, shifting approaches to land reform, different means to secure land rights and to achieve more equitable land distribution, the particular vulnerability of certain groups to losing their land rights, and the role of addressing land rights within conflict resolution and peace building. It concludes with broad recommendations for protecting land rights of poorer and more vulnerable groups.

Land is an asset of enormous importance for billions of rural dwellers in the developing world. The nature of property rights and their degree of security vary greatly, depending on competition for land, the degree of market penetration and the broader institutional and political context. The picture is hugely diverse and complex within and between countries and regions. Nevertheless, some general trends and common challenges can be identified.

Although there are significant differences between and within countries, pressure on land is set to increase over future decades, given the impacts of continued population growth, urbanisation, globalisation of markets and activities, international investment flows, trade negotiations and climate change. As a resource becomes scarcer and more valuable, those with weak rights to this resource will tend to lose out. In the case of land, particular groups tend to be more vulnerable to such dispossession, including the

poor, those in peri-urban areas, indigenous people, women, those relying on common property resources, and those in areas of conflict. Addressing the land access and tenure security needs of these groups is crucial for social justice, political stability and peaceful co-existence. Attention to securing land rights is also important for promoting rural development, as it helps create conditions that encourage local and foreign investment.

Policy dialogue at all levels should recognise the importance of secure land rights for sustained development, growth and peace. There is a need to identify ways to mainstream more systematically land access in PRSPs and in agricultural and economic policy at national level, and in the MDGs at global level, so as to provide concrete strategies for socially inclusive economic development.

The land policy agenda must be driven and owned at the individual country level and, whilst lessons of good practice can be shared across countries, simple one-size-fit-all solutions are unlikely to help. Reform requires sustained and long-term commitment from governments and development agencies. Successful land reforms ultimately depend upon strong political power allied to land reform movements and prepared to challenge resistance by vested interests.

Promoting equitable access to land requires dynamic and effective implementation of ongoing land redistribution programmes, and a systematic assessment of the appropriateness of the institutional arrangements used in those programmes. Securing land rights requires developing and implementing policy, legal and practical tools that are appropriate for different groups and circumstances, and that pay special attention to the specific land tenure security needs of poorer and more vulnerable groups; supporting democratic land institutions and land administration systems that are decentralised and problem centred, and that make links with existing indigenous and customary mechanisms for managing land; and improving access to effective systems of land dispute resolution, including courts, alternative dispute resolution and customary procedures.

Capacity building is critical for improving access to land and for effective land administration, both in state institutions and in civil society. Lack of capacity in government agencies, lack of legal awareness, and economic, geographic and linguistic inaccessibility of state institutions all contribute to limit the outreach of state policy and legislation in rural areas. This calls for supporting opportunities for professional development, lesson sharing and capacity building in centres of excellence and through learning networks of policy makers, practitioners and civil society. Capable and well-informed civil society organisations can play an important role in informing, and in

providing checks and balances, on government decision-making and the development and implementation of land policy and law. Exchange of experience through networks of civil society organisations, and analysis and research linked to action planning can also promote the development of appropriate land policies.

This was among my prayers: a piece of land not so very large, where a garden should be and a spring of ever-flowing water near the house.

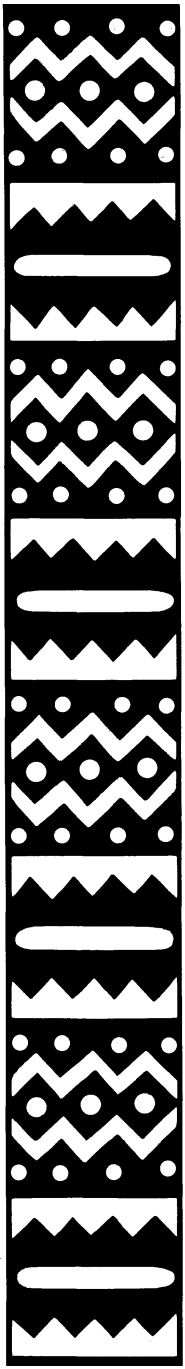
Horace, 30 BC

In many parts of Africa, rural dwellers find themselves in a period of uncertainty – a time of hesitation between two systems and two periods: a time not long ago when customary principles were the point of reference, and an uncertain future, in which new rules and norms are inevitable.

Mathieu *et al*. 2003

INTRODUCTION

This study analyses the links between land access and poverty reduction, and highlights lessons from recent policy, law and practice to improve land access for poorer groups in different parts of the world. It reviews land access issues in Africa, Latin America and Asia, focusing on access to rural land in those three regions, while also referring to the major land reforms that have taken place in the transitional economies of Central and Eastern Europe and the Commonwealth of Independent States. It examines shifting approaches to land reform, different means to secure land rights and to achieve more equitable land distribution, the particular vulnerability of certain groups to losing their land rights, and the role of addressing land rights within conflict resolution and peace building. The study concludes with broad recommendations for protecting land rights of poorer and more vulnerable groups.



The study identifies the challenges that need to be addressed to secure access to land for poorer and more vulnerable groups in a context of rapid global change. Given the very broad scope and great diversity within and between countries and continents, much valuable detail has been passed over. While the principal focus is on rural land and agrarian reform, it should be recognised that rural and urban land access issues cannot be separated. In particular, increasingly rapid urbanisation absorbs rural lands, for housing, commercial, and speculative purposes. Also, innovation in securing urban land rights offers some valuable lessons for addressing rural land claims. The study focuses on agricultural land use – broadly defined here as including crop production, livestock rearing and other activities to produce food through the use of natural resources. Other forms of rural land use and assets (residential use, forestry, tourism, rural markets; environmental assets, water assets, etc.) are also very important for the livelihoods of many, but are only briefly touched upon here.

The study adopts a broad definition of land access, as the processes by which people, individually or collectively, gain rights and opportunities to occupy and use land (primarily for productive purposes but also other economic and social purposes), whether on a temporary or permanent basis. These processes include participation in both formal and informal markets, land access through kinship and social networks, including the transmission of land rights through inheritance and within families, and land allocation by the state and other authorities with control over land.

I. ACCESS TO LAND AND POVERTY REDUCTION

A. ACCESS TO LAND AS A BASIS FOR SOCIO-ECONOMIC EMPOWERMENT

Rural poverty is strongly associated with poor access to land, either in the form of landlessness or because of insecure and contested land rights. Economic analysis has long recognised the importance of secure property rights for growth, and therefore for the poverty reduction which growth can bring. Increased land access for the poor can also bring direct benefits of poverty alleviation, not least by contributing directly to increased household food security. In countries where agriculture is a main economic activity, access to land is a fundamental means whereby the poor can ensure household food supplies and generate income. This applies both to societies in which subsistence agriculture is prevalent, where access to land is the *sine qua non* of household food security; and to societies where agriculture is more market-oriented, in which family farming provides a principal source of employment generating the income with which to buy food. Even where agriculture and land are becoming less important with the growth of alternative sources of income, secure land rights provide a valuable source of income for investment, retirement or security in case of unemployment.

Secure rights to land are also a basis for shelter, for access to services and for civic and political participation. They are also a source of financial security, as collateral to raise credit or as a transferable asset that can be sold, rented out, mortgaged, loaned or

bequeathed. Moreover, secure access to land creates incentives for the user to invest labour and other resources in it, so as to maintain or enhance its value and sustain its productivity, and to access social and economic development opportunities.

In addition, research has documented a positive relationship between equitably distributed land and economic growth (Deininger & Squire 1998). While history provides examples of countries that have developed with very unequal land distributions (see for instance the industrial revolution that took place in Great Britain in the 18th and 19th centuries), research shows that, over the period 1960-2000, countries with a more egalitarian distribution of land tended to be characterised by higher levels of economic growth (Deininger 2003). More egalitarian land distributions are also associated with greater social peace and cohesion. Where land rights are highly concentrated, inequalities may spawn a sense of injustice, entailing risks of land occupations and even violent clashes over land. The experience of several East Asian countries (South Korea, Taiwan) shows how a reform resulting in more equitable land distribution is fundamental in creating the basis for sustained economic development.

B. ACCESS TO LAND AND AGRICULTURAL DEVELOPMENT

The relationship between access to land and poverty reduction cannot be seen in isolation from broader agricultural and economic policy. Equally, these issues are intimately connected with rural development policies and environmental outcomes. The distribution of land rights and opportunities for access to land will have implications for the distribution of wealth, rates of economic growth and the incidence of poverty, and the shape and direction of agricultural development will affect the incomes and returns from different types of farming activity, the value of land and demands for access to land resources (Cotula *et al*. 2004). The incentives and tenure structures that largely determine how land is used will profoundly affect environmental impacts and sustainability.

Discussions on access to land should be placed in the context of the debate on agricultural modernisation that is taking place in many parts of the world. Broadly speaking, two models of agricultural development are competing in the market for policy ideas. On the one hand, a commonly held view calls for the promotion of agribusiness as a way to attract private capital and increase agricultural productivity. On the other, family farming remains the backbone of rural livelihoods in many parts of the developing world, and has been shown to be dynamic, responsive to change, and an important source of investment in agriculture, such as West Africa (Toulmin & Guèye 2003). Elsewhere, as in Latin America, capital-intensive and family farming-centred

models co-exist, although research, development and extension support tend to be heavily concentrated on the commercial sector.

