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Le présent bulletin a pour but de fournir des renseignements et de faire connaître des opinions sur la réforme agraire et les questions connexes à l'Organisation des Nations Unies, aux États Membres de la FAO, ainsi qu'aux experts et institutions nationaux et internationaux. Les articles paraissent dans la langue originale (en français, anglais ou espagnol).

Les lecteurs désireux d'obtenir des renseignements complémentaires sur ce bulletin sont priés de s'adresser au rédacteur, *Réforme agraire, colonisation et coopératives agricoles,* Division du développement rural, FAO, Viale delle Terme di Caracalla, 00100 Rome, Italie.

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La presente publicación es editada por la FAO como medio difusor de información y opiniones sobre la reforma agraria y temas conexos entre las Naciones Unidas, los Estados Miembros y expertos e instituciones nacionales e internacionales. Se publican artículos originales en español, francés e inglés.

Los lectores que deseen obtener más detalles sobre este boletín o sobre los artículos que figuran en él deberán escribir a: Redactor en Jefe, *Reforma agraria, colonización y cooperativas,* Dirección de Desarrollo Rural, FAO, Viale delle Terme di Caracalla, 00100 Roma, Italia.

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Preface

The availability of good quality land tenure data is necessary to enable informed debate and the generation of appropriate land tenure and rural development policies. This need, coupled with increasing pressures on land resources, has led the Land Tenure Service of the Food and Agriculture Organization of the United Nations (FAO) to focus on land tenure data as one of its major areas of activity under its present work programme. Its objective is to support the Member Nations of the Organization in their analysis and understanding of the role of land tenure in rural development and, more specifically, of how good land tenure data are used to support improved policy- and decision-making. Given that relatively few national agricultural censuses and other appropriate data collection activities record much data on land tenure, this activity, in cooperation with FAO's Statistics Division, supports Member Nations that are considering inclusion of such data by helping to identify what data might be useful and why.

This first volume of *Land Reform, Land Settlement and Cooperatives* for 2006 concludes this line of work. It includes ten articles that examine the issues of land tenure data, land tenure databases and their roles in their host societies. These articles are based on the set of case and synthesis studies that were prepared for the Land Tenure Data Expert Meeting held at FAO in Rome in September 2005. They also reflect the outcomes and improved understanding of the issues developed during that meeting.

This volume, therefore, presents a rich set of articles presenting issues specific to a number of continents and regions, countries and communities, land tenures and land tenure databases. The first article, by Grover, Törhönen and Palmer presents a general summary of current thinking on the importance of land tenure data and databases for policy- and decision-making. The following four articles deal specifically with Central and Eastern Europe, Southeast Asia, sub-Saharan Africa and Latin America. The remaining five articles present country case studies covering selected Central and Eastern European countries, Cambodia, Thailand, South Africa and Bénin.

The articles in this volume are unique in presenting a set of regional perspectives on this important issue. They demonstrate the importance of collection, recording and analysis of land tenure data in all regions. These data are crucial for improved decision- and policy-making in the fields of economic development, food security and environmental sustainability. The articles also make it clear that the collection of such data is not straightforward, owing to the variability and complexities of land tenure systems and arrangements; nor do land tenure databases permit standard solutions or models.

Paul Munro-Faure
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Préface

L'accès à des données de qualité ayant trait au régime foncier est indispensable afin de faciliter la tenue de débats solidement étayés et de favoriser la mise en œuvre de politiques adéquates en matière de régime foncier et de développement rural. Cette exigence, conjuguée aux pressions accrues sur les ressources terrestres, a amené le Service des régimes fonciers de l'Organisation des Nations Unies pour l'alimentation et l'agriculture (FAO) à axer ses travaux sur les données liées aux régimes fonciers et à leur accorder une place privilégiée au titre de son programme de travail actuel. Son but consiste à prêter son appui aux États Membres de l'Organisation afin qu'ils puissent analyser et comprendre le rôle que joue le régime foncier au sein du développement rural, et, plus précisément, la manière dont des données foncières solides peuvent être utilisées afin d'appuyer des stratégies et des prises de décisions mieux conçues. Vu le nombre relativement restreint de recensements agricoles nationaux et autres activités de collecte de données adéquates et la rareté des données relevées en matière de régimes fonciers, cette activité, en coopération avec la Division de la statistique de la FAO, appuie les États Membres qui envisagent l'inclusion de ces données en favorisant leur extraction judicieuse et leur justification pertinente.

Le premier volume de Réforme agraire, implantation agricole et coopératives pour 2006 permet de mener à bien cette démarche. Il recouvre 10 articles qui se livrent à une analyse des problèmes relatifs aux données foncières, aux bases de données foncières ainsi qu'à leur rôle au sein des sociétés hôtes. Ces articles s'inscrivent dans l'optique des jeux d'études de cas et de synthèse qui ont été préparés à l'occasion de la Réunion d'experts sur les régimes fonciers, tenue au siège de la FAO à Rome en septembre 2005. Ils concordent également avec les résultats obtenus et la compréhension améliorée des problèmes qui se sont précisés lors de cette réunion.

Ce volume présente ainsi un large éventail d'articles rendant compte des problèmes propres à un certain nombre de continents et de régions, de pays et de communautés, de régimes fonciers et de bases de données foncières. Le premier article, par Grover, Törhönen et Palmer présente un tableau récapitulatif des idées courantes sur l'importance des données et des bases de données foncières en matière d'orientations et de prises de décisions. Les quatre articles ultérieurs abordent expressément l'Europe centrale et orientale, l'Afrique subsaharienne, l'Asie du Sud-Est et l'Amérique latine. Les cinq derniers articles portent sur des études de cas de pays traitant d'un échantillon de pays de l'Europe centrale et orientale, du Cambodge, de la Thaïlande, de l'Afrique du Sud et du Bénin.

Les articles de ce volume sont sans précédent car ils rendent compte d'un jeu de démarches entreprises au niveau régional sur ce problème fondamental. Ils témoignent de l'importance que revêtent la collecte, l'enregistrement et l'analyse des données foncières sur l'ensemble des régions. Ces données sont essentielles afin d'assurer des orientations et des prises de décisions optimisées en matière de développement économique, de sécurité alimentaire et de viabilité environnementale. Ces articles précisent aussi que la collecte de ces données n'est pas simple, par suite de la variabilité et de la complexité des régimes fonciers et des dispositifs fonciers; à noter également que les bases de données foncières ne se prêtent pas à des solutions normatives ou à des modèles normatifs.

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Prefacio

Es necesario disponer de datos de tenencia de la tierra de buena calidad para llevar a cabo un debate fundamentado y diseñar políticas de tenencia agrícola y de desarrollo rural apropiadas. Esta necesidad, junto con una mayor presión sobre los recursos territoriales, ha conducido al Servicio de Tenencia de la Tierra de la FAO a concentrarse en los datos de la tenencia agrícola como una de las principales áreas de actividad de su actual programa de trabajo. Su objetivo es respaldar el análisis y la comprensión de la función de la tenencia en el desarrollo rural por los Estados Miembros de la Organización y, en especial, la utilización de unos datos correctos con el objeto de promover políticas y tomar decisiones más adecuadas. Debido a que pocos censos agrícolas nacionales y otras campañas de recogida de datos registran un gran número datos sobre la titularidad territorial, la Dirección de Estadística de la FAO ha respaldado a los países miembros en su esfuerzo por identificar qué datos pueden ser útiles y por qué.

Este primer volumen de *Reforma agraria, colonización y cooperativas* de 2006 contiene diez artículos que examinan las cuestiones de los datos de tenencia agrícola, de las bases de datos de la tenencia de la tierra y sus papeles en las respectivas sociedades. Los artículos se basan en una serie de estudios de casos y de síntesis elaborados para la Reunión de Expertos de Datos de Tenencia de la Tierra celebrada en la sede de la FAO en Roma, en septiembre de 2005. Los artículos reflejan asimismo los resultados y la mejor comprensión de los temas desarrollados durante esta reunión.

Por consiguiente, este volumen contiene un amplio conjunto de artículos en que se exponen temas específicos sobre un cierto número de continentes y regiones, países y comunidades, tenencias agrícolas y bases de datos de la tenencia de la tierra. El primer artículo, de Grover y Törhönen, presenta un resumen del pensamiento actual sobre la importancia de los datos y de las bases de datos de tenencia para la instauración de políticas y la toma de decisiones. Los cuatro artículos siguientes se refieren a Europa central y oriental, a África subsahariana, al sureste asiático y a América Latina. Los cinco artículos restantes presentan estudios de casos de determinados países de Europa central y oriental, Camboya, Tailandia, Sudáfrica y Benin.

En este volumen se brinda una serie de perspectivas regionales sobre esta importante cuestión y se demuestra la importancia de la recogida, el registro y el análisis de los datos de tenencia de la tierra en todas las regiones. Los datos son fundamentales para la instauración de una mejor política y una toma de decisiones más apropiada en los ámbitos del desarrollo económico, la seguridad alimentaria y la sostenibilidad medioambiental. Se pone de relieve asimismo que la recogida de datos no resulta fácil debido a la variabilidad, complejidad y organización de los sistemas de titularidad territorial; y que tampoco las bases de datos permiten soluciones o modelos estándares.

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L'importance des données foncières en matière de prises de décisions

Ce document récapitule les idées courantes relatives à la nature et à l'incidence des données foncières, y compris leur poids dans l'élaboration des stratégies. Une réunion d'experts qui s'est tenue au siège de la FAO en septembre 2005 a étudié les données recueillies au niveau mondial par une série d'études de cas traitant des données foncières, qui ne laissent aucun doute sur l'importance des données foncières. La nature des données ainsi que les défis que représentent la durabilité, la cohérence, la diffusion et les applications diffèrent selon les circonstances. Le document se termine par une classification générale des exigences en matière de données foncières à l'usage des divers niveaux de gouvernement et indique le rôle que pourraient être amenées à jouer les instances internationales en matière d'élaboration de bases de données foncières. Les données exigibles en matière de stratégies relèvent d'un degré d'abstraction plus élevé que celles utilisées à des fins opérationnelles de façon que les tendances et les associations puissent être analysées.

La importancia de los datos de titularidad territorial en la toma de decisiones

Este artículo resume el pensamiento actual sobre la naturaleza y la magnitud de los datos de titularidad territorial, incluida su importancia en la toma de decisiones. Una reunión de expertos celebrada en la sede de la FAO en septiembre de 2005 analizó los resultados de una serie de estudios de casos a nivel mundial sobre los datos de titularidad territorial, que no dejaron dudas sobre la importancia de los datos de tenencia de la tierra. La naturaleza de los datos y los problemas de sostenibilidad, coherencia, dispersión y aplicaciones varían según el contexto. El artículo finaliza con una clasificación general de las necesidades de datos de tenencia para los diferentes niveles de gobierno e indica cuál ha de ser el papel de los organismos internacionales en el ámbito de las bases de datos de titularidad territorial. Los datos necesarios para el diseño de políticas se encuentran a un mayor nivel de abstracción que los utilizados a efectos operativos, por lo que es posible analizar las tendencias y las asociaciones.

The importance of land tenure data in decision-making

R. Grover, M-P. Törhönen and D. Palmer
Richard Grover, Assistant Dean (Finance & Resources) SoBE, Oxford Brookes University
Mika-Petteri Törhönen, Land Tenure Officer, Land Tenure Service, FAO Rural Development Division
David Palmer, Land Registration and Cadastre Officer, Land Tenure Service, FAO Rural Development Division

This article summarizes current thinking on the nature and significance of land tenure data, including their significance in policy-making. An expert meeting at FAO in September 2005[1] explored the findings of a series of worldwide case studies on land tenure data, which leave no doubt as to the importance of such data. The nature of the data and the challenges of sustainability, coherence, dissemination and applications vary according to context. The article ends with a general classification of land tenure data needs for the different levels of government and makes suggestions for the role of international bodies in the field of land tenure databases. The data needed for policy-making is at a higher level of abstraction than that used for operational purposes so that trends and associations can be analysed.

Land tenure defines the relationship between people and land and other natural resources. It determines who has access to land and who can be excluded from it; the terms and conditions of that access; the rights and obligations that such access gives rise to; how land can be used and controlled; and the means and circumstances by which the rights and obligations can be transferred to others. A land tenure system means that a number of interests can exist simultaneously in the same parcel of land. For example, a right to graze animals or to forage may exist alongside cultivation rights, or the right to use the land at present can coexist with a right to take possession of the land at some point in the future. The ability of a land tenure system to allow for the creation of a number of different and intersecting rights over land makes it likely that there will be a number of people who have interests in the same parcel of land. Land tenure is concerned with regulating these different interests and overcoming potential conflicts among them.

Land tenure is essentially a social phenomenon, comprising rules invented by society to regulate behaviour (FAO, 2002, p. 7). Property "is not a thing but a *power relationship* – a relationship of social and legal legitimacy existing between a person and a valued resource" (Gray and Gray, 2005, p. 102). It legitimizes access to land and natural resources by individuals and groups and provides the validation by society of claims to land and land rights. The legitimization of access to land is likely to reflect power structures and may not be equitable. "Land tenure structures mirror the distribution of power within society. While access to land is not recognised as a human right as such, it may be considered

[1] The meeting was attended by Brett M. Ballard, Dai Yinping, Richard Grover, Vladimir Evtimov, Adriana Herrera, Mariana Herrera, Edward Lahiff, Kariyan Mei, Pierre-Yves Le Meur, Paul Mathieu, Paul Munro-Faure, Eathipol Srisawalak, Orapan Nabangchang-Srisawalak, Somchai Sitisomrutai, Hiek Som, Mukesh K. Srivastava, Wang Xiulian, Chamna Xoto and Mika-Petteri Törhönen. The authors are grateful for the comments received on this paper by those attending the expert meeting. The opinions in this paper and any errors are the responsibility of the authors.

as a means to achieve fundamental human rights as defined by international conventions" (Commission of the European Communities, 2004).

The social legitimization of land rights means that tenure systems reflect the social structures of their societies, together with their norms, values and belief systems, and the shared experiences of the society. Land tenure arrangements therefore vary not only in the rights themselves, but also in terms of the means by which they are defined, recorded and enforced.

Understanding land tenure is central to strategies to achieve food security, alleviate poverty, provide for peaceful closure to conflicts and promote environmental sustainability. "In countries coming out of conflict, fair and just handling of land tenure questions will often be central to reconstruction, both to maintain peace and provide conditions under which sustainable economic growth can be re-established" (Commission of the European Communities, 2004).

Security of tenure encourages investment and the development of sustainable means of using land and natural resources. Flexibility in land tenure allows households to adjust their holdings and production to meet changing circumstances. The variability of land tenure among societies, communities and even within countries adds to the complexity of recording and analysing land tenure data in a consistent manner.

The initial case studies prepared for this FAO project showed that there were some important relationships between land tenure and, for example, the financial strength of farming businesses, the age of farmers, farm sizes and production choices (Grover, 2003). It is likely that there are other important relationships with land tenure – for example, farming methods and their impact on the environment, which also need to be explored. In order to do this, governments and researchers need access to good quality land tenure data. Data on specific aspects of land tenure can allow policy-makers to track the dynamics of land tenure, to identify and quantify emerging issues, to formulate effective development policies, to plan actions for the mitigation of adverse trends and to monitor and evaluate current policies.

Land tenure data for policy-making differs from land tenure data used operationally, for example in land registration and cadastre systems, which provide information on specific land rights and responsibilities and are used to provide security of tenure or to collect revenues. The data collected for operational purposes may still provide base data for the policy-makers but are rarely useful without an additional analysis and comparison to other data sets. Policy-making requires operational land tenure data to be summarized in a systematic and consistent fashion. The data are therefore of a higher order and more abstract, with detail about the individual case but enabling the identification of broader trends and associations. The operational databases often fail to record changes in land use, which limits their relevance in policy-making.

■

The importance of land tenure data for rural development policies and the pressures on land tenure led the FAO Land Tenure Service to commission a series of studies on land tenure data. The purpose is to support the Member Nations of the Organization in their analysis and understanding of the role of land tenure in rural development. Given that relatively few national agricultural censuses and other appropriate data collection activities record much data on land tenure, this activity supports Member Nations that are considering inclusion of such data by identifying what data may be useful and why.

The articles in this issue of *Land Reform, Land Settlement and Cooperatives* present findings of FAO-commissioned country case studies and regional synthesis studies, which were prepared for the land tenure data expert meeting held at FAO headquarters in Rome in September 2005.

Since 2002, FAO has assisted Member Nations in Central and Eastern Europe to understand the importance of maintaining national data on land tenure and, in particular, to understand the land tenure data requirements of the EU accession by analysing the experience of countries already within the European Union (EU). Since 2004, further FAO activities have targeted Africa and Asia and, to an extent, Latin America. Europe is unique in this group in that EU membership provides a strong common factor and defines the needs and requirements for land tenure data. In other regions, the land tenure data scene is much more scattered and complex. For example, Orapan Nabangchang-Srisawalak's (2006a, 2006b) and Brett Ballard's (2006) articles introduce cases of neighbours in Southeast Asia, Thailand and Cambodia. Although they have had very different recent histories, they face common challenges in land tenure, though in different states of development.

It has become evident that, while there is often good state-of-the-art knowledge among the land professionals, which is particularly true in Europe but also in other regions, there is a growing need to increase awareness among policy-makers of the importance of land tenure and the monitoring of changes in land tenure and land markets. The accumulated technical knowledge seems not to have been reflected at the decision-making levels. This issue provides consolidated knowledge and messages for land tenure professionals and, through them, for policy-makers. The expert meeting identified the following conclusions as having a common global relevance.

■

The articles in this issue show that land tenure systems in many parts of the world are being obliged to respond to major economic, environmental and political pressures for change. For example, in Central and Eastern Europe, land tenure has undergone a fundamental change since the opening of the Berlin Wall in 1989, with private ownership and commercial tenancies, which have been created as a result of privatization and restitution of land, replacing state farms and cooperatives (Evtimov, 2006). Accession to the EU requires the new Member States to open up their land markets to foreign ownership and occupancy as part of the EU's policies of free mobility of capital and enterprise (Grover, 2006). In Thailand, the expansion of agricultural land through encroachment into forests has brought about far-reaching economic and environmental consequences as the balance of the ecosystems has been disturbed, yet the newly cleared forest areas are generally unsuitable for agricultural production (Nabangchang-Srisawalak, 2006b). Cambodia has had to deal with the disruption to land tenure and land administration that resulted from civil conflict, war, the collectivization policies of the Khmer Rouge and related dislocations of population (Ballard, 2006). Post-apartheid South Africa faces the tensions of a dual system. A system of well-established property rights and land administration on white-owned private commercial farms is coupled with low security of tenure for the rural black population that lives on them, while the black population living in communal areas is largely outside the formal land administration system (Lahiff, 2006). Land tenure in Benin is characterized by a postcolonial legal and institutional pluralism where formal, informal, communal and individual land rights dynamically alternate, coexist, compete and overlap, thereby failing to provide legal finality and clarity to the land tenure situation (Le Meur, 2006a), which is a common theme in Africa (Le Meur 2006b). Many countries in Latin America face basic challenges that include inequitable distribution of land and low levels of security of tenure (Herrera, 2006).

■

Although land tenure data are important for land management and land policy, the variability of land tenure makes it difficult to record. Consistency in recording can be achieved only at the cost of a loss

of important detail. Generalization is possible at the level of the shared values embodied in land tenure systems, but such summaries are likely to lose the local values that define particular tenure systems. Nevertheless, a hierarchy of data needs can be identified and a satisfactory series of related land tenure databases may be constructed.

In a number of countries the lowest tier of government for the delivery of public services comprises several distinct communities. Sometimes communities are divided between local government areas even though they recognize themselves as being part of a wider collective. Communities may be defined geographically, but may also define themselves by reference to characteristics, such as faith or ethnicity, and their leaders may not be recognized as having a place in formal governmental or political structures. In such societies there may be a need for community land tenure rights to be secured by defining, recording and regularizing informal and customary rights and obligations. A local land tenure database can play an important part in preserving informal knowledge and making it more widely accessible. Such knowledge may currently be recorded orally, including in the form of myths and legends retold through generations, possibly supported by monuments and cultural artefacts. The resolution of disputes requires sufficient detail about the tenure rights so that conflicting claims become apparent if there are competing rights in the same land parcels. It also requires information about the locations to which land tenure rights apply. The disputes can be inter- or intra-communities, but can also be between communities and the state or other external interests. Public involvement in the recording and protection of such rights spreads the high fixed costs over the community as a whole, enabling resources that would have to be devoted to the defence of such rights to be released for more productive purposes, and allowing rights to be exchanged and capitalized (Deininger *et al.*, 2003). The linkages between this level of data and the national level may occur randomly through the personal connections of policy-makers, but are seldom based on systematic processing and dissemination. This may hinder policy-makers' abilities to monitor changes, notice trends and predict developments, for example in food production or in social stability.

Government at the local or regional level requires good quality land tenure data for the effective delivery of public services. The location of activities and people, parcel boundaries, land uses and land tenure rights help determine the optimal delivery of public services, including the best location for a service and the best pattern of delivery. The provision of public services can also require the compulsory acquisition of land; good-quality data are therefore needed to establish whose and what rights are being expropriated and what the appropriate compensation should be. A widespread problem is that government agencies at all levels often have poor records of their own property rights, which makes them difficult to enforce when these are encroached upon, or when the natural resources are exploited or when the rights have been illegally alienated from public property. The absence of well-maintained data on land tenure hampers the authorities in playing their guardian role and blinds policy-making to potentially serious threats to the environment and to state interests. There can be interagency conflicts and difficulties encountered by one agency in accessing property controlled by another when the property is needed for the delivery of services.

Local and regional authorities are typically responsible for the regulation of externalities and the maintenance of the environment. These responsibilities require spatial planning and development control policies. Land tenure data are important

elements in such plans through identifying land uses and the parties that exercise control and management over them. The delivery of land consolidation programmes, aimed at improving agricultural efficiency, is generally at a local level, and requires good land tenure data so that rights can be bought out or exchanged. In essence, local and regional authorities need to be able to produce land tenure databases for their jurisdictions by tiling local land tenure databases, that is joining local databases together and capturing data for the areas between communities.

The trend of decentralization of services from central to regional and local governments has created the need for new local sources of revenue. Often the most sustainable source of revenue, and an option universally available, is the rural property taxation, which to be equitable and effective needs to be founded on a reliable land tenure database (FAO, 2004).

National governments have responsibility for policy in areas such as agricultural productivity, food security and economic development. The policies at this level of government that have an important role include taxation and agricultural subsidies. National governments have the power to change land tenure systems through legislation in areas such as tenancy, inheritance, mortgage and land registration laws. National governments need to plot trends in land tenure in order to determine which policies are most effective. This requires the summarizing of local land tenure data. It means that, in order for trends to become apparent, the data at a national level must be an abstraction from local data, with a consequential loss of detail. Thus, for example, a national government may be interested in whether the proportion of agricultural land being farmed under broadly similar tenancy rights is increasing or decreasing, in order to assess the effectiveness of tenancy laws, but without needing to know the precise terms and conditions of each lease. At the local level, the differences in the terms and conditions of individual leases may be important, for example, in understanding what is happening with a particular watershed or valley. This may be of considerable local significance, but not necessarily for the overall pattern for a country.

National governments have responsibilities for human rights. Human rights include the right to peaceful enjoyment of property. These may come under pressure during periods of economic, social and political change. National governments need to be able to monitor changing tenure patterns so that they can check whether these are the result of human rights abuses or conflicts between groups within a society. They also need to monitor whether there is discrimination in access to land between genders, or ethnic or social groups. Land rights are a major source of wealth as well as one of the main assets available to those in rural areas to secure sustainable livelihoods.

The international community has an interest in ensuring that effective development policies are pursued so that there is value for money from aid, soft loans and debt relief. Understanding land tenure is central to strategies to promote food security, environmental sustainability and equitable access to land. The impact of unsustainable exploitation of natural resources on the environment and climatic change goes beyond national boundaries. The international community has a need for data are capable of producing demonstration effects so that relationships among land tenure, development, food security and environmental sustainability are apparent, and that countries are able to draw upon guidance from best practice. This implies land tenure data that are comparable between countries and over time. Given the variability of land tenure systems among societies, this would suggest broad categorizations of land tenure systems and a high level of abstraction.

The hierarchy of needs for land tenure data suggests that different types of land tenure databases are needed in different circumstances, from the detailed recording of local rights and obligations and the precise locations to which they apply, to information that is comparable among countries. There is a role for international bodies in advising on how land tenure databases can be compiled; instigating research into the relationships among land tenure systems and matters such as food security, environmentally sustainable exploitation of natural resources, economic development and equity in life chances; and acting as a clearinghouse so that national data on land tenure can be brought together for international comparison.

FAO already undertakes such work in agricultural censuses and these are often the source of data about land tenure patterns at the national level. Encouragement is needed for the compilation of land tenure data at the community and local levels and for the production of data for land tenure policy-making. Such encouragement is likely to be effective only if it is supported by technical assistance, for example in recording informal and customary rights and obligations and devising means to map them. At present, land tenure data from agricultural censuses collated by FAO are limited, as a number of countries either do not record such information or do not report it. There is no international compilation of land tenure data from sources other than from agricultural censuses and, even for these, there is an absence of international standards for land tenure data. For example, the EU collects land tenure data together with detailed information about agricultural inputs and outputs, costs and revenues from a sample of farms through its Farm Accountancy Data Network. Other countries have similar surveys. The collation of such data would be a valuable research resource.

In recent years there has been an active debate about the merits of security of property rights and about land titling as the means to achieve it. It may be time for this debate to move on to the broader question of security of tenure and the security of proprietorship of rights that give access to land and natural resources, and which may intersect with other rights over the same parcel. Securing and protecting tenure rights in the interests of promoting development require the creation of land tenure databases rather than just proprietorship registers. It means moving away from the notion that the aim of securing rights is to ensure that they can be transferred, capitalized and commodified, and that therefore only those rights that can be alienated should be secured. Rather, the full range of land tenure rights should be secured and protected by being recorded, in order to ensure that justice and human rights prevail, as well as by the development of effective policies for environmental protection, food security and economic development.

Land tenure data are important. They provide a basic tool of governance in terms of operational functions for securing rights, managing public assets, protecting the environment, collecting revenues and spatial planning. There appear to be some important relationships between land tenure and economic development, food security and environmental sustainability that ought to inform policy-making. Effective policies require good quality data so that situations can be analysed accurately, effective policies formulated and the consequences of the policies monitored. Understanding the status, changes and trends in land tenure is crucial for policy-makers and requires systematic and timely collection and dissemination of land tenure data. Challenges are posed by the variability and complexity of land tenure, land tenure institutions, and coordination and sustainability of functions.

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Accession à l'Union européenne et données foncières en Europe centrale et orientale

L'Union européenne (UE) a entrepris un élargissement marqué vers l'Europe centrale et orientale. Huit pays de cette région ont été admis en 2004, il est prévu que deux autres pays soient admis en 2007, et un processus a été établi aux termes duquel les pays des Balkans occidentaux pourront à plus ou moins brève échéance adhérer à l'UE. Les pays ne peuvent entrer à l'UE que s'ils ont une économie de marché effective. Ils doivent aussi adopter et mettre en œuvre les principes du droit européen, qui recouvre des lois assurant la mobilité sans entraves des capitaux et des entreprises au sein de l'UE. Cela oblige les nouveaux États Membres à assouplir leurs marchés fonciers et permet l'accession d'entités étrangères à des droits fonciers et d'occupation foncière sur leur territoire national. Cet assouplissement risque d'exacerber les pressions sur les marchés fonciers des pays adhérant à l'UE, qui viennent s'ajouter à celles issues du processus de transition. Il est indispensable que les gouvernements surveillent les tendances en matière de régimes fonciers. Le droit européen exige que les États Membres recueillent les données foncières par le biais du Réseau d'information comptable agricole et du recensement agricole, et gèrent un registre des occupants de chaque parcelle de terre cultivable par l'entremise du Système intégré de gestion et de contrôle. Il existe quelques carences au niveau des données foncières de l'UE qui limitent leur capacité d'analyse des liens existant entre droits fonciers, pratiques agricoles et environnement ainsi que celle permettant de préciser quels groupes sociaux ont accès à la terre.

Incorporación a la Unión Europea y datos de titularidad territorial en Europa central y oriental

La Unión Europea (UE) ha acometido una importante expansión en Europa central y oriental. En 2004, ocho países de esta región se convirtieron en miembros, está previsto que en 2007 se conviertan en miembros dos países más, y se ha iniciado un proceso que posibilita el acceso de los países de los Balcanes occidentales a la UE. Se permite únicamente el acceso a la UE a los países en los que existen economías de mercado. Estos países también deben adoptar e implantar el cuerpo legislativo de la UE, que comprende leyes destinadas a garantizar la libre movilidad del capital y de las empresas dentro de la UE. Esto obliga a los nuevos Estados Miembros a liberalizar sus mercados agrícolas y a abrirlos a la propiedad y a la ocupación extranjera de las tierras. Es probable que la liberalización conlleve una mayor presión sobre los mercados agrícolas de los países que se incorporan a la UE, además de las presiones propias del proceso de transición. Es fundamental que los gobiernos supervisen las tendencias de la titularidad territorial. La legislación de la UE exige que los Estados Miembros recopilen los datos de tenencia agrícola a través de la Red de información contable agrícola y del censo agrícola, así como de un registro de los ocupantes de cada parcela agrícola a través de un Sistema de control y administración integrado. Hay insuficiencias en los datos de tenencia agrícola de la UE que limitan su utilidad para el examen de la relación entre la titularidad, las prácticas agrícolas y el entorno, y para el establecimiento de los grupos sociales que tienen acceso a la tierra.

European Union accession and land tenure data in Central and Eastern Europe

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The European Union (EU) has embarked upon a major expansion into Central and Eastern Europe. Eight countries from the region became members in 2004, two more are expected to become members in 2007 and a process has been established whereby the countries of the Western Balkans can eventually accede to the EU. Countries are only permitted to join the EU if they have functioning market economies. They must also adopt and implement the body of EU law, which includes laws to ensure the free mobility of capital and of enterprises within the EU. This obliges the new Member States to liberalize their land markets and open them up to foreign ownership and occupancy of land. Such liberalization is likely to place further pressures on the land markets of countries joining the EU, in addition to those that have resulted from the transition process. In these circumstances, it is essential that governments monitor land tenure trends. EU law requires Member States to collect land tenure data through the Farm Accountancy Data Network (FADN) and the agricultural census, as well as to maintain a register of the occupiers of each parcel of farmland through an Integrated Administration and Control System (IACS). The new Member States have been obliged to put these systems in place as part of their preparation for EU accession. There are some weaknesses in EU land tenure data that limit their usefulness for examining the relationship between tenure, farm practices and the environment, and determining which social groups have access to land. The EU does not collect economic data about the state of the land market in a systematic way. Therefore, there is scope for EU land tenure data to be improved.

On 1 May 2004, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, together with Cyprus and Malta, joined the European Union (EU) in its largest and most significant expansion to date. This brought the number of EU Member States to 25. This expansion of the EU brought in more countries and a greater combined population than any previous EU enlargement. Bulgaria and Romania are expected to join the EU in January 2007. Croatia and Turkey have been granted the status of candidate countries and negotiations on their entry began in October 2005. Under the stabilization and association process, a way has been opened that could eventually lead to EU membership for Albania, Bosnia and Herzegovina, The former Yugoslav Republic of Macedonia, and Serbia and Montenegro (including Kosovo).

The Copenhagen Council of 1993 set out three basic criteria for would-be applicants for EU membership.

- Stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.
- The existence of a functioning market economy and the ability to cope with competitive pressures within the EU.

• The ability to take on the obligations of EU membership, including political, economic and monetary union.

Prior to accession, EU applicants have to demonstrate that they have adopted and implemented the body of EU law known as the *acquis communautaire.* For convenience in negotiations, this is divided into 31 Chapters. Of specific relevance to land tenure are Chapter 4 on the free mobility of capital, Chapter 7 on agriculture and Chapter 12 on statistics.

The countries of Central and Eastern Europe have been going through the transition from centrally planned to market economies. Accession to the EU can be regarded as the culmination of this process, since EU membership is possible only once a country has a functioning market economy and is able to open up its markets to foreign competition. Joining the EU means becoming a part of its single internal market, with freedom of trade, free convertibility of currencies and the free movement of labour, enterprise and investment replacing the controls and autarky that were an integral part of the former centrally planned economies.

A cornerstone of the transition process has been the creation of private ownership of land and secure land tenure and property rights (Rembold, 2003). Land markets, in which land can be bought, sold or rented, have been created through the privatization of state land and the restitution of expropriated land to its previous owners or their heirs. This has resulted in significant changes in land tenure, with an increase in the private ownership and the renting of land and the decline of state and cooperative land ownership. As Figure 1 shows, it is no longer possible to distinguish between the land tenure patterns of the current Member States by reference to whether or not they had been centrally planned economies in the past. For example, Slovenia and Latvia have owner occupation levels that are comparable with those found in Austria, Denmark and Italy, and actually higher than those in France, the Czech Republic, Germany or Slovakia.

The privatization and restitution of land have created millions of new land titles, many of them for small, badly shaped parcels of land incapable of commercial exploitation. Restituted land has often been divided among the heirs of the original owners. The consequences have included underinvestment in agriculture, rising rural poverty and rural unemployment, as well as an ageing rural population as the young migrate to urban areas in

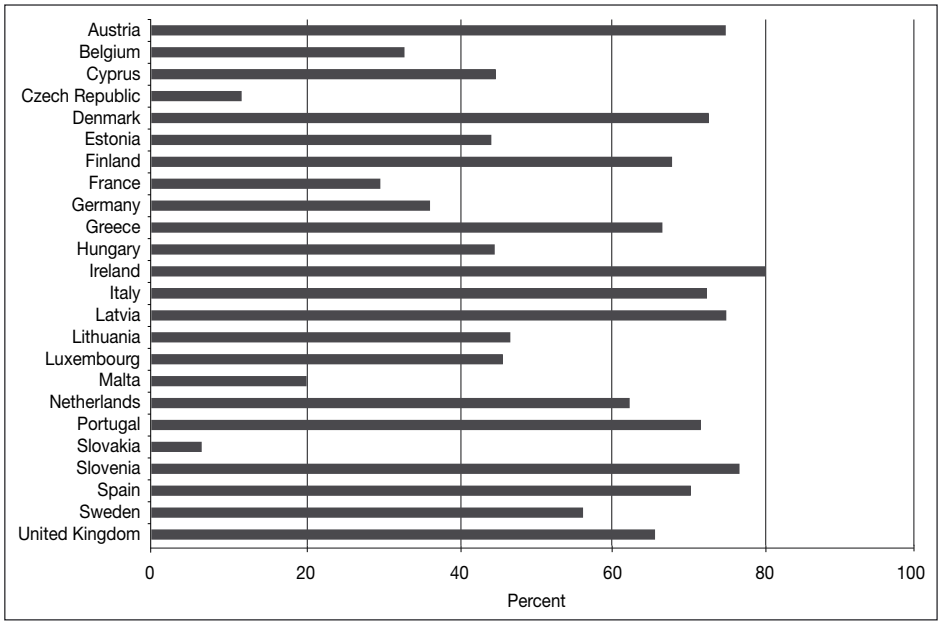

FIGURE 1
Proportion of utilized agricultural area farmed by owners, 2003

Source: Eurostat

search of work (Kotov and Lingard, 2002). Subsistence farming has developed on small private plots, sometimes in response to the collapse of industrial employment and state budgets, producing the migration of industrial workers to rural areas in search of lower costs of living (Brown and Schafft, 2002). The development of the infrastructure for operating the land markets, such as land registration and titling, land laws and mortgage finance, has tended to lag behind privatization. Different countries, though, have had different experiences. For example, in Bulgaria restitution restored land to its former owners and their heirs, producing land fragmentation and smaller farms than at the end of the nineteenth century (FAO, 2003, Rembold, 2003). In the Czech Republic, by contrast, there has been a high level of leasing as many of the new owners either lacked the skills to farm their land or were no longer connected with agriculture (Ciaian, 2002).

In view of the enormous changes that have taken place in land markets during the transition process, an important issue is whether the applicant country's property markets, including its agricultural land markets, are adequately prepared for accession. Of particular concern is whether the processes of privatization and restitution are complete, whether there is adequate protection of property rights, and whether the legal framework for the buying and renting of real estate and the infrastructure to support the property market (such as land registration systems) are adequately developed. Typical problems encountered (Commission of the European Communities, 2001; Commission of the European Communities, 2002; Pouliquen, 2001) include:

- lack of security of tenure in agricultural leases, resulting in the inability of tenants to offer collateral to potential lenders;
- low take-up rate of EU funds for land improvement and reparcelling;
- delays in privatizing unclaimed arable lands and forests;
- slow pace of restitution;
- need to improve land registration to increase the ability to use property as collateral for loans;
- fragmentation of ownership;
- slow resolution of legal disputes;
- low level of transactions;
- farmland going out of production;
- slow pace of agricultural restructuring.

The EU does not have an absolute standard for determining whether a country has a functioning market economy, particularly in relation to real estate markets. These largely operate outside of the *acquis* because they tend to be the responsibility of Member States' governments rather than of the EU Commission. It can also be argued that the EU's monitoring and evaluation of the real estate markets of applicant countries have not been consistent or reflective of precise criteria. This may be because the *acquis* does not provide a clear point of reference in the way that it does when there are specific laws that must be adopted and implemented. This could mean that countries may become members of the EU before their land market problems have been fully resolved, even though they have brought in the formal legal changes required by the *acquis*. New Member States may therefore have further work to do on improving the functioning of their land markets even after EU accession. For example, in Poland the restitution process remained restricted until legislation was finally approved in 2003.