Whereas social justice and equity concerns demand that agrarian strategy support the struggles of poor people for access to land as a means of subsistence and livelihood, some critics argue that smallholder farming is inefficient and that the rural poor would be better off leaving the land and finding employment in the "modern" economy – whether in commercial farms or in the non-farm sector (Box 1). In practice, family farming competes with commercial demands for land and, given the context of increasingly globalised markets, sustaining rural livelihoods for smallholder farmers will depend on their continued modernisation, with support from policy and resources to strengthen capacity and access to markets.

BOX 1. SMALLHOLDERS VERSUS LARGE FARMS

There has been long-standing debate about farm size and productivity. Some argue that the era of the smallholder farmer is over, and that for reasons of efficiency, small farms should be consolidated into fewer large holdings, allowing for economies of scale and increased mechanisation. They point on the one hand to impoverished peasant farmers on the margins of existence with little ability to generate a surplus for investment in the farm enterprise and limited capacity to adopt new technology, and on the other to profitable large farms, accessing world markets, and providing employment and good wages to the local rural workforce. Others refute such arguments and note that for many crops there are few if any economies of scale in agricultural production. They point on the one hand to dynamic smallholder production, in which innovation and investment are very evident, as people adapt to new market opportunities and changing environmental conditions, and on the other hand to inefficient, extensive large farms with few workers, low wages and poor productivity.

There is ample evidence to support either case, depending on the type of crop, the policy context, and forms of support available to different kinds of farmer. Small farms are generally family-run, may be subsistence-based or market-oriented, using few or many external inputs, working manually or with machinery, and use the land extensively or intensively. Large farms are generally market-oriented, may be family-run like small farms or corporate, and use few if any or many labourers. Both small and large farms may be resource-poor or rich, use largely manual methods or machinery, and use the land extensively or intensively. Because of this great variation in farm types any statements on the relative merits of small versus large farms can only be relevant within specific social, economic and biophysical environments.

Scale economies may be achieved by mechanisation in crops such as sugarcane, some cereals and soya, for example, while perennial crops such as rubber, fruit and vegetables tend to do better under intensive production with a significant proportion of manual

input. In the absence of economies of scale, small farms may be more efficient than large ones because of the favourable incentive structure in self-employed farming and the significant transaction and monitoring costs associated with hired labour (de Janvry *et al*. 2001). In Indonesia, for example, some 80 percent of rubber and resin production and 95 percent of fruits are produced in smallholders' tree gardens (Kuechli 1997). But both smallholder and plantation rubber may be tapped by experts, owners or labourers with a direct interest in the sustained latex quality and productivity of the trees in their care, and limited need of supervision.

Even where there may be few economies of scale in production itself, there are increasing upstream and downstream economies of scale related to access to inputs and markets. Purchasers of commodities prefer dealing with a few larger suppliers because of the transaction costs associated with handling produce from a large number of individual smallholders, relegating these to less profitable local market outlets. Such local markets are also under threat where local produce is in competition with food grains, often subsidised, from countries with surplus stocks (Vorley 2001). However, groups of smallholders may also organise themselves to jointly store, grade and sell their produce to gain access to large buyers.

Ultimately, the choice between large and smallholder farming systems is a question of politics as much as of economics. With the right kind of policy environment and availability of the appropriate services and infrastructure, small-scale farming systems can be at least as productive per hectare as large commercial farms, and also provide a decent living standard through assured access to local and global markets. The latter will depend not just on national policies but in large measure on the outcome of international trade negotiations such as in the context of the WTO and of the Cotonou Agreement, and on the degree to which food aid will be decoupled from disposal of food surpluses, for example. In any case, smallholders must have their property rights secured and protected. This would encourage them to invest in their land; enable them to safely rent out part of the land or rent in other land; or in the last resort provide the option to sell their land and harness the proceeds to develop new livelihood opportunities. Social, ethical, cultural and environmental considerations, as well as the internalisation of externalities of agricultural production need to be considered in this equation.

C. ACCESS TO LAND AND POVERTY REDUCTION STRATEGY PAPERS

Current global efforts to promote development are focused around the need to tackle poverty, make progress in achieving the MDGs, doubling aid flows and providing debt relief to the poorest countries, and liberalising the world economy through trade reform. Poverty Reduction Strategy Papers (PRSPs) are the principal framework for many developing country governments to deliver on these objectives, as well as a precondition for receiving debt relief. Priorities within PRSPs tend to focus on mobilising resources for service delivery, rather than on addressing the political obstacles which constrain opportunities for the poor. Much of the emphasis on how poor people can be helped to "grow their way out of poverty" presents a seemingly conflict-free win-win situation, in which increased aid funding and a more enabling policy environment offer everyone the chance to improve their incomes and livelihoods. But such gains for all are not guaranteed. Institutional frameworks and the pattern of political interests – locally, nationally and globally – will determine the extent to which poor groups will gain from new economic opportunities.

Box 2 presents a recent look at PRSPs from 18 countries, and compares results with an earlier study from West and Central Africa. After having been neglected by the first generation of PRSPs, issues of access to land have started to appear within more recent PRSPs, as can be seen below.

The issue remains how far governments are willing and able to tackle the legal and institutional blockages that maintain structural inequalities in access to land.

BOX 2. LAND IN POVERTY REDUCTION STRATEGY PAPERS IN SUB-SAHARAN AFRICA, LATIN AMERICA AND SOUTH AND EAST ASIA

In 2002, IIED conducted a review of Poverty Reduction Strategy Papers (PRSPs) in West and Central Africa (summarised in Cotula *et al*. 2004). Although eight of the thirteen PRSPs covered by their study discussed the importance of improving access of poor people to land, only four identified related activities to be undertaken. Only two of the thirteen specifically mentioned women's access to land (Niger and Guinea), and five touched upon the importance of land tenure in relation to urban poverty (Benin, Central African Republic, Chad, Guinea, Mauritania). In one PRSP (Senegal) there was no reference to access to land or natural resources as a significant factor in poverty alleviation. Extending the sample three years later to incorporate a further 18 PRSPs from Latin America, East Asia, South Asia and Sub-Saharan Africa, a number of comparisons can be drawn.

First, land issues play a more significant role in the more recent PRSPs examined. In thirteen

of the eighteen, explicit reference is made to the causal relationship between lack of access to land and poverty. The link is made with greater or lesser degrees of emphasis. For example, Burkina Faso's PRSP makes 13 references to access to land. Mongolia's 2003 PRSP outlines a new land law which proposes to give land to households, thereby addressing the question of access to land, although this is not directly posed in the document as a poverty issue. In sub-Saharan Africa, the most recently produced PRSPs frequently refer to the link between poverty and access to land.

Second, commitment to land reform – through targets, policies, programmes and new legislation focusing on access to land and tenure security – is manifest in the PRSPs of most of the countries surveyed, at least at the level of rhetoric. Honduras takes improving poor people's access to land to be a principal objective in its poverty reduction strategy. This translates into a commitment to enlarge its ongoing land titling programme, and the creation of a land access programme. New land legislation has recently been passed in Cambodia and Mongolia, and the Lao People's Democratic Republic has established a National Land Use Planning and Land Development Department within the Prime Minister's Office. Some of the objectives sought may be over-ambitious, but land issues are clearly intended to be addressed as a principal means of poverty reduction.

Third, eleven out of the eighteen PRSPs explicitly mentioned gender in relation to land and access to land. Four of the seven which did not do so were Latin American. This may be attributable to the fact that generally, women can inherit land throughout Latin America, which is not always the case in other regions. In contrast to the earlier IIED study, it is the sub-Saharan African countries which carry the most references relating to land and gender.

Fourth, only seven of the eighteen refer specifically to land dynamics in urban settings, the majority of these from sub-Saharan Africa and East Asia. Reference to urban land issues such as the lack of access to services of informal settlements is discussed in other documents, but the causal linkages to land tenure and security remain unexplored.

II. LAND REDISTRIBUTION

Land redistribution programmes aim to change the distribution of land within society, reducing land concentration and promoting more equitable access to and efficient use of land. This study considers mainly the experience of redistributive land reform in developing countries of Asia, Latin America and Africa. At the end of this section, we review one of the largest land redistribution exercises in recent history, involving the restitution and privatisation of land in the transition economies of Central and Eastern Europe, and the Commonwealth of Independent States, which had as its driving force the strong political imperative to restructure tenure in many of these countries away from the socialist model.

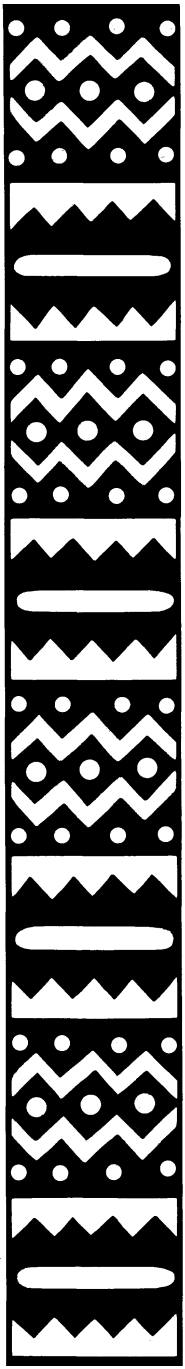
In general, redistributive land reforms have been motivated by three related but distinct objectives:

- To achieve more equitable access to land, so as to reduce poverty and landlessness in rural areas;

- To improve social justice by shifting the balance between different groups in the ownership and control of land, and by restoring alienated land rights;

- To promote rural development by raising agricultural productivity and creating a class of productive smallholder farmers.

These objectives have frequently been combined, but they may also conflict, leading to different types of land reform, targeting the very poor, or alternatively, commercially viable farmers. In particular, whether improvements in equity and social justice also enhance



productivity and land use efficiency may depend on the agricultural development model adopted and the wider market context. Research has documented a positive relationship between more equitably distributed land and economic growth (Deininger & Squire 1998). Experience from several East Asian countries (South Korea, Taiwan) shows clearly how a reform delivering more equitable land distribution is fundamental to create sustained economic development, by sweeping away unproductive land-owning classes, promoting farm modernisation, and boosting rural purchasing power and domestic demand to support a growing and competitive industrial sector.

In much of Africa, land concentration is limited compared to other regions such as Latin America. Important exceptions exist, especially in Southern Africa, where the colonial settler economy and apartheid resulted in an extremely inequitable land distribution, mainly along racial lines. In South Africa and Namibia, land redistribution programmes have been implemented since the 1990s, and land policy has had to grapple with reconciling objectives of social justice with economic development. In South Africa, the aim of more equitable access to land is entrenched in the Constitution. However, despite the government's efforts, the wider policy and trade environment still tends to favour a predominantly white commercial farm sector, which still generates important export revenue. Through the LRAD (Land Reform for Agricultural Development) grant-aided land acquisition programme, the South African government has sought to promote the emergence of new small scale black commercial farmers, while maintaining opportunities for poorer groups though a sliding scale of grants and own contributions which can be made in the form of labour.

Both Latin America and Asia are characterised by complex histories of land reform and redistribution efforts. Land redistribution has generally occurred on the back of historical turning points, at which powerful interest groups and coalitions could be mobilised in favour of land reform. In East Asia there have been some notable and well-documented success stories (South Korea, Japan and Taiwan). Most Latin American countries have adopted agrarian reform programmes to redress the high concentration of land and the dualistic *latifundio–minifundio* land tenure structure. While in some cases reform programmes have redistributed substantial land areas (e.g. in Cuba), in most cases lack of political commitment has limited the effectiveness of the agrarian reform.

Different mechanisms can be used to redistribute land, ranging from market-based negotiation to compulsory acquisition. In market-based redistribution programmes the state, or reform beneficiaries with financial support from the state, purchase land from right holders at a negotiated price ("willing seller, willing buyer"). Market-based models vary widely, for instance with regard to the identity of the buyer (the state, as in Namibia;

or beneficiaries, as in South Africa), and the institutions and processes used. Compulsory acquisition models also diverge widely, depending on the amount and timing of compensation and the nature of the expropriation process.

In recent years, state-centred models have been criticised on a number of grounds, including: coercive expropriation of land and compensation below market prices leading to landlord opposition and legal challenge; the slow pace of reforms due to heavy, centralised state bureaucracy; poor sequencing of land transfers and development support to beneficiaries; and the creation of disincentives for large-scale commercial and inward investment because of contested land ownership.

Market-based approaches have been promoted in the last decade as an alternative means of addressing land redistribution, avoiding the problems associated with state-centred models. They feature: voluntary participation by landlords and 100 percent cash payments at market values; a demand-driven approach with self-selected beneficiaries; a decentralised, more transparent, quicker and less contentious approach; and more flexible financing arrangements (see Borras 2003).

While there have been real problems with how the state organises land reform programmes, where progress with state-led land redistribution has been slow (e.g. in the Philippines and in many Latin American countries), this is substantially a result of lack of political commitment. In addition, a number of problems associated with state-centred programmes, such as lack of transparency, failures in delivery of essential support services, and lack of effective participation amongst beneficiaries have also been reported with regard to market-based approaches, which have themselves proved politically contentious.

Progress with market-based redistribution depends upon the willingness of landowners to sell and on the availability of funds to enable the state to support land purchases. As a result, land redistributed may be of low quality (Wegerif 2005; Borras 2003; Barros *et al*. 2002; Lebert 2003) because it is more readily and cheaply available. The design of land purchase credit schemes – such as *Cedula da Terra* and *Credito Fundiario* in Brazil (Box 3), and LRAD in South Africa – requires poor beneficiaries to pool resources to enter the market, and encourages them to minimise loan funding for land purchase (which leads to debt obligations), and maximise grant funding for productive investments.

Strong capacities are needed to implement land acquisition programmes effectively. Whether land is first acquired by the state and subsequently transferred to beneficiaries, as in the Namibian model, or acquired directly by beneficiary groups, land valuation and

other skills are needed to negotiate a fair market price with the "willing seller". Landowners' asking prices are generally considered to be inflated (e.g. Pohamba 2002 on Namibia), and even where land is expropriated, as in Brazil, former owners are frequently able to argue up compensation levels through the courts. These problems might be addressed through hiring in skills to appraise values for acquisition, which should encourage more realistic pricing; and to set values for land taxation purposes, which should create incentives to put land on the market, particularly where very large land holdings are not utilised productively.

BOX 3. MARKET-BASED REDISTRIBUTION PROGRAMMES IN BRAZIL

Brazil is running a mix of traditional expropriation-based redistribution efforts alongside market-assisted land reform and negotiated recuperation programmes. During the Cardoso government (1994-2002), the pace of land expropriation and other types of reform increased sharply (Baranyi *et al.* 2004). This is largely because the government was put under considerable pressure to deliver by social movements such as the Movement for Landless Rural Workers (MST). Alongside expropriation-based reform, Brazil has implemented two market-based programmes – the *Banco da Terra* (Land Bank) and the *Cedula da Terra*. The latter was piloted with World Bank support in five Northeastern states, and subsequently expanded nationally as the Credito Fundiario programme, while the former was established with the intention of expanding the market-based scheme nationally (Baranyi *et al*. 2004). Both operate on the basis of state provision of cheap credit (*Banco da Terra* and *Cedula da Terra*) or grant/loan packages (*Cedula da Terra*) for land purchase. However, land reform social movements have criticised these initiatives, arguing that landlords responsible for the concentration of land are rewarded, and they express concern that decentralising land reform processes leaves it in the hands of the very actors who have traditionally opposed it. Official studies on the comparative effectiveness of these programmes and of state-managed land redistribution have produced largely inconclusive evidence.

At the same time, studies showing that disadvantaged groups are purchasing land on the market (e.g., for South Africa, Lyne and Darroch 2003) suggest that an appropriate use of market-based mechanisms has a valuable role to play in changing the distribution of land. Despite these cases, purchase markets are generally inaccessible to the poor, who cannot mobilise the resources required to enter the market because of lack of appropriate credit facilities and the high prices commanded by large landowners. Moreover, case studies in South Africa and Brazil demonstrate that while subsidised land acquisition schemes may have a role to play, available market supplies can be rapidly exhausted, and (for instance in some parts of Brazil) land offered by sellers may be ineligible for the schemes because it had been acquired illegally.

Rather than choosing a single type of institutional arrangement to transfer land from the hands of a few to the many, the challenge may lie in devising a menu of options enabling different routes to land acquisition and combining elements of compulsion, incentive and free negotiation (see Roth 2002). These different elements may be mutually reinforcing. For instance, a credible threat of compulsory acquisition may make landowners more willing to sell at fair prices to land beneficiaries, thereby making market-based mechanisms more effective and speedy. Over the past sixty years, successful land redistribution programmes across the world have combined free negotiation, fiscal incentives for land transfers and compulsory land acquisition (e.g., Italy, South Korea and Taiwan). In all cases, the existence of an element of compulsion proved crucial for the success of the reform programme. In addition, experience demonstrates the importance of making full use of available public land, held by the state – which may have been occupied illegally by private landowners – prior to acquiring new land from the private sector.

These considerations highlight the need to monitor progress made with land redistribution programmes. This involves a comparison not only between market-based and expropriation-based mechanisms, which has proved ideological and divisive, but also between modalities of market- and state-based models and combinations of the two (e.g. between the South African model, whereby land is purchased by beneficiaries with support from the state, and Namibia's state-centred "willing seller, willing buyer" model). Attention should be paid to getting the right mix of approaches tailored to different areas, circumstances and market conditions, and to the success with which land reform programmes manage to square the circle of protecting private property, so as to encourage investment, while achieving a more equitable land distribution.

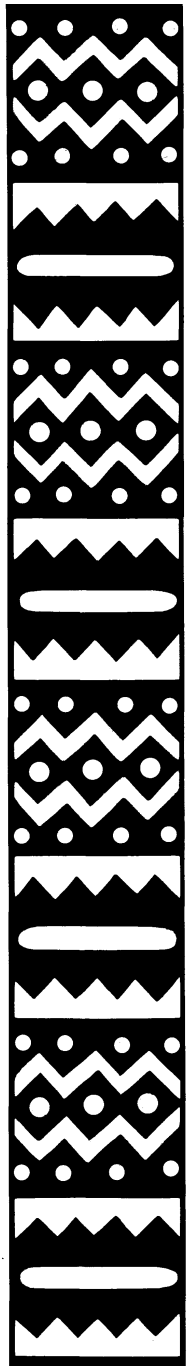
Land redistribution must not be seen in isolation from broader support to the agricultural sector. Newly established farmers will need a mix of technical support, as well as help in accessing credit, markets and inputs. In Brazil, the recent slow progress by Lula's government in redistributing land includes the allocation of a larger share of support to the family sector as a whole, including resettled farmers. This aims to ensure that they have sufficient support to be viable, rather than maximising the number of new land recipients.

The experience of Taiwan and South Korea, where successful land redistribution took place after the end of a major war and under the "communist" threat, and in the Indian states of Kerala and West Bengal, where land reforms were key elements in egalitarian social change, shows that the success of a land reform programme ultimately depends

upon strong political power allied to land reform movements seeking to change the land distribution of the country, and challenging resistance by landed interests.