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The aim of the EU is political union by economic means. It has progressively achieved a closer economic union among the Member States, through the creation of the customs union and the single internal market. Chapter 4 of the a*cquis* is concerned with a key aspect of the internal market, namely the free movement of capital. Restrictions on the movement of capital between Member States, and in many cases to and from countries outside the EU, are prohibited. The 1988 directive that established free mobility of

capital, however, does contain a safeguard clause that enables a Member State, with the consent of the Commission, to restrict real estate transactions in the event of disruption of its monetary and exchange rate policies by short-term capital movements of exceptional magnitude. Although there is a mechanism by which a Member State experiencing problems in its real estate market as a result of the free mobility of capital can obtain temporary relief, preventing the liberalization of land markets is not an option.

Free movement of capital is not just about allowing free transfers of investment between Member States by individuals and companies or the free convertibility of currencies. It also means the removal of restrictions on the ownership of assets and liabilities by individuals and corporate bodies, implying that they must be able to acquire or rent all forms of real estate, including agricultural land and secondary residences, in other countries of the EU. Freedom of enterprise means that farm businesses from one part of the EU must be able to relocate or acquire farms in other parts. Individuals and companies from elsewhere in the EU should not be prevented from owning land so that they are obliged to rent land if they wish to establish their business in the country. Nor can discriminatory restrictions be placed on the amount of land that can be owned or rented, because these undermine essential elements of the EU's internal market, including the free mobility of labour and investment and the freedom to establish enterprises. The only restrictions that could be tolerated are ones that apply in a non-discriminatory manner to citizens of and enterprises registered in the country as well as to those from other EU countries. However, these are likely to receive approval only in very exceptional circumstances.

A number of the new EU members from Central and Eastern Europe had restrictions on the ownership of agricultural land by foreigners, and sometimes also on ownership by domestic companies. Among the countries joining the EU in 2004 and 2007 that had restrictions on foreign ownership of land were Estonia, Hungary, Lithuania and Romania. The lifting of restrictions on foreign companies acquiring agricultural land also implies that any barriers to domestic companies purchasing land must also end. For example, a Hungarian act of 1994 limited the ownership of arable land by private individuals to 300 hectares in size, or 6 000 Gold Crowns in quality rating.

The issue of ownership of agricultural land and natural resources by foreigners is a contentious one for many of the applicant countries. There has been the fear that individuals and companies within the EU will take advantage of their greater wealth to buy up relatively cheap farmland and housing so that nationals of the applicant countries could find themselves priced out of their own land markets. For example, the Hungarian Government argued that lifting the ban on the purchase of agricultural land by foreigners "would lead to speculative land purchases and impede the development of viable family farms".[1] There may also be fears that the opening up of land markets could reopen past disputes. In the aftermath of the Second World War, there were large-scale movements of populations as particular ethnic groups, nationalities and political dissidents were expelled, fled or dispossessed of their land. Some of these prospered in their new homelands. They are now in a position to take advantage of the relatively low prices of their ancestral lands to purchase their lost heritage, even though they may have been frustrated in their attempts to reclaim it under restitution laws.

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It has been recognized that the sudden liberalization of the rural land markets of countries joining the EU could be extremely destabilizing. Therefore, one of the areas in which transitional arrangements have been

[1] Quoted on the former Web site of the Hungarian Ministry of Foreign Affairs: www.kum.hu/euint/prep_cap.html (accessed on 30 August 2002).

permitted after entry is rural land markets. It should be noted that these issues do not just apply to the countries of Central and Eastern Europe. Cyprus has been permitted to retain restrictions on the ownership of secondary residences by non-residents for a five-year period after accession. Malta has been allowed to retain indefinitely its controls over the acquisition of secondary residencies by non-residents in recognition of the limited land on the island available for residential development.

Nor do such derogations just apply to the new EU Member States. Denmark has the right to maintain its controls over the acquisition of second homes, providing that EU nationals residing in Denmark have the same rights as Danish nationals. In the Åland islands of Finland, there are restrictions on who can acquire and hold real estate. These apply to natural and legal persons from all Member States and do not give special rights to those from Finland. The key to these restrictions is that they do not confer any special rights and privileges on the citizens or legal persons of one Member State compared with those from elsewhere in the EU. While the EU recognizes that controls over land markets may be necessary in certain circumstances, they cannot be discriminatory.

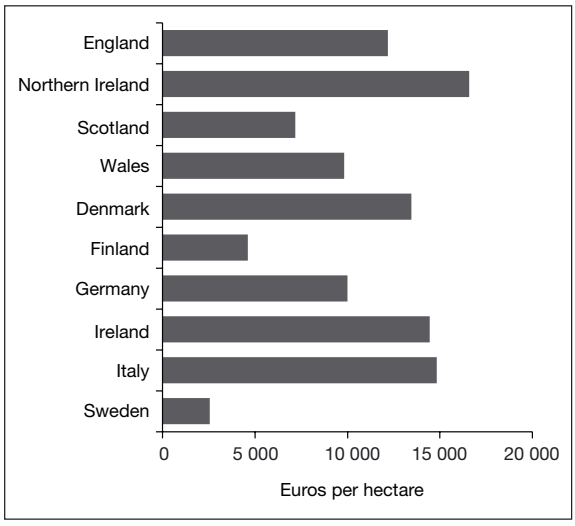
The accession treaties governing the entry of the ten Central and Eastern European countries to the EU in 2004 and 2007 provide for three types of transitional arrangements with respect to real estate markets:

- **Secondary residencies.** The Czech Republic, Hungary and Poland have been permitted to retain restrictions for five years from accession on the ownership of secondary residencies by non-resident EU nationals and by EU companies neither established in the country nor having a branch or representative agency. This arrangement will also apply to Bulgaria and Romania from when they join the EU in 2007.
- **Agricultural land and forests.** All the Central and Eastern European countries that joined the EU in 2004, except Slovenia, have been granted transition periods during which they can restrict the ability of non-residents to acquire agricultural land and forests. The Czech Republic, Estonia, Hungary, Latvia, Lithuania and Slovakia were granted seven-year transition periods during which they are able to maintain restrictions on non-resident EU nationals and companies from other EU Member States acquiring agricultural land and forests. This transitional arrangement will also apply to Bulgaria and Romania from when they join the EU in 2007. Hungary is also allowed to maintain restrictions on the acquisition of agricultural land and forests by legal persons (i.e. companies), both domestic and from elsewhere in the EU, during this transition period. Poland has been granted a 12-year transitional period. EU nationals who have established themselves as self-employed farmers in these countries are excluded from the restrictions. The transitional arrangements can be terminated or shortened by the EU. If there are serious disturbances in the agricultural land markets of the countries, or the threat of serious disturbance, the transition periods can be extended for up to a further three years.
- **Use of the general economic safeguard clause.** Slovenia has not been granted any specific real estate transitional arrangements, but is permitted to use the general economic safeguard clause in the accession treaty to protect its real estate market for up to seven years after accession. The safeguard clause permits a new Member State to apply for authorization to take protective measures in the event of serious difficulties that are liable to persist and "could bring about serious deterioration in the economic situation of a given area". The general safeguard clause normally applies for three years after accession, but its duration has been extended for Slovenia's real estate market.

Although most of the Central and Eastern European countries have been granted

transitional exemptions from opening up their rural markets, eventually rural land and secondary residential markets will be accessible to purchasers from elsewhere in the EU. The transitional periods are also relatively short. However, although cross-border purchases will become possible after the transitional periods, are they likely? Figure 2 shows that there are considerable differences in average land prices between the pre-2004 Member States. These do not appear to result in significant numbers of landowners in Italy or the United Kingdom, for example, using the greater value per hectare of their land to raise capital for purchasing farmland in, say, Finland or Sweden. It is likely that in an efficient land market there will be variability in prices per hectare that reflect differences in the productivity of land and its accessibility to markets. Under such circumstances, farmers are unlikely to migrate and establish businesses in new locations because the differences in land prices are likely to reflect differences in potential profits. Cheaper land may be obtained elsewhere in the EU, but higher costs of working it or lower productivity will counterbalance the savings in land costs. Conversely, higher productivity may be obtained from land elsewhere in the EU, but the benefits gained from higher revenues are likely to be fully absorbed by higher land costs.

FIGURE 2
Agricultural land prices in 2002 in selected countries and regions

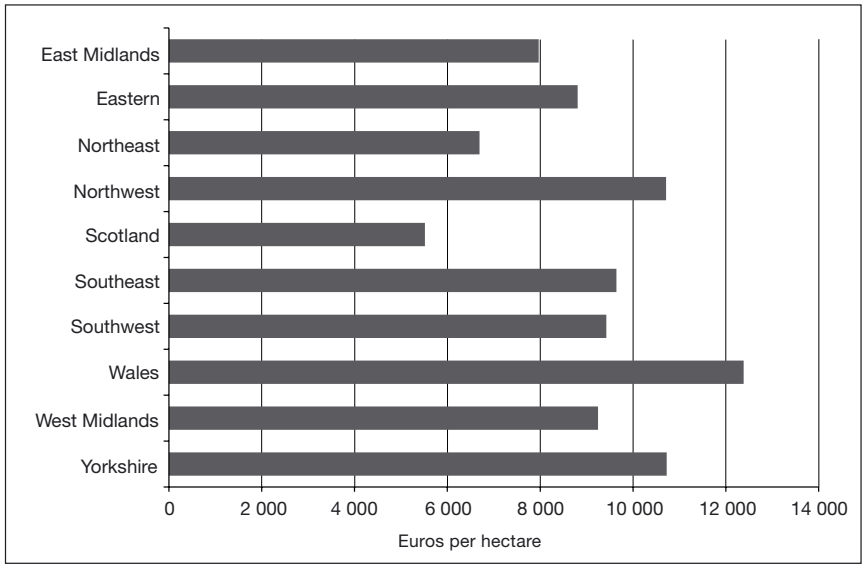


SOURCE: EUROSTAT.

The countries of Central and Eastern Europe, however, have not been part of a unified European land market and will not be until the transitional arrangements end. Access to these markets has been limited as a result of restrictions on foreigners acquiring land. Thus, differences in land prices between Western and Eastern Europe may not just reflect differences in productivity and access, but also the lower demand for land which may have resulted from restrictions on foreign ownership. Once these restrictions are removed, it is likely that there will be some rebalancing of portfolios as those who have been prevented from diversifying their ownership take advantage of the new openness of markets. After a time, the now unified European land market should reach an equilibrium in which differences in price just reflect differences in land productivity. However, as the transitional periods come to an end, the new EU Member States are likely to experience an influx of Western European farming businesses buying or renting farmland, attracted by lower production costs and land prices. They may also be attracted by historically lower levels of herbicide, pesticide and artificial fertilizer use, which lessens the costs of conversion to organic farming.

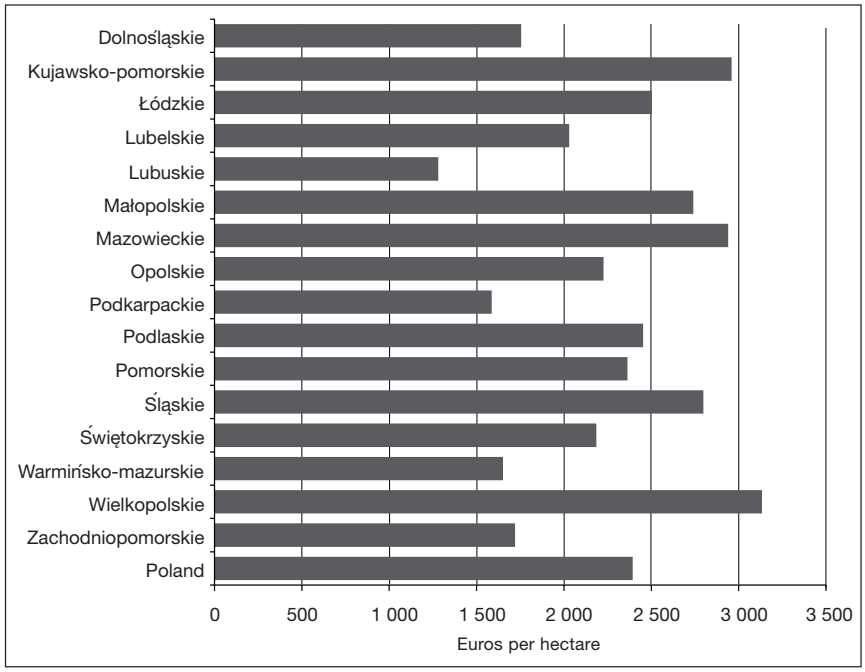
Figures 3 and 4 illustrate the possibility of businesses in Western Europe using their greater economic wealth to acquire land in Eastern Europe. For example, the average price per hectare of unequipped mixed farmland in Scotland, with the lowest prices among the United Kingdom regions, was 5 300 euros. By contrast, average prices of fertile land in the voivodships of Poland ranged from 1 600 to 3 100 euros per hectare. Discrepancies between land prices in the Czech Republic, Hungary and Latvia and those in Western Europe are similar (Vrbová, 2005; Popp and Stauder, 2003; Lebedinska, Petersone and Zarina, 2005). Such differences in land prices make the purchase of land by Western European investors feasible.

FIGURE 3
Prices of unequipped mixed farming land with vacant possession in the United Kingdom, 2005



Source: United Kingdom Valuation Office Agency, 2005.

FIGURE 4
Prices of farmland in Poland by province, 2004



Source: Polish Central Statistical Office, 2004.

It can also be expected that housing, including farmhouses, housing for rural workers, and that in coastal and scenic areas, border regions and areas with winter or water sports, fishing or hunting, will be purchased as secondary residences by citizens from elsewhere in the EU or by companies and investors for tourist use. Such pressures are likely to be greatest in areas close to motorways or airports served by budget airlines. Many such properties are already being marketed to Western European purchasers. Many Western European countries experience similar pressures on residential property in comparable rural areas, which can result in local workers being priced out of housing markets.

The eventual granting of rights to foreign companies to acquire agricultural land implies that any remaining obstacles to domestic companies purchasing agricultural land must also be lifted. The phenomenon by which larger farming businesses are obliged to rent land on a short-term basis because they cannot

legally own it will disappear. There could be profound changes in land ownership and land tenure as the transition periods come to an end. The use of devices such as options to purchase at a future date and the registering of purchases in the names of nominees may mean that these changes will be anticipated towards the end of the transition periods, even though the interests acquired may not be officially registered or appear in official statistics. There is some limited evidence of such practices already occurring. For example, from Hungary there are reports of land acquisitions by foreigners using methods of dubious legality (Popp and Stauder, 2003) and estate agents' reports from Romania talk of demand for land coming from foreign investors (Colliers International, 2005).

EU membership obliges countries to put in place some powerful tools for monitoring land tenure, namely:

- contribution of data to the Farm Accountancy Data Network (FADN);
- periodic surveys of agricultural holdings or agricultural censuses; and
- introduction of the Integrated Administration and Control System (IACS) for the payment of agricultural aid.

Both FADN and the agricultural census collect data about the amount of utilized agricultural area that is owner-occupied, tenanted or sharecropped. They collect information at the level of the agricultural holding. IACS can provide the link between agricultural data and parcels of farmland. It collects area and location data for the parcels. It is important to note that none of the three tools is specifically concerned with land tenure data. Rather, land tenure data are produced as a by-product of collecting other information about agricultural production for use in the Common Agricultural Policy (CAP).

The future of the CAP has come under discussion as a result of pressures from both within and outside the EU. A number of new members who joined in 2004 have a greater reliance on agriculture, which has raised questions about the size of future EU budgets and who will benefit from future aid to agriculture. Related questions of agricultural protectionism and export subsidies have been important factors in the G8 discussions about world poverty and in the World Trade Organization's Doha Round of tariff reductions. All of these discussions have raised fundamental questions about the future of the CAP and of the tools used to support it. Could changes in the CAP result in the abandonment of the European land tenure tools? A number of Member States meet their obligations to supply data to FADN and the agricultural census using instruments that pre-date the CAP. For example, Britain has carried out an annual agricultural census since 1866 (MAFF, 1968) and its Farm Business Survey, which collects data for FADN, was established in 1936. This would suggest that the instruments are robust, versatile and capable of an independent existence apart from the CAP. Information about the economic viability of agriculture, productivity, food security, farm structures and land tenure is of considerable value to governments that need to formulate agricultural, environmental and rural development policies, which is why the means used to satisfy EU data requirements often pre-date the CAP.

Under FADN, data are collected at the farm holding level about revenue, costs, inputs, outputs and employment for an accounting year (European Commission Directorate-General for Agriculture and Rural Development, 2005). This is used to generate standard gross margins, which estimate the income generated by each farming enterprise by measuring the value of the output less the variable costs directly attributable to the enterprise. In other words, it measures the contribution the enterprise makes to the payment of overhead costs and farm profits. Farm income can then be derived by deducting overheads, payments for external resources, depreciation and taxes, while adding in grants and subsidies. Information is also

collected about the proportion of the utilized agricultural area that is owned, rented or sharecropped. FADN is a rich source of data that makes possible analyses of the relationship between land tenure and farming incomes, types of production, sizes of farm, the amount of bank borrowing undertaken and net worth.

FADN is concerned with commercial farms. Regulations define the minimum size of holding considered to be commercial, rather than part-time or subsistence. These vary between Member States, and currently range from 1 European Size Unit (ESU) in Cyprus to 16 ESU in the United Kingdom (excluding Northern Ireland). One ESU equals 1 200 euros of standard gross margin. The Central and Eastern European countries that joined the EU in 2004 were given thresholds of 2 ESU, except for the Czech Republic (4 ESU) and Slovakia (6 ESU). The data exclude any non-farming activities of the holder or the holder's family, other than forestry and tourism connected with the farm. This exclusion means that FADN does not provide comprehensive information on standards of living of agricultural households, except where those households derive their entire income from the holding.

A number of issues have arisen with FADN and the data derived from it that have implications for the extent to which the data can be relied upon. They are not exclusive to the countries from Central and Eastern Europe, but are applicable to the whole of the EU. The quality of FADN has been reviewed by the European Court of Auditors (2003). The United Kingdom and Denmark have also examined the quality of the statistics they provide for FADN (MAFF, 2000; University of Hull, 2000; Sørensen, 1999).

The level of detail required means that the data can only be collected for a sample of holdings. Analyses for regions and small areas are not feasible because sample sizes are too small to produce robust data at the subnational level. With any sampling system, the value of the data depends upon how representative the sample is and the quality of the sampling process. Liaison agencies for each Member State are responsible for drawing the samples and collecting the data. The quality of the data depends upon that of the sample, and there is some evidence that practices vary between Member States (European Court of Auditors, 2003). In countries such as the United Kingdom, where participation is voluntary, it is difficult to get farmers to take part because of the demands upon them. The need for farmers to gain experience of what is required before they are able to supply data of the required quality, low renewal rates and problems in finding replacements means that there may be biases in the sample and an element of self-selection. The use of tax rather than farm management accounts overcomes the problem of low participation rates, but can introduce biases into the accounting data as a result of definitions and accounting conventions being based on tax law and, possibly, management decisions reflecting tax-avoidance strategies. There are also questions about how well suited the methodology is to gathering data from the growing number of farms run by companies rather than individual farmers.

Developing FADN has involved some of the countries from Central and Eastern Europe in considerable work, which includes creating the surveys of farms necessary to generate the data, adopting the necessary legal framework and applying EU data standards, methods and concepts. Typical problems are:

- the need to increase the number of staff working in this area in order to manage the survey;
- the need to train those working on the survey;
- the absence of a comprehensive farm register from which a sample of farms for FADN could initially be drawn until an agricultural census has been held; and
- differences between what can be regarded as the minimum size of a commercial farm compared with those found in Western Europe.

Member States are obliged to carry out

a comprehensive survey of agricultural holdings or an agricultural census every ten years and three interim surveys each decade. The most recent comprehensive survey was in 1999/2000, with interim surveys in 2003, 2005 and 2007. Data are collected about crops, livestock, farm labour, machinery and the amount of the utilized agricultural area that is owner-occupied, tenanted or sharecropped. Information is also collected about certain non-agricultural activities carried out on the holding, such as tourism, handicraft, the processing of farm products and contract work using the holding's equipment. The agricultural census makes possible comparative analyses of land tenure between different areas and over time, and these can be undertaken for relatively small geographical areas.

The main issues arising with the agricultural census are:

- the extent to which sample surveys make a full census unnecessary, with Member States making increasing use of sampling for financial reasons;
- whether the collection of data by holdings adequately captures the complexity of farm-based businesses; and
- whether data ought to be collected about different types of tenancy agreement.

There is a growing trend for agricultural businesses to comprise more than one holding. A recent British study of the changing structure of agricultural businesses has argued that the growth of varied tenure arrangements and whole-farm contracting "means that the holdings-based data have less and less relevance to monitoring the extent of farm business change" (Lobley *et al.*, 2002). A holdings-based survey can give the impression that the larger businesses are smaller than they really are. Aggregate figures for land that is rented can conceal divergent trends of economic significance. For example, in England between 2000 and 2003 the amount of rented land hardly changed, increasing from 3.42 to 3.49 million hectares. This conceals a decline in traditional full agricultural tenancies and an increase in more flexible arrangements, such as farm business tenancies (Defra, 2005).

The issues that have arisen with the introduction of the agricultural census in Central and Eastern Europe include:

- the recruitment and training of staff to administer the census and process the data;
- budgetary pressures that government statistical services came under during the transition process; and
- the need to upgrade methodologies and the quality and completeness of data to EU standards.

There has been considerable cooperation between EU bodies, such as Eurostat, and existing Member States and the applicant countries. Support has also been given by international bodies such as FAO.

Member States of the EU are responsible for administering the CAP. This has recently changed from being a system for supporting agricultural production to one of providing income support for the land. Central to the agricultural support payments is the IACS, which is intended to ensure that the payments made are correct and traceable. This requires Member States to establish Land Parcel Information Systems that identify each parcel of farmland. These contain data about the location and size of each parcel, the identity of the holder, date of establishment, date of last activation and whether it was acquired by purchase, lease or inheritance. The system has to be able to identify whether a claim is made from an individual or legal person who is permitted to make one, that multiple claims are not being made for any piece of land and that the land is part of the utilized agricultural area. Because land can be transferred between farmers and agricultural land parcels may be joined together or divided, or land removed from the utilized agricultural area, the system must contain means by which the registers are updated without compromising the integrity of the data.

Both FADN and the agricultural census produce information based on farm

holdings. These do not give the precise geo-coordinates of the data. IACS is capable of generating parcel-level information with its coordinates; however, it does not produce land tenure data, because it is concerned with the payment of aid to the occupier and not with the ownership of the land. Information about farmland parcels from IACS has to be merged with tenure data from other sources in order to produce a land tenure database. IACS, though, is of particular value in spatial planning because of its ability to provide geo-referencing of the data.

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Although joining the EU is likely to create problems for the land markets of its new members, it also provides some powerful tools to monitor and understand changes in land markets and to inform the development of land tenure policy. The quality of land tenure data available to new Member States should be improved by the requirement to collect such data for FADN and the agricultural census. The IACS system provides data on the sizes and locations of agricultural land parcels and their occupiers. There are, however, a number of weaknesses in the EU's approach, which may mean that it fails fully to reflect changing circumstances in agriculture and rural society.

- The emphasis is on the holding rather than the agricultural enterprise. For many farmers, the business is much more complex, comprising several holdings, and is made up of land held under different tenures. Data collection needs to focus on the business rather than the holding and the role of farming in the portfolio of businesses that farmers undertake.
- EU statistics use a crude distinction between owned, tenanted and sharecropped land, which fails to capture the subtleties of the different forms of tenure or the impact of different types of tenancy agreement.
- The EU does not require Member States to collect data on land prices, numbers of transactions or rents. What data the EU does collect on these subjects are neither comprehensive nor done in a standardized manner (Eurostat, 2000). But such data are needed to understand what is happening in land markets, particularly in view of the wide divergence in prices of land of comparable productivity within the enlarged EU.
- EU data systems were created to monitor production and do not examine the impact upon the environment. In particular, they do not identify whether particular farming practices are associated with particular tenures.
- Neither FADN nor the agricultural censuses collect social data beyond limited information about the gender and age of farm holders, their spouses, farm managers and employees. There are no data concerning the ethnicity or socio-economic status of owners and tenants or access to land by ethnic or social groups.

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The EU's single internal market raises questions about land tenure for EU members because of the eventual liberalization of land markets that new members must accept. The adoption of the *acquis* does create some powerful land-tenure data tools through FADN, the agricultural census and IACS. However, the land tenure data that results from them leave some important questions unanswered, which calls for further development of the EU's land tenure data in the interests of all Member States and not just those from Central and Eastern Europe.

The EU should collect data for FADN and the agricultural census by agricultural enterprises rather than by holdings so that the emphasis is placed upon businesses rather than farms. It should use these sources to collect information about production methods and their environmental impact so that the role of land tenure in determining these can be examined. Better data are needed about farmers, including their ethnicity and socio-economic status, in order to understand

which groups have access to land. Member States should be required to collect data on land prices, land transactions and rents in a standardized form that the EU can publish in order to provide a clearer picture, at regular intervals, of the state of the land market.

Member States could collect additional data through FADN and the agricultural census over and above what are required by the EU. This provides an opportunity to collect data about different tenancy arrangements, as these vary between countries. Even if there is no agreement at the EU level on collecting data about the social characteristics of farmers, land prices and rents and the impact of farming methods on the environment, individual Member States could still do so.

The countries joining the EU need to prepare for the liberalization of their land markets. The impact is likely to vary between areas because of such factors as different opportunities to develop agriculture, tourism and rural industries, the potential for inward investment, and competition for land and rural housing from incomers. Governments should therefore prepare spatial planning policies for each rural area that reflect their opportunities and strengths and the threats to them from liberalization. Entry to the EU is likely to bring greater competition, so governments need to pursue policies to encourage rural businesses to become more competitive and engage in diversification.

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Données foncières et stratégies en Asie du Sud-Est

Ce document compare les régimes fonciers et les données foncières de deux pays de l'Asie du Sud-Est, nommément la Thaïlande et le Cambodge. Cette comparaison repose sur deux cas d'études publiés dans ce journal (Nabangchang-Srisawalak, 2006; Ballard, 2006). Il cherche à identifier les thèmes communs et les différences en matière de questions, de problèmes et de solutions afférents aux politiques foncières. Le document aborde également quelques-uns des défis émergents compte tenu de la différence de degrés de développement économique existant entre les deux pays ainsi que l'importance des données foncières en tant qu'un des apports décisifs en matière de détermination de stratégies.

Datos de titularidad territorial e instauración de políticas en el sureste de Asia

En este artículo se compara la situación de los sistemas de tenencia agrícola y los datos de tenencia de la tierra en dos países del sureste asiático, Tailandia y Camboya. La comparación se basa en los estudios de casos de Nabangchang-Srisawalak y de Ballard publicados en el presente número. Se pretende identificar los temas comunes y las diferencias en cuestiones, problemas y soluciones con respecto a las políticas de tenencia agrícola. Se abarcan asimismo algunos de los nuevos problemas teniendo en cuenta las diferencias a nivel de desarrollo entre ambos países y la importancia de los datos de titularidad territorial como base para el diseño de las políticas.

Land tenure data and policy-making in Southeast Asia

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This article compares the status of land tenure systems and land tenure data in two countries in Southeast Asia, namely Cambodia and Thailand. The comparison is based on the two case studies published in this journal by Ballard and Nabangchang-Srisawalak, and identifies common themes and differences in issues, problems and solutions with respect to land tenure policies. The article also addresses some of the emerging challenges given the differences in the level of development between the two countries and the importance of land tenure data as one of the vital inputs for policy-making.

Despite the differences in the level of development and in the structure of the economies of Cambodia and Thailand, land is an important resource and production asset upon which the majority of the population of both countries rely. Thailand is the larger country of the two, with an area of 513 000 km^2 and, in 2003, a population of 63.4 million. Up to 1997, the double-digit growth rate earned Thailand the reputation of being among the "Asian miracles". With a gross national income per capita of US$2 190 per year, Thailand is classified as belonging to the lower middle income group by the World Bank.[1] With income generated by various economic sectors, Thailand is no longer a strictly agricultural economy. In fact, 90 percent of gross domestic product (GDP) is generated by the manufacturing and the services sectors (National Economic and Social Development Board [NESDB], 2005). The smaller share of less than 10 percent revenue generated by the agriculture sector may be interpreted as a structural move to the more productive non-agricultural based economy; yet 42 percent of the population are employed in the agriculture sector (NESDB, 2005). The declining GDP share of agriculture reflects low productivity both of labour and land factors of the sector, and indeed is cause for alarm. Cambodia, by comparison, is a smaller country, with a total area of 181 000 km^2 and a population of just over 13 million. Cambodia is one of the world's poorest countries, with heavy reliance on the agriculture sector both as the main source of revenue (34.5 percent of GDP) and as the single largest employment sector. What both countries share is a large number of people classified as poor and living below the poverty line; however, the figure is far higher in Cambodia, at 36 percent (FAO, 2005) compared with Thailand's 9.8 percent (NESDB, 2005). The poor are mainly concentrated in rural areas, are mainly agricultural and hence dependent on the land factor as a means for income generation.

Though neighbouring countries, the relationship between Thailand and Cambodia has not always been peaceful. Nonetheless, at least before the Democratic Kampuchea (DK) period, the countries

[1] For comparison purposes, country data – unless stated otherwise – are from World Bank Country Data and Statistics (available at www.worldbank.org/data/countrydata/countrydata.html).

shared some similarities in their social and cultural dimensions. Cambodia has been through turbulent periods in its history and changes of government, as well as changes of political and economic ideology. Those periods not only resulted in disruption but also destruction of land records, which had to be recreated and reshaped as part of the efforts to rebuild society and the economy. By comparison, Thailand's current land administration is founded on periods of relative peace. Land use was governed to a great extent by market incentives and policy directives that aimed at providing the infrastructure and technical support for increasing production and output of cash crops.

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"Public land" for Cambodia means land under the responsibility of the State, and is divided into two subcategories. One of these refers to land of environmental and ecological importance such as forests, watersheds and wildlife sanctuaries. The other is public land that is earmarked for allocation to the landless and the near-landless, who represent the bulk of the poor. The typologies of the use of public land can be said to be broadly the same in Thailand. There are slight differences, however, in definition. Private land, by Thailand's definition, refers to parcels of land that have been issued titles which legally recognize the full bundle of rights of the owner as any other private property. Private land in Cambodia, on the other hand, does not necessarily signify private ownership. The term "private land" is more an indication of the rights of decision-making rather than legal possession, which can either be by the individual, communal or some form of co-ownership. Short of ownership, other forms of land tenure in Cambodia include habitation rights, usufruct rights, mortgages and pledges.

Although the social and political systems of the two countries may differ in some respects, there are similarities in the broader institutional structure of land administration. The key players can be divided into three levels. At the macro and sectoral level of planning, in view of the complexities of use of land resources, there are multiple players. Given the intersectoral nature of land management, interministerial institutions have been established, such as the Council of Land Policy (CLP) in Cambodia and a range of national level committees in Thailand including the National Land Committee and National Land Reform Committee. As land use and management is a main component in all development sectors, the key ministries that have specific mandates over different aspects of land management generally include ministries responsible for agriculture, forestry, natural resources and environment, and urban and spatial planning. Over the years, the number of such public agencies involved in land administration has proliferated, as have the types of land documents, with varying legal properties, decrees, rules and regulations. Like Thailand, Cambodia appears to be moving in the direction of multiple players.

At the operational level, there are agencies that deal with registration and titling and technical staff responsible for data collection and computation. Registration and titling is a main foundation for building a functioning land market, and in each of the countries there is a single responsible agency. For Thailand, the Department of Lands under the Ministry of Interior is responsible for registration of land rights and the issuing of titles. In Cambodia, the equivalent is the National Cadastral Office under the Ministry of Land Management, Urban Planning and Construction (MLMUPC). Both have provincial and district branches. Regarding technical staff involved in the development and updating of the statistical databases, while there are differences in the stages and levels of development, parallel structures have been set up or are in the process of being set up. The National Statistical Office (NSO) of Thailand and Cambodia's National Institute of Statistics, for example, are responsible for collection and computation of population censuses. Given the political disruption

during the Democratic Kampuchea period, Cambodia as yet has no agricultural census. Local government is a key player in land management, particularly in view of the decentralization of responsibilities.

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The relevance of land to poverty stems from two key issues, food security and income generation (land as a productive asset). Both the amount and qualities of the land have implications on the food security situation. In Cambodia, concerns have been raised by the number of landless and near-landless people, which is rising at an annual rate of 2 percent (FAO, 2005). For Thailand, food security is both about producing the supply the revenue earning capacity of the producers themselves. Similar to the situation of world food shortages, the distribution of food supplies is more of a challenge than the production of food itself. The relevance of land tenure and land information in relation to food security issues is its role in the estimation of the food supply situation. The collection and maintenance of land tenure and land use data, as well as production data, will enable planners, including governments and donors, to target resources in support of improved food security more accurately. At the least, such information would indicate geographical concentrations of supply (as opposed to adopting certain assumptions over per capita demand for food) and, with information on the population distribution, some estimates can be made to identify food deficit areas. In addition, there would be prices, market transaction costs and affordability to be factored in.

In capital-scarce economies, land is the most important production asset, which can be used to provide subsistence needs and the surpluses for income generation; thus, a common policy prescription is to allocate land to the poor. While clear associations exist between land and poverty incidence, large information gaps exist, particularly on land tenure. Past and current efforts in Thailand in championing the idea of giving land to the landless have confronted logistical problems in verifying the demand and the supply side. On the demand side, operational constraints can start from matters as basic as how to define and prioritize the poor, and land tenure information is required to support this process. In tandem with that is the need for information on the stock of land supplies. There are also the modes of land acquisition and delivery to consider. Consideration of what should be the optimal farm size is also a part of realistic estimation of demand and supply potential.

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The relationship between land and the environment engages the broader concepts of efficiency, equity and sustainable uses of resources. In addition to deforestation, agricultural production is often associated with adverse environmental impacts such as soil depletion, soil erosion and contamination of water sources; the bulk of the blame has generally been directed at resource-poor farmers. Apart from their potential for agriculture, natural resources represent the stock of natural assets and a source of wealth for rent-seeking economic agents. Because forests provide both ecological and economic functions, substantial work needs to be undertaken. On the forest resources *per se,* work needs to be undertaken on classification and making resource inventories. Regarding the economic role of the forestry resources, work may be less straightforward and will involve identification of users, their numbers and how resources are used; the location; the intensity of use; the revenue generated and the resources rent paid by the users. Inadequate attention to these issues has given rise to various dimensions of conflict. Social conflicts arose, for example, because the boundaries of forest resources are generally not well defined and because rights and entitlements of users have tended to be unclear. There are also institutional conflicts between

the public agencies, which can be traced back to unclear mandates and scope of responsibilities. Agencies follow different procedures and generally are authorized by different pieces of legislation. There have been inefficiencies of utilization of public funds and resources caused by overlapping or duplication of functions, which have led to confusion and plagued land administration, with overlapping of claims and parcels of land having several documents issued by different authorities (Nabangchang-Srisawalak, 2004). Incidences of conflict are becoming more frequent in areas where the market value of land is higher and where there are higher competing uses, for example in areas undergoing transition from agriculture to commercial use (FAO, 2005).

One other area of conflict is that between the State and the people. This type of conflict, widespread in Thailand, has arisen in situations where the State disputes or does not recognize *de facto* rights to land of people who have invested their own efforts in clearing and utilizing the land, or have bought the land from previous owners. These conflicts are generally concentrated in areas of environmental and ecological importance such as national forest reserves, national parks and wildlife sanctuaries. A larger segment of the small-scale farmers in Thailand are now occupying ecologically fragile land (Nabangchang-Srisawalak, 2003). Lands brought under production by marginal farmers (including small and landless farmers) are usually marginal lands found in many open-access situations.

Finally, there is the issue of large-scale commercial agriculture versus small-scale farms. Given the notion of "public goods", coupled with equity considerations and considerations over comparative abundance of resources, there is an implicit preference for small farms. In practice, institutional failures can lead to opposite outcomes, hence the numerous cases of complaints raised over preferential treatment in favour of large commercial farms. The discontent in the case of Cambodia has already been noted over the granting of 64 economic concessions to large commercial farms (Ballard, 2006).

[redacted]

Of equal importance to the issues of access, control and ownership of land are the factors that will ensure the revenue-generating functions of land resources. Productivity of the land depends, in the first instance, on physical attributes such as soil type, slope and availability of water supply. Land productivity can be enhanced by the availability of supporting infrastructures such as irrigation facilities. Technology inputs and factors inputs, which can raise both land and labour productivity, all require investment, and hence the high relevance of the accessibility to services and to the capital markets. Information required on these supporting components includes physical attributes, availability of supporting physical infrastructures and status with respect to accessibility to the capital markets (both formal and informal).

[redacted]

If property rights are endorsed, security and accessibility to credit and capital markets will increase market values. With records of land ownership and transactions recorded, it becomes possible to monitor transfers and ownership. Among the lessons learned from Thailand is that the speed of land titling has not been without costly trade-offs such as discrepancies, overlapping of claims and disputes, which created further costs of rechecking and validating. The knowledge that there will be titling and legal endorsement of claims can actually encourage encroachment onto forest land in anticipation that land claimed would be granted titles. Such has been the root cause of cases of land use conflicts where titles have been issued *inside* protected forest areas or within the boundaries of State land. Among the lessons learned is also that registration programmes should be accompanied by publicity

campaigns. Asymmetry of information, often conditioned by differences in social and economic status between buyer and seller, has unfortunately worked out to the disadvantage of the poor (Srisawalak, 2003).

In view of the importance of public land resources with respect to economic, social and environmental concerns, land tenure data on public land is of crucial importance. Collecting land use information with regard to public land and monitoring land use changes will fill in many information gaps in land management, and should be undertaken parallel to the registration of private land. The speed with which this is executed should also be emphasized, as such data would allow for more accurate estimation of the spatial scope and level of utilization of resources; this in turn would form the basis for determining the amount of work that still needs to be done on public land.

Two other land-related databases, namely agricultural and population censuses, are essential for macro- and sectoral-level planning. The Cambodian agricultural census, when it is developed, is expected to be the one-stop venue for land tenure data. If land information will also be collected as part of the population census, then the unit of analysis should be the same. This would make it possible to share information from different databases without having to make assumptions on compatibility of units and definitions.

Thailand's situation is of a different nature altogether. While Thailand has had a considerable head start, with long experience in collection and analysis of population and agricultural censuses (both undertaken by the NSO) and other statistical databases, the values of both databases can be enhanced if agencies would make better use of what is available rather than investing more resources to collect and compile information as and when needed. Thus, Thailand's challenge is more how to increase the utility value of several stand-alone databases (which is often limited by coordination constraints). The existence of multiple databases leads to losses in the practical value of the information. The presence of international agencies such as the World Bank and the United Nations Development Programme (UNDP) should make institutional cooperation easier, if not mandatory. Unfortunately, donors can sometimes contribute to the growth of multiple databases when approaching agencies on ad hoc basis. Given the scarce resources, efforts to build an integrated framework for developing a land tenure database would be more cost-effective, not only from the point of view of the countries themselves, but also for the donors.

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While land tenure data are essential policy inputs, there are limitations relating to collection, analysis and usage, and this limits their potential usefulness. Problems arise from combinations of financial gaps and human capacity constraints. To develop a comprehensive land tenure data system, financing is required for three purposes. First, investments are needed to develop and regularly update land tenure databases. Here there are concerns over heavy reliance on donor financing, the project orientation approach to data collection and the risks of non-sustainability of efforts. Another area where financial resources are required is for land registration processes; this applies to both privately owned land and registration of occupancy in public lands. Given the magnitude of the tasks and the speed at which countries would like to complete the process, external sources of assistance would be necessary for launching as well as accelerating the process. There are also issues relating to financial limitations of local governments in the context where financial resources from central governments are gradually withdrawn, and also the issue of user fees levied, which might create gender biases as well as bias against lower-income groups.

As far as human capacity constraints are concerned, three sorts of personnel are required, namely, personnel responsible for

data collection, registration and capacity building of local governments, which will be concerned with the management and tax (or revenue-generating functions) levied on land under various types of land use. Ongoing decentralization highlights the importance of capacity building of local governments in particular, and will dictate changes on both the revenue side and the cost side of land management. Local governments will principally be given additional responsibilities in tax collection; they will also be able to retain a larger percentage of revenue, as well as having greater discretion over its use. Land tenure information is the basic precondition for improvement of efficiency in tax collection, which dictates the demand for regularly updated information on land ownership and land utilization.

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Based on the experiences of Thailand, and the emergence of the same problem areas in land management in Cambodia, there is a need for a central land tenure database. The framework for developing such a database should start at the village level, with the intention of aggregating the information to subdistrict, district, provincial and higher levels of analysis. The database should contain information at the individual level on the number of parcels of land owned, rented or leased out. It should also contain information on site locations and the nature of land use. The design should include linkages in the database on the physical attributes of land, such as land capability and soil suitability, and networks of supporting physical infrastructures. More important, this land tenure database should be linked with socio-economic databases in the population census and agricultural production data available in the agricultural census.

Without such a central database, none of the key land-based issues mentioned here can be addressed immediately because what exist at present are fragmented land tenure data compiled by different agencies, and which furthermore are not readily accessible or usable. Often the resources spent, the delays involved and the trade-offs in quality of information collected in response to ad hoc policies have intensified, rather than reduced, the existing confusions. Given the fragmented information, policy-makers cannot establish, with any level of accuracy, such features as land distribution, the magnitude of landlessness and near-landlessness, legal properties of land parcels, the level of tenurial security of occupants on various types of public land, the scale of the problems of deforestation (either with respect to the size of the population now inhabiting ecologically sensitive areas) or the rate of expansion and the corresponding demands for resources. Nor is it possible to expect local governments to execute some of the roles related to the beginning of decentralization in land management, such as collection of land tax.

The establishment of a central land tenure database does not necessarily imply creating yet another land database. For Thailand, it means integrating the fragmented land tenure data, addressing the coordination constraints discussed. For countries such as Cambodia in the initial stages of putting together a framework for land management, it means developing a framework for a land tenure database with the goal of having a one-stop source for land tenure data, and with the intention of linking this database to other relevant sources of information. The existence of such a database would not only provide an overview of the land tenure situation at the local level (and at higher levels of aggregation if and when needed), but it will also provide the benchmark to monitor changes in land tenure systems and associations with other development variables. In many respects, the land titling process already provides a systematic means to monitor land transactions in private land. Although this is an essential step in the construction or, for some countries, reconstruction, of the land market, where changes in the land tenure situation are more closely related to

poverty, food security and environmental concerns in countries such as Thailand and Cambodia it is in relation to public land where information is scant and where institutional and legal measures have tended to lag behind the changes that are occurring. A system for recording and monitoring transactions in public areas is therefore an important tool for management of public land.

For practical purposes, however, there are two major considerations. First, the database needs to be regularly updated to reflect the dynamics of changes in the land tenure profile. Second, the structure of the database should be clear and simple. The large numbers of isolated geographic information system databases are ample proof that large investments in sophisticated techniques do not necessarily guarantee practical uses. Data collection, insofar as possible, should be localized, either undertaken by village headmen, local governments or people assigned by these authorities. This will mean large-scale capacity building, to communicate the rationale for data collection, the structure of the database and the variables to be collected. Equally important will be the incentives provided for the contributions in collecting and updating this database.

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Réflexions sur l'information foncière et les stratégies adoptées en Afrique subsaharienne

La sécurisation foncière, en particulier celles des groupes les plus vulnérables du point de vue économique et social, commence à être prise au sérieux – d'une manière plus pragmatique et moins dogmatique – en matière de politiques foncières en Afrique subsaharienne. Ces politiques doivent reposer sur des analyses solides, qui doivent à leur tour être établies sur des données fiables en matière d'accès, de distribution et de transfert de droits fonciers. Il n'en reste pas moins que le problème de l'information foncière est en général méconnu, ou du moins sous-estimé. La plupart des Africains vivent dans une conjoncture caractérisée par l'absence de formalités juridiques ainsi que par la marginalité, et cet état de choses n'est établi que d'une manière abstraite et non dûment étayé, à titre d'exemple, pour autant qu'il s'agisse de concentration de terres ou de pluralisme juridique. La pénurie de données et l'absence de politiques foncières contribuent à maintenir des personnes sur les marges d'une véritable citoyenneté, où elles existent en tant que sujets et non en tant que citoyens. Envisager les politiques gouvernementales comme un processus de négociation et une stratégie visant à assurer une légitimité, exige inévitablement de repenser les attributions d'un système d'informations incorporé à un flux de pratiques, ainsi que la nature des acquis et des informations en matière foncière. Les questions fondamentales qui se posent aux gouvernements, tels les relations rurales par rapport aux relations urbaines, la nature des droits et des pouvoirs «coutumiers», le rôle et les possibilités offertes par les politiques de réforme et de décentralisation agraires, doivent être interprétées en ce sens.

La información agrícola y la toma de decisiones en África subsahariana

La cuestión de la garantía de la tenencia de la tierra, en especial para los grupos económica y socialmente más vulnerables, está empezando a ser considerada de una manera más pragmática y menos dogmática en las políticas de tenencia agrícola de los países del África subsahariana. Estas políticas deberían sustentarse en análisis exhaustivos, que a su vez deberían basarse en datos fiables sobre la distribución y las cesiones de los derechos territoriales. No obstante, la información territorial disponible es ampliamente ignorada o, como mínimo, desestimada. La mayoría de los africanos vive en una situación de abandono y marginalidad jurídica, que sólo es reconocida de manera abstracta pero no está documentada, por ejemplo en lo que se refiere a la concentración de las tierras y al pluralismo jurídico. La escasez de datos y la falta de políticas de tenencia agrícola dan pie a que las personas se mantengan al margen de una auténtica ciudadanía, por lo que existen más bien como sujetos que como ciudadanos. La consideración de las políticas públicas como procesos negociados y de legitimización requiere una nueva orientación de la información sobre tenencia. Las cuestiones clave como las relaciones rurales/urbanas, la naturaleza de los derechos consuetudinarios y de las autoridades, el papel de la posible reforma agraria y las políticas de descentralización deben contemplarse desde esta perspectiva.

Reflections on land information and policy-making in sub-Saharan Africa

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The question of securing land tenure, particularly for the most economically and socially vulnerable groups, is beginning to be taken seriously – in a more pragmatic and less dogmatic fashion – in land tenure policies in sub-Saharan Africa. These policies should rely on solid analyse that must, in turn, be based on reliable data on access to and distribution and transfers of land rights. However, the land information issue is largely neglected, or at least underestimated. The corresponding dearth of data and lack of land tenure policies help keep the majority of Africans, who live in a situation of legal informality and marginality, at the margins of true citizenship. This article addresses the intersections of the fragmented state of available information, formal and informal data-collecting and storage procedures, and land tenure policy-making, and argues that key policy issues such as rural–urban relations, the nature of "customary" rights and authorities and the role and potential of land reform and decentralization policies must be viewed in this perspective.

Under "Redefining land rights", the 1989 World Bank report *Sub-Saharan Africa: from crisis to sustainable growth* stated: "Agricultural modernization combined with population pressure will make land titling necessary. Traditional tenure systems need to be codified" (quoted in Peters, 2004). Ten years later, as Quan (2000) shows in a review of later World Bank policy papers, "the World Bank continues to view a framework of secure, transparent and enforceable property rights as the critical precondition for investment and economic growth. But they now recognise that property rights need not necessarily be individualised, and that security can be provided within customary tenure systems". The recent research report *Land policies for growth and poverty reduction* (World Bank, 2003) does not depart from this line. It links secure property rights with economic growth, poverty reduction, sustainable development and good governance, but sees an obstacle to these goals in Africa in the lack of legal recognition of customary tenure rather than customary tenure *per se*: "While tenure security affects farmers' investment behaviour, this does not necessarily require fully individualized rights or land titles" (World Bank, 2003; Fitzpatrick, 2005). In other words, the question of securing land tenure for rural producers and city inhabitants, in particular the most financially and socially vulnerable, is beginning to be taken seriously – in a more pragmatic and less dogmatic fashion – in land tenure policies. "In the last two decades, almost all countries in sub-Saharan Africa have been undertaking land reform in one guise or another. The aims have been to promote economic growth, encourage more sustainable management, and reduce poverty" (Toulmin and Quan, 2000; see also Okoth-Ogendo, 1993; de Janvry *et al.*, 2001; Cotula, Toumin and Hesse, 2004).

Policies aiming to improve land tenure governance, especially regarding access to land for the poorest people, should rely on solid analyses and therefore on reliable data on access to, and distribution and

transfers of, land rights. However, the land information issue is largely neglected, or at least underestimated. It is the case, for instance, with Poverty Reduction Strategy Papers (PRSPs),[1] a flaw stressed by FAO discussion on PRSPs. In the policy research report quoted above (World Bank, 2003), the theme is evoked without being systematically tackled.

This is also the case at the national level, as shown by country studies on both Benin and South Africa. Lahiff (2005) observes that, in South Africa, "while a certain amount is known, both in the literature and among practitioners and decision makers, about the broad outlines of land administration in freehold and communal areas, much less is known about tenure data in general".

This means that the majority of African people live in a situation of legal informality and marginality, which is only understood in an abstract way (policy-makers know that such people and situations exist), but their situation is not acknowledged or documented. Missing information contributes to maintaining such people at the margin of a true citizenship, as subjects rather than citizens. In this respect, one can argue that land is a human rights issue (see Wisborg, 2002).

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Addressing African land tenure in general terms is difficult. There are stereotypical representations, such as the ones Lund (2000) questions, showing how false description and narratives can produce social effects when used as (implicit) theoretical guidelines for policy-making.

The deep differences between Benin and South Africa, as far as political history and land policy are concerned, render comparison complicated. Nevertheless, as suggested by Mamdani (1996), South African exceptionalism (as a settler colony and apartheid country) should be questioned. For him, the apartheid regime belongs to a general mode of governance based on the notion of a "bifurcated state" that combines direct and indirect rule. "Direct rule was the form of urban civil power. It was about the exclusion of natives from civil freedoms guaranteed to citizens in civil society. Indirect rule, however, signified a rural tribal authority. It was about incorporating natives into a state-enforced customary order. Reformulated, direct and indirect rule are better understood as variants of despotism: the former centralized, the latter decentralized". Colonial powers relied on decentralized despotism to deal with the native question in rural areas, superimposing a rural/urban divide onto the citizen/subject demarcation. Postcolonial regimes evolved from this colonial matrix, either towards a decentralized conservative variant of despotism or a centralized radical one.

Mamdani's provocative theses have been widely discussed and criticized.[2] Of interest here is the double idea of decentralized despotism and legal dualism with regard to land issue. Mamdani's major weakness is to take colonial discourses for granted – hence he overestimates the strength of the colonial state. In other words, if legal dualism exists at the formal level, the reality of land access and control is much more one of legal and institutional pluralism and hybridity. A second element, the rural/urban relation, is rather one of connection and flows of people, ideas and resources, than one of separation. This means that many urban dwellers are no more "citizens" than are rural populations, especially as far as land rights are concerned.

Furthermore, the notion of legal dualism has a sort of colonial flavour and must not be taken at face value. It implies the existence of two distinct bodies of rules

[1] The PRSP model, originally endorsed by the World Bank and the International Monetary Fund, was conceived to enhance the interaction between donors and recipient countries and to lead to greater effectiveness in poverty reduction.

[2] See, for instance, *Politique africaine* No. 73 (1999) with critical comments by Ralph Austen, Frederik Cooper, Mariane Ferme and Jean Copans.

and authorities, each governing a separate domain of land tenure, the "customary" and the "modern" or "statutory" one. Actually, both domains are integrated within a common framework under the aegis of the state. There is, in this respect, only one source of law or "legal order," and one could interpret the situation as a case of state legal centrism rather than a plurality (Griffiths, 1986; see Chanock, 1991, on colonial customary law).

The degree of autonomy of a so-called "customary" land tenure system is different from one country to another. There is never a complete disconnection, at least because the dualistic framework inherited from the colonial era originated in the state. However, access to and claims over land and natural resources largely function outside the reach of state administrations, even though their representatives intervene more or less informally in the local politics of rights recognition.

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The nature of land tenure, the functioning of access and control of land, land policy and modalities of intervention all influence information production and use. Ideally, public policies consist of choices made by decision-makers relying on the cross-cutting of available information and desirable outcomes. What is the relative weight of each factor in the process? Are decisions guided by a careful analysis of reliable data, or do they follow other agendas? Beyond the land tenure issue, this is a matter of conceptualizing policy production, particularly as regards the relationship between information and decision, or knowledge and power.

The linear progression from information production to decision-making and then assessment does not account for the much more diffuse, fragmented and negotiated reality. Mosse (2005), in his ethnography of policy and practice, goes one step forward: "Policy primarily functions to mobilise and maintain political support, that is to legitimate rather than to orientate practice".[3] The link between information and decision-making is a matter of negotiation, alliance and compromise, not a smooth and linear process of conceiving, programming and implementing. The nature of public policies as negotiated processes and legitimation strategies inevitably requires rethinking the position of information in the flow of practices that form them and the nature of land tenure knowledge and information. One dimension is the private or public character of the information on land tenure. This knowledge takes various forms and is used in different contexts for policy production and land management. Information can be strategically manipulated, controlled or monopolized by social actors depending on their interests, positions and goals. Ruptures in the chain of land data production and circulation can reflect technical and institutional dysfunction (staff recruiting, data conservation, actualization, etc.) as well as individual or collective strategies of control over information flows.

The state of both archives and the land information storage devices themselves is an indicator of whether land data are considered as a common, or public, good – a good that belongs to everyone, and therefore one for which no one feels responsible. Actually, beyond the inherent property of a common good (non-rivalness and non-excludability), one can define a common good by the fact that its value increases with the number of its users (Rose, 1994). In the case of land information, one could assert that free – or at least fluid – access to land tenure data (especially legal information) should globally increase land tenure security and thus equity, social peace, investment and wealth. But is this the case? Which actors and institutions would find their advantage in the common good of land tenure data? The common/individual and public/private divides are

[3] Mosse adopts a broad conception of "policy": "embracing global policy as well as strategies, models and designs which express this locally".

socially constructed and, as such, are a central policy issue.

Both a common good and privatized resource, land tenure is never an autonomous or free object. It is embedded in specific institutions and procedures ruling the way information will be processed and used. This means that a specific cut-out is presented according to the needs and functions of the institution producing land tenure data. This selectivity, in turn, contributes to the fragmentation of information and knowledge about land, and thus to a specific way of organizing, remembering and forgetting the very function of institutions, as Douglas (1987) aptly reminds us.

Furthermore, behind the seemingly "technical" procedures of specific data production for specific uses (e.g. taxation, legal, economic, land development), one can decipher a – generally latent, sometimes more explicit – conceptual or theoretical basis. What is often missing in formal land tenure data is the very fact that land tenure is a matter of social relations between social actors or groups about land or, more precisely, about knowledge, access, control and rights over landed resources. This raises questions about what land tenure data are, in relation to the embeddedness of land rights in specific social and political contexts, or what Lund (2002) calls "the symbiosis of property and authority".[4]

In the case of South Africa, Lahiff (2005) comes to a similar conclusion with regard to land tenure data:

"In ways, it is misleading to speak of tenure data, in the conventional sense, with regard to South Africa's communal areas. Land rights in the communal areas generally derive from an individual's embeddedness within a given social context, be it a village, a tribe or other form of community. Unlike more formal, modern, systems of tenure, communal land rights do not depend on an objective, verifiable document or other artefact, such as a title deed. Communal land rights are often effectively personal rights, only loosely connected to specific parcels of land. Land parcels may be demarcated on the ground, but are not necessarily measured, and neither the exact location, nor the boundary nor the extent of the plot may be recorded in any other form. Thus, for purposes of our analysis, it is important to distinguish between tenure data which is not easily available, due to poor recording or communication systems, and data that simply does not exist in any objective sense."

[4] "The process of recognition of property rights by a politico-legal institution simultaneously constitutes a process of recognition of the legitimacy of this institution" (Lund, 2002).

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Land tenure information is heterogeneous, fragmented and scattered, as shown in the cases of both Benin and South Africa. Different categories of land tenure data have to be distinguished according to how they are produced.

Primary data are directly generated through procedures implemented or controlled by the land administration system: legislative texts (laws, decrees, acts); policy frameworks and texts (for instance, the *White paper on South African land policy*, Department of Land Affairs, 1997); land titles, deeds and administrative certificates (for instance, the Permit to Occupy in South Africa, the *permis d'habiter* in Benin); land sales agreements; cadastral maps; taxation registers; and written documents and decisions linked to the processing of conflicts by the land administration or courts of justice.

Other primary data are produced outside the formal land administration: "small papers" and various informal acts aiming at validating, at least locally, a land transaction; local conventions ruling the relations between autochthonous "customary landowners" and migrants; and written complaints and claims related to a land conflict.

Secondary land tenure data are also diverse. They are based on the processing of primary information: statistical databases; cadastral maps, global positioning systems data and geographic information

systems; complex procedures – "chains of translation" – of land tenure data production and management (for instance the rural land plan and urban land register in Benin); results of quantitative surveys and qualitative enquiries, including studies carried out by or for development projects or natural resources management programmes; social science literature on land tenure; colonial and postcolonial archives; and texts produced locally or by native intellectuals about land tenure, settlement history, customary authorities and natural resources management. These sources often function as justifying discourses or local charters in the management of land, natural resources and migrants.

The diversity of land tenure data is matched by a corresponding diversity of data collection and localization (storage location and conditions). For some of these data, there is also a question of actualization, of the maintenance of a land information system, that should ideally take into account the question of land information accessibility. This brings us back to the double nature of land tenure data, as a common good and a strategic resource.

Also worth noting is that the primary and secondary data listed above are all materialized as written objects or computerized data. But the actors involved in the land tenure arena have been developing a knowledge about land, as extremely diverse, unevenly distributed, often not formalized, and even not completely verbalized, and oriented towards practical ends.[5] This less visible – and indeed invisible for many projects and administrations – part of land knowledge is intrinsically part of "everyday land governance" (Le Meur and Lund, 2003; Woodhouse, Bernstein and Hulme, 2000).

[5] See Ellen's definition of local knowledge (reply to Sillitoe, in Sillitoe, 1998): "local, orally transmitted, a consequence of practical engagement reinforced by experience, empirical rather than theoretical, repetitive, fluid and negotiable, shared but asymmetrically distributed, largely functional, and embedded in a more encompassing cultural matrix".

[redacted]

The development of a formal system of land ownership registration reflects a specific state project of territorial and local anchoring. In both countries (and the same observation could be made for the rest of sub-Saharan Africa), the formal system accounts for only one part of land property realities. There is, however, a big difference of scale and efficiency between Benin and South Africa.

The South African system of registration is described as highly efficient and reliable. However, it is:

> *…characterised by its exclusivity – a relatively low volume of transactions is being registered as a result of transactions between a relatively small part of the population. It is therefore easy to maintain a procedure of thorough examination of deeds by deeds registry personnel, resulting in the maintenance of the accuracy and reliability of the system. But a large part of the population – notably people in informal urban settlements and in rural areas where a system of communal property still prevails – is excluded from the deeds registration system.*
>
> (Pienaar, 2000, quoted in Lahiff, 2005)

Lahiff (2005) less identifies two major weaknesses in the formal system based on the cadastre and the deeds registry:

- The formal system does not extend much beyond the 87 percent of territory that formerly constituted "white" South Africa. Insofar as formal tenure data exist for the former homelands, they tend to refer only to nominal ownership of substantial parcels (i.e., the outer boundary of land held in trust by the state on behalf of communities), and not to individual land holdings.
- The formal system does not capture the detail of landholding and land use in situations where large numbers of people who are not the owners occupy land. This applies to millions of people residing in so-called informal settlements in and around urban centres, as well as millions of farm dwellers residing on commercial farms where they may be employed, or have been employed in the past.

The case of commercial farms is revealing. Farm dwellers constitute a vulnerable social group because they live under the threat of eviction. Furthermore, as their rights are encapsulated in a privately owned commercial farm, they actually do not have any visibility outside the boundaries of the farm and beyond their personal relationship with the landowner. They remain beyond the reach of state administration and decentralized bodies.

The diverse modalities of land tenure data production generate heterogeneous, dispersed files or fragments of files that have little connection (or poor connections) with each other. The state of each file depends on the combination of type of information and production and storage site. The combination of a sum of non-coordinated formal procedures and institutions results in a rather informal situation.

The limits of the formal and informal realms are not clear-cut, and in fact the two are often intertwined. To a certain extent, the distinction between formal and non-formal (or "customary") land tenure systems is linked to the urban–rural divide, which has framed the colonial, and, to a certain extent, postcolonial, legal history of many African countries. The categories cannot be superimposed, however. The degree of formality of urban land arrangements is very low in Benin, as well as in South African urban settlements, whereas commercial farming areas in South Africa combine formal and informal features. Although the farm boundaries and landowner are officially registered, what happens inside the limits remains out of the reach of formal procedures and is a matter of patron–client relationships between the landowner and the farm dwellers.

The last example leads us to the question of land tenure data in the informal or customary realm. As evoked above, it is not only a matter of degree of formality of land rights definition or registration. The polarity formal/informal requires clarification as far as land tenure data are concerned. Beyond the dual frame of reference conceptualizing a neat divide, the concrete functioning of land access and property is situated on a continuum of varying combinations of formal and informal, state and non-state, customary and modern, commoditized and non-commoditized elements.

In South Africa, the distribution of land administration institutions does not coincide with the divide between communal and non-communal land. This discrepancy generates confusion, ignorance of land tenure situations on the part of the administration, a lack of land tenure security and a great heterogeneity in the formalization of land rights. The polarity formal/informal is not a clear divide. The blurring of boundaries has several features:

- Tendencies towards informalization within the formal system are expressed in the form of the devaluation of official certificates.
- Relatively informal certificates, such as the Permission to Occupy in South Africa or the right of abode (*permis d'habiter*) in Benin, tend to acquire a practical validity that expands beyond official attributions.
- Informal, non-official (or rather, local/customary) forms of land rights allocation and land management are encapsulated within areas that are formally registered, such as commercial farms in South Africa. This boundary between the formal and informal realms is not "horizontal" (territorial) here, but "vertical", recalling the idea of indirect rule.
- Indirect rule, however, implies a distinction between levels of administration, which is not likely to be found in contemporary Africa. We observe instead a plurality of norms and institutions, a lack a clear hierarchy between authorities and interrelations between local and supralocal levels.[6] It is the interplay of state and non-state actors and institutions that eventually produces specific forms of land governance.

[6] "Today the administration of communal land is spread across a range of institutions such as tribal authorities and provincial departments of agriculture, but is in a state of collapse in most areas" (Lahiff, 2005).

Any attempt to reform land governance must take into account this pervasive legal and institutional pluralism. As Cousins puts it, following Berry's discussion on the failure of land reforms in Africa (see Berry, 2002a; 2002b), "Land conflicts are the outcomes of social processes, negotiations, and conflict resolution, and thus … institutions to mediate these processes, rather than the legal redefinition of rights, should be the focus of intervention" (Cousins, 2002). The statements may be too radical; however, the issue is crucial as far as land policy is concerned.

■

Reforms raise specific questions as far as land tenure data are concerned. Depending on the procedures and objectives, they create new rights either *ex nihilo* or by identifying and recognizing existing rights. This has consequences for the type of information needed and produced. Quan (2000) distinguishes six types of land reform undertaken in sub-Saharan Africa over the past 50 years (2000): (1) land nationalization; (2) tenure reform: land registration and titling; (3) agrarian reform: land redistribution and resettlement; (4) agrarian collectivization; (5) land development projects and protected areas; and (6) efforts to reaffirm and recognize customary rights. Land reform in the sense of a reallocation of land rights in order to effect the distribution of property within the society – whatever the orientation of the redistribution (towards more equity or more inequity) and its conception of property (more or less focused on ownership) – constitutes a specific policy option.

Lavigne Delville (1999), following Le Roy, noted three main trends in the legislative reforms of the 1990s in French-speaking West Africa (see Mortimore, 1997, on English-speaking West Africa), aimed at harmonizing the different landholding systems (and thus close to Quan's sixth type):

- **Codification** (for instance, the Rural Code in the Niger; see Lund, 1998). This includes systematic attempts to give customary rights a legal definition and to integrate them into formal law, with rules clearly spelled out, at the risk of an oversimplification and homogenization of a complex body of flexible and variable rules. "Codification still follows positivist and instrumentalist reasoning whereby the purpose of the law is to define what should be, and to transform reality accordingly" (Lund, 1998).
- **Registration** of local rights, with the aim of giving them legal status (rural land plan, PFR, in Benin, Burkina Faso, Côte d'Ivoire and Guinea); the PFR takes the form of a simple and relatively cheap – at least compared to classical land titling – form of customary survey. It records and maps the totality of customary land rights at the village level through a systematic public enquiry process and produces public documentation by building consensus around land property rights, land-rights holders and field boundaries. The PFR claims to be participatory and politically neutral, as it seeks merely to give concrete expression to actual existing rights. Actually, the PFR is not simply a kind of "applied ethnography of customary rights", which results in a recognition of what exists. The process of recognizing rights transforms their very nature, by extracting them from local practices, uses and authorities in a way that both decontextualizes and recontextualizes knowledge and practice (Le Meur, 2006a). The PFR is unable to take account of land tenure complexities, and tends to produce a set of simplified artefacts through the action of its homogenizing procedures.
- **Subsidiarity** within public land administration authorities, and the introduction of "common heritage" (patrimonial) management principles (Madagascar and limited experiments in West Africa regarding timber resources). In the same vein (despite some differences), the Land Observatory (*Observatoire foncier*) in Mali developed the concept of a land charter recognizing rights and local tenure rules. It was a

failure, eventually resulting in a turn back to the land-and-property code approach and to the implementation of the decentralization without any clarification of the tenure issue at the communal level.

The last option, subsidiarity, leads us to the political decentralization issue. Alden Willy (2003), in her review of decentralization of land administration and management in Africa, highlights the duality or plurality arising from the different modalities chosen:

- Administration is decentralized for only certain types of land rights (most commonly customary rights), while other rights in rural areas are administered centrally (e.g. the case in Burkina Faso, the United Republic of Tanzania. Botswana, in respect of freehold rights);
- Distinctions are drawn by class of right-holders (most commonly foreigners may only access land through central land administration systems), for example in Eritrea, Ethiopia, Mozambique, Namibia and the Niger.
- Rights are locally administered, but registration of these rights is handled by central land administrations. Often in these circumstances the right is converted by this centralized registration (e.g. Côte d'Ivoire, Nigeria, South Africa [planned] and Zambia). In other cases the right retains its integrity to a significant (but still incomplete) degree (e.g. Ghana and Mozambique).

One crucial issue for decentralized bodies is their ability to gain a central position within political arenas and, as a legitimate (democratically elected) institution, to polarize the debate and the circulation of information This means finding a way out of the current situations of non-hierarchized and poorly regulated institutional polycentrism that characterize political arenas in many African countries.

A last point about decentralization policy regards the polarity rural/urban. Development literature often emphasizes the phenomena of rural exodus and urbanization as being major trends everywhere in the developing world. In reality, these processes are composite and non-linear. Secondary poles are often the ones that develop the most rapidly, and population flows are fluctuating and reversible. Return to villages, cyclic migrations between cities and the countryside and intrarural migrations can also be seen. These phenomena make it difficult to grasp clearly the distinction between rural and urban. For these reasons, the problem of managing peri-urban areas is becoming central. It is not a matter of "peripheral areas" or "urban fringes". It is at the heart of land tenure because it cuts across an ensemble of distinctions that influence public policy choices without truly being made explicit. The rural/urban pair forms the matrix of other duos implicitly seen as its counterparts – non-agricultural/agricultural, modern/customary, subdivided/unsubdivided, taxable/non-taxable – that in a way also reflect the citizen/subject distinction and the old (but renewed with the city/countryside pair) distinction between mastered/humanized space and not fully controlled space. Decentralized bodies could play a key role in bridging these gaps between urban and rural worlds, which are actually not lived as gaps.

[redacted]

Beyond differences among African countries, one can discern common issues concerning land tenure policy and information:

- The circulation of information among state administrations and ministries – and beyond, with development and natural resources management programmes – lacks fluidity. This phenomenon is linked to the use of information as a strategic good, in a typical patrimonial logic. Political and administrative decentralization offers an opportunity to bring together different sources of information over land tenure and to harmonize databases, which can

shift the balance towards a common good conception of land tenure data,

- The rural/urban divide is lived in terms of mobility and rural/urban connection (Geschiere and Gugler, 1998; Chauveau, Jacob and Le Meur, 2004); nevertheless, it continues all too often to structure representations underlying policy-making and, more specifically, land tenure policy and the production of data related to the subject. Decentralized elected bodies and administrations could be the right place to tackle the issue. In this respect, taxation is a major issue. As Guyer (1992) remarks, "Completely contrary to the historical sequence in Europe, and even differing quite profoundly from the processes in place at the time of independence, the present African leadership has to seek consent first and enforce taxation afterwards." Decentralization – the term itself is somewhat misleading – could be an occasion for reorganizing state-making in a more democratic and legitimate way (Le Meur, 2006b). In this sense, taxation is a matter of citizenship.
- The reflection on the recognition of local/customary land rights must be continued and freed of a positivist illusion that has underlain most of the interventions in this domain (Colin, Le Meur and Léonard). Local land rights function in relation to authorities, and this specificity must be taken into account when it comes to giving the former a legal status. The creation of new entities such as the communal property associations in South Africa can be seen as an alternative option to the recognition of customary rights. The identification/creation of rights and institutions must be debated within a common framework.
- One important debate revolves around the fluidity and negotiability of land tenure in Africa and its impact on landholding distribution (see Lund, 1998; Woodhouse, Bernstein and Hulme, 2000; Berry, 2001; 2002a; 2002b; and Peters' critical comments, 2002, 2004). Peters (2004) argues that "the pervasive competition and conflict over land call into serious question the image of relatively open, negotiable and adaptive customary systems of landholding and land use and, instead, reveal processes of exclusion, deepening social division and class formation". There is a lack of reliable data on land property distribution that could document – if not solve – the discussion, which is central for policy-making.

These points are to various extents linked to the subject/citizen debate, and thus to land as a human rights issue. This big question has to be reformulated into a series of concrete propositions to be tackled at the policy level: supporting decentralized bodies in their attempts at centralizing information produced by various state and non-state institutions; emphasizing the importance of storage and maintenance in land information systems; making access to land information as easy as possible for institutions and persons; and training administration, court of justice, non-governmental organization and project staff in land issues. However, any recommendations must take into account that land information is a political affair that has to be dealt with through political choices, not only technical measures.

■

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The status of information on land occupancy for the formulation of land policies in Latin America

This article is based on a study carried out by G. Barnes, B. Real and M. Herrera for FAO on the status of information on land occupancy. In the article, the authors reach the conclusion that despite the fact that data on land occupancy are vital for officials responsible for the creation of land policies, this information is extremely scarce in Latin America and its quantity is insufficient for carrying out analyses and creating land policies.

L'état des données sur l'occupation des terres en vue de l'élaboration, en Amérique latine, de politiques sur les terres

Ce travail s'inspire d'une étude menée par G. Barnes, B. Real et M. Herrera, pour le compte de la FAO, concernant l'état des données sur l'occupation des terres. Les auteurs de cette étude ont conclu que malgré le fait que les données sur l'occupation des terres sont cruciales pour les fonctionnaires chargés de l'élaboration de politiques sur les terres, ce genre d'information se fait rare en Amérique latine et sa faible quantité ne permet ni les analyses qui s'imposent ni l'élaboration de politiques sur les terres.

El estado de la información sobre tenencia para la formulación de políticas de tierras en América Latina

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Este trabajo se basa en el estudio de G. Barnes, B. Real y M. Herrera para la FAO, y examina el estado de la información sobre tenencia de la tierra. En él se llega a la conclusión de que a pesar de que los datos sobre la tenencia de la tierra son indispensables para quien formula políticas de tierras, este tipo de información es muy escasa en muchos países de la región y no está disponible en la escala necesaria para elaborar análisis y promover políticas de tierras.

A pesar de que por lo menos el 75 por ciento de la población de América Latina vive en ciudades, la agricultura sigue siendo la actividad de subsistencia más importante de la región. La agricultura es importante porque constituye una de las mayores fuentes de ingresos para muchas de las economías de la región, y contribuye al empleo y al PIB, al desarrollo del sector rural y de otros sectores de la economía y a la disminución de la pobreza rural. Según datos del Banco Mundial, el 12 por ciento del PIB regional de América Latina y el Caribe en el año 2000 correspondió a la agricultura primaria, a la silvicultura y a la pesca (Banco Mundial, sitio Web). Diecinueve de los 31 de los países de América Latina y el Caribe obtienen un valor añadido de la agricultura (en porcentaje del PIB) superior al 8 por ciento, y para por lo menos cinco países (Dominica, Guatemala, Guyana, Haití y Paraguay) entre el 22 y el 30 por ciento del PIB proviene de la agricultura.

Las diferencias respecto a la distribución de la riqueza, medidas por el coeficiente de Gini (que indica el nivel de desigualdad del ingreso en una sociedad)[2], van de 0,38 en algunos países del Caribe (Jamaica y Trinidad y Tabago) a 0,58 en Brasil y otros países de América del Sur (Paraguay y Colombia). Estos valores reflejan situaciones de desigualdad preocupantes si se toma en cuenta que los países escandinavos registran índices no mayores de 0,30. Pero cuando se trata de la distribución de la tierra, los coeficientes de Gini son mucho más altos y por consiguiente se observa un patrón de propiedad de la tierra sumamente asimétrico. La Figura 1 muestra que la propiedad de la tierra está muy concentrada. Los valores van de 0,55 a 0,93. El 85 por ciento de los países registra valores mayores de 0,6 incluyendo las

[1] Las opiniones expresadas en este artículo son las de la autora, y no representan las de la Secretaría General de la Organización de los Estados Americanos ni las de sus países miembros.

[2] El coeficiente de Gini va de cero, situación en la que todos los individuos o familias de una comunidad tienen el mismo ingreso, a uno, valor al que tiende el coeficiente cuando todos los ingresos van a un solo individuo.