This experience contrasts with that of the former socialist countries of Central and Eastern Europe and the Commonwealth of Independent States, although there are some common conclusions about what is necessary to achieve a successful outcome. While individually substantially different in backgrounds, legal frameworks and patterns of tenure, these countries shared a broadly common heritage of very large-scale cooperative, collective or state farms operating thousands of hectares and employing hundreds of workers (in the first two cases as member-workers). The workers also farmed individual household plots. Normally less than a hectare, these plots were nominally for subsistence purposes, but in practice made a substantial contribution to aggregate agricultural production. The process of restitution and privatisation of agricultural land and enterprises hides a complex set of highly differentiated approaches and experiences. On average, however, in Central and Eastern Europe 21 percent of land was farmed individually in 1990; the equivalent figure for the Commonwealth of Independent States countries was 4 percent. By 2000, these figures had increased to 66 and 21 percent respectively; although the more revealing statistic for the CIS countries is of individual production, which increased from 28 percent of total farm output in 1990 to 72 percent in 2000.

Their experience reinforces the general view that success in implementation of land reform depends to a very large extent on the commitment, the political will, of the government. Likewise, privatisation of land and other assets without effective reorganisation of the enterprise structures, incentives and operations will not improve farm performance and efficiency (Lerman *et al*. 2004).



III. SECURING LAND RIGHTS

Land tenure security (Box 4) is a key part of sustainable development, as agribusiness and smallholders alike need secure tenure in order to invest in the land. Yet, in many parts of the world, property rights are weak or unclear, undermined by overlapping land claims and intense competition. Across Africa, for instance, land legislation is based on European legal concepts that have little relevance to land relations on the ground, where land is usually held by clans or families and used through complex systems of multiple rights. On the other hand, local – "customary", but continually evolving – land tenure systems are commonly applied even where inconsistent with legislation, as they are more accessible to rural people. As a result, several legal systems – statutory, customary and combinations of both – coexist over the same territory, resulting in overlapping rights, contradictory rules and competing authorities ('legal pluralism'). This situation creates confusion and fosters tenure insecurity, which discourage agricultural investment and enable elites to grab common lands.

BOX 4. LAND TENURE SECURITY

Land tenure security refers to the degree of reasonable confidence not to be arbitrarily deprived of the land rights enjoyed or of the economic benefits deriving from them. It includes both objective elements (clarity, duration and enforceability of the rights) and subjective elements (landholders' perception of the security of their rights).

(Place *et al*. 1994; Schlager & Ostrom 1992).

Efforts to improve land tenure security have traditionally emphasised large-scale individual titling and registration programmes. Individual titles, a long-standing argument runs,

would increase the willingness and ability of landholders to invest, by removing disincentives (as landholders would not invest in the land unless they can be reasonably confident that they will not be deprived of it) and by improving access to credit (as titles can be used as collateral). On the basis of these arguments, titling and registration programmes have been implemented over the past decades in many parts of Africa, Asia and Latin America.

In Asia and Latin America there has been some success with titling and registration. In Thailand, land titles are reported to have led to higher land values, greater agricultural investment and higher productivity (Feder *et al*. 1988; Deininger 2003). Increases in land values and agricultural investment following registration have also been reported in Nicaragua, Ecuador and Venezuela (Deininger 2003). In the transitional economies of Central and Eastern Europe, and the Commonwealth of Independent States, there has been a range of experience, but, in general, the development of registration systems has proceeded substantially since 1990, although in many countries there have been serious constraints, particularly legal and institutional, which have delayed progress.

However, in Africa, registration programmes have proved slow, expensive, difficult to keep up-to-date and hard for poor people to access. As a result, very little rural land has been registered, and formal tenure covers only between 2 and 10 percent of the land (Deininger 2003). Where titling and registration have been implemented, greater agricultural investment has not necessarily materialised. High monetary, transaction and other costs discouraged registration of land transfers, thus making land registers outdated and undermining their ability to secure land rights. Registration may not be enough to improve farmers' access to credit where high transaction and other costs hinder credit supply in rural areas and where an unpredictable and fluctuating environment makes farmers risk-averse and hence reluctant to apply for loans. And, although one of the aims pursued by registration programmes is to reduce land disputes, ill-conceived programmes can in fact exacerbate disputes, at least in the short term. Indeed, research shows that latent disputes can flare up when local actors realise that registration will bring about final adjudication of land rights; and that local elites can manipulate the process to grab land before registration (so as to be well placed when implementation starts) or to register common lands in their own names. Also, many registration programmes had negative distributive effects, as those with more contacts, information and resources were able to register land in their names, to the detriment of poorer claimants (for example, in Kenya's long-standing registration programme). Where there are significant costs to registration, in both cash and time, smallholders are particularly vulnerable to losing their rights over land. Moreover, registration tends to

penalise holders of secondary land rights, such as women and herders, as these rights often do not appear in the land register and are thus effectively expropriated (Shipton 1988; Atwood 1990; Migot-Adholla & Bruce 1994; Lund 1998; Firmin-Sellers & Sellers 1999; Platteau 2000). This highlights the need for more inclusive processes of tenure regularisation, focused on existing land rights, instead of the adjudication of individual ownership.

As experience and understanding of land registration has developed, more nuanced and appropriate approaches have emerged. It is now generally recognised that land policies and laws must build on local concepts and practice, rather than importing one-size-fits-all models. This entails, among other things, legally recognising local land rights, which are the entitlements through which most people gain access to rural land. Land registration may be a useful component of a broader tenure security strategy – particularly where customary systems have collapsed, where land disputes are widespread, and in newly settled areas – and may extend to instituting land taxation as fiscal means for decentralised government. Registration may also be useful in areas of high-value land, such as urban and peri-urban areas and irrigated lands, where competition is particularly fierce. Simple, low-cost and accessible forms of land records and the registration of community land rights are being introduced on an experimental basis in several countries around the world, e.g. land records in Niger and the Ethiopian state of Tigray, and community land rights in Mozambique and the Philippines.

As a result of this shift in thinking, recent land policies and laws present important innovations compared to their predecessors. Several countries have made explicit efforts to capture all land rights in records – for instance protecting customary land rights and providing for their registration (e.g. Uganda, Mozambique, Tanzania, Niger and Namibia). Use or lease rights over state-owned land may also be registered or are otherwise protected (Ethiopia, Mozambique and Vietnam). In Mozambique, customary use rights are protected regardless of whether they have been registered or not. And, as for the right holder, several recent titling programmes have issued titles not only to individuals but also to families (through joint titling for couples; e.g. Nicaragua, Brazil) and to groups or communities (e.g. South Africa, Mozambique and the Philippines).

It is also widely recognised that secure tenure does not necessarily require individual land ownership. Security can be achieved with clearly defined and sufficiently long-term use rights over land that is ultimately state property, as in Vietnam and China. Community land rights can also provide adequate tenure security, provided that group members enjoy clear rights over their plots; in Mozambique, for example, all land

belongs to the state, but communities can register a collective, long-term interest and manage land rights according to customary or other local practices. Enabling access to appropriate systems of land dispute resolution can provide greater returns in terms of certainty and security than investing in comprehensive exercises to document land rights. Increasing the security of land transactions, particularly land rentals (fixed-rent or sharecropping contracts), is also critically important, requiring simple local documentation systems. New technologies such as computerised land information systems and GPS can help put in place efficient and publicly accessible land records, but are no substitute for a locally legitimate process to adjudicate competing claims. Finally, there is growing recognition that in order to improve the security of land rights it is necessary to address issues beyond land tenure per se. For instance, in securing women's land rights, a new land law providing for gender equality would achieve little without a reform of discriminatory family and succession laws, particularly in contexts where inheritance is the main form of land transfer.

This shift in thinking on land tenure security – from one-size-fits-all registration to using a comprehensive approach that builds on local practice – has also raised new questions and challenges. For instance, if customary land rights are to be recognised, how to go about it in practice? Customary systems are often complex, with overlapping rights over the same resource held by different users (herders and farmers, men and women, parents and children, etc.); some groups may be discriminated against under customary systems (typically women), and formalising customary rights may favour some groups and disadvantage others (e.g. migrants vs. autochthones); formalisation risks resulting in codification and hence in loss of flexibility, which is one of the very strengths of customary systems.

As land tenure reforms may be manipulated by local elites to gain or increase access to land, access for the poor to legal institutions and processes is a precondition for pro-poor outcomes. This applies for instance to dispute settlement institutions (Box 5) and to the land registration process, both in law and in practice. Factors typically affecting access include the geographical distance to land institutions, fees and other costs, use of the local language, the length and complexity of the process, the extent of corruption, and socio-cultural factors. As for the registration process, there may be a trade-off between accessibility (which may require for instance locating land institutions at the lowest possible administrative level, and using simple technology that can be operated at such a local level) and the extent to which the registration system can provide precise and up-to-date information on land rights (which depends on the technology adopted, on the quality of land surveying, etc).