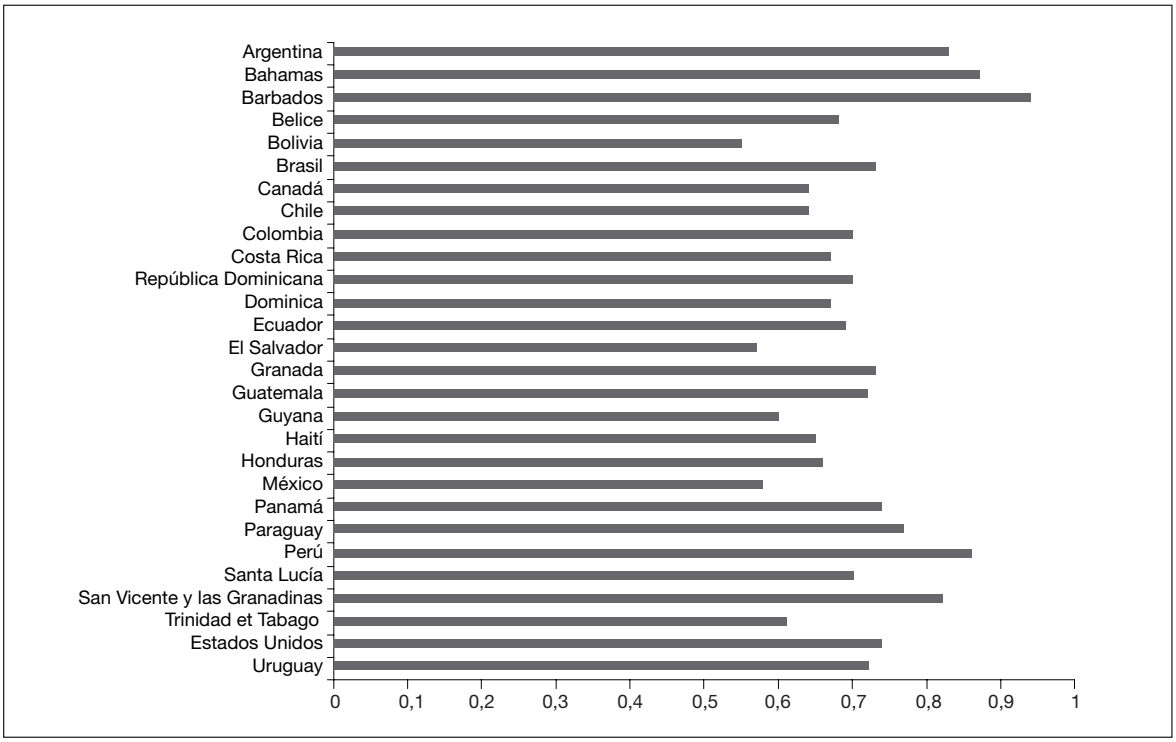
economías más importantes de la región, particularmente Brasil y Argentina cuyos valores están por encima de 0,7.

Con el fin de resolver los conflictos y desigualdades históricas en la distribución de la tierra, facilitar el acceso a la tierra y mejorar la estructura y organización agraria, en los decenios de 1960 y 1970 especialmente, los países de América Latina iniciaron reformas agrarias de gran alcance. La mayoría de las reformas no logró cumplir sus objetivos, en parte debido a la falta de voluntad política, los costos excesivos y los conflictos sociales y políticos a que dieron origen. Tomando en cuenta la poca efectividad que tuvieron las reformas en la reducción de la desigualdad, en el incremento de la producción y el empleo agrícola, y en el mejoramiento de las condiciones de vida, en el decenio de 1990 se pusieron en práctica reformas de políticas de tierras orientadas al mercado. Dentro del actual modelo de desarrollo económico, el mercado constituye la principal fuente de recursos de capital para el desarrollo rural. Desde finales de los años 1980, los programas de reforma de tenencia de la tierra han sido diseñados con el propósito de facilitar los mercados de tierras.

La aplicación de programas de ajuste estructural en el sector agrícola se ha orientado hacia el establecimiento de mercados de tierras como solución de los problemas de acceso. Para que existan mercados de tierras que funcionen correctamente es necesario primeramente regularizar la tenencia. Con el fin de regularizar la tenencia de tierras que no habían sido tituladas, o para modernizar los sistemas registrales y catastrales, a partir de 1994 más de 50 proyectos se han financiado con préstamos del Banco Mundial y del Banco Interamericano de Desarrollo (BID). Algunos de los objetivos más comunes de estos proyectos son:

- aumentar la seguridad y garantizar el dominio pleno sobre la tenencia de la tierra;
- facilitar el funcionamiento de los mercados de vivienda;
- proporcionar infraestructura y asistencia técnica a los beneficiarios;

FIGURA 1
Índices de Gini de distribución de la tierra

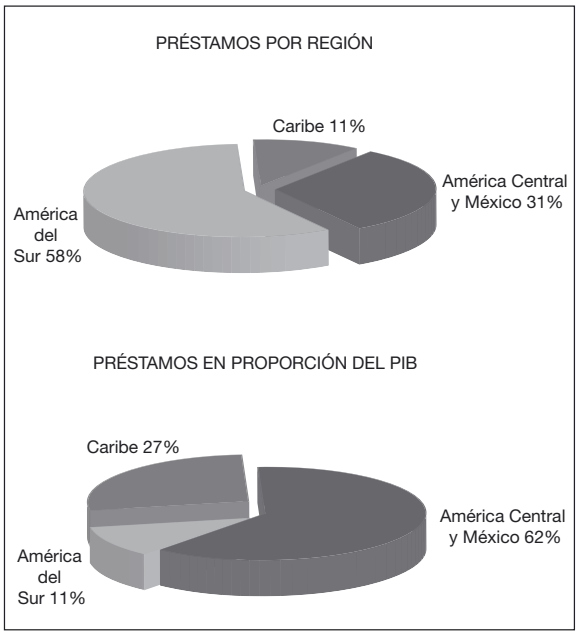


Fuentes: FAO, Censo Agropecuario Mundial, 1990; Jazairy *et al.*, 1992.

- expandir los servicios de registro de títulos;
- incentivar el financiamiento del sector privado para la compra de tierras;
- establecer mecanismos administrativos y judiciales para la resolución de conflictos;
- ampliar los mercados de arrendamiento de tierras.

Brasil ha recibido el monto más alto de préstamos para ejecutar proyectos de regularización de la tenencia (el más grande es el proyecto piloto Cédula de Tierra, por un valor de 218 millones de dólares EE.UU. prestados por el Banco Mundial). En Honduras, Guatemala y El Salvador se han realizado 16 proyectos por un valor de 717 millones de dólares. Si se considera el tamaño de las economías de estos países, se desprende que es América Central la región que más partidas crediticias ha recibido del Banco Mundial y del Banco Interamericano de Desarrollo. Del total de préstamos destinados a América Latina para financiar proyectos de tierras, el 58 por ciento se destinaron a América del Sur. Al referir la proporción de préstamos al PIB de cada subregión se observa que América Central ha recibido el 63 por ciento de los préstamos. En la Figura 2 se compara la distribución de los préstamos por región con el PIB. En el Cuadro 1 presenta el número de proyectos por país y la institución que los ha financiado.

FIGURA 2
Préstamos para la regularización de la tenencia de la tierra, por región y en proporción del PIB



CUADRO 1

País	Número de proyectos	Monto del préstamo *(millones de dólares EE.UU.)*	Institución de financiación
Bahamas	1	5	BID
Barbados	1	30	BID
Belice	2	11	BID
Bolivia	3	59	BID/Banco Mundial
Brasil	5	807	BID/Banco Mundial
Colombia	1	103	BID
Costa Rica	1	92	BID
Ecuador	1	16	BID
El Salvador	4	249	BID/Banco Mundial/ FMAM
Guatemala	4	243	BID/Banco Mundial
Guyana	1	1,3	FMI
Honduras	8	225	BID/Banco Mundial
Jamaica	1	10,2	BID
México	1	4	BID
Nicaragua	4	68	BID/Banco Mundial/ FMI
Panamá	2	103	BID/Banco Mundial
Paraguay	2	60	BID/Banco Mundial
Perú	3	144	BID/Banco Mundial
República Dominicana	3	210	BID
Trinidad y Tabago	2	165	BID
Rep. Bolivariana de Venezuela	2	150	BID
Total	**52**	**2 755**	

Nota: BID = Banco Interamericano de Desarrollo; FMAM = Fondo para el Medio Ambiente Mundial; FMI = fondo multilateral de inversión.

No es fortuito que en América Central se concentren los programas de saneamiento y regularización de la tenencia financiados con créditos del Banco Mundial y del Banco Interamericano de Desarrollo. Los conflictos sociales que durante varias décadas sacudieron a la región tuvieron su origen en gran medida en la desigual distribución de la tierra. Los acuerdos de paz que pusieron fin a los conflictos armados incluyeron entre otras cuestiones los programas de transferencia de tierras. Estos programas contemplaban la compra de tierras con cargo a fondos específicos (Molina Cruz,

2001) en beneficio de ex combatientes y de la población civil desarraigada. Sin embargo, el respaldo público al proceso de paz se fue debilitando paulatinamente: los donantes bilaterales redujeron sus promesas de apoyo financiero a causa de los ajustes de sus presupuestos y a nuevas prioridades.

Los problemas sociales que dieron origen a los conflictos no se resolvieron. Por lo tanto, los programas de reforma agraria pasaron del modelo tradicional de confiscación y expropiación a una reforma por conducto del mercado, que no consiguió éxito porque para que los mercados de tierras pudiesen funcionar los campesinos habrían debido contar con activos y con acceso a créditos a largo plazo que les hubieran permitido acceder a la tierra para poder producir bienes.

Además, la carencia de políticas de ordenamiento territorial claras fue la causa de que el suelo de utilizara de forma inapropiada. Para acreditar la posesión de una extensión de tierra o de una parcela, la mayoría de las legislaciones exigen que se demuestre su uso. Este requisito motivó el cambio de uso del suelo, y originó la deforestación de los territorios y la disminución de las superficies boscosas con el fin de aumentar la frontera agrícola o extender los pastizales (Morales, 2004).

En América Latina el 20 por ciento de la tierra es ocupado por comunidades indígenas, pero estas comunidades no sólo no poseen títulos de propiedad sino que sus tierras aún no han sido demarcadas. En Brasil por ejemplo, sólo el 37 por ciento del territorio indígena ha sido demarcado (Dahun, 2005).

Otro problema que limita el acceso a la tierra es la «asimetría» de la información que comparten vendedores y compradores, y que se debe a las carencias institucionales de los garantes de los derechos de propiedad (información incompleta en el registro y catastro nacional); a la carencia de mecanismos para resolver los conflictos de tierras, y a los altos costos y complicados procesos de registro.

Información sobre tenencia de la tierra

Históricamente, los censos agrícolas han sido la fuente por excelencia de datos sobre la tenencia, ya que indican entre otras cosas el tamaño de la explotación, las tierras de cultivo y si el ocupante posee o no títulos u otros documentos de propiedad. A partir del decenio de 1990, en el contexto de la liberalización de mercados, los censos agrícolas comenzaron a reflejar datos orientados hacia el desarrollo sostenible y de mercados con el fin de fortalecer el sector agroexportador. Por lo tanto, los datos que recogen los censos actuales no son adecuados para la formulación de políticas de tierras aún cuando es sabido que la regularización de la tenencia es fundamental para promover el desarrollo rural.

En el Cuadro 2 se indican los años de los censos agrícolas y ganaderos; si el último censo incluyó o no la tenencia, y si los datos están disponibles de forma electrónica. Se observará que la mayoría de los países de la región no incluyeron preguntas sobre tenencia de la tierra en el último censo; sin embargo, la información está disponible en muchos casos de forma electrónica.

En Chile, por ejemplo, los censos incluyeron preguntas sobre el tamaño de la parcela, número de dueños de la propiedad y extensión y número de tierras agrícolas. En Ecuador, el último censo incluyó una descripción del régimen jurídico de la parcela y el tipo de tenencia de cada propietario. En el Perú, el censo de 1994 indicó que 5,7 millones de parcelas (el 53 por ciento) no estaban tituladas; que el 43 por ciento de las parcelas estaba titulado, y que el 2 por ciento estaba bajo arrendamiento.

Uno de los problemas más evidentes de la información sobre tenencia de la tierra es que los datos que es posible recoger no permiten formular políticas de tierras. La información no es suficientemente amplia y la calidad de los datos no es necesariamente adecuada para un análisis en profundidad. En el Cuadro 3 se indican las fuentes de donde es posible extraer datos sobre tenencia de la tierra. Sin embargo, los encargados de formular políticas públicas necesitan informaciones complementarias,

CUADRO 2

País	Años	Datos de tenencia de la tierra	Información disponible de forma electrónica	Institución
Argentina	1947, 1960, 1974, 1988, 1997, 1998, 2002	Sí	Sí	Instituto Nacional de Estadísticas y Censos
Bolivia	1950, 1984, 1999	No	No	Ministerio de Asuntos Campesinos y Agropecuarios
Brasil	1960, 1970, 1985, 1995-96	Sí	Sí	Instituto Brasileiro de Geografia e Estatística (IBGE)
Chile	1929, 1975, 1997, 2002	Sí	Sí	Instituto Nacional de Estadística
Colombia	1993, 1998	No	Sí	Departamento Administrativo Nacional de Estadística
Ecuador	1954, 1974, 2000	No	Sí	Servicio de Información y Censo de Agricultura del Ministerio de Agricultura y Ganadería
Panamá	1950, 1971, 1980, 1990, 2001	No	Sí	Ministerio de Desarrollo Agrario
Paraguay	1991	No	Sí	Dirección General de Estadísticas, Encuestas y Censos
Perú	1961, 1972, 1994	Sí	Sí	Instituto Nacional de Estadística e Informática
Uruguay	1980, 1986, 1990, 2000	Sí	Sí	Oficina de Programación y Política Agropecuaria
Rep. Bolivariana de Venezuela	1950, 1961, 1971, 1987, 1997	No	No	Instituto Nacional de Estadística e Informática
Costa Rica	1955, 1984, 2002	No	No	Instituto Nacional de Estadística y Censos de Costa Rica
Cuba	n.d.	No	No	Oficina Nacional de Estadísticas de Cuba
Rep. Dominicana	1960, 1998, 2002	Sí	Sí	Oficina Nacional de Estadística de la Republica Dominicana
El Salvador	1961, 1993, 2001	No	No	Dirección General de Estadística Agropecuaria DGEA-MAG; Dirección General de Estadísticas y Censos (DIGESTYC)
Guatemala	1950, 1964, 1979, 1996, 2003	No	Sí	Ministerio de Agricultura, Ganadería y Alimentación de Guatemala; Instituto Nacional de Estadística de Guatemala
Honduras	1952, 1965, 1993, 1998-99	Sí	Sí	Instituto Nacional de Estadística
México	1939, 1972, 1980, 1991	No	Sí	Instituto Nacional de Estadística, Geografía e Informática (INEGI)
Nicaragua	1963, 1971, 2001	Sí	Sí	Instituto Nacional de Estadísticas y Censo de Nicaragua

Nota: La información se refiere sólo a las parcelas agropecuarias y no a la totalidad del territorio del país.

CUADRO 3

Instituciones	Tipos de datos
Registros públicos, notarías públicas, Superintendencia de notarías y registros	Datos legales, formalmente registrados, sobre derechos y deberes contenidos en títulos, testamentos e hipotecas.
Catastros nacionales y departamentales	Registros de tierra y declaraciones de impuestos; datos catastrales de propiedad de las parcelas.
Ministerios de agricultura, institutos nacionales geográficos	Datos sobre uso de la tierra.
Oficinas nacionales y municipales de impuestos	Catastros fiscales e impuestos sobre la propiedad.
Organismos de donantes, agencias consultoras, bancos multilaterales	Estudios sobre mercados de tierras; políticas de tierras; evaluaciones de proyectos de administración de tierras.
Grupos de análisis e investigación, Ministerios de información y estadística, Ministerios de agricultura y tierras	Estadísticas sobre distribución de las tierras.
Censos periódicos de agricultura, Ministerios de agricultura y tierras	Datos sobre distribución y tamaño de las fincas.
ONG, grupos de investigación sobre género y comunidades indígenas	Estudios de género sobre tenencia de la tierra y estudios de tenencia comunal.

además de datos organizados en diferentes escalas, para poder entender los cambios en la estructura de la tenencia de la tierra y luego diseñar políticas eficaces que respondan a los problemas de la pobreza, acceso al crédito y establecimiento de mercados de tierras activos.

En el Cuadro 3 se observa que los diferentes tipos de datos han sido recogidos utilizando escalas diferentes y que la mayoría son del nivel de la parcela. En el caso de las áreas protegidas, los datos se encuentran a nivel municipal o departamental. Las investigaciones sobre la tenencia basada en el género generalmente ofrecen datos a nivel comunitario; lo mismo sucede con los datos sobre comunidades indígenas; sólo los coeficientes de Gini de

distribución de la tierra son de alcance nacional.

Es conocido el efecto que tiene la tenencia informal sobre las variables económicas, sociales y ambientales. La mera existencia de datos sobre tenencia no es suficiente para explicar la relación entre seguridad de la tenencia y reducción de la pobreza, conservación del medio ambiente y seguridad alimentaria. En un documento del Banco Interamericano de Desarrollo se señala que, desde el punto de vista económico, además de cuanto se advierte en la recaudación de impuestos cuando la propiedad no está registrada, «la tenencia informal de la tierra tiene un impacto directo sobre la productividad de los predios agropecuarios al desincentivar al posesionario a realizar inversiones productivas e impedir su acceso a los mercados financieros [...]. Asimismo, la tenencia informal restringe la transferencia de tierras hacia usos más eficientes en el sector rural y, por ende, hacia una mejor y más equitativa distribución del recurso». El Banco explica que, a nivel social, los índices de pobreza aumentan debido a que son generalmente los sectores sociales de menores recursos económicos los que suelen verse desposeídos de los derechos de propiedad. Desde el punto de vista ambiental, « [...] la falta de inversión para la conservación de suelos que ocasiona la falta de títulos de propiedad seguros origina la degradación de los suelos y consecuentemente promueve la movilización hacia tierras marginales con mayor fragilidad ambiental» (BID, 2001).

El deficiente desempeño del sector agrícola en América Latina es una de las causas principales del aumento de la pobreza y de la inseguridad alimentaria. Las importaciones de alimentos, las tierras improductivas y la producción de materias primas para la exportación han aumentado en detrimento de la producción de alimentos para el consumo interno.

En Panamá, como en muchos otros países de la región, la ingesta calórica por habitante ha disminuido debido a que, ante la caída de los precios, los terratenientes productores de alimentos básicos (arroz y maíz, principales productos de la dieta panameña) optaron por dedicarse a la producción de otros productos mejor pagados en el mercado internacional (BID, 2005).

Es necesario disponer de datos sobre tenencia que sean más completos que los obtenidos a través de la rutina de la administración de tierras, y que estén estructurados de modo que permitan responder a las siguientes preguntas:

- ¿Hasta qué punto ha beneficiado la regularización de la tenencia a quienes poseen un título de propiedad y tienen acceso al crédito?
- ¿Qué extensión de tierra ha sido objeto de titulación y/o está bajo diferentes regímenes de tenencia?
- ¿Qué tipo de información hace falta para dar mayor eficacia a las intervenciones anteriores o posteriores a los desastres naturales destinadas a mitigar los efectos de dichos desastres?
- ¿Cómo contribuye la regularización de la propiedad al establecimiento de los mercados de tierras?
- ¿Cuáles son los vínculos entre tenencia de la tierra e indicadores de seguridad alimentaria, pobreza y medio ambiente?
- ¿Cuál es el mecanismo ideal para obtener datos sobre impuestos prediales?

No cabe duda de que los censos agrícolas son apropiados para obtener información sobre la tenencia, pero para que puedan ser de utilidad para los encargados de formular políticas es necesario incorporar en ellos las siguientes preguntas sobre el régimen de tenencia:

- ¿Tiene el ocupante de la parcela un título de propiedad?
- ¿Está el título de propiedad a nombre del ocupante de la parcela?
- ¿Ha sido registrada la parcela?
- ¿Cuál es el sexo del ocupante?

Las respuestas a estas preguntas no proporcionan una información completa puesto que los censos agrícolas tradicionales generalmente no incluyen los usos de la tierra no agrícolas (ganadería y silvicultura), o las áreas protegidas

forestales o de comunidades indígenas. Sin embargo, la información puede ser complementada con una buena base de datos actualizada proveniente de los sistemas impositivos municipales, ya que la recaudación depende de datos como el número de parcelas y el nombre y dirección del ocupante.

Durante la crisis económica de los años 1980, los gobiernos se vieron imposibilitados de responder a las crecientes demandas financieras de los municipios; hoy, en cambio, algunos países como El Salvador financian con los impuestos recaudados las necesidades de la sociedad civil que antes se cubrían con fondos excedentes del gobierno central.

El propósito del portal www.LandNetAmericas.org es fomentar la concertación mediante el debate y el intercambio de información, realizar análisis y recopilar datos que ayuden a aclarar dudas respecto a los derechos de propiedad, identificar nuevos enfoques y hacer un seguimiento de los progresos realizados en el mejoramiento de los sistemas de registro de la propiedad en cumplimiento de los mandatos de la Cumbre de las Américas.

Los siguientes foros regionales proporcionan información sobre tenencia de la tierra:

- La Alianza Interamericana de los Derechos de Propiedad Inmueble, que agrupa a defensores del mejoramiento de los sistemas de derechos de propiedad existentes en el hemisferio y a individuos y agrupaciones que contribuyen, junto con los países de la región, a dar cumplimiento a los compromisos para el fortalecimiento de los derechos de propiedad asumidos en la Cumbre Especial de las Américas, celebrada en Monterrey (México) en enero de 2004. La Alianza ha diseñado el Plan de manejo para el fortalecimiento de los derechos de propiedad inmueble, que mide los sistemas de derechos de la propiedad inmueble de un país según un conjunto de principios y criterios comunes.
- El Consejo Registral Inmobiliario de Centroamérica y Panamá (CRICAP), que se reúne cada año para compartir experiencias y mejores prácticas, discutir asuntos como la integración entre registro y catastro, la formación de profesionales del sector y, recientemente, un modelo de hipoteca aplicable a todos los países miembros del Consejo.
- La Red centroamericana de capacitación en administración de tierras (RECCAT), que es un centro de formación en administración de tierras que ofrece cursos en línea y una biblioteca virtual dotada de documentos sobre aspectos sociales, económicos, técnicos y jurídicos de la administración de tierras en América Central.

Estos foros también pueden colaborar en la labor de estandarizar, diseminar y actualizar la información disponible sobre tenencia de la tierra. Además pueden llevar a cabo actividades complementarias al trabajo de recopilación de datos, por ejemplo:

- un análisis del tipo de datos que precisan los funcionarios públicos para formular las políticas relativas a la tenencia de la tierra;
- facilitar en lo posible el acceso a la información sobre tenencia de la tierra al público y a la sociedad civil.

[illegible]

Es importante formular políticas nacionales que tengan como objetivo la seguridad de una tenencia entendida como fundamento del desarrollo económico. Las políticas deben comprender métodos alternativos de solución de conflictos, y asegurar marcos jurídicos que permitan el intercambio de información entre el registro y el catastro. Es preciso implantar servicios catastrales y registrales modernos y eficientes que cobren aranceles razonables y estén en condiciones de crear o modificar los registros a breve plazo.

Las reformas de la tenencia de la tierra deben estar siempre vinculadas a estrategias coherentes de reducción de la pobreza, tanto rural como urbana. Con

frecuencia, la entrega de títulos no es la forma más efectiva de asegurar los derechos de propiedad de los pequeños productores, que por lo general se benefician más de mecanismos de fácil acceso al crédito y a mercados de arrendamiento tierras. Sin embargo, es necesario tomar en cuenta la evolución histórica de los diferentes patrones de tenencia y uso de la tierra y las condiciones locales de cada comunidad al implementar las políticas. Además, una regularización de la tenencia a breve plazo permite garantizar la credibilidad de la tenencia y su aceptación pública.

Las políticas deben estar acompañadas de procesos de participación que tomen en cuenta las comunidades en las que se ponen en marcha los proyectos tendentes a mejorar la tenencia. Las discusiones sobre políticas de tierras no pueden tener lugar si no se considera la situación presente tanto en las zonas rurales como en las urbanas, y para ello es necesario organizar programas de consulta con la sociedad civil. Las consultas dependen también de la voluntad política y de la capacidad financiera de los distintos entes comprometidos en implementar la infraestructura necesaria, y especialmente en realizar inversiones para modernizar y descentralizar los servicios de registro y catastro. En la mayoría de los casos, el financiamiento de los gobiernos deberá estar complementado con contribuciones externas, que podrían plantear problemas a los encargados de diseñar políticas públicas porque no siempre la banca multilateral o los donantes bilaterales podrán proporcionar el financiamiento requerido para satisfacer las expectativas nacionales. Será por lo tanto necesario recurrir a mecanismos innovadores de financiación compartida entre organismos del sector público e instituciones del sector privado que se vean favorecidos por unos sistemas de propiedad modernizados.

Conclusiones

A pesar de que se ha demostrado que la seguridad de la tenencia de la tierra tiene repercusiones positivas sobre el desarrollo económico de la sociedad, investigadores, profesionales y empleados de la administración pública no disponen todavía de datos fiables y de calidad apropiada para la formulación de las políticas públicas. En los últimos 50 años los censos agrícolas no se han realizado con la periodicidad deseable y en muy pocas ocasiones han incluido preguntas sobre el régimen de tenencia.

Sería recomendable incorporar en los censos o encuestas futuros una sección sobre tenencia de la tierra para que las respuestas puedan utilizarse en el diseño de las políticas de tierras.

El trabajo de estandarizar, diseminar y actualizar la información disponible sobre tenencia de la tierra puede dividirse entre grupos y foros que promueven el asunto de los derechos de propiedad y que se benefician con la obtención de los datos de tenencia. Las municipalidades y gobiernos regionales pueden también colaborar en la recolección de la información registral y catastral con fines impositivos, puesto que esta información les servirá para obtener otras fuentes de ingreso.

La información sobre tenencia de la tierra por sí sola es de poca utilidad para formular políticas si no se incorpora en el análisis de la productividad agrícola la seguridad alimentaria, el acceso a los mercados de tierras y la mitigación de los efectos de los desastres naturales.

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Base de données foncières en Europe: cas de l'Europe centrale et orientale

Cet article donne un aperçu des points communs en matière de développement de statistiques foncières en vue de la détermination de stratégies dans les Pays de l'Europe centrale et orientale (PECO), alimenté par le processus d'élargissement de l'Union européenne (UE). Ayant défini les exigences minimales de l'UE en matière de régime foncier et de données foncières, ainsi que les jeux de données foncières souhaitables au niveau national, l'article donne un instantané des régimes fonciers et dresse un tableau récapitulatif des démarches hongroises, polonaises, bulgares, croates et albanaises afin de satisfaire aux exigences de l'UE en matière de recensements agricoles et d'annuaires statistiques, d'enquêtes réalisées auprès de fermes démontrant une compatibilité avec le Réseau d'information comptable agricole (RICA) et de jeux de données foncières connexes et auxiliaires. Enfin, l'article aborde les tendances qui se font jour, émet des recommandations en matière de politiques, s'étend sur les questions et tire des conclusions sur la conception et l'amélioration des bases de données foncières du PECO.

Bases de datos de la tenencia agrícola en Europa: los casos de Europa central y oriental

Este artículo destaca los aspectos comunes del desarrollo de las estadísticas de titularidad territorial para la instauración de políticas en los países de Europa central y oriental, acometidas por el proceso de ampliación de la Unión Europea (UE). Una vez definidos los requisitos mínimos de la UE sobre la tenencia de la tierra y los datos, así como los conjuntos de datos de titularidad territorial deseables a nivel nacional, el artículo ofrece una información general de los sistemas de tenencia en Hungría, Polonia, Bulgaria, Croacia y Albania para satisfacer los requisitos de la UE relacionados con los censos agrícolas y los anuarios estadísticos, las investigaciones compatibles con la Red de información contable agrícola y los conjuntos de datos complementarios relacionados con las tierras. Para finalizar, el artículo analiza las tendencias, recomienda políticas, contempla cuestiones y esboza conclusiones sobre el diseño y la mejora de las bases de datos de tenencia en los países de Europa central y oriental.

Land tenure databases in Europe: cases from Central and Eastern Europe

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This article outlines the commonalities of development of land tenure statistics for policy-making in Central and Eastern European countries (CEEC), driven by the European Union (EU) enlargement process. Having defined minimum EU requirements on land tenure and data, as well as desirable land tenure data sets at the national level, the article gives a snapshot of land tenure systems and summarizes the Albanian, Bulgarian, Croatian, Hungarian and Polish approaches to meeting the EU requirements for agricultural censuses and statistical yearbooks, farm-level surveys compatible with the Farm Accountancy Data Network (FADN) and auxiliary land-related data sets. Finally, the article considers trends, makes policy recommendations, expands on issues and draws conclusions about the design and improvement of land tenure databases in CEEC.

Central and Eastern Europe is a region undergoing dramatic social and economic transition. Following the absolute domination of totalitarian communism and the central command economy for more than 40 years after the Second World War and the historical reversal that began in the 1990s, on 1 May 2004 ten new countries joined the developed democracies and market economy of the European Union (EU): Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Eight of these countries are from Central and Eastern Europe, and more seek to join the EU in the future. Bulgaria and Romania aim to become members in 2007, and Croatia and Turkey opened accession negotiations on 2 October 2005. Albania, Bosnia and Herzegovina, The former Yugoslav Republic of Macedonia, and Serbia and Montenegro (including the territory of Kosovo) have also set out on the way to EU membership. It seems that integration in Europe is the common vision of all nations in the region.

The transition to democracy and a market economy directly affects the land tenure systems of CEEC by reversion to private ownership, mass privatization and restitution, including farm lands. For some countries, EU accession is an opportunity to find their own solutions and improve their land tenure databases. In others, although the EU is a longer-term perspective, the data collection systems are being designed to meet the requirements for EU membership. The selected cases dealt with in this paper are two new EU member countries (Hungary and Poland), one EU accession country (Bulgaria), one country that has just started accession negotiations (Croatia) and a western Balkan country with a strategic EU orientation (Albania). This article summarizes five case studies prepared by the author in 2002–04 under contract for FAO.

The EU enlargement process has been a catalyst for change for new EU members and potential members. It accelerated the implementation of complex and difficult political, institutional and economic reforms that require sustained commitment of national governments over many years.

The process of social transition from central planning to a market economy naturally addressed land tenure regimes and land markets. As fundamental and determinative features of any society, they were at the core of Central and Eastern European reforms. Under the former centralized economy, the dynamics of land utilization were relatively low due to economic isolation and dysfunctional land markets. This has hampered the highest and best use of land in Central and Eastern Europe. The domination of private property and the liberalization of land markets has put strong pressure on land use policies and legislation owing to highly increased market demand for alternative land uses (for example, commercial uses, tourism and recreation). Against the background of economic collapse, especially in rural areas, land tenure and land markets are of paramount importance in the attempts of reformist governments to revitalize flagging national and rural economies.

The dynamic arrangements of rural land tenure in the Central and Eastern European region are tackled by new agriculture and rural development strategies, in which the institutions of land tenure are both subject to and a means of introducing change. Adequate land-tenure statistics are required for policy-making and monitoring; policy-makers in Central and Eastern Europe endeavour to foster economic development and attract foreign investment by drawing up and implementing sustainable policies that address the national priorities, measure up with relevant EU policies and aim to satisfy the requirements of EU membership. It is imperative for these policies to monitor change effectively, including the changes of land tenure patterns.

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The requirements in the EU a*cquis communautaire* for land tenure systems and land tenure data to be collected in Member States have been clarified in detail by Grover (2005). Therefore, only a brief overview is outlined below.

A functioning market economy such as the EU implies private ownership of the means of production, an efficient legal system for enforcement of property rights, competitive markets with freedom of entry and exit and well-developed capital markets, including efficient property markets (sales, leases and mortgages). Property markets, including in farm land, should be ready for accession. Land privatization and restitution should be complete, and the legal framework for real estate transactions and the property market infrastructure (e.g. land registration systems) should be adequate.

The EU single internal market provides for free mobility of goods, labour, capital and enterprise, as well as rules of competition. Among other factors, free movement of capital covers the transfer of ownership of assets and liabilities, e.g. investments as companies and real estate including the purchase of land. Legislative bars to land ownership by foreigners and restrictions on farmland acquisition by companies are incompatible with EU membership. Farm businesses must be entitled to relocate to other EU states or to acquire farm businesses elsewhere in the common market. Companies dealing in real estate, including farmland, or offering estate agency services must be able to establish themselves anywhere in the EU and be permitted to offer cross-border services. The *acquis* allows no barriers to foreigners dealing in land or setting up real estate agencies, no discriminatory technical standards or refusal to recognize equivalent professional qualifications from elsewhere in the EU. The Common Agricultural Policy (CAP) requirement for the Farm Accountancy Data Network (FADN) is directly relevant to land tenure. EU members must provide annually a farm-level survey with data on revenue, costs, inputs, outputs and employment for a representative sample of commercial farms. These data also cover the utilized agricultural area and proportions owned, leased and sharecropped. One national FADN liaison agency is responsible for

this survey. The Integrated Administration and Control System (IACS) for direct aid to farmers under the CAP is also linked to land tenure. An essential part of IACS – the Field Identification System – handles localization of declared fields and estimation of surface areas eligible for subsidies. It could be linked to ownership and tenancy data for verification purposes.

Sound statistics are needed for the conduct of EU policies: demographic and social, macroeconomic, business, environmental and agricultural statistics. Member States are obliged to carry out a census of agricultural holdings every ten years and three interim surveys of agriculture each decade. The data cover the structure and typology of agricultural holdings. The censuses include questions on the number of hectares in the utilized agricultural area that are owner-occupied, tenanted, or held by sharecropping.

The minimum EU land tenure information is very useful in policy formation and to monitor change. Such data cannot reflect social and environmental aspects in rural areas, however, because they were designed to monitor production. Monitoring land tenure and the land markets is essential for building up the rural economy. Several countries have successfully developed national land-tenure data sets, as an upgrade of the EU minimum. A farmland lease register has been instrumental in cases where leasing is the prevailing tenure in farming. As EU members are not required to collect land markets data, a strong case is made for doing this on a national basis. Such monitoring enables a holistic analysis of rural processes and the efficient design of development interventions with predictable outcomes.

A series of regional workshops by FAO on land tenure data in Central and Eastern Europe between 2002 and 2004 have summarized the minimum EU requirements and – based on Western European experiences – combined them with desirable data sets for national collection in a relevant matrix (Table 1).

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A brief snapshot (Table 2) of the land tenure systems in the country cases shows a degree of commonality in Central and Eastern Europe, despite natural variances owing to geographic, historic and cultural differences. All the countries have new or amended legislative frameworks, which have reinforced private ownership of land and real estate. The common features include the protection of property types by constitution and major structural changes of land ownership since the early 1990s, implemented through massive land reforms. There is a high incidence of farmland leases and hence their special protection by law. The legal form of farms shows diversity: state farms, farming cooperatives, private family and individual farms, farmers' associations and legal entities. Among the family and individual units, many are tiny subsistence farms. Serious fragmentation of farmland exists throughout the region, bringing forth a tendency towards land consolidation measures, and use of public land funds (land banks) as tools to facilitate consolidation – sometimes supported by special legislation. Fragmentation is coupled with demographic issues such as migration to urban areas and ageing of rural populations, as well as environmental issues that are a legacy of communism. This is a challenge for the viability of farms and the ability of these countries to cope with EU competitive pressures. Solving these problems requires integrated rural development measures underpinned by reliable land tenure data. The reforming of land administration systems, with legal provisions for mortgaging real estate, is also common. The land market activity, which started from scratch or fairly low levels in the 1990s, is strongly influenced by EU accession. Virtually all countries try to protect their land markets from the much higher purchasing power of many citizens in other parts of the EU by placing a ban on foreigners' ownership of farm and forest land and secondary residences for a transition period after the EU accession.

Table 1

[redacted]

Requirements of EU *acquis* and enlargement criteria	Implications for land tenure, land tenure data and desirable national data
Existence of a functioning market economy	Private ownership of the means of production Efficient legal system for enforcement of property rights Competitive markets with freedom of entry and exit Well-developed capital markets
Functioning property markets	Complete land privatization and restitution Adequate legal framework for real estate transactions, e.g. security of tenure for tenants Adequate market infrastructure, e.g. land registration to document ownership claims Developed mortgage system and secured lending on property Active land markets in terms of numbers of transactions
Single internal market and free mobility of goods, labour, capital and enterprise	Freedom of payments and money transfers, ability to repatriate profits Free movement of capital for fixed investment Free movement of capital for portfolio investment Freedom to buy land and capital assets
Elimination of legislative bars to foreigners' ownership	Free acquisition by foreigners of farm and forest land, and of residential property as secondary residences – transitional arrangements are negotiable Free relocation of foreign farm businesses and free acquisition of local farm businesses Free establishment of foreign companies and nationals dealing in real estate, including farmland, or offering estate agency services No discriminatory technical standards, or failure to recognize equivalent professional qualifications from elsewhere in the EU
Common Agricultural Policy	
Farm Accountancy Data Network (FADN)	Participation in the FADN – appoint liaison agency Annually collect data from a representative sample of commercial farms Data at farm level about revenue, costs, inputs, outputs and employment Data at farm level about utilized agricultural area and proportion of owned, leased and sharecropped land Data at farm level about non-agricultural farming activities such as forestry and tourism
Field identification system	Supporting the Integrated Administration and Control System (IACS) – direct CAP aids Localizing fields and estimating surface areas Linked to farmland ownership/tenancy, field surface areas and land use
Statistics	Produce accurate and harmonized data, compliant with EU standards and methodologies, in a permanent and sustainable way Collect a range of data for conduct of EU policies in many areas: demographic, social, macroeconomic, business and environmental data, as well as data on agriculture
Agricultural statistics	Once a decade organize a comprehensive agricultural census Organize three interim surveys per decade Collect data on structure and typology of agricultural holdings Surveys include acreage of utilized agricultural area that is owner occupied, tenanted or sharecropped
Desirable national land tenure data sets	
Farmland lease register	Monitoring farmland tenancy as a tool in the IACS
Land markets data	Monitoring farmland prices and farmland lease prices

[redacted]

The case studies have identified a variety of land tenure data sources in the five CEEC. They are grouped according to their relevance to the minimum EU land-tenure data requirements, in three categories: agricultural statistics produced by comprehensive censuses, partial surveys for data supply to the FADN and available land-tenure data sets beyond the EU requirements, collected by national initiatives.