BOX 5. ACCESS TO JUSTICE AND LAND TENURE SECURITY

Access for the poor to courts and other dispute settlement institutions is essential for securing their land rights, both within communities and between local communities and outsiders. For instance, some communities have successfully challenged before international human-rights institutions the granting of logging concessions on indigenous communal lands without local consultation (e.g. Mayagna (Sumo) Awas Tingni Community v. Nicaragua, 2001). Within communities, access to justice may, for instance, help secure women's land rights – as evidenced by several cases across Africa where courts have declared discriminatory customary norms unconstitutional (e.g. Ephrahim v. Pastory and Kaizilege, 1990, in Tanzania; Bhe v Magistrate, Khayelitsha and others, 2004, in South Africa). However, in the great majority of cases access to courts is seriously constrained by the factors outlined above. In many contexts, effective customary dispute settlement institutions exist, which may be more accessible to rural people. Often, several dispute settlement institutions (statutory, customary or combinations of these) co-exist over the same territory, without clear coordination mechanisms. In these cases, parties to land disputes tend to choose those institutional channels which they deem more favourable to their cause ("forum shopping"), and disputes are never resolved in a clear and final way – which fosters confusion and tenure insecurity. Comprehensive and accessible land dispute systems are required which define clearly the roles of the formal courts and alternative dispute resolution systems, including customary mechanisms, and establish appropriate linkages between the different systems (Cotula 2005).

Ultimately, secure property rights require a combination of two forms of validation, legitimacy and legality. At local level, rights are secure if neighbours recognise a land claim as being legitimate according to their knowledge and set of values. However, unless these rights are legally recognised by the state, they have no legal value. In practice, this may not matter if land is not under particular pressure and local systems work reasonably well. But where land values are rising and there are significant outside interests, legal backing of local land rights is crucial for the protection of those rights in relation to the interests of powerful external actors.

A. THE ROLE OF LAND MARKETS IN IMPROVING ACCESS TO LAND

The political and financial difficulties with land redistribution have led to renewed interest in finding other ways to make land accessible to poor farmers. Land transactions, whether through sales and share tenancies, loans or gifts have long provided a mechanism for providing access to land those who seek it and thereby for enhancing land utilisation.

Sharecropping is a predominant form of land rental in developing countries but has been widely criticised – both by economists, for being less efficient than cash rental contracts, and by campaigners for social justice, for being exploitative. Nevertheless, whereas effort supply and intensity of input use may be higher under fixed rental contracts, under uncertain seasonal farming conditions, and with limitations on working capital and access to credit, share tenancy is a favourable option for tenants and minimises risks for tenants as well as for landlords (Lavigne *et al*. 2002).

As land becomes scarcer, the terms and conditions of land transactions are being transformed. In many parts of the world, land that was formerly available through gifts or loans now can only be obtained through short-term tenancies. In Ghana, whereas share contracts were a means by which land-poor but labour-rich households could gain access to a plot, those seeking to sharecrop land must now put forward a significant fee in order to gain access (Amanor 2001). This would imply that poorer, more marginal groups are finding their position more difficult – an expected trend as demand for land becomes stronger and land values rise.

Research from West Africa shows that, in an attempt to secure their land claims, many farmers are now seeking to document their land transactions through written contracts, formal witnessing or endorsement by customary chiefs and government officials. Supporting these efforts by linking them to formal land administration systems and clarifying the rights and duties of the two parties may help address one of the main drawbacks to informal tenancies: the disincentive to invest in the land. Under many customary systems of Africa, tenants are not allowed to plant trees or undertake other forms of land improvement with returns over several years, such as building soil conservation structures or digging wells. This is because such actions would confer on tenants stronger land rights to the plot in the eyes of the local population. Where the law lays down clearly in whose hands the underlying rights are held, this should enable tenants and landowners to discuss and agree issues relating to land improvements, including the share of costs to be borne by each party and how unexhausted improvements should be compensated at the end of the tenancy agreement.

In South Asia, land tenancy markets appear to work well, but they face legal hurdles in the shape of tenancy legislation originally intended to protect the interests of the poor (Gazdar and Quan 2004): as most developed countries have found, such legislation effectively paralyses rental markets. In different Indian states, land legislation ranges from outright prohibition of tenancies to regulating their terms and conditions. However, implementation of this legislation has led to unintended

consequences (Hanstad *et al*. 2004), driving tenancy underground. The creation of permanent rights for tenants and the outlawing of tenancy has caused landlords to fear losing their land, limited rental opportunities for land-poor households, and led to the under-utilisation of cultivable land and to pre-emptive evictions of tenants before the legislation came into force (Hanstad *et al*. 2004). The prohibition and excessive regulation of land rental markets tends to restrict land access opportunities, and while clear and secure tenancy rights and the elimination of exploitative practices are important, there is a compelling case for the liberalisation of restrictions on both fixed rental and share tenancy contracts (Deininger 2003). Nevertheless, there remains a case for limited and balanced regulation of tenancy in favour of the poor, providing some measures of security of tenure and curbing the potential for exploitative practices of landlords (Srivastava 2004).

A variety of promising initiatives in land leasing by NGOs to facilitate access to land by the poor have emerged in South Asia (Gazdar & Quan 2004). One of the best documented is the work of the Deccan Development Society in leasing out underutilised private land in Andhra Pradesh for use by Dalit (lower caste) women on a tenancy basis (Hanstad *et al*. 2004).

Several counties across the world have also adopted reforms to ease restrictions on land sales. In Mexico, for instance, recent reforms enabled land sales within the community (*ejido*; Deininger 2003). In Vietnam, long-term use rights can be transacted. And in much of Africa, recent land laws enable various forms of land transfers, although state control over land remains widespread, in the form of ownership (e.g. in Ethiopia, Eritrea, Mozambique) or trusteeship (e.g. in Tanzania). For instance, under Uganda's Land Act, land certificates may be sold, leased and mortgaged, while in Tanzania landholders may freely sell their rights to other villagers and, with the approval of the Village Council, to non-villagers (Alden Wily 2004). However, despite the need for small-scale landholders to be free to transact land amongst themselves, experience shows that land sales markets are much less effective than land leasing or sharecropping in providing new land access opportunities for the poor. High transaction costs and lack of access to credit limit the ability of the poor to buy land on the market. Distress sales of land by the poor may also occur, with negative equity outcomes. Nevertheless, the ability to transfer land on a freehold or leasehold basis may create incentives for greater investment and enable use of land as collateral in credit markets (Deininger 2003).

B. WOMEN'S LAND RIGHTS

Throughout the world, women constitute a large portion of the economically active population engaged in agriculture, both as farmers and as farm workers, and play a crucial role in ensuring household food security, despite enjoying very limited rights to land. In many countries, the role of women in agricultural production has increased in recent years as a result of men's migration to urban areas and absorption in non-agricultural sectors. However, in many parts of the world, women have little or no access to resources such as land, credit and extension services. Moreover, women tend to remain concentrated in the informal sector of the economy. In plantations, they often provide labour without employment contracts, on a temporary or seasonal basis or as wives or daughters of male farm workers.

Although land and natural resource legislation tends to be gender neutral or to explicitly prohibit sex or gender discrimination in relation to land, it is scarcely implemented in rural areas. At the same time, customary law is widely applied in the rural areas of Africa, Asia, and in those regions of Latin America inhabited by indigenous communities, and the exercise of women's land rights is consequently affected by entrenched cultural attitudes and perceptions.

Women's land rights under customary systems vary considerably from place to place. Substantial differences exist between patrilineal and matrilineal societies, with women generally having stronger land rights under the latter. However, in most cases, rights in arable land are allocated by the lineage authority to the male household head; women have secondary, derived rights, obtained through their relationship with male family members (husbands, fathers, brothers or sons). Under many customary systems, women's inheritance rights are limited: not only within patrilineal systems (where property devolves along the male line, to the exclusion of women), but also in matrilineal systems (where, although property traces through the mother's line, land control usually rests with male family members). With population pressures, cultural change, agricultural intensification and commercialisation, many customary systems have evolved towards greater individualisation, extending the rights vested in male household heads and further eroding women's secondary rights (Lastarria-Cornhiel 1997; Mackenzie 1998; Gray & Kevane 2001).

However, in many areas, women are increasingly keen to assert their claims over land. All over Africa, one can find examples of women negotiating rights to land and associated resources (Freudenberger 1993). For instance, women may enter

sharecropping arrangements, as documented for Ghana and Côte d'Ivoire (Amanor 2001; Koné 2001). In addition, there are growing numbers of reports of women buying land either individually or collectively. In many parts of the world, NGOs support women's groups by helping them obtain land on a collective basis.

In recent years, greater attention has been devoted to gender at both national and international levels, and considerable efforts have been made to improve women's position in society in general and their legal access to land in particular. Norms on women's land rights have been adopted at the international level not only within human rights treaties (particularly the Convention for the Elimination of All Forms of Discrimination against Women), but also in instruments relating to the environment and to sustainable development, such as the Convention to Combat Desertification. Gender equality and women's empowerment are also critical to achieving the Millennium Development Goals, particularly MDG 3.

At the national level, many countries have adopted national plans of action and established institutional machinery to promote women's empowerment. Most constitutions today prohibit gender discrimination and protect women's rights. Legislative reforms have brought about changes in family and succession law toward equality between spouses and full legal capacity of married women, and toward greater gender equality in inheritance rights. Moreover, women's legal status has been improved by judicial decisions declaring discriminatory norms to be unconstitutional (Cotula 2002).

For a long time, land policy and legislation made no reference to gender. However, policies and laws adopted since the 1990s have paid greater attention to gender equity, by embracing the principle of non-discrimination, abrogating customary norms, presuming joint ownership of family land, outlawing land sales without consent of both spouses, and providing for women's representation in land management bodies (e.g. in Africa: Eritrea, Burkina Faso, Mozambique, Tanzania, Uganda; see Cotula 2002).

In the past, very little attention was paid to gender within agrarian reform programmes, ranging from land titling to land redistribution. For instance, in the Kenyan land registration programme (1954 onwards), registration was usually made to the male household head, thereby undermining women's unregistered secondary rights (Shipton 1988; Mackenzie 1998). In India, state-level land tenancy reforms and land redistribution programmes mainly benefited male household heads (Agarwal 1994). Most Latin American agrarian reforms have targeted household heads and permanent agricultural workers in formal employment; both groups consist predominantly of men. As a result,

only a very small percentage of women benefited from Latin American land redistribution programmes: between 4 and 15 percent in Chile, Colombia, Costa Rica, El Salvador, Honduras, Mexico, Nicaragua, and Peru (Katz 1999).

Since the late 1980s, reflecting global recognition of the issue, agrarian reforms have paid greater attention to gender. Nicaragua's land titling legislation grants men and women equal rights to obtain land titles, and provides for joint titling for couples, whether married or not. Joint titling has also been used in Brazil. In South Africa, gender equity is one of the fundamental principles of the White Paper on Land Policy, and a specific Land Reform Gender Policy was adopted in 1997. The policy has been implemented in a variety of ways. For instance, the Communal Property Associations Act of 1996 empowers communities to own and manage property through associations complying with several requirements, including non-discrimination on the basis of gender.

Thus, there has been considerable progress with laws and programmes to affirm and protect women's rights. But it is hard to assess the overall effectiveness of these norms in increasing women's participation in reform programmes. The Nicaraguan titling programme has led to a substantial increase in the number of women landowners. On the other hand, in Brazil land is still usually registered with the husband and joint registration remains rare because many rural women lack the documents required to obtain land titles. The 1996 Agrarian Reform Census revealed that only 12.6 percent of land reform beneficiaries were women, although there was considerable variation by state (Guivant 2001).

In many countries, the implementation of policies and laws protecting women's rights is constrained by entrenched cultural practices, lack of legal awareness, limited access to courts and lack of resources. These implementation problems are generally more severe in rural areas than in urban areas. In these cases, effective interventions to improve women's legal status need to include not only legislative reform but also steps to bridge the gap between law and practice.

C. SECURING LOCAL RESOURCE RIGHTS IN FOREIGN INVESTMENT PROJECTS

Land and natural resources are an important sector for foreign investment, in agribusiness, forestry, tourism, mining and petroleum. Countries with such resources may lack the capital and technology to exploit them. Investors with the necessary capital and technology may be the solution. In Africa, foreign direct investment (FDI)

flows are heavily concentrated in countries with important petroleum and mineral resources (UNCTAD 2005). However, if appropriate conditions are not in place, natural resource-based investment projects may undermine the ability of local communities to access the resources on which they depend for their survival. This may take the form of expropriation of community lands without adequate compensation. Investors may also be granted exploitation rights that severely affect the ability of local communities to use their resources, and in many cases, investment projects – whether mining operations or large tourism facilities – have led to the diversion and pollution of scarce water supplies. While these issues may emerge in relation to both domestic and foreign investment, the involvement of foreign capital in capital-poor countries may affect more profoundly the balance of bargaining power between local resource users and outside investors.

These problems are compounded by the fact that local users commonly gain access to land through customary norms, and therefore lack registered land titles. Many legal systems accord greater protection to the property rights of foreign investors than to those of their nationals, in the belief that this is important in attracting foreign investment. Many developing countries have provided special guarantees to foreign investment through signing investment treaties, passing domestic legislation and establishing specialised government agencies. However, it is easy to exaggerate the importance of guarantees to property rights in attracting FDI. A recent study by UNCTAD (2005) has shown that the determinants of FDI are complex, and include factors such as scale economies, infrastructure, GDP growth, and wage levels capable of supporting domestic demand for produce. Nevertheless, investor-friendly reforms have in some cases managed to attract foreign investment, for instance in the mining sector (e.g. Mali and Tanzania).

In recent years, several countries in Asia, Africa, Latin America and the Pacific have adopted policies and laws to grant local resource users greater tenure security, including in their relations with foreign investors. Several countries have opted for the legal recognition of collective land rights rather than individual titling. In its recent Policy Research Report, the World Bank argues that "while the individualisation of land rights is the most efficient arrangement in many circumstances, in a number of cases […] definition of property rights at the level of the group […] can help to significantly reduce the danger of encroachment by outsiders while ensuring sufficient security to individuals" (Deininger 2003: 76). Indeed, "where the primary source of tenure insecurity is outsider encroachment, the best legal response is to recognise and enforce local group rights, and (where it does not cause undue conflict) to demarcate and record certain lands in the name of that group" (Fitzpatrick 2005: 465).

In Mozambique, for instance, progressive land and forest legislation provides for the protection of the right of local communities to use and benefit from the land (though ownership remains vested with the state); and for a process to demarcate and register community lands (though land rights are meant to be protected even when not registered). It also requires investors to consult local communities in order to obtain land allocations or logging concessions within the boundaries of community lands. In other words, local users and outsiders are expected to negotiate terms and conditions under which local users may benefit from the outside investment. In addition, local communities are meant to benefit from 20 percent of the forest tax revenue from timber exploitation in their land. This is one of the boldest attempts to secure the property rights of local resource users in relation to foreign investors.

However, shortcomings in the design and implementation of this system have been reported (Johnstone *et al*. 2004; Norfolk 2004). For instance, the system is centred on a one-off consultation between the investor and the community. This is at odds with the long-term duration of land allocations and forest concessions. Also, the implementation of these provisions has been riddled with difficulties. In many cases, consultation processes only involve customary chiefs and local elites. In some cases, the consultation did not take place at all. Even where consultation takes place as required, communities lack the bargaining power and technical skills to negotiate with foreign investors on an equal footing. Ultimately, local communities have no right of veto – and government can still allocate concession rights within community lands, without paying compensation (Alden Wily 2004).

Another issue concerning investor-community relations concerns compensation for the taking of land and for environmental damage (e.g. water pollution) suffered by local communities as a result of the investment project. Where customary land rights are not legally recognised, local users may find it difficult to obtain compensation. In recent years, several countries have taken steps to require that loss of customary rights be compensated – either through law reform (e.g. Mali's Land Act 2000, as amended in 2002) or through judicial decisions (e.g. in Tanzania, the case Attorney General v. Akonaay and Lohay, 1994). However, even where the law requires payment of compensation, substantial problems remain. Evidence from Ghana and Tanzania within the context of mining operations suggests that the land values used by valuation boards are often lower than market values; and the existence of overlapping use rights over the same land raises issues as to who should be compensated – tenant or landowner, which landowner, or all. Customary chiefs and other elites may ally themselves with foreign investors and government agencies, and

capture the benefits of compensation to the detriment of community members; and even where compensation is set, payment may be delayed or resisted.

D. PROTECTING THE RIGHTS OF INDIGENOUS PEOPLES

While there is no universally agreed definition of indigenous people, article 1 of the ILO Indigenous and Tribal Peoples Convention 1989 (Convention 169) states that it applies to peoples "who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who […] retain some or all of their own social, economic, cultural and political institutions". Self-identification as indigenous or tribal is a "fundamental criterion".

Land rights issues relating to indigenous peoples are particularly acute in Latin America and in South and Southeast Asia. In Africa, the situation is somewhat different. In a sense, the majority of its population can be characterised as indigenous, as a result of the incomplete penetration of colonial concepts and systems of property rights and political organisations at local level. Here, the concept of indigenous people is usually referred to in relation to relatively isolated groups, such as forest dwellers (e.g. the Ogiek of Kenya) and hunter-gatherers (e.g. the San in Botswana). However, there is also growing engagement by pastoral groups, such as the Maasai of Kenya and Tanzania, in arguing land claims on the basis of indigenous rights.

Three specificities characterise property rights issues relating to indigenous peoples. Firstly, indigenous peoples' land rights are specifically protected by international law – including ILO Convention 169 and the American Convention on Human Rights (as interpreted by the international institutions supervising its implementation). Thus, Convention 169 recognises the "rights of ownership and possession" of indigenous peoples, and requires states to consult indigenous peoples on the allocation of licences to exploit natural resources (timber, minerals, etc) in indigenous lands.

Secondly, indigenous lands often constitute quite extensive areas endowed with substantial oil and gas, mining, timber and other valuable resources. As a result, tensions often occur with governments and outside interests, who do not wish to grant indigenous people substantial control over this wealth.

Thirdly, indigenous lands are typically held in common by relatively large communities. Therefore, titling processes centred on individual private property are wholly

inadequate, and different tools to improve land tenure security, tailored to community needs, are required including a wide range of joint and communal interests, and of public interests and rights.

In many areas, indigenous lands are under intense pressure from outside interests – such as incoming agribusiness, timber and mining companies, and large-scale infrastructure projects. However, the past decade has also witnessed greater assertiveness and leverage by indigenous groups in many countries. This assertiveness has usually relied both on political mobilisation and on legal processes, including litigation before national and international courts. While such lawsuits are not always successful, they do show the extent of civil society mobilisation around indigenous lands issues (some examples in Box 6).

BOX 6. INDIGENOUS PEOPLES' LAND RIGHTS IN THE OAS HUMAN RIGHTS SYSTEM

The Inter-American Commission of Human Rights and the Inter-American Court of Human Rights have been very active in protecting the land rights of indigenous peoples. In the Awas Tingni case, a Maya community filed a case against the government of Nicaragua, alleging that the grant of logging concessions to a foreign-controlled timber company without consultation with the community traditionally inhabiting and using the land area constituted a violation of several human rights. In 2001, the Court decided that the government of Nicaragua had indeed violated the right to property and the right to judicial protection of the Awas Tingni community. Although Nicaraguan legislation protected the communal property rights of indigenous peoples, no procedure existed to delineate, demarcate and title the land (Mayagna (Sumo) Awas Tingni Community v. Nicaragua, 2001).