Agricultural census

While all the countries considered have both a national statistical body and a ministry of agriculture, their involvement and role in agrostatistics vary. For the new EU members and accession countries it is essential to have a census meeting the Eurostat norms, as baseline data for the agriculture after the end of intensive land reforms. Such a census was conducted in 2000 in Hungary by the Central Statistical Office in cooperation with the Ministry of Agriculture and Rural Development. Poland's Central Statistical Office carried out the national census in 2002 in parallel with a population and housing census, which reduced the role of the Ministry of Agriculture and Rural Development. On the contrary, in Bulgaria only the methodology of its AC 2003 was jointly developed by the Ministry of Agriculture and Forests and the National Statistical Institute; the census was carried out

Table 2

Features	Albania	Bulgaria	Croatia	Hungary	Poland
Country profile:					
Area	29 000 km²	111 000 km²	88 000 km²	93 000 km²	313 000 km²
Population density	123/km²	70/km²	79/km²	107/km²	125/km²
Rural population (% of total)	55%	30%	41%	30%	33%
Agriculture share in GDP	25%	12%	9%	3%	3%
Percentage of labour force occupied in agriculture	24%	11%	15%	6%	16%
Property types protected by constitution	Private, public	Private, state, municipal	Private, state	Private, state, municipal, cooperative	Private, state, cooperative
Structural change of land ownership (private lands):					
under command economy	0%	1%	64%	7%	67%
at present	80%	74%	68%	76%	91%
land reform	Completed	Completed	Ongoing	Completed	Ongoing
Leased land as share of total land used in agriculture	10%	58%	< 10% [1]	60%	< 10%*
Special protection of farm land leases – types of tenancy protected by law	Leases: < 10 yr (field), < 30 yr (perennial plantation), < 99 yr (with investment)	"Rent" – short term < 4yr, "farm lease" – long term > 4 yr	"Lease" < 10 yr (field), < 25 yr (perennial plantation); "concession" < 10 yr (field), < 40 yr (perennial plantation)	Lease < 10 yr	Special pre-emptive rights for leases > 10 yr
Share of private land farmed by family units	100%	56%	86%	54%	82%
Average area of farm land					
Owned	0.97 ha	2.3 ha	2.6 ha	4.5 ha	8.5 ha
Cultivated	1.72 ha	2.8 ha	-	4.8 ha	10.4 ha
Special legislation					
Land consolidation	Pilots	In draft, pilots	Yes (1940s), pilots	In draft, pilots	Yes (1968)
Public land fund	No	In draft	Yes	Yes	Yes
Land administration system	New single agency, reforming	Register and cadastre, reforming	Register and cadastre, reforming	Single agency, reformed	Register and cadastre, reforming
Mortgage legislation	Yes	Yes	Yes	Yes	Yes
Land market activity	Low, improving	Improving with EU accession date	Low, improving	Much improved after EU accession	High after EU accession
Land acquisition by foreigners:	No	No	No	No	No
Transition period after EU accession	not yet applicable	7 years	not yet applicable	7 years	12 years

[1] Anecdotal information obtained by the author.

by the Agrostatistics Directorate at the ministry alone. Harmonization with the EU *acquis* was not mandatory for the western Balkans. Croatia intended to obtain precise data to support policy-makers in identifying issues, planning and decision-making, and chose to use a methodology that was fully compliant with Eurostat's. The body in charge of agrostatistics – the Central Bureau of Statistics (DZS) – carried out the 2003 census on its own. Albania's last general agricultural census – in 1998 – was not harmonized with EU criteria. It was realized jointly by the National Institute of Statistics (InStat) and the Ministry of Agriculture and Food – the Directorate of Statistics, which is mainly responsible for agrostatistics. The application of EU requirements in the agricultural censuses has been a challenge, especially in applying the Eurostat methodology known as Economic Accounts for Agriculture (EAA), which underlies the FADN, and the production of standard gross margins. Quite often, the problems result from the fragmented agricultural land tenure structure, which is difficult to reflect correctly with the EAA methodology, and

the national accounting standards, which may differ from those of the EU. Difficulties suffered by agrostatistics units in all cases were understaffing and underfunding, the need for further training of staff and temporary employed enumerators and maintaining the capacity of the census bodies. With the assistance of national stakeholders and international donors (the European Commission, FAO and others), the difficulties proved surmountable.

The data from the censuses were used in negotiations with the EU by Bulgaria, Hungary and Poland and included utilized agricultural area and proportions of owned, leased and sharecropped land at the farm level. Aggregate data are published by standard units of the EU Nomenclature of Territorial Units for Statistics (NUTS). In Poland, apart from the land use and ownership structure, further data were sought about fragmentation and distances between parcels. In Albania and Bulgaria, the censuses were the first to identify all farms operating in the country and to establish or reinforce the general register of agricultural units. Croatian land tenure data included land leased in and out and the number of parcels of utilized agricultural area in the farm. The land data in Albania referred to total area, the utilized agricultural area of the farm units and area under various crops, but no data were collected on tenure.

Annual farm level surveys for the Farm Accountancy Data Network

The selection of national liaison agencies for FADN and the organization of annual sample surveys were approached differently in each country case among the new EU members and accession countries. Poland has had relevant experience in conducting annual surveys of farm accounts since 1926 in the Institute of Agricultural and Food Economics. The full-fledged introduction of the United Accountancy System of Agricultural Farms there was carried out in 2003. The Research and Information Institute for Agricultural Economics in Hungary was appointed as liaison agency, running separate surveys for individual farms and for corporate farms. The information is collected by professional accountants affiliated with the 11 accounting offices throughout the country. Bulgaria had to develop its capacity for the Agricultural Accounting Information System and did so using the Agrostatistics Department of the Ministry of Agriculture and Forests.

Owing to the generally small farm sizes in CEE, the vast majority of farm holdings are outside the FADN population of commercial farms. This makes the data sets less suitable for policy-making, as they are less representative. Before the 2003 census, the lack of comprehensive typology of Bulgarian farms was a major obstacle for the early implementation of FADN.

In the western Balkans, the need to join FADN is not urgent, but countries nevertheless are getting ready. The Croatian DZS undertakes several sampling surveys in agriculture every year, including regular ones that resemble FADN: inputs, outputs and gross margins are recorded, with no land tenure items in the questionnaire. The FADN requirements are well known by the professional DZS staff, but so far no political decision has been taken on the institutional mandate. The Albanian Directorate of Statistics at the Ministry of Agriculture and Food, in coordination with InStat, ran one sampling survey of sizable farms (though the definition of these is not as yet coordinated with FADN). Data were collected at the individual farm level from a sample of 3 000 farms about inputs, outputs, production mix, land leased in and out, rents paid and gross margins. The Albanian authorities will still need additional technical assistance and advice to organize a FADN-compatible survey.

Auxiliary data sets

Auxiliary data sets are kept by the land administration structures – land and mortgage registries and cadastres; in registers of leases, farmers, farms or systems for distribution of national and EU farm subsidies; and in agricultural

information systems, tax registers, land valuation systems and so on.

In Hungary, the land administration structure is integrated under the Ministry of Agriculture and Rural Development. The Department of Lands and Mapping maintains several land tenure databases. Two information systems are maintained in the 116 district land offices – the landowner system and the land use one, using a common information technology infrastructure. All sales are registered in the landowner system and all farmland leases in the land use system, with an identification of the parcel that is the object of the transaction, the subject legal entity or individual and the interest. The data are at the basic unit level, not public, and not linked to a farm register. Some data aggregation is carried out at the county level within 19 land offices. Land tenure data were also collected by surveys in land consolidation pilots, covering ownership, leases, land use, fragmentation and intentions of owners for management or disposal of lands, but these data are only a sample.

In Poland, the Land and Buildings Cadastre covers the whole territory with descriptive and graphical data in digital format, and the Land and Mortgage Register covers less than half of the properties. The data in the Land and Buildings Cadastre provide information mainly on the parcels and their owners, while the Land and Mortgage Register provides data about the rights to properties. The two registers are not completely up-to-date. At present, there are no obligations for the registration of leases, but there are plans to amend the legislation. An integrated Real Estate Information System on the basis of existing registers is being built up. The tax register covers the whole territory, and annually collects returns from farms and properties, where data about the area and type of land use are collected. A database of market prices of agricultural properties was developed, which are aggregated at the community level to make maps of the market value of land. When fully compiled, this database will be used to introduce an *ad valorem* taxation system. Every year, the statistical offices also collect statistical returns from farmers, including total land area and a breakdown by land use. The Task Force for Restructuring of the Agriculture Information System in Poland is considering developing a land tenure database by integrating data from various sources.

The land administration databases in Bulgaria were updated in recent restitution processes, and for rural lands are kept by the Department of Registers and Land Tenure in the Ministry of Agriculture and Forests (MAF). Land leases are registered there. The 272 municipal offices of MAF collect most land tenure data. They keep the register of farm operators produced by the 2003 census, and the pilot rural land-tenure register in which tenancies are reflected at the farm level, based on returns from the farmers. This register is used for administrative control. The data sets may be linked and aggregated at higher administrative levels for analysis and policy-making. The MAF Department of Agrostatistics also carries out annual sample surveys of the utilized agricultural area for operational control of cereal crops and land utilization. Since 1998, the Agro-Marketing Information System (SAPI) has published a bulletin of farmland prices and leases – the result of sample surveys aggregated at NUTS 3 level (28 oblasts – administrative regions).

The land book and the cadastre are being reconciled in Croatia. Reportedly, the currency and data accuracy in the land books is often insufficient for statistical purposes. The cadastre data, on the other hand, are used as a basis for many land-related statistical surveys, as the alphanumeric records are digital and more readily accessible. The Directorate for Market and Structural Support of Agriculture at the Ministry of Agriculture, Forestry and Water Management maintains the register of farms for control of government subsidies; approximately 30 percent of the farm households are

registered. The land tenure data in these records come mainly from declarations of farmers and extracts of the cadastre, causing duplication and inconsistencies of data. The Ministry of Finance has its own monitoring system for land market values, based on monitoring the declared prices in transaction contracts. The issue of underdeclaring prices exists, and as a result the assessments arrive at an artificial tax value, irrelevant for monitoring the market.

The land administration bodies in Albania produce monthly and annual statistics extracted from the monitoring and evaluation reports of the district offices. The data cover all transactions, broken down by types of land (including agricultural lands), types of transaction (sale, mortgage, lease), extent of land transacted, declared price and other factors. This could be a valuable source of land tenure data if linked to other data sets; however, links are now virtually impossible, as the data are maintained manually, and as some external registers – such as the population register – are still not upgraded to meet the modern requirements. These statistics are underutilized. The issues faced are the accelerated completion of first registration and the computerization of data maintenance in the Immovable Property Registration System (IPRS). The Soil Institute in Albania maintains parcel-based soil productivity data, applied for tax assessment and linked with the IPRS data sets, which are used to define the taxable persons. The Soil Institute also implements a pilot land-use information system in several municipalities.

Slower yet significant evolution of land tenure can be foreseen in Central and Eastern European in the years to come, driven by markets, demographic factors and government policies. Rural areas will undergo substantial change over the course of the next generation. Regional and rural development, with elements of land consolidation and government intervention in the land markets, is likely to modify rural landscapes and tenure patterns. Land markets, including rural ones, will be accessible to expatriates with considerable purchasing power. Despite the current ban on land ownership by foreigners, countries have already experienced increased demand from abroad on land and farmhouses as secondary residences around scenic areas, resorts and fishing and hunting sites. When the ban comes to an end, one can expect a further influx of foreign farming businesses buying or renting farmland.

Central and Eastern European governments and policy-makers recognize the requirement to collect land tenure data systematically. Competent authorities in each country are investing in statistical censuses and surveys, and are creating land administration systems that will potentially be major data providers after completion of their establishment. The re-engineering of official agricultural censuses and surveys was and is a unique chance to add value to these government functions at a relatively low cost. Data collection practices and relevant networks exist in all CEEC, and further capacity can be developed to undertake functions related to land tenure data. The weakest field of land tenure statistics is the monitoring of market values and rents, and rural land leases – an area where there is little experience, and no EU requirement. Ministries of agriculture are now designing new information systems to support their land management functions in a market economy environment.

On the basis of commonalities observed in the development of land tenure and land markets in the whole Central and Eastern European region, several policy priorities can be identified: sustainability, coordination and harmonization, focus on land markets and information technology.

- **Sustainability.** Governments should attempt to strengthen the sustainability of land tenure data collected. Clear definitions of long-term institutional responsibilities for agrostatistics,

including land tenure data, will enable gradual improvement of the quality and enrichment of the informative content through planning and continuous capacity building in the relevant units.

- **Coordination and harmonization.** Land tenure information is a sophisticated issue, requiring synergy among stakeholders. In Central and Eastern Europe, coordination between them is often far from satisfactory. Harmonization of methodologies, including fundamental definitions used by the various authorities (e.g. property, household, farm) should be enhanced to reduce duplication of efforts and confusion of citizens and policy-makers.
- **Focus on land markets.** Land market data in Central and Eastern Europe would benefit from further concentration of efforts in order to catch up with decades of negligence as a result of communist ideology, and to provide adequate reflection and monitoring of land market and policy-driven changes in land tenure.
- **Information technology.** Modern information technology is a powerful tool for improving the efficiency of land tenure information collection, processing, analysis and dissemination for policy-making purposes. It should remain a priority in the Central and Eastern European region in the future.

[redacted]

Land and lease markets and market values in Central and Eastern Europe have been neglected in the past. There are several government bodies that are likely to be involved in the collection of rural land data: agricultural ministries, statistics departments, tax authorities, cadastres, land registries and local authorities, as well as some non-governmental organizations including academic institutions, agricultural researchers, professional unions of valuers, farmers and real estate professionals. New initiatives, such as a national land market valuation base, may develop new data collection bodies. Brand-new land tenure surveys, however, would hardly be affordable for any country in the region. The variety of potential collectors may offer to rural policy-makers an opportunity to focus on assembly and compilation, rather than on collecting a national land tenure database. By careful coordination of data collectors, harmonization of their methodology, integration and the application of quality control techniques, it may be possible to upgrade the existing database. National interdisciplinary task forces such as the one for restructuring the agriculture information system in Poland are good models for such options.

[redacted]

Clearly, some sources of fundamental land tenure data, such as cadastres, land registries or tax records, are potential sources of statistical land tenure data. However, there are problems with using these data sets. All case studies identified problems with the interoperability of existing data sets. Their coverage is rarely complete, and they focus on the parcel and the owner or the tenant (by contrast, agricultural censuses focus on the farm holding and the actual farmer or farmers' household). Relating registered landowners or tenants to farm units is highly problematic, unless special registers of farm operators are maintained. The land and lease values registered may not be the market ones, or may have systematic biases resulting from tax evasion strategies of the farmers. In some countries, these data sets are bound by excessive privacy constraints, and may not be used for purposes different from the prescribed ones. Also, it may be difficult to distinguish between rural and urban land in these records; the classification used may be incompatible with agrostatistics, so their utility for monitoring the intensity of land markets may be low. Such issues require national coordination and standardization of data sets to provide compatibility and enable data integration. If possible, minor

amendments to these data sets may bring about significant improvements to land tenure databases.

In the design of such a land tenure database, policy-makers may include new data items, or expand the scope of agricultural censuses and farm surveys, to allow analysis of land tenure in association with social, demographic and environmental factors in rural areas. Despite the EU minimum requirements, not only commercial farms but also subsistence farms should be covered by a national land tenure database in all the CEEC countries here discussed. Such analyses may be helpful, for example, in planning early retirement schemes in rural areas, providing incentives to subsistence farmers to become commercial, diversify into non-agricultural sectors or leave agriculture altogether. In this sense, versatility of land tenure data will be improved if farm surveys are linked to data from population and housing censuses, as well as environmental data.

The provision of similar data by farmers to farm surveys, censuses, tax authorities, cadastral surveys and local governments often means duplication of costs and efforts, and even confusion if the definitions of similar data items do not match. Land tenure data are not only required at the central government level; regional and local policy-makers and agencies also need such statistics to design their strategies. Their needs are not always considered at the central level, but this would be an opportunity to join rather than duplicate efforts. Involving local actors in the maintenance of land tenure databases may improve the sustainability of data series, as well as reduce costs. Data exchange between the existing databases kept by stakeholders at various levels may also assist in the reduction of duplication and improved efficiency. Such steps, however, require a national strategy on information and communication technology, which goes far beyond the task of developing land tenure databases.

For historical reasons there is a poor tradition and weak institutions for monitoring land tenure in the CEE region, which points to the need for capacity and institution building. The actors who are apparently most involved and interested in good land tenure data are the ministries of agriculture and rural development. In the absence of "best" international practices, in each country case they have sought and found their own approaches to solving the most urgent data gathering priorities. Owing to EU requirements, these priorities include a minimum land tenure data set. Additional needs exist, however, in the development of land and lease market-monitoring systems. In building this capacity, countries in Central and Eastern Europe would benefit from sharing relevant international experience.

Land tenure databases are unique to each country because of the individual features of national land tenure systems. Their important role in monitoring changes and informing rural development policies is commonly recognized. In the EU, Member States have obligations directly related to land tenure data provision. Countries have a priority to satisfy the minimum EU land-tenure requirements and successfully implement timely measures to meet both the EU criteria and the data collection standards. They have set up the baseline data to be monitored over a longer period. Efforts in designing a better land tenure database today are a good investment in terms of the future.

Although EU Member States have better statistics on these sorts of data, no country has a perfect approach. The application of EU standards for agrostatistics, including the tenure data, faces difficulties in CEE countries. It is not easy to adapt the

methodologies designed for western EU farms to Central and Eastern European national realities, especially with regard to farm typology and structure, because of the widespread fragmentation of farms in Central and Eastern Europe.

In addition to the mandatory EU data sets on land tenure, there are desirable national data sets on land and lease markets, and on the actual tenants of the land. Such aspects of the land tenure databases are less developed in the case study countries. There are weak track records of monitoring land and lease market prices in Central and Eastern Europe. Issues related to the quality of tenure data in basic land records, as well as privacy arrangements, reduce the utility of such sources for policy-making. Monitoring or registration of farm leases is deemed useful in the case study countries.

In this respect, accession and approximation countries may benefit from sharing knowledge and international experience. Despite their recognized necessity, particularly in relation to the land consolidation efforts and the achievement of the EU criterion for viable farms, targeted efforts to monitor the land tenure are just starting. The major challenges, issues and bottlenecks are in the fields of interdepartmental coordination and standardization of data items in the various surveys related to land tenure.

The design of land tenure databases should be high on the agenda of governments if future benefits from such data are to be fully exploited. The current review of government data collection functions urged by the EU enlargement process is a good opportunity to improve the national databases on land tenure for policy-making purposes.

Grover, R. 2006. European Union accession and land tenure data in Central and Eastern Europe. *Land Reform, Land Settlement and Cooperatives,* 2006/1:14–27.

Développement de bases de données foncières au Cambodge

L'information en matière de régimes fonciers et d'utilisation des sols est essentielle à la conception, à la mise en œuvre et à la supervision des politiques gouvernementales régissant le développement agricole et rural dans les pays en développement. Dans le cas de pays sortant d'un conflit comme le Cambodge, les moyens dont dispose l'État afin de faire appel aux ressources humaines et financières en vue d'assurer la collecte, le stockage et l'analyse des données sont souvent réduits. Cet article s'attache à déterminer le rôle que les données foncières peuvent être amenées à jouer en matière de détermination des stratégies, et identifie les sites éventuellement appropriés à des fins de collecte et de stockage de ces mêmes données au Cambodge. Les critères d'évaluation des sites institutionnels en matière de collecte et de stockage de données sont la fiabilité, l'accessibilité, l'interopérabilité, la comparabilité, la capacité de mise à jour et le rapport coût-efficacité. L'article conclut qu'un recensement agricole périodique finit par représenter l'option la plus viable du fait qu'elle est non seulement prescrite par la loi, mais qu'elle bénéficie aussi de l'appui des parties prenantes principales, y compris des donateurs multilatéraux.

Desarrollo de la base de datos de titularidad territorial en Camboya

La información sobre la titularidad territorial y la utilización de la tierra es fundamental para el diseño, la implantación y la supervisión de las políticas públicas que rigen el desarrollo agrario y rural en los países en desarrollo. En el caso de los países que han sufrido conflictos como Camboya, la capacidad del Estado de movilizar unos recursos humanos y financieros suficientes para recoger, guardar y analizar datos es por lo general muy reducida. Este artículo examina la función de los datos de titularidad territorial en las políticas, e identifica las hipótesis adecuadas para la recogida y el almacenamiento de dichos datos en Camboya. Los criterios de recogida y almacenamiento de los datos comprenden la fiabilidad, la accesibilidad, la compatibilidad, la comparación, la capacidad de actualización y la eficacia en relación con el coste. El artículo concluye que un censo agrario planificado representa la opción más sostenible, ya que no tan sólo cumple los requisitos jurídicos sino que es respaldado por los interesados clave, entre los que están los donantes multilaterales.

Land tenure database development in Cambodia

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Information about land tenure and land use is central to the design, implementation and monitoring of public policies governing agricultural and rural development in developing countries. In the case of post-conflict countries such as Cambodia, the capacity of the state to mobilize sufficient human and financial resources to collect, house and analyse data is often diminished. This article examines the role that land tenure data can play in policy-making, and identifies potentially suitable venues for collecting and housing such data in Cambodia. The criteria for assessing institutional venues for data collection and housing include reliability, accessibility, interoperability, comparability, capacity of updating and cost effectiveness. The article concludes that a scheduled agricultural census represents the most sustainable option over time because it is not only mandated by law but enjoys support among key stakeholders, including multilateral donors.

Land tenure arrangements form the core of agrarian systems in the rural economies of developing countries. These systems are composed of (a) an agrarian structure characterized by the distribution of land ownership and operational land holdings (i.e. land use); and (b) agrarian institutions characterized by informal and formal rules governing the social and economic organization of land (property rights) and labour (contracts). The formulation and enforcement of rules governing property rights and contracts are functions of public policy, as the state plays a significant role in shaping the interaction among natural environments, land/labour endowments, technology and markets. Over time, the distribution and productive use of land are subject to fluctuations in prevailing socio-economic and political trends, as well as episodic events such as revolution and war. In this sense, the policy arrangements governing land tenure must be considered in the wider context of history.[1]

Information about land tenure, land use and production is central to the design, implementation and monitoring of public policies governing agricultural and rural development in developing countries. It is generally understood that the state has a comparative advantage over other sectors (e.g. civil society, donors) in terms of collecting and housing accurate data over time. In the case of post-conflict countries such as Cambodia, however, the capacity of the state to mobilize sufficient human and financial resources to perform such functions accurately and consistently is often diminished. As a result, other institutions, such as civil society organizations, international donors and private companies, may fill the information void by undertaking research specific to their own needs.

Inconsistent and inaccurate data collection by state authorities and sporadic collection by other institutions result in conflicting and confusing data, which are invariably difficult to integrate with one another. The design and implementation of relevant and effective public policy are thereby undermined. Moreover, poorly

[1] This discussion is drawn from Hayami, 2005.

organized land tenure data systems can promote counterproductive and socially disruptive practices in land management, such as land grabbing and encroachments upon public land by landless migrants. In this sense, the implementation and enforcement of official land management policies and practices requires a well-organized and reliable land tenure and land use database system.

The FAO Land Tenure Service has contracted the Cambodia Development Resource Institute (CDRI) to conduct a review of land tenure databases to support policy-making in agricultural and rural development in Cambodia. CDRI was tasked to identify the role that land tenure data can play in policy-making, and potential institutional venues for collecting and housing such information. This article reports on CDRI's observations.

[redacted] [2]

The current problems associated with land tenure rights and land administration in Cambodia can be largely traced to the civil conflict, war and radical collectivization polices implemented by the Khmer Rouge regime of Democratic Kampuchea (DK) during 1975–1979. These problems include the mass dislocation of both urban and rural populations during three more or less distinct phases. First, many people abandoned their land to seek refuge in Phnom Penh as fighting intensified prior to 1975. Second, people were forced to migrate from urban areas to various rural areas throughout the country, or from one rural area to another, during the period 1975–1979. Third, many people sought refuge in Thailand and overseas following the collapse of the DK regime in early 1979. During this period, cadastral records and maps were destroyed and most professionals either died or fled the country.

During the post-DK period in the 1980s, all land was considered state property. It is commonly believed that agricultural land was farmed collectively in small groups (*krom samaki*), while households were allocated residential use rights on the basis of occupation. In practice, however, the implementation of the *krom samaki* policy varied from place to place. In some areas, people returned to their original land and farmed individually as early as 1979, thus bypassing the *krom samaki* system. In other areas, land was farmed collectively for several years and was then informally divided among villagers at the local level, using various methods and criteria for distribution. In certain areas, security was a major factor that influenced when a village might initiate a land distribution. In terms of documentation, some villages recorded the distribution outcomes by hand, but in most cases such records were not kept or were subsequently lost.

In 1989, the Government of the State of Cambodia (SOC) reintroduced private property rights through Instruction Number 3, along with Sub-decree 25. Among other provisions, the sub-decree established ownership rights for residential land up to 2 000 square metres, and possession rights for cultivated land of less than five hectares. With the enactment of the 1992 Land Law, people were able to apply for land certificates that confirmed occupancy and use rights, although the law allowed only possession rights rather than ownership in rural areas. According to the Department of Cadastre and Geography, not more than 14 percent of the estimated 4.5 million applicants have received formal certificates of ownership since the early 1990s (Chan and Sarthi, 2001). Among other difficulties, the cadastral system has been ill-equipped and underresourced to manage even modest workloads. In some parts of the country, security was also a significant factor, as fighting between the Khmer Rouge insurgents and government forces continued up until 1998. Government offices at the district and commune level, as well as village chiefs, were sometimes

[2] Much of this section also appears in a report on the rural phase of the land-tilting baseline survey project (Ballard and So, forthcoming).

attacked, and in some cases cadastral records were once again destroyed.

The new Land Law of 2002 was passed largely in recognition of the fact that progress towards economic and social development requires a system of strengthened land tenure rights, as well as improved land management and administration. The law recognizes three domains of land ownership in Cambodia: state public property (e.g. forests, protected areas) for resource conservation, state private property for economic and social development and private property (e.g. residential or agricultural land). Within the private domain, ownership can be individual, communal, undivided or by co-ownership.

The Ministry of Land Management, Urban Planning and Construction (MLMUPC) is primarily responsible for land management and explicitly responsible for cadastral affairs. These responsibilities include the development of land policy, land registration and improving the management of state land, which involves oversight of the granting of social concessions, which are in turn carried out at the provincial level through the provincial Departments of Land Management, Urban Planning and Construction. The Council for Land Policy (CLP) is an intergovernmental body that includes key stakeholders concerned with land policy and management. The CLP was created in order to coordinate policy-making and strengthen and coordinate the design, implementation and monitoring of land management policy in Cambodia (CLP, 2002).

Land management also involves a number of other key stakeholders whose roles and jurisdictions are often overlapping and not clearly delineated. For example, the Ministry of Agriculture, Forestry and Fisheries (MAFF) is primarily responsible for agricultural development, which includes oversight of economic land concessions. The Ministry of Environment (MoE), meanwhile, is responsible for managing and protecting environmentally sensitive areas such as national parks. The military controls large areas of land in military development zones. Some of this land is intended for demobilized soldiers, including former Khmer Rouge soldiers, while other land has been granted to private companies as economic land concessions (see COHCHR, 2004). This lack of clarity creates confusion regarding decisions about state land management and, in some cases, contributes to competition among different ministries and departments. This in turn undermines the state's ability to implement land policy decisions and monitor land use. Such confusion is exacerbated when provincial and even local authorities also enter into parallel agreements regarding various land concessions, or authorize land transactions involving multiple claimants.

In this section, we identify several areas where the systematic collection of land tenure data in Cambodia can be useful to policy-makers.

At present, in the absence of clearly defined administrative roles and legal procedures, and in the absence of accurate and well-organized land tenure data, different levels of the administration sometimes provide different types of documents to various claimants. As a result, certain land parcels at any one time may have two or more rival claimants – all producing some kind of documentation to legitimize their claim. Such cases tend to occur more frequently in areas where land use is changing (e.g. agricultural land being converted to commercial or industrial uses) and land values are increasing for one reason or another.

A well-organized and maintained land tenure database is essential for protecting people's ownership and/or contractual use rights in both rural and urban areas. In order to be effective and reliable, the database must include the name of the owner, information about the area and

boundaries (measured and mapped) of individual plots and reference to land use. However, such documents cannot by themselves guarantee ownership rights and tenure security. It is ultimately up to the state to establish and uphold clear procedures for validating claims, providing legal enforcement of property rights and managing efficient and transparent transfers (e.g. sales and inheritances) and contracts (for example, leasing arrangements).

Chapter Five of the 1992 Land Law addressed the concept and practice of land concessions. The main rationale for granting state land, including forests, to private companies has been to stimulate private enterprise, contribute to state revenue and reduce poverty in rural areas. There are three kinds of concessions: economic land concessions for commercial agricultural exploitation of land; social concessions for residential construction of subsistence cultivation; and "others" (including mining, ports and fishing concessions) that are outside the provisions of the Land Law.

Economic land concessions

The government has granted (or is negotiating) approximately 64 economic land concessions to private companies in order to promote the large-scale development of ostensibly unused, or underutilized land (COHCHR, 2004). All concessions have been awarded at the national level on the basis of unsolicited bids, with little or no prior consultation with local authorities or people living in villages that may be adversely affected. In some areas, local villagers have been forcibly deprived of access to land that they historically used for cultivation or collecting of non-timber forest products. In some cases involving ethnic minorities, ancestral burial grounds have been violated, while in other cases the indiscriminate use of chemical herbicides and pesticides has reportedly resulted in illness.

International donors and civil society organizations have criticized the practices, if not the policies, associated with these land concessions in terms of human rights abuses and environmental damage associated with at least some of the projects. Recently, there have been several well-publicized local protests against companies implementing these concessions, and some have resulted in violence. In response to such problems and donor pressures, as well as concerns that some concessions are not at all productive, the government has formulated and recently circulated a draft sub-decree on economic land concessions in order to clarify and strengthen grant procedures and improve management.

There are two general areas in which land tenure and land use data are important with regard to economic land concessions. The first area concerns local people's traditional access to and control over land resources, whether this involves farming households claiming individual use and ownership rights or indigenous communities claiming communal use and ownership rights. Many of the economic land concessions have overlapped with household or community claims to land. A land tenure database could be useful in this regard, though only to the extent that it actually included data on affected households and communities. Such data would have to exist already exist, or be available at the time a concession is granted. To be workable, such a system also assumes that the relevant authorities would uphold such claims. Although the current draft sub-decree refers to an "environmental and social impact assessment concerning land use and development plans", there is no explicit reference to how conflicting land claims, whether household or communal, would be resolved. The second area concerns the most effective and efficient development approach in the agriculture sector. The comparison between large-scale plantation and agribusiness approaches to development with smallholder producers is

ultimately a researchable question. A third alternative, involving contract-farming approaches, could also be included in such research. However, this kind of evidenced-based policy research requires accurate and reliable land tenure and land use data, as well as production data. These kinds of data requirements, however, may be most effectively met through specific single-purpose research activities.

Social land concessions

A Social Concessions Sub-Decree adopted in March 2003 essentially creates a mechanism for the transfer of state private land to people with little or no land for farming and residential purposes. The increasing level of landlessness and rural-urban migration has resulted in people taking up residence on state public land, for example in Phnom Penh and other urban areas. This development has in turn prompted action for resettlement for the urban poor and social land concessions for the rural poor. Accurate land tenure and land use data are required in order to plan and implement resettlements more effectively through social land concessions. Biddulph (2004), for example, has observed that there is significant difference between "land being vacant and it being available and potentially desirable for Social Land Concessions". In one case, land in the village of Dangkat Knung had already been marked and cleared, but the military in the area also claimed the same land. Elsewhere, village authorities reported that certain large areas of forest (including old hardwood forest) were vacant, but the regulations governing land use in forested areas had to be considered. In terms of desirability, some land that had been set aside for urban resettlements was of poor soil quality and not fit for productive farming. In cases where resettled people could not develop sustainable incomes, they tended to return to their previous areas or migrated elsewhere. Landmines may be another important concern in certain areas of the country.

Communal property

A comprehensive land tenure and land use database should also include specific reference to communal tenure arrangements. The Land Law of 2002 introduces the concept of indigenous communal property as a form of property ownership and recognizes the community as a legal entity for land ownership. Among other provisions, the Law provides for the collective titling of indigenous lands. There are several significant constraints because the identification and actual demarcation of such lands are extremely difficult. Many of these areas are in sparsely populated parts of north and northeast Cambodia, where people have traditionally practised swidden cultivation.

A draft sub-decree on communal land rights has now been prepared and efforts to provide titles for communal land are under consideration. The process, however, is likely to spark controversy and perhaps further conflict. For example, communal boundaries will have to be surveyed and mapped. This process will require consensus among different levels of the administration as well as neighbouring communities. For example, what will be the institutional mechanisms at the village level for managing communal lands? What institutional arrangements will be implemented to enforce communal land rights against possible encroachment from outside interests?

Access to and control over productive land assets is crucial to both livelihoods and poverty reduction. Approximately 36 percent of Cambodians live below the poverty line. Most of these people live in rural areas and depend on farming for all or a substantial part of their livelihoods. If Cambodia is to be successful in reducing poverty, it is accepted that informed pro-poor policy, programming, and budgeting processes that can ensure harmony and better co-ordination will be required. The Government of Cambodia is preparing a National Strategic Development Plan

(NSDP) for 2006–2010 and aligning it with Cambodia's Millennium Development Goals (CMDG). This planning is being undertaken within the framework of the government's "rectangular strategy", one component of which concerns agricultural development. In order to be effective, the NSDP requires a monitoring and evaluation system that can assess progress and provide feedback to policy-makers. Such a system in turn requires a comprehensive set of performance indicators, including data regarding land tenure, land use and production. For example, agricultural production includes total per capita rice production and dry and wet season rice yields; environment and natural resources statistics include forest coverage and percentage of rural and urban land titles. Poverty and vulnerability indicators include the percentage of area contaminated by landmines and unexploded ordnance, as well as the percentage of planted areas destroyed by flood and drought.

Food security and targeting resources

One of the most important indicators of food security in rural areas is the amount and quality of land to which households have access and control over. For example, the number of landless and near-landless households is increasing by approximately 2 percent per year. These households face chronic food shortages because they are not able to produce enough rice for one year. In addition to the distribution of land, other factors are the distribution of labour, income and other assets with reference to the gender of the head of household. The collection and maintenance of land tenure and land use data, as well as production data, will enable government planners and donors to target resources more accurately in support of improved food security.

Natural resources and land use monitoring

Land tenure and land use data are essential for monitoring the impact of changes in land use on environmentally fragile and sensitive areas (e.g. Tonle Sap Lake). For example, where people have cut inundated forest in order to expand rice production, such practices have profoundly adverse effects on fisheries and local ecosystems. The collection and maintenance of land use data would enable policy-makers to monitor such practices and target areas where there have been no improvements.

Forest resources

Forests are another area of concern, as an increasing number of people are claiming forestland by clearing it and planting crops. In some cases, people are even obtaining land titles for such land from the provincial cadastral department, despite Department of Forestry regulations prohibiting such practices. In 2002, forests in Cambodia were classified into five groups: evergreen forest, semi-evergreen forest, deciduous forest, mangrove and other types of forest. Cambodia's total forest cover was estimated to be approximately 61 percent of the country's land area. However, the Ministry of Environment observes that "this figure is based on satellite imagery and does not give any indication of the quality of the forests or the types of plantations which have been included in the inventory" (MoE, 2005). In terms of land use management in forested areas, then, there are no reliable resource inventories and accurate maps available. There is also no standardized typology for different forest types, and different classifications result in confusing and conflicting analysis. Thus, a national forest inventory, classification and mapping project would be useful.

Water resources

The two ministries that are principally involved with water resource management, the Ministry of Water Resources and Meteorology and the Ministry of Agriculture, Forestry and Fisheries, do not have extensive data concerning water resources. Such data are vital for land use management and planning in matters such as medium and large irrigation and water

resource infrastructure projects. Changes in land use patterns, such as forested areas that are cleared after economic land concession, may have an impact on groundwater flows and supplies. Watershed catchment management is also impeded by a lack of reliable data on land tenure and land use patterns, as well as on water resources. Certain types of agricultural practices, such as the use of chemical fertilizers and pesticides, may also affect downstream water quality.

Land tenure data are not only useful for monitoring the use of land, but also for promoting or expanding the operations of government, particularly local government. The 2002 election of Commune Councils established a lowest, i.e. most local, level of government in Cambodia. At this time, intergovernmental transfers are the only source of discretionary funds that can be used for local development projects. The Law on the Administration and Management of Commune/Sangkat authorizes the Commune Councils to establish their own source of revenue from three main sources: tax revenues, non-tax revenues and service fees. Such locally derived revenues would provide income to supplement national transfers and serve as a means for citizens to contribute to the costs of the local public services they receive.

Among other potential own-source revenues for Commune Councils, Eng and Rusten (2004) have suggested that a commune service levy could be collected as an "annual compulsory contribution" paid by commune residents. They suggest that the councils could collect the service levy from every household residence and business based on (a) the categories of land use (e.g. agricultural, residential, commercial) that each family and business own; (b) the classification of land size; and (c) the types and sizes of structures on the land. They observe that communes "must have access to reliable data and records on land and property in the communes".

Land use planning and management in urban areas, including Phnom Penh municipality, Siem Reap and Sihanoukville, require accurate land tenure data. As a city's population grows owing to natural growth rate and immigration, and as the urban areas of the city continue to expand into the rural and peri-urban regions, competition among people, private companies and state institutions over access to and control over increasingly scarce land resources will grow. In this sense, the orderly and peaceful transfer of land from rural to urban land use patterns often implies a transition from state public land to private land. Such transfers require accurate and transparent data on land use and landowners. Already in certain rural areas of the municipality, land conflicts are emerging as a serious issue; some investors (sometimes in collusion with local officials) purchase land that is occupied by others. The capacity of local government to obtain revenues from such transfers through land transaction taxation also depends on an accurate database. Transportation is another area where accurate data are required. The city will need to develop transport infrastructure as it grows, and this will entail the use of state public land and in some cases the acquisition of private land. A just and accurate compensation for such land requires accurate data records. Similarly, data will be needed in order to deal with the issue of encroachments on state land by in-migrants who lack affordable housing.

Perhaps one of the most crucial aspects of policy formulation concerns research that links land tenure security to various components of the development process. For example, it is widely believed that land tenure security promotes investment in productive agricultural practices, including land improvements and capital inputs. Secure tenure is also widely considered to promote better access to formal credit. Therefore, land tenure databases should

include as wide a range of factors as possible. For example, such databases should then be linked, or have the capacity to be linked, to various databases on such matters as agricultural production, productive assets and capital mobilization. The strength or weakness of these linkages will provide policy-makers with important insights as to what areas require more attention.

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At this time, there are a limited number of options to consider. It is important to emphasize that none of the potential data-housing venues will be feasible in the near term owing to constraints associated with human capacity, financial resources, organizational capital and other factors. Some of the factors and criteria for assessing the suitability of potential institutional venues for data housing include interoperability across and linkages with other data sets; reliability (i.e. optimal accuracy); maximum policy relevance (i.e. utility); comparability across location and over time; capacity for updating; and cost effectiveness, for example in terms of human resources and finances (see Wallace and Williamson, 2004).

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Cambodia's commune councils might be one data-housing venue, though not in the near term. It is important to note that "own source" revenues will begin to figure more prominently in decentralization reform planning that supports greater authority and autonomy of the commune councils. This suggests that a tax or service levy system will become increasingly desirable, which may require an accurate land tenure database that can be regularly updated. In principle, then, the commune council may be a suitable institutional home for a land tenure database. In Cambodia, however, this approach is undermined by the lack of human and financial resources, and it is not realistic to think in terms of this in the near future.

In addition, such an initiative is currently politically sensitive, and will require a significant change in terms of the policy discourse in the country. Given recent promises by the Prime Minister not to impose any taxes on land, government administrators are understandably reluctant to propose anything that resembles such a tax. For example, of the four different types of own-source revenues that were recommended to the Ministry of Economy and Finance for piloting at the commune level, the service levy fee mentioned above was not authorized.

Another shortcoming concerns the difficulty of standardizing data collection and record keeping across all communes in a way that can be aggregated at upper levels of the administration, which would be important for policy-making. Commune-based land tenure data would probably also not be easily used in conjunction with other data, particularly at the local level, thus reducing their general utility. In this sense, then, the comparability and interoperability of commune-based land tenure data may be low.

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The most extensive land tenure database is currently maintained by the National Cadastral Office in the MLMUPC. This database aggregates data from all the provinces and is thus a more or less national database. Moreover, as the MLMUPC's Land Management and Administration Project (LMAP) systematic land-titling project progresses, this database will expand significantly.

The LMAP project, however, is not comprehensive in terms of its geographical reach, and as a result there will continue to be significant gaps in the cadastral records. Also, the LMAP data focus solely on land ownership and, as a result, do not provide a good sense of land rental markets. Moreover, many people with titled land who are engaged in land transactions tend to avoid the official registry for various reasons. As a result, such a database may not be easily or consistently updated. Those

who do use the official registry to facilitate land transactions may at the same time understate the sale price of the land, thus distorting perception of the actual market values in a given area.

This database may also not be easily accessible to researchers and/or policy-makers. One consideration concerns confidentiality, and some of the data may be considered politically sensitive. For example, certain individuals may not wish to have records concerning their landholdings available to the public. These and other problems associated with transparency will require some time to sort out.

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As noted above, the Statistics Law of 2005 mandates the National Institute of Statistics (NIS) to carry out an agricultural census once every ten years. An agricultural census would represent a single, one-stop venue for land tenure data that could be linked with other data sets, such as population census data, land use data and geographic information system maps. Such a data set could include a wide range of factors, including comprehensive land tenure and land use information, as well as other productive assets, and certain demographic information concerning available household labour. Moreover, a comprehensive agricultural census would be national in scope and would provide data consistency across administrative boundaries, thus promoting comparability.

There are, however, several concerns regarding an agricultural census, one of which is timing. The Statistical Master Plan (SMP) observes that it is best to carry out the agricultural census as long after the population census as possible. In this sense, the population census could help prepare for the agricultural census, perhaps by identifying those households that are engaged in agriculture. Given that the population census is now scheduled for 2008, the SMP suggests that an agricultural census could take place in the second half of 2009.

Another concern is cost. The current estimate for such a census is approximately US$3.3 million, but it would not be surprising if this were to increase during the next several years. While the donor community appears to give its full support to the population census, it is not yet clear to what degree an agricultural census would enjoy donor support. The SMP suggests that it might be necessary to do this as a "partial census" in which all "large establishments" are covered, but only employing a sample of "smaller establishments". This in turn raises concerns about the type of information that would be gathered; presumably, information would be collected on a wide range of factors pertaining to land tenure arrangements and land use at the household level. Therefore, the development of the survey instrument should involve a wide range of stakeholders, including policy-makers, government officials and donors.

A third concern with regard to an agricultural census is the reliability of data. While most people may be inclined to provide accurate information, there may be a tendency to underestimate land holdings and productive assets, as well as other factors. The impact of such problems can be minimized with good training, rigorous pre-testing and comparisons with other data surveys that are considered reliable. In this sense, there will need to be close collaboration between NIS and MAFF in terms of capacity building in survey and sampling techniques.

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Information about land tenure, land use and production is central to the design, implementation and monitoring of public polices governing agricultural and rural development in developing countries. In Cambodia, the state's capacity to collect, maintain and effectively use such information has been severely diminished by years of war and civil conflict. Cambodia faces several significant constraints in terms of the supply of data, among them human resource capacity and financial

resources. On the demand side, Cambodia lacks a tradition of evidence-based policy-making. Such constraints undermine the government's ability to provide secure land tenure for farming households, as well as to manage state land resources effectively. Although important progress is currently being made towards building a professional national statistics and data collection service, there are significant information gaps in areas concerning land tenure and land use data.

Probably the most feasible institutional venue for land tenure and land use data at this point is the agricultural census. Although Cambodia has never undertaken an agricultural census in its history, the Statistics Law of 2005 now mandates that NIS conduct such a census once every ten years. A draft version of the Statistical Master Plan for Cambodia suggests that an agricultural census should take place in the second half of 2009, following the population census of 2008. Such a census can and should include comprehensive sections on land tenure and land use data that can be linked to other demographic and production data. This option, however, would require additional training for NIS and MAFF enumerators. Given the lack of government resources, donors should support this effort. If costs are a concern, a partial census using a representative sample may be the most feasible alternative.

A comprehensive and reliable land tenure database system, however, is not entirely feasible in the absence of effective arrangements for managing state land, which includes land allocated for economic and social land concessions. Three initial steps are required: identification and mapping of state land, registration and classification of state land and creation and maintenance of the state land maps and database. As part of the identification and mapping exercise, existing occupancy and land use must be identified. This means that spatially linked databases must include reference to household and community data, as well as land use and type of claim; these features must be identified before any rational system of adjudication and conflict resolution can be undertaken. Another aspect of the exercise is to determine and classify state public land according to suitability of use. This would entail a type of land use suitability mapping, including databases associated with soil type classifications and water resources availability.

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Les données foncières en Thaïlande

Cet article passe en revue les systèmes fonciers et les données foncières en Thaïlande afin de démontrer l'importance des informations connexes en matière de détermination des stratégies. Cet article offre également un bilan des bases de données et des contraintes tant pour le processus de collecte que pour la qualité des données, des éléments qui peuvent peser sur la valeur des informations. Il attire l'attention sur les différents aspects que revêtent les conflits sociaux dont les origines remontent à la démarche segmentée adoptée lors de la gestion des terres en Thaïlande. Les zones forestières représentent la pièce maîtresse: vu l'importance écologique et le caractère «d'accès ouvert» des ressources qui s'y trouvent, ces zones se heurtent à des demandes conflictuelles ayant trait à des préoccupations en matière d'économie, d'équité et d'environnement. Si d'aucuns font valoir que les données foncières peuvent contribuer pour une large part à traiter les conflits se rapportant aux terres, il n'en demeure pas moins que leur valeur pratique est amoindrie du fait de l'inconsistance des informations et du fait qu'elles ne sont pas aisément accessibles, ou ne peuvent pas être conjuguées à d'autres afin de permettre une analyse approfondie. Trop souvent, cela signifie que les décideurs ne peuvent pas utiliser immédiatement les informations imparties en raison des délais et des frais supplémentaires occasionnés afin de recueillir des informations complémentaires ou afin de vérifier la validité et l'exactitude des informations existantes.

Datos de titularidad territorial en Tailandia

Este artículo revisa los sistemas de titularidad territorial y los datos de tenencia de la tierra en Tailandia con el objeto de ilustrar la importancia de la información para el establecimiento de las políticas. El artículo abarca también la situación de las bases de datos existentes y se circunscribe al proceso de recogida y a la calidad de los datos, que puede limitar el valor de la información. Se mencionan las diferentes zonas de conflictos sociales que pueden dar origen a un enfoque segmentado de gestión territorial en Tailandia. Las zonas forestales son objeto de especial atención debido a su importancia ecológica y al carácter de «acceso abierto» de los recursos; en estas zonas se observan demandas competitivas relacionadas con intereses económicos, de equidad y medioambientales. Aunque los datos de tenencia agrícola puedan ser útiles para abordar los conflictos territoriales, su valor práctico es limitado debido a la incoherencia de la información y a las dificultades de acceso, y a la dificultad de realizar un análisis en profundidad. Esto significa que los responsables de las políticas no puedan utilizar de inmediato la información disponible y que existan costos añadidos, tanto para recopilar la información adicional como para verificar la validez y la exactitud de la información existente.

Land tenure data in Thailand

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This article reviews land tenure systems and land tenure data in Thailand in order to illustrate the importance of such information for policy-making. The article also discusses the status of existing databases and constraints both in the process of collection and the quality of the data, which may limit the value of the information. It draws attention to the various areas of social conflicts that can be traced to the segmented approach to land administration in Thailand. The focal point of attention is forest areas: in view of the ecological importance and the "open access" nature of the resources, these areas face competing demands related to economic, equity and environmental concerns. It is argued that while land tenure data can be instrumental in addressing land-related conflicts, much of the practical value is lost because of inconsistency of information and because information is not readily accessible, or cannot be combined to allow for greater depth of analysis. In practice, this means that policy-makers cannot make immediate use of the information that is available because additional time and expense are required either to collect additional information or to verify the validity and accuracy of existing information.

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This article is a report of a short-term study commissioned by the FAO Land Tenure Service to review and analyse Thailand's land tenure data. The objectives can be divided into five major areas, namely: (i) to identify how and why the collection of selected land tenure data in Thailand can be valuable to policy-makers; (ii) to review and assess the current status of collection of land tenure data in selected provinces of Thailand, including particular constraints as well as the current and potential institutional homes for the data; (iii) to identify the main issues that should be addressed to improve the collection of land tenure data; (iv) to evaluate the available land tenure data from the point of view of the Assets Capitalization Bureau (ACB) and its task, as well as the valuation of agricultural properties; and (v) to suggest issues that could be explored further in a given context.

To address the issues listed above, the following sections present findings in five corresponding areas, namely, the changing context of land resources in the Thai economy; the profile of public land administration institutions; public land resource management issues; the current status and limitations of land and tenure system information; and the relevance of reliable land tenure data to support land-related development policies.

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One of the most important factors underlying the steady growth of the Thai agriculture sector is the expansion of the area under cultivation. It has been argued that the perceived abundance of land has influenced an extensive rather than an intensive cropping pattern (a situation in which increased output can be achieved through bringing more land under cultivation, thus postponing the necessity of rationalizing land use to ensure greater land productivity). The expansion of agricultural land has resulted from the conversion of the country's natural forests. Thailand's forest areas have been steadily declining over

the past decades since the first National Economic and Social Development Plan. In 1961, area classified as being under forest coverage was 27.4 million hectares, equivalent to 53 percent of the total area of the country. Between 1961 and 1981, forest coverage reduced by half, to only 14.4 million hectares. Increasing frequency of natural hazards, combined with public pressure, led to the withdrawal of all logging concessions in 1989. In the period between 1991 and 1999, the rate of deforestation slowed down marginally, though total loss was still around 96 000 hectares per year. But during this same period, there was also a net loss of 320 000 hectares of agricultural land due to conversion to non-agricultural uses and urbanization processes, as well as an increase of around 1 million hectares in "unclassified" land. The reduction in agricultural land has been partially compensated for by the encroachment on forest areas and conversion to agricultural use, phenomena that are not without environmental and related economic consequences. Current natural forest coverage is estimated at around 25 percent of Thailand's total area.

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To understand the land tenure system in Thailand, it is important to distinguish between private and public land. The Land Code 1954 constitutes the most comprehensive enactment pertaining to ownership and utilization of land resources even up to the present period. The Land Code distinguishes between *de facto* occupancy and legal recognition of rights of property, which is the foundation of the concept of individual private property rights. In sanctioning private property, the Land Code thus makes a distinction between private land and *public land that refers to all remaining land not claimed by private ownership* (Nabangchang-Srisawalak, 1992).

To obtain the title deed, which is the legal document acknowledging the full bundle of rights of private property, four documentary stages are specified by the Land Code B.E. 2504 starting from the claim certificate or the *Bai Chong* (literally translated as the "right to reserve"), pre-emptive certificate, exploitation testimonial and title deed (Nabangchang-Srisawalak, 1992). Registration of private land had initially been a slow process given the limited financial resources and technical capacity. In 1984, recognizing the economic merits of land titling and under political pressure to rationalize the land tenure system, loans and technical assistance were sought from the World Bank and AusAID for the Department of Land in a series of land titling projects, which contributed to the tremendous progress in issuing land titles (ADBTA, 2002). Given that certain regulatory frameworks had to be modified and the original intention of the law has been compromised (if not overlooked), the speed accomplished has not been without trade-offs with social and economic consequences. The merits of shortened procedures created loopholes, which benefited occupiers of land who may not have had legitimate claims. In 2004, with registration of private land in its final stages, approximately 40 percent of the total area of the country, equal to 20.48 million hectares, is classified as private land.

Over the years, expansion of agricultural land, either as a result of population pressure or in response to market opportunities, has always been faster than the corresponding legal and administrative system to formalize land occupancy, usage, ownership and control. The dominant approach of the state was to use legislative tools to assert legal claims over various types of "public land", as well as to create agencies to implement the legislation. Although the scope of responsibilities of many of these agencies may be clear, what remains unclear is the "area dimension" of their jurisdiction. Over the years, common problems of many public land areas have been encroachment and utilization of land. In many cases, occupation of

land (sometimes owing simply to lack of knowledge that land was publicly owned) without any contending of the claims (in this case from the responsible public agencies) often led to conflicts arising from overlapping claims. The highest numbers of conflicts are concentrated in forest areas. The number of agencies involved with land administration proliferated and peaked at one time at 21 agencies, each with separate mandates, authorized by different laws and adopting different procedures (Nabangchang-Srisawalak, 1992).These agencies can be divided into two groups. The first are public agencies authorized to lease public land (or land belonging to the state) as well as to allocate public land. The other group consists of agencies that do not have a legal mandate to lease or allocate public land but are nonetheless involved in land administration under specific circumstances, mostly to resettle occupants affected by physical infrastructure development projects.

Among the agencies responsible for land allocation are the Cooperatives Promotion Department under the Ministry of Agriculture and Cooperatives (MOAC) and the Department of Social Welfare and Development (until recently known as the Public Welfare Department) under the Ministry of Interior. These were the first two agencies responsible for resettling farmers affected by physical infrastructure development projects such as construction of dams, irrigation facilities, hydropower plants and highways. Beneficiaries in the cooperatives settlement are granted a document, which, after a specified period, can be transferred into land titles. Similarly, members of the self-help settlements are granted land documents which after a specified period, can be transferred into land titles.

The Royal Forestry Department (RFD) is a powerful organization that has maintained its influence despite the continued decline in forestry resources discussed earlier. The RFD's earlier involvement in land allocation was primarily because of widespread encroachment on areas classified as national forest reserves and several categories of forest "protected areas". Provided that areas encroached were not in watershed areas, farmers were granted usufruct rights. Many of the land conflicts of today go on inside forest areas of different categories, which have been reserved or protected for environmental reasons. The underlying causes centre around the following:

- Forestlands have been cleared and utilized prior to declaration as forest reserves.
- Vacillation of policies, alternating between compromise and strict enforcement of rules.
- Continued clearance from within the forest (expansion of population and new migrants from neighbouring countries across the borders) and from outside pressure (owing both to increasing population and competing demands for economic uses).
- A vacuum of authority during the transitional period of public sector reform. Many functions of the RFD have been split between utilization (still under the RFD under the MOAC) and conservation to be handled by the Department of National Parks and Wildlife under the recently established Ministry of Natural Resources and Environment.

In 1974, coinciding with the Third Plan (1972–1976), several violent incidents occurred between farmers and landlords or moneylenders in the Lower Northern Region. This led to the enforcement of agricultural land reform policy, the enactment of the Agricultural Land Reform Act 1975 and the establishment of the Agricultural Land Reform Office (ALRO). It was not to be a radical land redistribution with compulsory transfer of land from large landowners to landless and near landless farmers. The land reform policy covers both public and private land. In public land, the reform recognized occupancy rights of farmers who have cleared and farmed areas in areas classified as national forest reserve. A cabinet resolution of January 1975 specified that deforested (encroached forest)

areas within national reserve forests could be allocated to farmers either through land settlement programmes or under provisions of the Agricultural Land Reform Act 1975. Allowance for utilization of national forest areas will also be permitted so long as this does not lead to deforestation or is in any way in conflict with the intention of preserving forest resources. Currently, ALRO is the organization with the largest scope of work both in terms of area covered and number of beneficiaries. The total area under ALRO's responsibility is currently 37.4 million *rai* (just under 6 million ha) in 66 provinces of Thailand.

Apart from agencies both directly and indirectly involved, there are a number of other public agencies that contribute to land administration by providing statistical, technical and planning inputs. Among these is the Office of Agricultural Economics (OAE), responsible for collecting and compiling agricultural statistics, which contain both cross-sectional and time-series data for analysis of changes of various production and related economic indicators. Information is available by province and aggregated to district, provincial, regional and national levels. The information includes changes in crop area (by province) of the key cash crops. The series also provide data on forest areas and grazing areas; expansion of irrigated areas, fallow land and unclassified areas; changes in agricultural land and farm sizes; land tenure data; percentage of privately owned land used by the owner or mortgaged out; and agricultural land classified as owned and leased, under mortgage or used for cultivation free of charge.

One other important source of statistical information is provided by the National Statistical Office (NSO), which also collects population census data and conducts labour force surveys and an agricultural census. The agricultural census data contain information on composition and breakdown of household income, debt profile and usages of agricultural credit. The census also collects data on household assets and ownership of production assets such as land, farm machinery and equipment.

On a broader level, and not related to land information *per se,* are the National Rural Development (NRD) surveys, which are essentially a standard questionnaire administered nationwide, which provides a comprehensive socio-economic database on all the villages throughout Thailand. Very limited information is collected on the land tenure situation as such. Information available includes whether or not the village or its agricultural land are located in the national forest reserve; whether there are parcels of land used as common resources by the village such as grazing ground, swamps, fishing ponds or burial grounds; and the various types of land documents that villagers have. There are land-use related variables that allow for measurement of land productivity. The responsible agency for the NRD database is the Community Development Department (CDD). Information on land suitability for each province is prepared by the Land Development Department (LDD), which was formerly under the MOAC and is now attached to the Ministry of Natural Resources and Environment. In general, the LDD can be said to have an in-depth comprehensive database of the physical attributes of the land and covering the entire country, with vast potential for cross-analysis with social and economic data.

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One key problem of Thailand's administration is the excessive divisions and segmentation of responsibilities. Among other issues, this has created a lack of unified direction and goals, incoherence and compartmentalization of activities and the absence of complementarities of efforts. Existing legal structures are part of the cause of problems of land distribution and underutilization of land resources. Among the legacies of these problems is the range of types of land documents with varying legal properties that have been issued by agencies under different legislation. As

there are no laws that provide a ceiling on land holdings, there are no legal restrictions on the size of land parcels that can be held by individual landowners, nor are there effective taxes that could be used to discourage concentration of land ownership or the acquisition of land for speculative purposes. Furthermore, the emphasis of the Agricultural Land Reform Act is not on private landholdings as a means of equitably distributing land, but rather on confirmation of occupancy rights of small and landless farmers on public lands. Ineffective enforcement of the Town and Country Planning Act and the Land Development Act generates an evolving pattern of land use that is inconsistent with the land use plans and utilization of land, and does not accord with land capability.

Comparison of the nature of rights under land allocation programmes reveals that there are discrepancies between rights allocated to private individuals or legal entities and lessors who are smallholders. Legal entitlements vary under different laws, which give authority to the various implementing agencies. There are differences, for example, in the level of security of tenure just as there are differences in the rental rates.

Rationalization of the various types of land document into one single document, namely the title deed, is recommended to reduce management confusions as well as provide some uniformity of rights and entitlements of landownership. Among the much debated issues is whether or not to issue land titles, as opposed to usufruct rights, to farmers who occupy degraded forest areas, fringe areas or the buffer areas that border the remaining diminishing stock of forest. The theoretical argument for full land titles is that they are a precondition for an efficiently functioning land market.

Those against issuing full title deeds generally point to the risk of losing land once it can be used as loan collateral. The opposing view is that restrictions on land transfer do not necessarily prevent loss of land. Given the limited resources to provide a full coverage monitoring, restrictions on subdivision of land and the fact that prohibitions of sales or transfer to other people are not strictly enforceable in practice, there have been numerous cases of land transactions and illegal transfer. Moreover, land reform beneficiaries seldom enjoy additional support to ensure that they can put the land allocated (which is more often than not marginal land) into full productive use. In contrast, where land is productive, or has the potential to generate high rent, the demand for such land will be great *with or without formal title*.

With the physical supply of land diminishing, the balances between physical, economic, technical and institutional determinants of land supply have been altered. From the early 1990s onwards, not only was there concern over unsatisfactory measures to protect the areas that still remain under forest coverage, but also there was growing recognition of unsuitable agricultural practices which underlie the problems of land degradation. The physical supply of easily cultivatable land has been pushed to the limit and the potential threat to the environment has led to adjustments in the institutional framework, which is no longer supportive of further conversion of forest areas for alternative land use. Given the allegation that the prime cause for deforestation is pressure for land among the groups of poverty stricken landless and near landless people, another dimension is added, namely how to balance equity with environmental concerns.

Limitations in the use value of land tenure information in Thailand are due to several factors. *Variations in units of analysis, as well as differences in definition and consistency*, are common. One of the most frequently encountered problems in the use of land and land tenure data from the multiple sources mentioned above is the

discrepancies in the information obtained. The figures generally do not tally.

Similar problems are caused by *differences in scale and blurred boundaries*. The scale of the base maps will vary according to the objective of use. Each agency will have its own map-based information. If all the areas of responsibilities of the agencies are transferred onto one single map, one of the fundamental problems, which constitutes a major cause of land use conflict, is the overlapping of areas and discrepancies in the boundaries, and therefore in the division of responsibilities between one agency and another.

Implementation of development, whether or not related to land issues, has always used the *administrative boundaries as the spatial framework of implementation*. But in many cases, administrative boundaries do not make sense in the management of natural resources. Experiences show that the area-based approach may be feasible under a "project" framework, with the cooperation of concerned provinces and ministries; however, this by no means assures continuity and sustainability of interprovince, interdepartmental and interministerial cooperation once the project reaches its completion stage.

Another problem arises with the information that various agencies collect, which is held in *stand-alone databases*. In the past decade and in recognizing the usefulness and various applications of geographic information systems (GIS), many public agencies have invested large sums of money in procuring the hardware and the software for GIS as well as investment in training and capacity building. Within MOAC, RFD, the Department of Agriculture, OAE, LDD and ALRO have invested in their own GIS systems, which are stand-alone and unlinked. Cost considerations aside, the design of the separate GIS databases, given the differences in units of analysis, the differences in definitions and difference in scale, greatly hinders the vast opportunities for practical uses of the information fed into these separate databases. This makes cross-checking information on some attributes or data sets or analysing the correlation between variables more costly and time consuming than would otherwise be necessary.

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While land policies have been modified over the decades in response to the changes in demand and supply, a number of policies and measures have also emerged in response to immediate events and irregularities. This may explain the ad hoc nature of the measures, the inadequacy of other components to launch the policies effectively and the failed linkages between the policies and measures. There have been inconsistencies and discrepancies between approach and anticipated outcomes. One other general observation concerns the sustainability of the interest in implementing the land policies. Interests may have been consistent on the academic side, but have tended to wane among policy-makers unless the calm is punctuated by new events. The policy framework falls into seven programmes: (i) land tax; (ii) land administration institutions; (iii) land information; (iv) conservation; (v) rehabilitation and utilization of land resources; (vi) land use zoning and protection of agricultural land; and (vii) improvement of land rights. At least four ministries will be involved as the lead agencies for each of these programmes: the Ministry of Finance, Ministry of Natural Resources and Environment, MOAC and the Ministry of Interior.

[illegible]

A serious obstacle to the implementation of land policy is the tax system. Over the years, it has been generally observed that the Thai land tax system represented one of the major institutional hindrances to efficient land administration. The two major criticisms are that the land tax is regressive by nature and that the rates do not adequately reflect the opportunity cost

of holding land, thus providing incentives for acquiring land for the purpose of speculation. Three proposals have been made. The first is the introduction of a progressive land tax as an alternative to imposing a ceiling on the size of the landholdings, which had at one time been specified in the Land Code; this could provide the necessary impetus for redistribution of land, reducing land concentration and producing greater intensity of land use. A second proposal is for differential tax rates based on the level of land utilization, the third option being for the differential to be calculated on the basis of land value as well as the economic rent of land (Land Institute Foundation, 2001). The extent to which the above recommendations can be put into practice depends on two conditional factors: the local governments now responsible for collection of land tax (formerly the responsibility of the Department of Lands) and the existence of land information. Land parcel maps with some information on land use would allow for efficient and systematic tax collection.

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Land use zoning serves three main objectives – environmental, economic and social. The first has involved classification of forests and various categories of protected areas with varying degrees of ecological importance. Efforts on zoning for economic objectives, on the other hand, have been concentrated on identification of areas with comparative advantages for production of specific cash crops. The output of these efforts was the concept of agro-economic zones (AEZ), which would in principle balance the economic, environmental and physical aspects of agricultural production. AEZs would promote the concentrated and intensive development of agricultural products (usually as raw materials for processing) as an important land-use tool to promote agricultural diversification and improve the quality and value-added of targeted products. In addition, the AEZs would ensure economy of scale of public investments. A related objective of zoning is for protection of agricultural land as a means of livelihood for the poor (the social objective referred to above). With over 50 percent of the population still earning a large share of their economic livelihood from agriculture, there is concern that without state intervention and measures to protect agricultural land, a large segment of small-scale farmers could become deprived of their main factor of production.

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Concentration of land ownership represents one facet of the land market, which affects both efficiency and equity considerations in land resources utilization. This line of argument has been predominantly based on the statistical inference that there is a higher percentage of the poor among the landless and smallholders. Also, as mentioned above, the poor who have land have been very dependent on agricultural land and related assets from which they have derived income. The recent loss of such income has aggravated their poverty status.

If landlessness and near-landlessness were indeed the root of the problem of poverty, the logical and straightforward conclusion would be to redistribute and allocate land to those in need. This is where there is a large information gap. The policy-makers lack accurate information on both the demand and supply sides of the land question, which is required to launch this policy. On the demand side, verification of need and entitlement are necessary. Do applicants fit the definition of the “poor”? What should be the criteria for land allocation, how does one decide who deserves land or who needs land more? Does it matter if the applicant is not a local inhabitant of the area if they need land? On the supply side, each public agency may have information on the number of inhabitants and the type of legal documents the occupants hold in the areas for which it is responsible; there may or may not be records of official boundaries. In most cases, what agencies do not have is information on current land use in those

areas. In practice, the existence of a stock of land does not necessary guarantee availability for allocation. The probability that any unclaimed land has already been occupied and utilized is almost 100 percent. In other words, there are vacant lands for allocation as part of poverty alleviation measures as such.[1]

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One of the main drivers of the assets capitalization policy is the recognition that a sizeable stock of assets, particularly those held by lower-income and the poverty-stricken groups, cannot be capitalized. The combination of constraints, ranging from the questionable legitimacy of claims, the risk factors and the high costs for administering loans to large number of loan applicants, has resulted in differential costs of capital for the marginalized social and economic groups, thereby placing them in even more disadvantaged positions. Moreover, the fact that those assets cannot be used to access capital amounts to saying that the value of assets in question is limited to only its use value, thus restricting the ability to maximize the potential economic rent.

The launching of this policy is based on two basic assumptions. First, while the poor do have assets, operational channels for the poor to access capital are currently limited. Second, creating access to capital can be a modality for unleashing the productive capacity of the poor, thereby helping them to escape the poverty trap. The policy intervention is designed to create that access to capital by formalizing lesser forms of property rights used by the marginalized economic groups in the rural sector, as well as their urban poor counterparts in the so-called informal sector of the economy. A precondition for bridging these small and informal economies to the capital markets will be the registration of those assets as a step towards creating values from them.

The existence of accurate data and information, both in terms of registration records and maps, is of critical importance, and is seen as a precondition to gaining access to formal sources of credit. In launching the policy, many of the factors and basic information appear to be unknown, such as: what is the stock of land under public agencies; what are the legal properties and how do they affect price and the capitalization process; and what is the land value, and to what extent do such values determine access to the formal capital market?

Regarding the first two objectives, in estimating the stock of public land that is under the responsibility of various public agencies in Thailand, the five basic questions are: (i) how much land is under the jurisdiction of the various public agencies; (ii) the size and the location of land; (iii) the current status of land use; (iv) whether land is legally occupied through formal permission of the agencies responsible or leased out, or whether land is illegally occupied through encroachment; and (v) the market values of various types of land documents. One of the difficulties of estimating the total stock of public land is that although each public agency has been and still is responsible for compiling and updating their land database, there is no single agency that compiles and combines the data. In most cases, there is no established access to land data even among the public institutions themselves. Thus, more often than not, there is heavy reliance on informal and personal channels.

As the key agency at the policy level to oversee the implementation of this policy, the immediate concern of the ACB is to expedite the process of registration of land rights, contracts and various types of permits on assets, as well as verification of the authenticity of such documents.

[1] These observations are based on an ongoing study by O. Nabangchang-Srisawalak and E. Srisawalak, *The development of land information and mechanisms for management of land resources at the local level*, supported by the Thailand Research Fund.

[2] This section is based on observations from an ongoing study by O. Nabangchang-Srisawalak and E. Srisawalak, *The feasibility of capitalization of land resources within the framework of the assets capitalization policy*, commissioned by the Assets Capitalization Bureau.

To minimize both time and expense by being able to focus efforts on what is really essential, it was decided that it would be a more practical start for the agencies in charge of the land assets covered by the policy and the financial institutions to work out what critical information would be needed. The agencies directly responsible, together with the public financial institutions, will be responsible for improving and converting the existing database into computerized information that can be shared. The ACB will work with the Ministry of Information Technology and Communication to design a central data system, which will link up with the specific database of the implementing agencies.

Conclusion

The information and analysis presented in this article illustrate the importance of land and land tenure data to policy-makers. Access to land and tenure information, as well as accuracy and reliability of information, are essential inputs to current policy-making in the three key areas of poverty alleviation, environmental protection and improvement of access to capital markets.

Discussions on the current status of the collection of land tenure data highlight both shortcomings and potential areas for improvement. The advantages that Thailand may appear to enjoy with respect to neighbouring countries are the existence of multiple databases, and the availability of a critical mass of qualified statisticians and technicians with years of experience in collection, computation and analysis of data. In recent decades, Thailand has also made large investments in building the digital databases with comprehensive socio-economic and physical data. The shortcomings highlighted in this article, however, show that the fragmented approach and coordination constraints have limited the practical value of the information available. Higher practical value can be gained if the multiple stand-alone databases can be linked, which would make it possible both to broaden and to deepen the analysis. The article has also highlighted an area of change that will directly influence land administration, particularly at the local level: this is the change brought about by the overall trend towards decentralization, which will result in expanding responsibilities of local governments for collection of land taxes as well as the use of revenues in management of natural resources (land being one of the most important). This is an area where Thailand, similar to other countries in the region, will face challenges in building capacity and developing a land and tenure database that is of practical value to support the work of local governments.

This article has made reference to the policy areas that are aimed at improving both land administration and the potential to maximize the utility of land resources to respond to social, economic and environmental concerns. Two recently launched policies, namely poverty alleviation and assets capitalization, highlight the shortcomings and the limited value of existing land and tenure data systems. The ideal situation would be that existing land and tenure data could be readily accessed so that both policies can be launched with the minimal amount of effort to verify information. As with many other preceding policies, the time lag in implementing policies can often be traced back to the need to collect and verify information. This raises the question of the cost-effectiveness of public investments in land and tenure data and the limited practical value of the databases created, which results from having placed greater importance on the needs of institutions in having their own databases over considerations of what the data would be used for.

Recommendations

Despite the shortcomings illustrated above, investments made up to the present are far from wasted. What is required now are the extra efforts to link the databases and draw upon the wealth of information waiting to be analysed. There are three

sets of databases that, if pooled together, could allow in-depth analysis both of cross-sectional and time series data. These are:

- socio-economic information that can be obtained from the agricultural, population and labour censuses, and production statistics from the periodic surveys of agricultural households;
- physical and ecological data; and
- the various development indicators now being compiled, such as poverty indicators and basic needs.

In developing a frame for the purpose of combining the variables from the various databases, the design should also anticipate the inclusion of the land information to be collected by local governments as part of their new assignments in land management. This database will contain information at the individual level on the number of parcels of land owned, rented or leased-out, as well as location, nature of land use and legal status. This proposed "integrated" land tenure database would be available from the village level, which could be aggregated to subdistrict, district, provincial and higher levels of analysis. The existence of such a database would be the means to understanding the "area-based dimension" of land tenure, as opposed to the "institutional-based dimension" of land tenure as in the current system.

It must be said, however, that what will be more difficult to mobilize to carry this proposal through is not those extra financial inputs, but rather the cooperation of the institutions involved. Ownership of information, including land and tenure information, is after all an institutional power that public agencies would be less than willing to share.

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FAO/10478/A. Wolstad

Données foncières en matière d'agriculture et de développement rural: un examen critique du dualisme en Afrique du Sud

L'Afrique du Sud dispose d'un éventail de régimes fonciers, à la fois formels et informels. La gestion des terres dans les zones «formelles» est extrêmement développée, et est fondée sur un registre central d'actes notariés et de systèmes de documentation foncière perfectionnés. Cependant, la plus grande partie de la population habitant dans ces zones demeure invisible aux yeux du système formel du fait qu'elle occupe des aires informelles au sein des zones urbaines ou du fait qu'elle réside sur des fermes commerciales qui appartiennent à d'autres. Dans les zones «informelles» ou à régime de propriété communal, réservées par le passé à des occupants noirs, la gestion des terres qui remonte à l'ère de l'apartheid s'est effondrée et une gamme de solutions impromptues l'a remplacée. Il reste qu'un système de gestion des terres unifié en Afrique du Sud doit s'élaborer. Dans l'ensemble, les départements gouvernementaux aux échelons national et provincial ainsi que le secteur privé peuvent accéder aisément aux données foncières formelles, mais une grande partie de l'administration locale dispose de connaissances limitées eu égard aux sources et doit lutter afin d'obtenir les données foncières les plus élémentaires pour les zones relevant de leur juridiction. Les données sur les zones à régime de propriété communal sont en général disséminées et le plus souvent de qualité médiocre.