Similarly, in a later case concerning oil and logging concessions in Belize, the Inter-American Commission of Human Rights found that lack of specific protection of indigenous peoples' communal land rights, of demarcation and registration procedures tailored to indigenous peoples' specific needs, and of consultation before the grant of natural resource concessions in indigenous lands constituted human right violations (Maya Indigenous Community of the Toledo District v. Belize, 2004).

Partly as a result of civil society pressure, several states have taken steps to secure the land rights of indigenous peoples. In Latin America, most countries have legislation in place to protect their land rights to a greater or lesser extent. Despite this progress, fundamental problems remain, as evidenced by longstanding tensions between indigenous peoples, oil companies and government agencies in Ecuador. There, significant expansion of oil fields has resulted in water pollution and adverse health effects (IWGIA 2005).

In Southeast Asia, policy and legal frameworks are extremely diverse. In Thailand, for instance, there is virtually no recognition of indigenous peoples' (here called hill tribes) rights to land and forest (Wiben Jensen 2004: 5). On the other hand, Cambodia and the Philippines have adopted legislation to protect indigenous peoples' resource rights. The Indigenous Peoples' Rights Act 1997 of the Philippines is hailed as a particularly progressive law. It protects the ownership and possession rights of indigenous groups over their "ancestral lands" and "ancestral domains"; it establishes a process for the titling of ancestral lands and domains; and it provides for "just and fair" compensation for damages, for "informed and intelligent" participation in the formulation and implementation of projects affecting the ancestral domains, and for benefit sharing. However, implementation of the Act has been extremely slow. By 2003, only 27 certificates of Ancestral Domain Titles had been issued – most of which merely confirmed documents already issued under previous legislation (Amos 2004). This is due in part to a long and cumbersome procedure, for which most communities need external assistance and in part to lack of capacity of the National Commission on Indigenous Peoples, the government agency responsible for titling, to handle large number of applications. In addition, there has been substantial opposition from strong vested interests, especially in the mining and agribusiness sectors (Wiben Jensen 2004).

E. SECURING THE RESOURCE RIGHTS OF PASTORAL GROUPS

In environments characterised by scarce and erratic rainfall and by scattered grazing resources, pastoralists need herd mobility and secure access to strategic resources, such as water and dry season grazing. This requires flexible arrangements enabling herders to access grazing resources rather than exclusive ownership rights over a given area. Such arrangements are at odds with the tools generally used to secure and manage land rights, and raise challenges for securing pastoralists' resource rights. Land titling and registration, even at a group level, of exclusive rights over a clearly delimited area may not provide for the flexible access arrangements addressing inter-group interests, which characterise many pastoral societies – for instance in much of West Africa. Conventional common property arrangements may not necessarily work either, because of the clear group membership rules and clearly defined resources typically embodied in common property rights mechanisms (see Ostrom 1990). State ownership of pastoral resources has also proved ineffective, with interventions to regulate grazing through fencing and seasonal closures reducing flexibility and mobility (Toulmin *et al*. 2004).

Much past and current debate regarding pastoral rangelands continues to make reference to the article by Hardin (1968) on the "Tragedy of the Commons". The premise

of Hardin's argument is that by holding land in common, individual herders have no incentive to limit the number of animals they graze on that land. Without such incentives, conditions are set for land degradation. Pastoral development policies in the 1970s and 1980s were heavily influenced by these negative perceptions of both pastoralism and customary tenure systems. A major preoccupation of governments and donors was thus to control rangeland degradation through the regulation of livestock numbers. Herders and the number of livestock they kept had to be controlled, as did their movements. They were encouraged to "modernise": to settle down and raise fewer animals more intensively. The focus for all these initiatives was on capital investments and infrastructure (fencing, water, roads and markets), intensification through sedentarisation, and herd size control. Few if any of these policies in fact contributed to sustainable rangeland management or improved pastoral livelihoods.

It is now widely accepted that rainfall variability is the primary driving force behind fluctuations in pasture productivity in arid and semi-arid areas, with grazing pressure rarely a significant factor, given highly mobile, seasonal patterns of resource use. Opportunistic management, allowing pastoralists to respond rapidly to changing grazing conditions and fodder availability through mobility or the opportunity to offload or restock livestock, is now recognised as a key requirement for the sustainable management of rangelands in dryland areas. This requires specifically tailored arrangements that secure the resource rights of pastoral groups while enabling flexibility for herd mobility.

Insights on how to do this can be drawn from recent experience in the Sahel. There, the past decade has seen a promising shift by several governments to recognise and regulate access and tenure rights over pastoral resources – first with Niger's Rural Code (1993) and then with the pastoral laws passed in Guinea (1995), Mauritania (2000), Mali (2001) and Burkina Faso (2002). Although the approaches taken by legislators vary considerably across countries, this pastoral legislation recognises mobility as the key strategy for pastoral resource management – contrary to much previous legislation, which was traditionally hostile to herd mobility. In order to maintain or enable mobility, pastoral legislation seeks to protect grazing lands and cattle corridors from agricultural encroachment and to secure herders' access to strategic seasonal resources. The tools used range from the delimitation of pastoral resources to innovative legal concepts like the *terroir d'attache* in Niger.[1] Pastoral laws also regulate multiple and sequential use of resources by different actors (e.g., herders' access to cultivated fields after harvest), and

1. Under Niger's Rural Code and its implementing regulations, the *terroir d'attache* is the area where herders spend most of the year (usually a strategic area, such as a *bas-fond* or the land around a water point), and over which they have priority use rights. Outsiders may gain access to these resources on the basis of negotiations with the right holders.

determine the role which pastoral people can play in local conflict management.

While these laws constitute a major step forward, some problems remain. First, pastoral legislation has been scarcely implemented. For instance, Mali's Pastoral Charter still lacks its implementing regulations. Secondly, although some laws now recognise pastoralism as a legitimate form of productive land use (*mise en valeur*, upon which protection of land rights is conditional), the concept of *mise en valeur pastorale* remains ill-defined, and generally involves investments in infrastructure (wells, fences, etc.) that are not required for agricultural forms of *mise en valeur*. Finally, in most countries, rangelands are affected by many laws, often uncoordinated, and managed by a range of different institutions. Laws on land, water, forests and decentralisation may all have implications for rangeland management.

Important innovations have taken place at field level. Throughout West Africa, for instance, local conventions (*conventions locales*) – community-based agreements concerning the management of shared natural resources – have been set up, negotiated by all interested natural resource users, usually with support from development projects. These conventions are an attempt to overcome the weaknesses of previous approaches to natural resource management focusing on individual villages (e.g. the *gestion du terroir* approach), which often resulted in the exclusion of groups not resident in the village, particularly transhumant herders.

F. CONFLICT

Armed conflict and access to land are linked in two main ways. Control over land and natural resources may constitute a key factor underlying conflict; conversely, armed conflict may severely affect land tenure or access.

Where rapid demographic growth is not accompanied by increases in productivity or by new opportunities to acquire income from non-agricultural activities, competition over land increases, and may be manipulated by elites to gain or maintain power. Thus, competition over scarce land, together with lack of off-farm opportunities, frustration and lack of hope for the youth, may create a context of instability where other trigger factors such as politically manipulated class or ethnic tension can subsequently lead to violent conflict (FAO 2005). In Rwanda, for instance, unequal access to land was one of the structural causes of poverty which was exploited by the organisers of the genocide, during which violence was directed not just at Tutsi, but also at Hutu involved in land disputes (Huggins *et al*. 2005).

Issues of access to land may also feed conflict in countries with a history of very unequal land distribution (Deininger 2003). In Guatemala, a lengthy civil war erupted in 1954, after previous attempts to redistribute land were reversed. Similarly, in Colombia, conflicts over land are among the root causes of the violence that affected the country in the second half of the 20th century.

In many cases, land disputes – while not the primary source of conflict – are among the many factors that lead to an escalation of violence. In Eastern DRC (Democratic Republic of Congo, formerly Zaire), for instance, conflict has numerous sources. Among these, access to land is an important factor. Here, the deep causes of conflict include massive in-migration by different ethnic groups seeking land; the dispossession of increasing numbers of small farmers as a result of land sales by chiefs; uncertainty and confusion over whether migrants would be given the status of citizens of the DRC; and political manipulation by rival parties and personalities (Mathieu *et al*. 1998; Huggins *et al*. 2005).

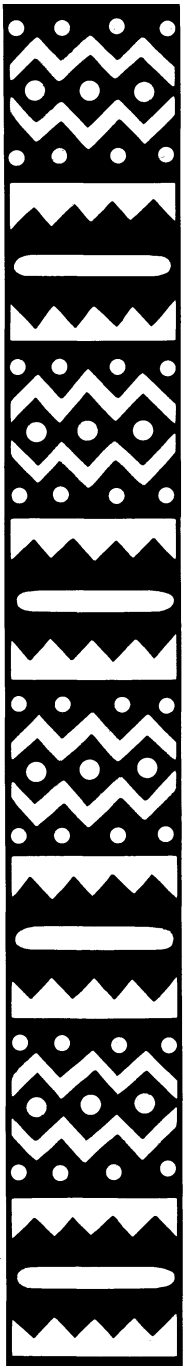
Armed conflicts in their turn have major implications for land tenure systems. First, the chaos generated by wars may weaken the customary or local institutions managing and administering land rights, thereby generating widespread tenure insecurity, fostering land disputes, and enabling elites to grab land. Secondly, wars leave a legacy of landmines preventing productive use of substantial areas of land for many years after the end of hostilities. In many countries, protracted conflict has significantly reduced the performance of the agricultural sector and of the economy as a whole (Deininger 2003). Thirdly, armed conflicts create large numbers of refugees and displaced persons, with little or no access to land in the areas to which they flee. After the end of the armed conflict, competing land claims by returnees and by new occupants may generate further disputes.