Datos de titularidad territorial en el desarrollo agrícola y rural: una visión crítica del dualismo en Sudáfrica

Sudáfrica dispone de una serie de sistemas de titularidad territorial, tanto oficiales como no oficiales. La administración territorial en las zonas «oficiales» está muy desarrollada, y se basa en un registro central de escrituras y en complejos sistemas de información catastral. No obstante, la mayor parte de la población residente en estas zonas se mantiene invisible para el sistema oficial, ya que ocupa asentamientos no oficiales en zonas urbanas o reside en granjas comerciales propiedad de terceros. En las zonas de titularidad comunal o «no oficial», antiguamente reservadas a la población negra, la administración de las tierras implantada en la época del apartheid está a punto de derrumbarse sin que se hayan encontrado soluciones alternativas. En Sudáfrica todavía no existe un sistema unificado de administración territorial. Los departamentos gubernamentales nacionales y provinciales y el sector privado acceden fácilmente a los datos de titularidad oficiales, pero la mayor parte de los funcionarios del gobierno local tiene un escaso conocimiento de las fuentes disponibles y tropieza con dificultades para obtener los datos de titularidad básicos de sus respectivas zonas de jurisdicción. Los datos relativos a las zonas comunales están muy desperdigados y son de poca calidad.

Land tenure data in agriculture and rural development: a critical review of dualism in South Africa

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South Africa has a range of land tenure systems, both formal and informal. Land administration in the "formal" areas is highly developed, and is based on a central deeds registry and sophisticated cadastral information systems. Much of the population residing within these areas, however, is invisible to the formal system, because it occupies informal settlements in urban areas or resides on commercial farms owned by others. In the areas of "informal" or communal tenure, formerly reserved for black occupation, apartheid-era land administration is in a state of collapse and a range of ad hoc solutions have taken its place. A unified land administration system for South Africa has yet to emerge. National and provincial government departments and the private sector generally have good access to formal tenure data, but much of local government has limited knowledge of the sources available and struggles to obtain the most basic tenure data for their areas of jurisdiction. Data on communal areas is widely scattered and generally of poor quality.

Land tenure, and land tenure data, in South Africa are a highly contested terrain, marked by an extreme duality. As a result of deliberate policies under colonialism and apartheid in the nineteenth and twentieth centuries, South Africa today is characterized by two broad tenure systems – the system of private property based on formal (mainly freehold) title, and the system of communal tenure based largely on informal rights and customary practices. While there is considerable variation and even overlap within and between these systems, and certain elements that do not fit neatly into either, this duality is, nonetheless, central to an understanding of land tenure issues in the country.

The system of private property based on freehold title – what can be loosely described as the formal system – applies to the great majority of land in South Africa, including both urban and rural areas. The technical and administrative systems associated with it are comparable to those in the most developed countries of the world. State services, such as the deeds registry and the surveyors-general, are supported by private-sector professionals, including property lawyers, valuers, conveyancers, surveyors, town and regional planners and estate agents, as well as by a sophisticated body of law. A thriving land market exists across the residential, agricultural and commercial sectors, supported by a range of financial institutions providing mortgage bonds and other services. This formal system of property ownership and administration in turn underpins most of the economic activity of the country.

Despite the advanced nature of the formal property system, it continues to exclude a large proportion of the population, as a direct result of centuries of colonial and apartheid practices that aimed to segregate the population along racial lines and deny or limit the property rights of the majority black population. Prior to the advent of democracy in 1994, black people generally lived under one or another inferior form of

property rights – as rental tenants in urban areas, as tenants-at-will on commercial farms, as subjects of tribal chiefs in rural communal areas or as squatters on land belonging either to the state or private owners. Only a tiny minority of the black population were able to acquire land rights comparable to the formal rights enjoyed by most of the white population.

Under apartheid, the system of administration of black communal areas was legally and administratively well defined, albeit racist, oppressive and manifestly inferior to that prevailing in the white freehold areas. With the transition to democracy (beginning around 1990), the communal system entered a state of general collapse and administrative and legal chaos. Key institutions such as the South African Development Trust and the former "homeland" (or Bantustan) governments were abolished, and not all of their functions were taken over by other government departments. Departments of agriculture in the nine provinces of South Africa have undergone major rationalization, and no longer carry out many of the land administration functions that they did in the past. Magistrates' offices have, officially, ceased to have any role in land administration. New institutions, notably elected local government (municipalities), have been created, with considerable powers in areas such as planning and economic development, but without clarity in their role in either communal areas or on commercial farms, where most of the rural population resides. Unelected tribal authorities continue to operate within the communal areas but without any clear legal guidelines or official supervision.

With the repeal of much (but not all) apartheid-era legislation on communal land, and the collapse of many of the institutions responsible for land administration, there has emerged a legal and administrative vacuum, greatly exacerbated by a lack of clear state policy on the reform of communal tenure. The government is constitutionally obligated to provide tenure security to all citizens, but it has taken ten years to pass a law – the Communal Land Rights Act of 2004 – that would address issues of land ownership and administration in the communal areas. The law was not expected to be implemented before the end of 2005 and, in the meantime, interim measures and assorted regulations from the apartheid era were deployed in an ad hoc manner. The dominant characteristic of the land tenure system remains legal and administrative chaos.

This article, which is based on a review commissioned by FAO, approaches the question of land tenure and land tenure data from the perspective of policy-makers and officials responsible for land administration and for developmental issues. It does not deal in any depth with the day-to-day management of tenure data but instead focuses on broader questions of the availability, reliability and general utility of tenure data to policy-makers and implementers, and the implications for both land administration and broader development objectives. It is based on a review of available literature on land tenure matters in South Africa (including Web-based sources), supplemented by interviews with selected individuals with knowledge of tenure data and land administration issues. Research was carried out in South Africa in January and February 2005.

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The arrival of Dutch, and later British, colonialists at the Cape in the mid-seventeenth century unleashed a process of systematic dispossession of indigenous people and destruction of African societies that continued up to the dawn of the democratic era. As the European settlement at the Cape grew, traders, hunters and farmers gradually advanced inland, greatly disrupting the lives of the Khoisan and later Xhosa and other people with whom they came in contact (Thompson, 1995). As the settlement expanded, settlers began to enforce military and political control over the people they encountered and the land

they occupied. Dispossessed of most of their land, black people were drawn into a variety of subservient positions on farms and in towns, and later in mines and factories.

Freehold tenure – based on the system then prevailing in the Netherlands – became established at the Cape, particularly for residential and arable land, from as early as the 1670s, along with a system of loan farms in the outlying areas (Carey Miller, 2000). This system of Roman–Dutch law was not displaced by English common law during the period of English colonial rule, and continues to define the law of property in South Africa up to the present. Under British rule at the Cape (from the early nineteenth century), loan farms in the outlying areas were gradually converted to perpetual quit-rent, and all new land grants were made in quit-rent title. Farms were formally surveyed and registered in the deeds office. A similar system prevailed in the nineteenth century Boer republics of the Transvaal and the Orange Free State, where initial land grants to settlers were followed by formal surveying and registration of title. Carey Miller (2000) argues that formal titling was largely reserved for whites throughout the eighteenth and nineteenth centuries, and was practically unavailable to people of colour.

With the discovery of vast deposits of diamonds and gold in the late nineteenth century, strenuous efforts were made by settlers and the colonial powers to coerce black people to work in the mines for extremely low wages (Crush, Jeeves and Yudelman, 1991). A central part of this strategy was to curtail drastically black people's access to land, thereby forcing them into wage employment. Under the Natives Land Act of 1913 and the Native Trust and Land Act of 1936, just 13 percent of the land in the country was set aside for the black occupation, and black people were prohibited from owning land in the remaining 87 percent of "white South Africa" (Bundy, 1979; Wolpe, 1972). On the white-owned farms, where the majority of the black population actually lived, a range of measures were implemented to abolish the systems of sharecropping and labour tenancy, under which black tenants had been able to gain access to plots for independent production (Keegan, 1986). Black tenant farmers were thus transformed into agricultural labourers, subjected to harsh labour conditions and denied rights to land. Within the reserves – the 13 percent set aside for black occupation – residents were generally only permitted to occupy, rather than to own, the land, and relied heavily on migrant labour for their survival

Under the system of apartheid, from 1948 on, these reserves (later know as homelands or Bantustans) became synonymous with extreme poverty, underdevelopment and misrule (Lodge, 1983). In urban areas, the notorious Pass Laws and the Group Areas Acts led to the destruction of vibrant, multiracial communities such as District Six and Sophiatown, and the forced removal of millions of people to the Bantustans (Platzky and Walker, 1985). Church mission stations, which gave black people access to land within designated white areas, along with the few remaining black-owned farms, were systematically eliminated by the government of the day in pursuit of its racist policies.

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From one perspective, South Africa has a highly developed and efficient system of land administration. Over much of the country, land markets function effectively, property rights are recognized and protected, environmental regulations are enforced and land use functions within a sophisticated planning framework. Another perspective, however, suggests that fundamental issues of land management in the country remain unresolved, with particular challenges posed by the extension of the dominant "formal" system to the "informal" areas of communal land in the former homelands.

For Kingwill, there are "continuing misfits between the dominant land management frameworks in developing countries like South Africa, and the marginalized informal

systems that serve the poor in both urban and rural landscapes" (Kingwill, 2004, p. 1). This lack of a unified system of land administration is highlighted in reports on land administration in the Eastern Cape by the Public Service Commission, which found no shared understanding on how the land administration function in the province should be performed, "multiple and parallel systems" of land administration, and a "vacuum" in the regulatory framework (Public Service Commission, 2000, 1.1; and 2003, p. x).

Similar concerns are raised by Cross, who highlights risks of overly complex land administration systems and lack of clarity about responsibilities and procedures, especially with regard to the provision of housing for the urban and rural poor in South Africa:

> *Under the complicated arrangement of delegated land powers that prevails, actual tenure control on the ground is sometimes weak and administrators who are frustrated, unsure of their authority and sometimes inclined to push the limits are handling land matters at many different levels. In this grey area, fly-by-night developers and pirate land allocators in tribal and informal areas have been establishing room to operate. Their activities detract from tenure security for an unknown number of disadvantaged landholders with weak tenure security or rights, which are difficult to document.*
>
> (Cross, 2002, p. 199)

Current policy reforms are based largely on the assumption that the existing formal system can, with only minor adjustment, meet the requirements of less formal and communal systems, an assumption that is challenged by many authorities in the field. Carey Miller (2000) argues that the historic importance of registration is continued in the reform era, as government seeks to replace lesser, permit-based rights with rights of ownership. Kingwill argues that official thinking on reform of land policy since 1994 has been based on the erroneous assumption that the formal system can be expanded to incorporate the informal, without itself undergoing radical change: "Emerging land policies aim to 'suck' the informal systems into the formal systems. There is a need for more rigorous analysis of why these policies continue to fail." (Kingwill, 2004, p. 1).

[redacted]

The formal land titling and registration system in South Africa is based on the deeds registries, as regulated by the Deeds Registries Act of 1937. The system is based on the transfer of ownership of land by public registration, rather than by private conveyance (Carey Miller, 2000). While the common law ownership of land includes the ownership of all fixed improvements erected on the land, South African law also recognizes separate ownership of buildings or parts of a building. Such ownership is regulated by the Sectional Titles Act of 1986.

Both the Deeds Registries Act and the Sectional Titles Act of 1986 provide that deeds and supporting documents shall be prepared and lodged in the deeds registries by a conveyancer or public notary. Under the South African system, title to land and other real rights are not guaranteed by law. Rather, security of title is the result of the respective responsibilities carried by professional land surveyors (under the authority of a surveyor-general), the deeds registries established throughout South Africa and an independent attorneys' profession. The system of registration that operates in South Africa has been typically described as highly efficient and reliable (Pienaar, 2000).

The deeds registration system provides four formal functions – registration of deeds, maintenance of a public land register, preservation of registration records and provision of registration information to the public. A total of 1.2 million transactions of all sorts were carried out in all deeds registries in the financial year 2003–2004, including 399 138 transfers, 251 104 bonds related to freehold titles and over 20 000 leasehold transactions (Department of Land Affairs, 2004).

A range of additional services essential to the functioning of the land registry system are performed by the national Department of Land Affairs, of which the most important are survey and mapping, and cadastral surveys, as regulated by the Land Survey Act of 1997. As with the deeds registries, the system of cadastral surveying in South Africa is generally held in high regard. Information pertaining to the Cadastral Information System has recently been incorporated into a computerized map of all seven million registered land parcels and all administrative boundaries in the country. Other surveyed real rights, such as servitudes and leases, are also included in this map. According to the office of the Chief Surveyor-General, this map is in great demand and is used for a wide variety of spatial planning purposes, in the fields of housing, health, education, water, electricity and post and telecommunications.

The periodic agricultural census reports on the number of farming units in both the commercial sector and family farming, but does not provide specific detail on land tenure. Aggregate data are provided on the nature of the land-holding entity (e.g. individual, private company or government enterprise), but not on the actual form of land tenure (National Department of Agriculture, 2002). Elsewhere, the census differentiates between workers and proprietors/tenants employed on farms, but this latter category is not disaggregated and again refers more to the position of individuals within the farming enterprise rather than to the nature of the land tenure.

Public institutions generally have good access to tenure data related to privately owned land, particularly with regard to boundaries, extent, ownership, ownership history, mortgages and leases. This information is available via the deeds registry, but also from a variety of data systems maintained by government departments and a range of private-sector service providers that interact closely with the offices of the Chief Registrar of Deeds and the Chief Surveyor-General's Office.

While the formal system described here has many strengths, and serves many of the planning and developmental needs of the country, it also has severe limitations, especially when it comes to meeting the needs of the majority of the poor and marginalized. The first major limitation is that the formal system does not extend much beyond the 87 percent of territory that formerly constituted "white" South Africa. Insofar as formal tenure data exist for the former homelands, they tend to refer only to nominal ownership of substantial parcels (e.g. the outer boundary of land held in trust by the state on behalf of communities) and not to individual land holdings or, as in the case of much quit-rent title in the Eastern Cape, have not been maintained and are therefore long out of date.

Second, the formal system does not capture the detail of landholding and land use in situations where large numbers of people are not the owners of the land they occupy. This applies to millions of people residing in so-called informal settlements in and around urban centres, as well as millions of farm dwellers residing on commercial farms. Urban informal settlements may be found on land registered in the name of private individuals or corporations, or on state-owned land and, in certain areas, such as greater Durban and built-up areas within the former homelands, they may be on communal land (Royston, 2002). In Soweto (the largest township in South Africa), where freehold title was introduced in the early 1990s, more than 15 percent of recent transfers have not been registered – a pattern repeated throughout the country (Fourie and van Gysen, 1996).

The commercial farming zone accounts for approximately 65 percent of the territory of South Africa and is home to an estimated three million farm dwellers, of whom less than one-third are employed on the farms (Hall, 2004). Under apartheid, farm workers (and farm dwellers more generally) were, by law, tied into a highly subservient relationship with the white

landowners, severely restricting their rights to change jobs or move off a farm, or to organize for better working or living conditions. Landowners generally provided rudimentary services for their farm dwellers, often with the help of subsidies from the state, although in many cases farm dwellers built their own houses. In the early decades of the twentieth century, many farm dwellers were provided with land to grow their own food crops or graze livestock, while others entered into a variety of tenancy arrangements, including cash tenancy, sharecropping and labour tenancy. Over the course of the twentieth century, most farm dwellers were deprived of access to agricultural land, leaving them with only basic accommodation and possibly a small garden plot. Farm dwellers are protected by law from arbitrary eviction, but evictions of farm dwellers remain common, and little has been done by the state to promote long-term security of tenure for farm dwellers on the farms they occupy (Hall, 2003).

The content of farm dwellers' rights – how long they have lived on a farm, what terms have been agreed with the landowner, the boundaries of land allocated for their use, and other customs and practices established over generations – is typically known only to them and to the landowner. Where written agreements exist between owners and dwellers, these typically relate only to matters of employment, with a general reference to housing or other benefits. Land rights *per se* are almost never recorded in writing. The great inequality between farm owners and farm dwellers – both in terms of the enforceability of their land rights and their wider socio-economic status – determines the views and responses of outsiders, including government agencies. The national Department of Land Affairs and provincial departments of agriculture maintain no registers of farm dwellers or their rights, and typically have no information on their living conditions or even the pattern of evictions in their areas of operation. Local government, which is responsible for the provision of basic services to all citizens, generally treats private commercial farms as no-go areas and excludes farm dwellers from many of its activities. In this context, the general absence of land tenure data with respect to farm dwellers is both a symptom and a contributing factor to the ongoing marginalization of this socially vulnerable but numerically large social group.

A third category of land where the formal tenure system tends to break down is state-owned land. It is estimated that the state (across all spheres of government and state-owned companies) owns approximately 24 million hectares, or 19.8 percent of the national territory (as at 31 December 2002) (Department of Land Affairs, 2003). Just over half of the total is controlled by the Department of Land Affairs, with the rest falling under a range of state agencies, including the Department of Public Works, national and provincial parks, the Department of Water Affairs and Forestry and the defense force. Sizeable areas of state land are held in trust on behalf of various communities, which occupy it under various forms of communal tenure. While information on specific portions of state land is generally available via the deeds registry, most is held in the name of either the Minister of Land Affairs or the Minister of Public Works, with little or no detail on the actual use of such land (e.g. for a school, hospital or military barracks). Needless to say, details of informal occupiers of state land are generally not recorded in any source. Further problems arise from the fact that much state land in the former homelands remains registered in the names of old homeland governments, ten years after their abolition. Repeated efforts have been made, by the Departments of Public Works and Land Affairs, to compile a detailed and complete inventory of state properties, with mixed results. Within the Department of Land Affairs, this function was carried out by two directorates, Public Land Inventory and State Land Management, which were merged in 2002 into the Directorate: Public Land Support Services.

Provincial and local government officials frequently express frustration about the lack of detailed information about state land in their jurisdictions and about the lengthy processes involved in acquiring state land for specific purposes (a process much complicated by the lack of certainty regarding responsibilities of various stakeholders with respect to state land). Some municipalities do not even have information available on land that is under their direct ownership (Hall, Isaacs and Saruchera, 2004). There is a need for better access to information on state land, particularly at the level of municipalities, to allow for more effective spatial planning and developmental activities.

■

The black rural areas of South Africa are marked by a wide variety of tenure forms, shaped by varying degrees of interaction among communitarian systems of indigenous origin, modern systems of individual ownership and state-imposed systems designed to maintain social and economic control (Lahiff, 2001). This results in very different forms of tenure, which can diverge widely from what their nominal forms suggest and from the regulations laid down by the state (Cross, 1991).

Major differences are observed within communal areas, based on factors such as the history of acquisition, population pressure and proximity to urban areas. Land under the jurisdiction of tribal authorities, for example, may comprise old "reserves" (pre-1913 lands), tribal farms (lands purchased by tribes before 1936), private lands (lands purchased by individuals or groups prior to 1936) and "trust land" (lands purchased by the South African Native Trust/South African Development Trust after 1936). Important differences in tenure arrangements are also to be found among lands used for different purposes, such as residential land, arable fields, grazing land (typically used also for harvest of natural materials such as firewood, thatching grass and medicinal plants) and business sites.

The majority of land in all the former homelands is registered in the name of the Government of South Africa, or some proxy of the government, such as one of the former homeland governments, the Ingonyama Trust (in KwaZulu-Natal) or the South African Development Trust. This can, technically, be referred to as state-owned land, albeit of a special kind, because much of it has been officially granted for the exclusive use of particular tribes or other groups. Considerable areas of state land, however, have not been formally allocated to any group, and can properly be referred to as state land, although much of it has been informally occupied by communities. In the former Coloured Rural Reserves, concentrated in the Northern and Western Cape, land is under the control of local municipalities, but effectively remains state (or public) land.

Other categories of rural land occupied by black communities include land purchased (or transferred by the state in terms of a deed of grant) and held in freehold by individuals, by groups of individuals, by corporate entities (such as tribes) and by church bodies (Haines and Cross, 1988). This can, technically, be referred to as privately owned land, whether individually or collectively owned, in that the state has no legal standing as owner. Nonetheless, much of the "private" nature of such land has been compromised by failure to transfer land properly between generations, influx of non-owners and, in some cases, abandonment of the land by church bodies. An important intermediate category, that combines elements of state and private ownership, is land purchased by tribes or other groups but registered in the name of the government or one of its proxies. This special arrangement arose as a consequence of the 1913 Natives Land Act, which prohibited blacks from acquiring land in their own name outside the scheduled areas. Such land cannot be described as state land because the state did not purchase the land, but acted as an intermediary on behalf of what were effectively private purchasers. It can,

therefore, be described as a limited form of private ownership, where owners were denied full rights of private ownership. Finally, in the Eastern Cape, especially in the former Ciskei, sizeable areas are held in quit-rent, a limited form of private ownership. Whereas quit-rent would usually be seen as a relatively secure form of individual ownership, in the black areas it has been compromised by repeated interference and regulation by the state and by social pressures that have imposed a degree of communalism on much quitrent land (Haines and Cross, 1988; Kingwill, 1993).

The formal ownership of much land in black areas is thus both confused and contested, the result of efforts by a colonial state, over a century or more, to limit and control the rights of black people. While certain decisions about land allocation and adjudication of land rights take place within local institutions – that is, internal to the system of communal land – a range of land administration and land management functions are carried out by institutions (local, provincial and national government agencies) that straddle formally titled areas and communal land. Dealing with this duality is an enormous challenge for the institutions involved, given the maximally divergent practices, quality of information and even laws that apply in each.

In a study of the Eastern Cape, the South African Public Service Commission (2003) described the challenge facing administrators in the following terms:

> *… the administration of land in the [Eastern Cape] is not in terms of a uniform legal framework. There are special legislative measures for "surveyed/unsurveyed" areas, urban/rural areas, communal and freehold-held land and so on. Even through the 1936 Land Act itself has been repealed, none of its retrogressive regulations have been done away with. The total impact of this is confusion, frustration and uncertainty at the level of administrators, who are under great pressure to deliver in terms of demands of the new dispensation albeit within an archaic legal framework. This kind of contradiction simply cannot co-exist with efficient and effective service delivery efforts.*
>
> (Public Service Commission, 2003, 1.3)

Needless to say, this confusion has direct, negative consequences for land administration:

> *This situation has led to poor land and service delivery in the former homeland rural areas and to the prevalence of informal and sometimes grossly unaccountable actions in the rural areas of the former homelands, since land administration in those areas is no longer contained within any organisational framework in the provincial government or any functioning legal framework.*
>
> (Public Service Commission, 2003, p. xi).

Such a lack of legal and administrative clarity not only leads to inefficiency and creates an obstacle to development, but it also provides opportunities for local elites to advance their own position at the expense of others (see Claasens, 2001).

The mix of formal and informal tenure types, generally viewed by officials as unequal, has a direct effect on where development takes place and for whose benefit. In many municipal areas, development is concentrated in freehold areas or on state land, to the detriment of areas under communal tenure. Nevertheless, a certain amount of development does take place on communal land, but usually requires extended negotiation with local stakeholders and ad hoc solutions. In the Eastern Cape, for example, extensive use has been made of the Interim Protection of Informal Land Rights Act to allow for the transfer of portions of land from communal use to various government departments for a variety of purposes. This process is usually managed by the district offices of the Department of Land Affairs. Elsewhere in the country, another law, the Upgrading of Land Tenure Rights Act, has been used intermittently, mainly by individuals wishing to obtain freehold rights in communal areas prior to establishing a shop or other business, but also for housing schemes (Claasens, 2001; Lahiff and Aphane, 2000). This results in a

pattern whereby isolated parcels of land are surveyed, registered and held in freehold, surrounded by large areas of unsurveyed land held communally. Data on such parcels are generally available within local municipalities and other institutions, but data on surrounding areas are generally absent.

Unlike more formal systems of tenure, communal land rights do not depend on an objective, verifiable document or other artefact, such as a title deed. Communal land rights are often effectively personal rights, only loosely connected to specific parcels of land. Land parcels may be demarcated on the ground, but are not necessarily measured, and neither the exact location, nor the boundary, nor the extent of the plot may be recorded in any other form. For communal land, the outer boundaries and major subdivisions (e.g. tribal authority boundaries) are generally known to officials and others from paper-based maps and, in some cases, electronic systems. The major weaknesses, however, are the lack of reliable data at the level of individual land parcels (i.e. residential and agricultural plots), lack of clarity (and often parallel process) in the allocation of rights and uncertainty over the status of land rights.

A variety of methods are used to record land rights in communal areas, although many are of dubious legal or practical value. The most common written record is the Permission to Occupy certificate issued under the Bantu Areas Land Regulations (Proclamation R188 of 1969), which drew its legal authority from the 1936 Native Trust and Land Act. Such permits usually indicate a right to a residential stand, as well as, possibly, the right to a specific amount of arable land and the right to keep a specific number of livestock. In many areas, however, the precise location of the land is not recorded, and land held under such permits is rarely surveyed at the level of the individual holding. A variety of other devices, both written and verbal, are also referred to as "permission to occupy" (PTO) and, like the R188 permits, effectively grant a lifetime, inheritable right to land in a particular area. PTOs and similar devices are generally seen as relatively secure forms of tenure, although their legal standing is not always clear. Their most obvious limitation lies in the area of transfer rights, as holders do not generally have the right to sell their interest in the property and permits are not accepted as collateral by commercial lenders.

Apart from records that were created at the time of allocation of plots, a range of measures have been employed to capture data (and even consolidate rights) retrospectively. Up to 1994, for example, agricultural officials sometimes surveyed arable plots, a process that captured certain information about the land users and could serve to formalize an otherwise informal land right. This was commonly done in the case of orchards, irrigation works or other "improvements". Similarly, interventions by veterinary officials, typically concerned with control of disease or overgrazing, could result in the compilation of lists of livestock owners and the issuing of a variety of stock cards (grazing permits). In the absence of more systematic tenure information, data generated through a local agricultural survey or census of stock owners often served as the only available source of information on land rights and land usage, and a PTO certificate or a stock card, no matter how cursory the data, could become an important means for land users to assert their rights to either government officials or their neighbours.

The PTO system continues to characterize land administration in most of the communal areas, as a result of the continued reference to old PTO certificates as proof of land rights and, in many cases, the issuing of new and legally dubious PTO certificates by a range of actors. While older (i.e. pre-1994) PTOs may continue to have some legal validity (and are widely accepted by occupiers and officials alike as proof of land rights), newer documents issued by municipalities, agricultural officials or magistrate's offices would appear to have no legal basis, and are in some cases being

issued in direct contravention of instructions from the relevant government department. According to the Public Service Commission (2000), officials of the magistrate's offices who lost their competence to perform certain tenure functions in the mid-1990s simply continue to perform what they regard as an essential service.

Land administration processes in communal areas are generally relatively informal and rooted in local customs, although heavily influenced by apartheid-era procedures and overlaid with a sometimes dubious officiousness. Outside formal townships, residential or arable plots are rarely formally surveyed, but may be marked with stones or fenced. Preference in land allocation is given to recognized members of respective communities, who may be required to pay a small fee to local leaders. In some cases, occupiers are issued with documentary proof, but such documents tend to be short on detail and of dubious legal status.

A recurring feature is the inferior position of women within virtually all customary land systems in South Africa. Despite the provisions of the South African Constitution and legislation on gender equality, women are routinely discriminated against in the allocation of land, in participation in communal meetings and in inheritance matters (Alcock and Hornby, 2004; Cross and Friedman, 1997; Small, 1997; Archer and Meer, 1997; Mann, 2000).

A minority of so-called communal land is held in private title, as freehold or quit-rent, which is officially surveyed and registered in the deeds office. However, a variety of factors serve to devalue such records. First, owing to racist laws, many de facto owners were recorded as beneficiaries of a variety of trusts, rather than as owners in their own right. Second, the failure to transfer title to heirs means that formal ownership of much private land is now far from clear. Third, as discussed above, the influx of population to black areas, much of it engineered by the state, has severely compromised the power of owners to exercise their rights, rendering many title deeds virtually worthless.

The principal findings of this examination of land administration and land tenure in South Africa are that, 11 years after the ending of apartheid, land administration remains fragmented and uneven, and that a sizable proportion (generally the poorest section) of the population remains outside the effective scope of the formal system. This has direct implications for the quality of tenure information and for the ability of public institutions to plan and implement developmental projects.

Over most of the national territory, the system of individual private property predominates, supported by an impressive array of state and private-sector services comparable to those found in the most developed countries. A central deeds registry and associated cadastral information service provide high-quality, detailed and up-to-date information in a variety of formats to owners, developers, planners and others, serving as the basis for a wide range of commercial and public administration activities.

In formally established townships, processes are under way to convert leasehold rights (not all of which are formally registered) to freehold through the issuing of deeds of grant. These areas are well on the way to individual freehold, and a number of innovative approaches are being tried with regard to surveying and titling. As with the upgrading of urban informal settlements, these township reforms can, with adjustments, be accommodated within the existing formal system. However, the limited resources of municipalities and other role-players often mean that such processes do not proceed at the pace, or with the degree of popular participation or awareness, that might be desired. Financial institutions have been widely criticized for failing to provide mortgages in many localities, because of negative perceptions of the creditworthiness of poor people and of the practical difficulties presented for repossession and resale of property. A related factor is the severely limited secondary market

in many residential areas, and reports of government-subsidized houses changing hands for considerably less than the cost of construction. Where properties do change hands, it is often on the basis of informal transactions that are not registered in the deeds registry. This raises the possibility that, even where reforms have taken place and people and property are drawn into the formal system, they may revert to informality over time.

A different prospect faces those living on privately owned commercial farms and under communal tenure arrangements in rural areas (mainly in the former homelands). In the case of farm dwellers, their use and occupation rights, although protected by general law, are outweighed in practice by the well-established rights enjoyed by farm owners. Where the rights of these two parties clash, the rights of the owner virtually always prevail, leading to the eviction of the farm dwellers. These evictions are routinely upheld by the courts. Even in the relatively few cases where farm dwellers have taken court action to defend their rights under the law, this has, at best, led to the preservation of the status quo, rather than to any long-term security of tenure. The one option available under current policy – expropriation by the state and transfer of ownership to the occupier – has been widely ignored, no doubt because of the perceived extreme nature of an intervention that reverses the established order.

Land *within* the communal areas, with the exception of residential stands and some arable fields, has not been subdivided, surveyed or demarcated, so the cadastral basis for the incorporation of individual rights into the formal system does not exist. Moreover, even where residential or other parcels have been demarcated, these are not seen as the exclusive property of the occupiers. Nominal landholders may be required to share resources with other users, and may be limited by local rules as to how they use or dispose of the land.

Under both these circumstances, the poor quality of tenure data available to outsiders is directly related to the weak or uncertain nature of the underlying land rights. Similarly, the lack of progress with tenure reform in these areas can be related to objective difficulties in fitting such rights into the existing formal system on the one hand, and the failure to develop alternative forms of land administration appropriate to the prevailing conditions on the other. Although further tenure reforms are in the pipeline, the current situation clearly gives users with relatively weak rights little option but to find a way of securing their rights within the formal system, or go without.

In areas where freehold predominates, public bodies are generally capable of accessing good quality tenure data sufficient to carry out their duties with regard to land administration, environmental regulation and development projects, with the notable exceptions of informal settlements and farm dwellers. Although wide disparities are found between government agencies in terms of their understanding of tenure issues and awareness of existing tenure data systems, it is clear that many are using advanced technology to access public tenure databases (such as the deeds registry) and to maintain their own geographical information systems.

Two broad exceptions to this pattern were found. The first relates to state land, about which there appears to be considerable confusion, including difficulties in ascertaining which state body has responsibility for particular portions of land. Even where such information is available (and considerable progress has been made in recent years to make such information available through the public land audit), public bodies such as municipalities appear to experience difficulties in accessing state land for developmental purposes.

The second exception to this generally positive picture is municipalities in rural areas, especially in areas such as the former homelands where there is not a strong tradition of local government. Recent surveys have shown that many local municipalities lack basic information about tenure matters within their area of

jurisdiction, are unaware of the advanced information services available to them from sources such as the Deeds Office and have a poor understanding of policy with regard to marginalized groups (such as farm dwellers and occupiers of communal land).

Land policy in South Africa is in a phase of rapid evolution and many areas are in considerable flux. On the basis of this study, the following recommendations for policy reform are offered:

- New forms of registration should be developed for rights holders in communal areas and for farm dwellers. Whereas discussions are being conducted about the former, the latter has not yet found its way onto the policy agenda.
- Interim measures should be developed for recording less formal rights in communal areas, based on existing PTO or similar records, prior to the upgrading of such rights. In addition, the roles of various stakeholders – particularly local municipalities and departments of agriculture – within such interim measures need to be clarified.
- Policies should be developed to ensure adequate access to and understanding of deeds registry and cadastral information within local government, including the provision of training to officials and councillors in the use of tenure data.
- Further reforms are required to ensure that reliable information on state land is available to all stakeholders, but especially to local government. Improved processes for the release of state land for developmental purposes should also be considered.
- There is a pressing need for the development of a comprehensive database on current and planned land reform projects, to be maintained by the Department of Land Affairs and made accessible to all stakeholders.

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Land information in Benin, between legal pluralism and dispersal of institutions

Despite the turning point reached for democracy in Benin between 1989 and 1991, the current situation is still in some respects one of transition, particularly relating to land policy – decentralization has still not been achieved, rural land legislation has not yet been voted and there is no urban land legislation. Land information is obviously adversely affected by this situation, in particular with relation to the taxation system, legal validation, land protection, regional planning and economic development. This article sets out the legal framework and the legal procedures relating to the production of land information in Benin. It then deals with the complex methods of knowledge, recognition and translation of rights in the rural (rural land plan) and urban (urban land register) environments, and concludes by considering the current issues, in particular those relating to political and administrative decentralization.

Información agraria en Benin: entre el pluralismo jurídico y la dispersión de las instituciones

A pesar del punto de inflexión alcanzado por la democracia en Benin en 1989-91, la situación actual es todavía, en algunos aspectos, la de una transición, en especial en materia de política agraria, ya que no se ha conseguido la descentralización, no se ha votado todavía la legislación territorial rural y no existe una legislación territorial urbana. La información agraria sufre necesariamente los efectos de esta situación, tanto a nivel del sistema tributario, como de la ratificación legal, de la protección territorial, de la planificación regional y del desarrollo económico. El presente artículo presenta primeramente el marco y los procedimientos jurídicos relativos a la producción de la información territorial en Benin; se tratan enseguida los complejos métodos de conocimiento, reconocimiento y traducción de los derechos en los entornos rurales (plan territorial rural) y urbano (registro territorial urbano), y se concluye con las cuestiones actuales, especialmente las vinculadas a la descentralización política y administrativa.

L'information foncière au Bénin, entre pluralisme juridique et dispersion institutionnelle[1]

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Malgré le tournant démocratique qu'a connu le Bénin entre 1989 et 1991, la situation actuelle est encore, à certains égards, une situation de transition, en particulier en ce qui concerne la politique agraire: la décentralisation est encore inachevée, la loi foncière rurale n'a pas encore été votée, et il n'existe pas de loi foncière urbaine. L'information foncière subit forcément les conséquences de cette situation en particulier au niveau des procédures de fiscalité, validation légale, protection territoriale, planification régionale et développement économique. Le présent article présente tout d'abord le cadre et les formes juridiques relatifs à la production de l'information foncière au Bénin. Il aborde ensuite les modalités complexes de connaissance, reconnaissance et traduction des droits en milieu rural (plan foncier rural) et urbain (registre foncier urbain), et se termine par les enjeux actuels, particulièrement liés à la décentralisation politique et administrative.

Le Bénin a vécu dans les années 1989-1991 une transition démocratique pacifique et innovante d'un point de vue institutionnel (Bierschenk et de Sardan, 1998; Banégas, 2003), Malgré ce tournant démocratique, la situation actuelle est encore à certains égards une situation de transition, en particulier en ce qui concerne la politique foncière: la décentralisation n'a pas encore été achevée, la loi foncière rurale n'a pas encore été votée, et il n'existe point de loi foncière urbaine. L'information foncière subit nécessairement l'influence de ce contexte particulier. Pour l'heure, il existe de nombreuses lacunes, typiques de certaines procédures qui varient de par leur complexité, les acteurs impliqués et leurs objectifs (fiscalité, validation juridique, protection territoriale, planification régionale, développement économique).

L'information est de nature composite dans la mesure où toute documentation élaborée constitue un savoir foncier définitif qui se rapporte à des objectifs spécifiques. En outre, l'information foncière a aussi une double nature, entre bien commun et ressource stratégique. De plus, mis à part l'information écrite, ceux qui s'intéressent au système foncier ont développé une base de connaissances extrêmement incohérente, hétérogène, souvent pas très formalisée ou claire, et destinée à des fins pratiques (par exemple d'évaluation et de résolution de situations conflictuelles). Or ce savoir contextuel est essentiel dans la gouvernance quotidienne du domaine foncier.

Cet article présente dans la première section le cadre juridique et les formes juridiques de production de l'information foncière au Bénin. Il traite ensuite des modalités complexes de connaissance,

[1] Cet article repose sur une étude effectuée en février 2005 au Bénin pour le compte de la FAO sur «L'information foncière au Bénin: production, stockage, utilisation», sur ma participation au programme d'appui à la mise en œuvre de la nouvelle législation foncière rurale (Lavigne Delville *et al.* 2003, Edja et Le Meur 2004; Le Meur, 2005) et sur des recherches en cours sur les liens entre foncier, politique, développement et mobilité dans le centre du pays (Le Meur 2006a).

reconnaissance et traduction des droits en milieu rural (plan foncier rural) et urbain (registre foncier urbain), et analyse enfin les enjeux actuels, liés en particulier à la décentralisation politique et administrative. Cette dernière est amenée à modifier profondément le paysage institutionnel, qui avec la commune, constitue l'échelon clef de la procédure, et deviendra le lieu principal de centralisation et, dans le meilleur des cas, elle sera chargée de l'organisation cohérente de l'information foncière. Toutefois, les communes ne disposent pas encore des moyens et des compétences nécessaires. Il faut définir quels sont les besoins en matière d'équipement et de formation. Il faut prendre en considération deux structures, l'une «verticale» avec l'administration territoriale, et l'autre, «horizontale», avec les communes voisines et les programmes de développement et de gestion des ressources naturelles. La gestion des espaces périurbains apparaît comme l'un des enjeux majeurs de la question foncière et de la décentralisation.

La question de l'information ne ressort pas du domaine de la mécanique des fluides; elle est de manière intrinsèque une affaire politique et économique, renvoyant à des logiques de pouvoir et de contrôle du savoir. Elle est aussi une affaire d'institution, au sens où les institutions codent de l'information et organisent socialement la mémoire et l'oubli, pour paraphraser Mary Douglas (1987: 69). Enfin, l'information foncière suppose pour sa production et son inscription dans le temps des dispositifs de traduction mobilisant un ensemble hétérogène d'acteurs, d'idées et d'objets[2].

[redacted]

L'appareil légal régulant la propriété foncière au Bénin est, comme dans les autres pays ouest africains, essentiellement d'origine coloniale. Il est par ailleurs extrêmement réduit[3]. Les premiers décrets coloniaux de 1904 et 1906 promouvant titres fonciers et propriété individuelle n'eurent qu'un impact extrêmement marginal. Basés sur le principe des «terres vacantes et sans maîtres», ils faisaient de l'État le propriétaire de toute terre non immatriculée, à l'exception de celles formant «propriété collective des indigènes» ou «détenues par les chefs les représentant», qui ne pouvaient être vendues ou louées qu'après approbation du gouverneur.

Des modifications de détail (Décrets de 1925, 1932) sont apportées sans remettre en cause les prémisses des mesures initiales et, fait significatif, les grands coutumiers supposés recenser tous les droits existants ne seront jamais vraiment opérationnels (voir Colonie du Dahomey, 1933). Le Décret du 15 novembre 1935 voit la disparition de l'expression «terres vacantes et sans maîtres»: «Appartiennent à l'État les terres qui, ne faisant pas l'objet d'un titre régulier de propriété ou de jouissance […] sont inexploitées ou inoccupées depuis plus de dix ans.» Il faut toutefois attendre le Décret du 20 mai 1955 pour que la charge de la preuve passe du possesseur à l'acquéreur.

L'indépendance du Dahomey acquise en 1960 ne change pratiquement rien à ce dispositif et la Loi foncière n° 65-25 du 17 août 1965 reprend le canevas colonial (en particulier le Décret du 26 juillet 1932 portant régime de la propriété foncière en Afrique occidentale française, AOF): l'État est propriétaire de la terre et les «droits coutumiers» sont plus postulés que clairement définis. La constitution – «Loi fondamentale» du 27 août 1977, élaborée pendant la période radicale du régime militaro-marxiste dirigé par Kérékou de 1972 à 1990, ne mentionne plus les droits

[2] Voir Callon (1986, 1992); Latour, 2000; voir Le Meur (2006b) pour une analyse du Plan foncier rural béninois selon cette perspective.

[3] Comme le notaient deux experts en 1994, «il n'existe pas de loi foncière et domaniale en République du Bénin» (Hernandez et Tribillon 1994: 16). Le renouveau démocratique s'est limité à inscrire la reconnaissance de la propriété privée dans la Constitution de 1990 tout en reconduisant un appareil législatif d'origine coloniale.

coutumiers. Des droits fonciers individuels ou collectifs (dans le cadre de formes coopératives promues par l'État) sont mentionnés, mais l'État reste le propriétaire du sol.

La Loi nº 61-26 du 10 août 1961 avait entre-temps précisé, dans une logique visant le développement, «qu'après l'étude d'une région, le président de la République pourra par décret, sur le rapport du Ministre de l'agriculture et de la coopération en décider l'aménagement et la mise en valeur compte tenu de la vocation des sols et des débouchés offerts». Les périmètres d'aménagement rural ainsi définis sont déclarés «périmètres d'utilité publique». Cette loi (qui remplaçait le Décret colonial du 25 novembre 1930 portant régime de l'expropriation pour cause d'utilité publique) a servi de support à des projets agro-industriels (prolongeant des programmes coloniaux des années 50) de promotion du palmier à huile, fondés sur des expropriations et redistributions foncières et une coopérativisation forcée qui, au-delà de leur échec économique, ont durablement transformé le paysage agraire du sud du pays (Le Meur, 1995). Ils constituent actuellement des zones d'ombre en matière foncière, exemple typique de production d'informel et d'incertitude par intervention de l'État.

À côté des zones touchées par les déclarations d'utilité publique qui se sont initialement conformées au cadre légal existant, les années 70 et 80 ont été marquées par la création de fermes d'État qui se sont faites en toute illégalité, sur la base d'expropriations et de redistributions à des clients du régime (le système bancaire étatique qui allait totalement s'effondrer en 1988-89 est ici fortement impliqué). Ces exploitations ont en général été des échecs financiers et les anciens propriétaires et d'autres personnes ont peu à peu repris pied sur ces espaces avec la démocratisation, sans que la situation foncière ait pour autant été clarifiée d'un point de vue juridique. Le Ministère de l'agriculture, de l'élevage et de la pêche (MAEP) mène actuellement, avec le soutien de la FAO, des actions sur les espaces non encore réappropriés, avec l'idée de les faire immatriculer comme éléments du domaine privé de l'État, pour les céder ensuite à de jeunes exploitants agricoles, selon une logique observée ailleurs de non-considération des aspirations et des espaces d'action des «jeunes» qui ne se retreignent pas au domaine rural, et encore moins à celui agricole (Chauveau, 2005).

Depuis le tournant démocratique de 1989-1991, ce sont les atermoiements puis la mise en œuvre non complétée de la décentralisation qui ont constitué l'élément central du paysage législatif (Lois nº 97-029, 98-005, 98-007, 986034 du 15 janvier 1999)[4]. La commune est devenue un échelon central de la gestion foncière. La sous-préfecture a disparu en tant que sous-division administrative et c'est le département qui est à présent la circonscription administrative, sans personnalité juridique ni autonomie financière, ce qui n'est pas le cas pour la commune. Les compétences foncières de la préfecture (délivrance de permis d'habiter, certificats administratifs) ont été transférées à la commune qui reprend aussi à son compte la mise en place du registre foncier urbain.

Le MAEP s'est engagé, en concertation avec le Ministère de la justice, de la législation et des droits de l'homme (MJLDH) et le Ministère des finances et de l'économie (MFE), dans un processus de réforme législative qui trouve en partie ses origines dans un projet de développement, le programme de gestion des ressources naturelles (PGRN), dont l'étude de faisabilité de la Banque mondiale en 1992 souligne que cela doit être l'une des missions[5]. La Déclaration

[4] À signaler aussi la Loi nº 93-009 du 2 juillet 1993 portant régime des forêts (avec son décret d'application nº 96-271 du 2 juillet 1996) qui distingue le domaine forestier classé (les classements sont en général d'origine coloniale) du domaine protégé, c'est-à-dire non classé.

[5] Les éléments d'information qui suivent sont principalement issus de Lavigne *et al.* (2003) et Edja et Le Meur (2004).

de politique de développement rural (MAEP, 2001) affirme que «la sécurisation des investissements nécessite la mise en place d'un cadre législatif approprié qui donne aux acteurs la pleine confiance aux structures, tant de l'encadrement que de promotion des différentes activités». Le Plan stratégique opérationnel (PSO: 58) précise que«en ce qui concerne le foncier (agricole, forestier, pastoral et halieutique), l'objectif reste d'adapter le droit traditionnel aux contraintes modernes, en utilisant (et en conservant) son dynamisme et son adaptabilité». Le processus est passé entre février 1999 et septembre 2001 par des enquêtes de terrain, et des séminaires ont été organisés sur le foncier rural pour recueillir des informations sur les réalités socioéconomiques et les préoccupations des acteurs du développement rural (agriculteurs, éleveurs, pêcheurs, propriétaires ou détenteurs coutumiers de terres, associations de développement, chercheurs, ingénieurs, juristes et cadres concernés). Sur la base des conclusions des séminaires et des études thématiques relatives à la question, un Comité d'experts nationaux a élaboré un avant-projet de loi portant le régime foncier rural sous le contrôle d'un Comité interministériel de suivi créé par le même arrêté, et sous la supervision conjointe des Ministères du développement rural (devenu le MAEP), du MFE et du MJLDH. Le projet de loi portant régime foncier rural a été adopté le 16 mars 2005 en Conseil des ministres.

La loi prévoit en particulier l'institution pour chaque village d'un plan foncier rural (Art. 115) à la demande du chef de village après délibération du conseil de village (Art. 118). Il débouche sur l'établissement d'un certificat foncier qui est un «acte de constatation et de confirmation de droits fonciers établis selon la coutume ou les pratiques et normes locales (…) faisant foi jusqu'à preuve du contraire établie devant le juge» (Art. 121). Il est possible de procéder à l'immatriculation ultérieure d'un fonds de terre enregistré au plan foncier rural (Art. 130). Cette extension prévue par la future loi a été précédée d'une phase pilote dans le cadre du PGRN devenu PGTRN (T pour terroir).

Pour ce qui est de la production législative actuelle, un commentaire s'impose, assorti d'une hypothèse interprétative: on assiste depuis quelques années à l'émergence d'initiatives législatives émanant de différents ministères, sans toujours avoir été précédées de déclarations de politique publique ni avoir été coordonnées entre elles. Actuellement, certains remettent en cause le projet de loi foncière rurale sous prétexte qu'il n'y a pas de raison juridique de séparer le foncier rural, et qu'il faudrait par conséquent une loi foncière générale. Si le premier argument est juste, rien n'empêche de partir de l'existant (bientôt la loi foncière rurale) pour bâtir ensuite un cadre commun à l'ensemble du foncier (l'idée d'une loi urbaine est avancée depuis longtemps, sans effets concrets). L'environnement et l'aménagement du territoire sont également l'objet d'entreprises législatives et l'on peut se demander – c'est l'hypothèse annoncée – si la prolifération peu coordonnée de projets de loi n'exprime pas une évolution du dispositif du développement qui, tout en restant structurel dans l'économie politique du pays, tend à se concentrer sur les prérogatives régaliennes de l'État, en l'occurrence les domaines du législatif et de la décentralisation: en d'autres termes, la rente législative comme avatar de la rente du développement, phénomène qui renforce l'hétérogénéité de l'information foncière.

■ ■

L'information foncière est disparate et fragmentaire. On doit distinguer différents types de données en fonction de leur mode de production. Les données primaires sont tout d'abord celles directement issues d'une procédure liées au dispositif d'administration foncière (textes législatifs, textes d'orientation et déclaration de politique nationale, titres fonciers, certificats administratifs, permis d'habiter, permis de construire, conventions de vente, cartes cadastrales,

registres fiscaux, comptes rendus, actes, éléments écrits relatifs aux conflits fonciers). D'autres données primaires sont produites hors administration foncière formelle («petits papiers» et actes informels divers visant à valider au moins localement une transaction foncière), lettres de revendication et plaintes dans le cadre des conflits fonciers. Les données secondaires sont également de natures diverses. Elles partagent le fait d'avoir fait l'objet d'un traitement à partir d'informations primaires: bases de données statistiques, représentations cartographiques, information GPS, système d'information géographique (SIG), procédures complexes de production et de gestion de l'information foncière – registre foncier urbain (RFU), plan foncier rural (PFR) –, enquêtes et états des lieux divers, résultats d'enquêtes qualitatives et quantitatives incluant les études réalisées dans le cadre de projets de développement, textes scientifiques sur le foncier, textes et récits locaux relatifs au foncier, à l'histoire du peuplement, aux autorités traditionnelles.

Les actes légaux et para-légaux sont divers. Ils sont produits et stockés par des institutions elles-mêmes diversifiées et il n'existe pas – ou presque pas – de mise en cohérence ou en relation de cette information foncière dispersée. L'information foncière légale est reliée à l'information foncière géographique (photographique et cartographique) qui en constitue une base objective et un élément de preuve. Toutefois le lien entre les actes juridiques et les supports topographiques est variable. Ainsi, les conventions de vente validées par les autorités territoriales ne sont jamais accompagnées d'un plan parcellaire qui permette de localiser le fonds de terre de manière non ambiguë.

Le titre foncier est le seul document juridique conférant la pleine propriété privée d'un fonds de terre (et donc en principe la possibilité de vendre légalement un terrain). Les terrains non titrés constituent donc le domaine privé (au moins potentiel) de l'État, ce qui donne d'une certaine manière une base légale aux expropriations pour la création de fermes d'État sous le régime du PRPB (voir toutefois aussi la loi fondamentale de 1977 dont l'Article 28 permet à l'État de réquisitionner des terres urbaines et rurales sans indemnisation automatique).

La délivrance de titres fonciers est restée une pratique extrêmement marginale au Bénin, sans grand changement depuis la période coloniale. Seulement 1980 titres avaient été émis en 1906 et 1967 dans tout le pays et, J. Comby qui cite ce chiffre (1998: 11-12), estime qu'en 1998, il existait moins de 10 000 titres fonciers dans l'ensemble du pays (pour Rochegude, 2000: 13, guère plus de 5 000), dont 60 pour cent à Cotonou et 20 pour cent à Porto-Novo et plus de 10 pour cent à Abomey-Calavi, ville qui est devenue une banlieue de Cotonou à l'expansion galopante et peu contrôlée. Ainsi, 4 pour cent des ménages dans l'agglomération de Cotonou et moins de 1 pour cent dans le reste du pays posséderaient un titre foncier. Selon la Direction de l'urbanisme et de l'aménagement (DUA) du Ministère de l'environnement, de l'habitat et de l'urbanisme (MEHU), à peine 10 pour cent des terrains urbains disposeraient actuellement d'un titre foncier (Mako Imorou, 2004). Dans tous les cas, il faut remarquer que les zones urbaines sont à peine mieux dotées que les zones rurales en la matière.

La conservation des titres fonciers est totalement centralisée à la Direction des domaines. J. Comby en soulignait en 1998 les dysfonctionnements: mauvais état physique des documents, manque de rigueur dans la tenue des livres, non localisation des plans des terrains adjoints au dossier (du fait de l'absence de cadastre). Ces dysfonctionnements sont des facteurs d'incertitudes et d'affaiblissement de la sécurité juridique «réelle» du titre foncier qui est constaté par différents services comme la DUA (MEHU) qui évoque l'absence de titres de propriété fiables et inattaquables.

Enfin, la mise à jour des mutations et

transactions n'est pas automatisée, elle se fait très lentement, et probablement de manière lacunaire, sur la base de tournées de terrain des agents des impôts. Ce dernier constat montre aussi que le dispositif institutionnel ne facilite pas les choses avec une direction du cadastre logée à l'Institut géographique national (IGN), et donc rattachée au MEHU, alors que la Direction des domaines se trouve logiquement au MFE.

Le sanctuaire de la propriété privée que le livre foncier est supposé incarner présente donc des brèches, en particulier en terme de collaboration et de circulation de l'information entre les administrations concernées.

[redacted]

Le permis d'habiter, régi par la Loi n°60-20 du 13 juillet 1960 et le Décret no 64-276 du 2 décembre 1964, est un droit personnel (non transmissible), précaire et révocable, permettant au bénéficiaire d'occuper un terrain en zone urbaine et appartenant à l'État. Cela implique une immatriculation préalable au nom de l'État. Contrairement au titre foncier, le permis d'habiter suppose une occupation permanente et une parcelle inoccupée pendant six mois peut être reprise sans indemnisation par l'administration.

On observe que, dans la pratique, le permis d'habiter est devenu un pseudo titre de propriété, un «titre foncier au rabais» (Comby 1998: 13), certains détenteurs ne faisant sans doute pas la différence entre les deux. Tout d'abord, ne pouvant être hypothéqué (car ce n'est pas un titre de propriété), il peut toutefois être mis en gage, ce qui dans la pratique revient au même. Ensuite, on accorde des permis d'habiter sur des espaces (de facto des terrains coutumiers) qui ont fait l'objet d'un simple morcellement, sans lotissement formel avec immatriculation foncière au nom de l'État. Troisième point: alors que le permis d'habiter n'est théoriquement pas cessible, les terrains concernés par ces permis font l'objet d'un marché actif reconnu par l'administration qui, sur le mode de la «coutume administrative», contribue à une informalisation du jeu foncier (ils sont aussi fréquemment l'objet de ventes multiples). Enfin, l'archivage des permis d'habiter est lui-même très déficient, s'apparentant à une «conservation foncière de fortune» sur cahiers ou même feuilles volantes. Il est impossible d'avoir une idée du nombre de permis d'habiter délivrés dans le pays dans la mesure où une large partie est délivrée hors zones loties immatriculées au nom de l'État.

Selon le traité de l'Organisation pour l'harmonisation en Afrique du droit des affaires (OHADA), seul le titre foncier permet d'accéder au crédit. Or la procédure de délivrance d'un titre est très longue et coûteuse (l'objectif étant de faire passer les frais d'immatriculation d'environ 500 000 à 100 000 FCFA). Le Gouvernement béninois a lancé en 2003 un projet pilote visant à préparer une réforme de la propriété foncière (réforme de la Loi n° 65-25) visant à élargir l'accès à la propriété privée en organisant une conversion massive des permis d'habiter en titres fonciers grâce à une procédure d'immatriculation simplifiée et moins onéreuse (Mako Imorou, 2004). L'approche se situe à un niveau supérieur à celui de la parcelle et passe par la constitution d'une Association d'intérêts fonciers (AIF) qui regroupe tous les propriétaires de parcelles situées dans un périmètre donné et qui acceptent de mettre en commun leurs biens immeubles dans le cadre d'une procédure groupée de régularisation juridique (immatriculation du périmètre de l'AIF). C'est l'autorité locale qui définit les limites du périmètre à traiter, tandis que la Commission locale d'immatriculation est chargée de vérifier et de valider, par enquête publique îlot par îlot (réalisée par des géomètres privés et par l'IGN), les limites des parcelles concernées, l'identité des candidats à la propriété foncière et l'existence éventuelle de permis d'habiter relatifs à ces parcelles.

À l'expérience pilote (1 483 conversions de PH en TF, réduction de 1 an à 6 mois

du délai de conversion) doit succéder le programme «Sécurisation foncière et résidentielle» piloté par le MEHU (DUA) et qui prévoit la délivrance de 10 000 TF en 2005, 15 000 en 2006 et 20 000 en 2007, la constitution d'un cadastre pour 10 communes et l'actualisation de la législation foncière et son application par le biais de la réforme du système foncier. La transformation des permis d'habiter en titres fonciers renvoie à des enjeux de sécurisation foncière, qui supposent des procédures améliorées de maintenance de la conservation foncière, mais aussi à des enjeux fiscaux qui constituent le fondement principal du Registre foncier urbain (voir *infra*).

Les procédures de lotissements constituent théoriquement des modalités de conversion de terres «coutumières» (par défaut) en terres à la fois immatriculées et aménagées (Décret nº 635 du 20 mai 1955, Arrêté du 22 octobre 1996). Dans les faits, les lotissements s'apparentent souvent bien plus à de simples morcellements sans aménagement ni réservation d'emprise foncière pour une viabilisation ultérieure. Ils interviennent très fréquemment comme procédure de régularisation a posteriori d'un processus d'urbanisation commencé par le jeu des interactions marchandes entre acteurs privés. On distingue les morcellements de terrains coutumiers et les lotissements de remembrement; le premier, qui ne permet à l'acquéreur d'obtenir qu'un certificat de vente, apparaissant comme une étape préalable au second qui constitue la forme de «lotissement» la plus fréquente, à l'issue de laquelle l'ayant droit reçoit une simple «attestation de recasement» avec indication du nouveau terrain attribué dans le lotissement.

Avec la décentralisation, le lotissement devient prérogative des communes et un enjeu central de mobilisation de ressources locales dans l'économie politique communale. C'est un instrument très puissant de conversion (ou de la régularisation de la conversion) d'espaces ruraux «coutumiers» en espaces urbains «immatriculés», producteur de «morceaux de ville» (Aboudou *et a*l., 2003) et contribuant fortement à la marchandisation du foncier. Les études de cas réalisées à Parakou (Aboudou *et al.*, 2003; Akobi, 2003) montrent bien à quel point ces procédures sont entachées d'irrégularités et sont souvent réalisées dans une grande opacité. En ce sens, elles ne se contentent pas de «régulariser» des processus d'urbanisation, elles les transforment, allant plutôt dans le sens des rapports de force existants et générant des conflits multiples dont les principaux types sont les suivants: problème de délimitation des propriétés et d'identification des ayants droit (et aussi conflits entre héritiers), erreur d'immatriculation des parcelles dans l'étape d'état des lieux, attributions illégales, taxations indues, manipulations diverses (par les notaires, les géomètres, les services administratifs) qui peuvent profiter de la méconnaissance des populations vis-à-vis des procédures légales (Aboudou *et al.*, 2003: 29-37).

La question de l'information foncière se pose ici à deux niveaux:

- Celui de l'information sur les règlements, les procédures formelles, la législation: cette information est distribuée de manière extrêmement inégale.
- Celui du savoir foncier, concernant les occupations et les légitimités foncières, qui renvoie à la durée des procédures et à leur faible transparence, et aussi à la question générale des institutions de la «coutume» (droits et autorités) comme dépositaires (contestés, hétérogènes) de connaissances et de pouvoirs en la matière.

Ce sont des actes effectués sous seing privé qui sont encore basés sur le décret colonial du 2 mai 1906 dans la mesure où la loi de 1965, enfermée dans une logique domaniale quelque peu autiste, ne prévoit pas de vente de droits pour des terrains ne disposant

pas de titre foncier[6]. On retrouve ici encore un nouvel élément d'informalisation des relations foncières par les «coutumes administratives».

Le formulaire officiel se limite aux informations minimales: identité de l'acheteur et du vendeur («présumé propriétaire»), témoins, description sommaire (surface, forme) et éléments de situation de la parcelle, prix de vente. La localisation précise sur un plan est impossible et l'origine des droits du vendeur absente, ce qui ouvre la porte à toutes les remises en causes et à des conflits nombreux et difficilement solubles qui peuvent concerner les limites, la situation de la parcelle, l'identité du propriétaire et la réalité de l'achat. À cet égard, les lotissements constituent des événements pivots dans le déclenchement (ou la réémergence) de conflits.

Avant la décentralisation, le document pouvait être officialisé par la préfecture, la sous-préfecture ou la circonscription urbaine. Ce cachet administratif ne donne pas de force légale à l'acte, l'administration n'en garantissant en aucun cas le contenu (Hernandez et Tribillon 1994: 9). Au sens juridique, la convention de vente n'a pas de base foncière. Malgré tout, la signature d'un sous-préfet appuie une présomption de droit et constituera une ressource argumentative en cas de conflit. Elle est de plus nécessaire pour l'acquéreur s'il veut ensuite se lancer dans une entreprise d'immatriculation foncière (par le biais de l'acte ou certificat administratif, délivré par la préfecture – à présent par le maire – et initialement conçu comme outil de constatation de la propriété originelle coutumière d'un terrain (Hernandez et Tribillon 1994: 9).

L'archivage de cette documentation foncière est problématique. Avec la décentralisation, la délivrance et le stockage des conventions de vente (cela vaut aussi pour les permis d'habiter et les certificats administratifs) sont théoriquement passés à la mairie mais les conditions d'archivage sont encore précaires et le transfert n'a pas systématiquement été fait.

Les paragraphes qui précèdent ont montré à la fois l'importance des phénomènes de marchandisation des relations foncières et les tendances à l'informalisation de procédures formelles. Or, à côté des actes de vente et des certificats administratifs, on observe une floraison de «petits papiers» dont l'importance a été mise en évidence dans de nombreux pays d'Afrique de l'Ouest (Lavigne Delville et Mathieu, 1999) sans qu'on ait encore une idée même approximative de leur poids relatif dans les transactions foncières.

Au Bénin, les pratiques populaires d'usage de l'écrit sont particulièrement répandues dans le sud du pays, en liaison avec une marchandisation ancienne des transactions foncières. H. Edja (2000: 87; voir aussi Mongo, 2000) montre que la fréquence des «petits papiers» et contrats écrits est variable selon le type de transaction: ils sont nombreux et anciens concernant les mises en gage et les ventes de terre, émergents pour les locations et les «contrats palmiers», absents dans les cas de métayage et de prêts de terre. Les interventions foncières dans le cadre du PGRN/PGTRN favorisent l'usage de l'écrit et constituent une étape vers une éventuelle formalisation (dépendant du vote de la loi foncière rurale). Enfin, les usages informels de l'écrit prennent aussi la forme de chartes ou conventions locales visant à réglementer par exemple la relation entre autochtones et migrants au centre du pays (Edja, 1999; Le Meu, 2002).

On retrouve donc, à un degré de formalité encore inférieur à celui décrit dans la section précédente, et selon une modalité en quelque sorte inverse, une logique de formalisation de l'informel – ou plutôt, de «formalisation informelle» – lorsque des transactions privées sont contresignées par des autorités publiques, le chef de village

[6] J. Comby remarque d'ailleurs que «les formulaires de ces conventions de vente visées par l'État font officiellement mention d'une "vente en toute propriété" alors qu'elles portent toujours sur des terrains coutumiers» (1998: 14).

ou le maire. Ce sceau augmente leur force sans pour autant leur donner de validité juridique.

Parmi les formes recensées d'information foncière, certaines résultent de procédures complexes et finalisées. Il est important d'en analyser les modalités de production, modalités à la fois opérationnelles et conceptuelles. La différence de composition des chaînes de traduction, des configurations d'intéressement, d'alliance et de mobilisation (Callon, 1986) sur lesquelles elles reposent expliquent les divergences dans les résultats et les effets. Elles induisent en particulier de nouvelles formes de production de la distinction entre rural et urbain, là encore bien plus ancrées dans l'économie politique que dans le juridique ou dans des préoccupations d'aménagement du territoire qui amèneraient sans doute à repenser – au moins à expliciter – la relation, alors même que la question de la gestion des espaces périurbains est vécue comme très sensible par les acteurs concernés. Le thème de l'aménagement du territoire émerge toutefois actuellement, avec la Déclaration de politique nationale d'aménagement du territoire (DEPONAT) de novembre 2002 (MEHU, 2002) et la création de la Délégation à l'aménagement du territoire qui succède à la Direction du même nom tout en s'affranchissant de la tutelle du MEHU. C'est un établissement public supervisé par un conseil interministériel comprenant aussi des représentants des communes et de l'administration territoriale.

Le Registre foncier urbain est un outil de gestion urbaine visant trois objectifs: i) fiscal, d'accroissement des ressources fiscales locales; ii) foncier, d'amélioration de la connaissance du patrimoine foncier et immobilier; et iii) aménagiste, de production et de gestion des données nécessaires à l'amélioration des infrastructures urbaines. Dans les faits, c'est l'objectif fiscal qui constitue le moteur de l'entreprise et les résultats ont effectivement été notables dans les villes où il a été mis en place. C'est d'ailleurs la complexité et la faible rentabilité de la fiscalité locale qui ont motivé à l'origine les premières expérimentations du RFU (démarrage en 1990 à Parakou) dans un contexte de décentralisation annoncée.

D'un point de vue technique, le RFU est un système d'informations foncières[7] basé sur un «plan de repérage adressé» servant de structure à des fichiers thématiques attribuant à chaque parcelle les renseignements nécessaires au développement d'applications sur une couche de données ou sur un ensemble de couches (PDM 2000, PDM-SERHAU SEM, 2000). C'est la collectivité territoriale bénéficiaire (à présent la commune) qui a la maîtrise d'ouvrage et la délègue à une structure opérationnelle, la SERHAU SEM (devenue SERHAU SA). Du personnel temporaire de niveau BEPC est recruté pour les enquêtes foncières et fiscales ainsi que des géomètres privés pour l'adressage (positionnement de la parcelle avec coordonnées géographiques). Les photographies aériennes sont réalisées par des sociétés étrangères. Le financement est essentiellement extérieur (FED, FENU et AFD, DANIDA, etc.).

L'analyse des enquêtes foncières du RFU montre que la définition très technique de la procédure évacue la question centrale de la nature des données foncières utilisées et leur mode de «capture empirique». On apprend au détour d'un paragraphe que «la méthode d'enquête consiste à collecter les informations en posant très peu de questions aux occupants des parcelles» (PDM-SERHAU SEM 2000: 24). C'est d'ailleurs tout ce que l'on apprend sur le

[7] Un SIF est défini comme «un environnement qui regroupe une base de données relatives aux parcelles, ainsi que les procédures, les techniques, les équipements permettant de recueillir les données, de les mettre à jour, de les traiter, de les corréler en vue de produire et de restituer une information» (Alain Durand-Lasserve, cité par Jean-Pierre Elong Mbassi, coordonnateur du PDM, dans: PDM-SERHAU SEM 2000: 8).

déroulement des enquêtes en lisant les brochures décrivant le RFU. De fait, deux questions sont au cœur de la procédure RFU sans avoir été pour autant l'objet de discussions très approfondies:

- Comment délimite-t-on les espaces ruraux et urbains (en l'absence de définition juridique claire)? Comment cette distinction est-elle prise en compte aux différents niveaux administratifs (commune, arrondissement) concernant en particulier la question de la fiscalité (il faut garder à l'esprit qu'il n'y a pas de fiscalité foncière rurale au Bénin)?
- Sur la base de l'hétérogénéité des situations foncières rencontrées, comment adapter le dispositif d'enquête de manière à obtenir une information foncière fiable, prenant en compte la diversité et la complexité des droits fonciers locaux?

La réponse à ces questions passe nécessairement par une exploration de la procédure intrinsèquement complémentaire au RFU que constitue le PFR. À noter que cette complémentarité n'a pas été pensée comme telle dans les phases de genèse et de lancement des RFU et des PFR au début des années 90. Elle semble émerger, extrêmement progressivement il est vrai, du constat de bon sens de la collision permanente de l'urbain et du rural, collision productrice de l'enjeu flou que constitue le «périurbain».

■

Le Plan foncier rural peut être défini comme une forme simplifiée de cadastre coutumier (Hounkpodoté, 2000; Edja et Le Meur, 2004). Il a été initié en Côte d'Ivoire vers la fin des années 80 et importé au Bénin sous une forme légèrement amendée. Il apparaît comme une solution alternative visant à combler un vide juridique (le cadre légal extrêmement lacunaire hérité de la colonisation) et à sécuriser les droits fonciers. Les opérations foncières autorisées par l'Arrêté interministériel du 11 janvier 1994 dans le cadre du PGRN doivent «favoriser la sécurisation des droits fonciers en milieu rural, l'utilisation rationnelle et durable du capital terre et l'émergence d'une législation foncière». L'objectif central explicitement retenu est donc celui du recueil et de l'enregistrement des droits coutumiers dans le cadre d'une opération pilote devant à terme être étendue à l'ensemble du territoire national (et – troisième finalité restée marginale – visant à informer les politiques publiques en matière d'aménagement rural et de développement agricole). Cette technologie institutionnelle combine topo-cartographie et enquêtes foncières dans une optique «participative» d'enregistrement contradictoire et public des droits coutumiers existants et reconnus localement.

L'information foncière produite par le PFR est de plusieurs ordres, cette pluralité renvoyant à la nature de l'opération, qui est à la fois procédure de connaissance et de reconnaissance des droits.

D'une part, les diagnostics fonciers et les lexiques (d'éventuels recueils de normes locales comme cela a été proposé [Le Meur, 2005]) produisent une documentation foncière à caractère qualitatif sur les enjeux fonciers, les modalités d'accès à la terre, les ayants droit et autorités concernées dans une localité donnée. D'autre part, les produits finaux de l'enquête sont un listing d'ayants droit et un plan parcellaire qui vont servir de base à l'émission d'un certificat foncier dont le projet de loi foncière rurale prévoit qu'il aura validité juridique «jusqu'à preuve du contraire» devant les tribunaux et qu'il pourra servir de base au lancement d'une procédure d'immatriculation foncière.

La situation actuelle concernant le PFR est transitoire. Le projet de loi (approuvé le 16 mars 2005 en Conseil des ministres) doit passer prochainement devant les députés, et c'est l'inscription de la procédure dans un cadre législatif qui lui donnera sa validité et permettra son extension à l'ensemble du territoire. En même temps, le passage de l'opération pilote à une couverture nationale ne va pas de soi; il ne s'agit pas d'un simple changement d'échelle car il suppose la mise en place d'un dispositif institutionnel particulier, une série d'améliorations techniques et la construction d'alliances

permettant sa mise en œuvre concrète (ne serait-ce qu'à l'assemblée, puis en direction des élus communaux, des tribunaux, etc.).

Enfin, on note que la procédure PFR longtemps défendue par l'AFD et le service des opérations foncières du PGTRN est en train de se diffuser dans des cercles plus larges, en particulier vers des projets forestiers comme le PGFTR et le PAMF. L'un des points critiques de cette diffusion réside dans la bonne articulation avec les autorités décentralisées (la commune) qui sont responsables de la décision de procéder à un PFR au niveau villageois.

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La production de l'information foncière n'est pas indépendante des institutions qui l'abritent et des enjeux et objectifs auxquels elle est supposée répondre. Le schéma linéaire allant de la production de l'information à la prise de décision, puis à son évaluation ne correspond pas à une réalité beaucoup plus diffuse, fragmentée, négociée. Pour commencer, la décentralisation politique est amenée à modifier profondément le paysage institutionnel. La commune, échelon clef de la décentralisation, devient le lieu principal de centralisation et – dans le meilleur des cas – de mise en cohérence de l'information foncière. Quatre questions structurent cet enjeu majeur: i) le transfert des compétences de la préfecture en matière de délivrance d'actes administratifs dans le domaine foncier; ii) l'archivage et la gestion de cette documentation foncière, affaire de stockage à la fois physique et informatique; iii) la gestion des procédures de lotissement; et iv) l'articulation entre le foncier rural et le foncier urbain et l'harmonisation des procédures de production et de gestion de l'information foncière (RFU et PFR). La gestion de l'information foncière se fera dans les communes, alors que celles-ci ne disposent pas encore des moyens et des compétences nécessaires. Il faut donc mener un travail de réflexion sur les besoins et d'appui en matière d'équipement et de formation. Deux articulations doivent être prises en considération: la première, «verticale» avec l'administration territoriale (préfecture) et la deuxième, «horizontale», avec les communes voisines (intercommunalité) et les programmes de développement et de gestion des ressources naturelles. Une troisième articulation naîtra de l'achèvement de la décentralisation avec les élections locales (niveau village et arrondissement).

Pour terminer, au-delà de l'information foncière matérialisée par des traces écrites (certificats et actes de tous ordres), les acteurs impliqués dans le jeu foncier ont développé un savoir extrêmement inégal, hétérogène, souvent peu formalisé ou explicité, orienté vers des fins pratiques (par exemple d'appréciation et de résolution de situations conflictuelles). Ce savoir contextuel est essentiel dans la gouvernance quotidienne du champ foncier, permettant d'interpréter des situations ou des revendications. Or, la continuité de ce savoir, la mémoire des institutions, n'est souvent pas assurée, en raison du fonctionnement de l'administration (instabilité du personnel, contrôle à des fins privées de l'information foncière, manque de moyens de conservation de l'information par l'administration foncière et la justice[8]) et d'une difficulté à l'intégrer dans des schémas formels de planification.

Enfin, la littérature sur le développement met souvent en avant les phénomènes d'exode rural et d'urbanisation comme représentant une tendance lourde partout dans le tiers monde. En réalité, ces processus sont composites et non linéaires. Ce sont souvent les pôles secondaires qui connaissent les développements les plus rapides et les flux de population sont changeants et réversibles. On assiste à des retours au village, à des migrations cycliques entre villes et campagnes et à des migrations intrarurales. Ces phénomènes rendent la distinction entre rural et urbain difficile à saisir, d'autant

[8] D'où, entre autres, une difficulté à construire une jurisprudence, en particulier dans le domaine des affaires foncières à caractère souvent «coutumier».

plus qu'elle n'a pas de fondements juridiques ou administratifs clairs au Bénin (contrairement par exemple au Sénégal où l'on distingue clairement les communautés rurales des communes urbaines) ni de délimitations administratives réelles. La problématique de la gestion des espaces périurbains devient pour ces raisons centrale (voir Gbaguidi et Spellenberg, 2004). Ce n'est pas une affaire de «périphéries» ou de «franges urbaines». Elle est au cœur de la question foncière car elle est transversale à un ensemble de distinctions qui informent les choix de politique publique sans être véritablement explicités. Le couple rural/urbain constitue la matrice d'autres binômes implicitement vus comme homologues – non agricole/agricole/moderne/coutumier, loti/non loti, imposable/non imposable –, qui renvoient quelque part à la distinction citoyen/sujet et aussi à celle, ancienne (mais renouvelée autour du couple ville/campagne), entre espace maîtrisé/humanisé et espace contrôlé de manière incomplète.

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