Addressing access to land issues is a key step towards the consolidation of peace (e.g. on Afghanistan, Alden Wily 2003). This may include the regularisation of existing land occupation and use – one of the key concerns that led to the adoption of Mozambique's Land Act 1997 and of Cambodia's land legislation. It may also include securing access to land for demobilised soldiers and for displaced populations, adjudicating amongst overlapping land claims of different groups, and re-establishing effective land institutions and land information systems. In Burundi, the 2000 peace accords guarantee returnees access to their property or adequate compensation (Huggins *et al*. 2005). Similarly, the Dayton Peace Agreement signed in 1995 for Bosnia and Herzegovina provides for the return of refugees and for the restitution of property (FAO 2005). On the other hand, the peace accords agreed upon for Rwanda in 1993 state that only those who had been out of the country for less than ten years could claim land (Huggins *et al*. 2005). In Côte

d'Ivoire, the 2003 Marcoussis Peace Agreement contains provisions on land relations, reaffirming the central role of the 1998 Land Law while calling for amendments better to protect the land rights of non-nationals (who constitute some 30% of the population and who are excluded from land ownership under the Land Law).

Tensions may arise between restitution of property and achieving peace. Returnees may find that their land is occupied by others and recovering their property may entail displacing the existing occupants (FAO 2005). This may slow the pace of return, as evidenced by the experience of the former Yugoslavia. There, competing claims on residential property have made their way to international human rights institutions (e.g. the case Blecic v. Croatia, decided by the European Court of Human Rights).

Addressing the underlying land-access factors that contributed to conflict is essential if long-term peace is to be achieved. In Guatemala, the peace accords require land distribution as a critical element of the post-conflict strategy, though progress with implementation has been limited (Deininger 2003). Special attention must be paid to the needs of female-headed households, widows and orphans – particularly vulnerable groups that can be very numerous in post-conflict situations (Deininger 2003; Huggins *et al*. 2005).



CONCLUSIONS

Land is an asset of enormous importance for several billion rural dwellers in the developing world. The nature of rights and how strongly they are held vary greatly, depending on competition for land, the degree of market penetration and the broader institutional and political context. The picture is hugely diverse and complex within and between countries and regions. Nevertheless, certain generalisations can safely be made.

Although there are significant differences in rural demographics between countries, with substantial rural de-population and an aging rural demographic profile in some regions, pressure on land is set to increase over future decades, given the impacts of continued population growth and demographic changes including urbanisation, globalisation of markets and activities, trade negotiations and climate change.

As a resource becomes scarcer and more valuable, those with weak rights to this resource will tend to lose out. In the case of land, particular groups tend to be more vulnerable to such dispossession, including the poor, those in peri-urban areas, indigenous people, women, those relying on common property resources, and those in areas of conflict. The strength of a given person's rights depends on a range of factors, including the resources and contacts that can be brought into play. In the case of local people versus foreign investors, the contest is usually highly unequal. Historical experience from Europe, North America and Australia shows clearly that rights are transformed when it is in the interests of certain groups to do so. The translation from oral to written testimony tends to favour the literate and those with good contacts in the bureaucracy. The meaning of

words takes on new forms. Customary trustees re-interpret their powers as those of owners, while governments and settlers redefine grazing and hunting lands as "vacant wastelands", to be allocated to others. Once such rights are lost, it is very difficult to get them back, as the struggles by indigenous groups in North America and Australia make evident.

A lack of attention to land tenure and security of land rights also risks hampering growth by discouraging local and foreign investment, because of the perceived risks involved where property rights are poorly secured. Further inaction may have an impact on agricultural growth and productivity, whether for domestic or international markets, as well as on food security and incidence of hunger, through disincentives to invest in farming for both small- and large-scale farmers.

The following sections identify key lessons and challenges for policies and programmes to improve access to land for poor and vulnerable groups:

Agrarian reform requires strong political will and sustained and consistent support

The land reform agenda must be driven and owned at the individual country level and, whilst lessons of good practice can be shared across countries, simple one-size-fit-all solutions are unlikely to help. Effective reform of land and property rights to support the livelihoods of the poor requires ***sustained commitment*** from governments and development agencies. Institutional and legal reform of this nature is ***long-term and complex***, requiring a phased approach that tackles priority activities within a longer timeframe. Significant harm can be done if the approach is limited to short-term project-based approaches. In deciding the direction and design of land reform, governments usually face choices between the interests to be supported. Successful land reforms ultimately ***depend upon strong political power*** allied to land reform movements and prepared to challenge resistance by vested interests.

Mainstream land access issues into the wider development agenda

There is a need to identify ways to ***mainstream land access within PRSPs*** more systematically at national level, and in the MDGs at global level, so as to provide concrete strategies for socially inclusive economic development. Policy dialogue at all levels should ***recognise the importance of secure land rights*** for sustained development, growth and peace. The Poverty Reduction Strategy (PRSP) process is currently at the heart of relations between donors, development agencies and country governments, bringing in substantial financial flows through budgetary support. While the PRSP process has many merits, however, the focus to date has been on service delivery in key

areas such as health, education and water. These are necessarily high priorities, given their prominence in the MDGs, but strategic support to the institutions and processes that underpin economic growth, peace and stability must not be neglected.

Reassess mechanisms for land redistribution

Promoting ***equitable access to land is crucial*** for social justice, political stability, rural development and peaceful co-existence. This is particularly the case where land ownership is highly concentrated. This requires ***dynamic and effective implementation*** of ongoing land redistribution programmes. At the same time, it requires a ***systematic assessment of the appropriateness of the mechanisms*** used in those programmes, particularly with regard to the ability of the different state-centred and market-based models effectively to change the land distribution and to benefit the poorest of the poor. In reality, ***a "menu of options" may be the most viable approach.***

Improve land administration and land tenure security

Simple and inexpensive methods to bring together existing records and make them open to the public are essential in establishing ***transparent and corruption-free administration*** of land and property rights. Outdated, inefficient, incomplete and inaccessible land registers and land administration systems generate conflicting claims and fuel disputes. In recent years there has been considerable innovation in this regard. One welcome shift in mainstream thinking has led to less emphasis on formal individual land titling as the essential tool to secure rights, ***in favour of a broader range of interventions*** according to cost and context. There is a need to:

- develop and disseminate a range of tools for improving land tenure security and delivering low-cost land titles (including group titles) appropriate for different groups and circumstances, paying special attention to the specific land tenure security needs of poorer and more vulnerable groups;

- systematically support democratic land institutions and land information systems that are decentralised and problem centred, and make links with existing indigenous and customary mechanisms for managing land;

- improve access to appropriate and comprehensive systems of land dispute resolution incorporating formal, alternative dispute resolution (ADR) and customary procedures.

Build capacity to implement agrarian reform

Aggressive capacity building is critical for improving access to land and its effective administration, both in state institutions and in civil society. New approaches to

land policy require ***investment in essential skills*** including surveying, land registration, land use planning, land law, valuation and community-based planning and management. Lack of capacity in government agencies, lack of legal awareness, and economic, geographic and linguistic inaccessibility of state institutions all contribute to limit the outreach of state policy in rural areas. This calls for ***supporting opportunities for professional development***, lesson sharing and capacity building, including at the university level, in centres of excellence and through learning networks of policymakers, practitioners and civil society. In many countries, legislation protects the rights of vulnerable groups, yet there remains a huge gap between what should be done in theory and what happens in practice. The issue of women's rights and gender equality is a telling example. ***Building the capacity of citizens*** to use the opportunities offered by the law is of great importance to bridge this gap. Measures may include awareness-raising campaigns to disseminate information concerning land policies and laws, such as legal literacy programmes for women and vulnerable groups.

Strengthen civil society groups and networks

Supporting civil society initiatives at local, national and sub regional levels is a vital element of enabling governments to identify effectively and develop appropriate policies in support of improved access to land. The distribution and management of land has important political aspects. Capable and well-informed civil society organisations can play an important role in informing, and in providing ***checks and balances***, on government decision-making and the development and implementation of land policy. Exchange of experience through networks of civil society organisations, and analysis and research linked to action planning can also promote the development of appropriate land policies.

Recognise that good governance of land is essential for peace and security

Land access issues must be addressed in post-conflict reconstruction as ***critical ingredients of future peace and security***, ranging from negotiated settlement of overlapping claims and competing land use, through rapid land provision for returnees to re-building land institutions. While land issues are not necessarily the major or sole cause of civil and military conflict, they are very often part of the picture. Land conflicts between groups may spill over into wider political conflict, insecurity and war, and are often manipulated by political parties as a means of mobilising support.

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Better land access for the rural poor
Lessons from experience and challenges ahead

This report reviews recent policy, law and practice to improve and secure access to rural land for poorer groups. It examines the links between land access and poverty reduction, shifting approaches to land reform, different means to secure land rights and to achieve more equitable land distribution, the particular vulnerability of certain groups to losing their land rights, and the role of addressing land rights within conflict resolution and peace building. It concludes with broad recommendations for protecting land rights of poorer and more vulnerable groups. It focuses on Africa, Latin America and Asia, while also referring to experience from Central and Eastern Europe and the Commonwealth of Independent States.

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