

# Effective and Transparent Management of Public Land Experiences, Guiding Principles and Tools for Implementation <sup>1)</sup>

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## SUMMARY

Public land management is a critical factor for ensuring good governance in the land administration of a country. There are common factors involved in poor public land management. There is typically ambiguity in authoritative roles and responsibilities, a lack of accountability or methodology in the systems of allocation, appropriation, disposal or use of public land, and a lack of information on state assets. Weak governance in this area has direct and indirect implications for citizens, and broader effects on economic development, political legitimacy, peace and security and development cooperation. There are a number of elements that can be applied to a strategy for developing good governance in this area. These elements are applicable to any country situation or stage of development. While the following strategies have good intentions, reform is difficult as key stakeholders in the equation often have vested interest in keeping the status quo. Therefore, these suggestions are best applied in parallel within a whole-of-government “good governance” strategy.

Some overarching strategies are important for setting a framework for legitimate and accountable public land management practices.

- Developing a public land policy to provide fundamental direction. A high-level oversight body should be involved in setting this policy that states land policy goals and a framework of principles for land management.
- Two keys areas of that should be addressed in a public land policy are land classification and fiscal management. These are primary loopholes used to conduct dishonest activities.

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- Legislation should complement a policy document detailing responsibilities and systems of management, including clear transfer and regularization processes. It must also state enforcement measures and ramifications.
- To improve accountability, transparency and ambiguities in state land assets and associated activities there should be an inventory of public land. This may eventually be linked to the registry; however an initial inventory is a starting point.
- Institutional mandates of public land institutions should be clear, comprehensive, and non-overlapping
- Accessible mechanisms and information to appeal government actions related to compulsory acquisition and compensation are essential for ensuring the rights of citizens are adhered to.

Good governance in the management of public land links back to the governance principles of legitimacy, accountability, fairness and participation. Reforming the management of public land must contribute to a basic set of development principles, namely reduction of severe poverty, achievement of the Millennium Development Goals, progress in good governance and transparent fiscal management of the public sector.

## 1. MAJOR ISSUES

The story about public land is a story of power relations, the relationship between state and civil society and experiences – both good and bad – during periods of nationalization, colonization, restitution or privatization during political transition. There is a clear need for, and interest in, sharing experiences about ongoing work on reforming the public land sector around the world.

Many developed countries, post-transition countries and developing countries have embarked on a thorough re-evaluation of the role of government in their societies. General principles for “good” asset management have been established that governments need to adopt to strengthen their public property management systems and enhance their efficiency and transparency. There is also a trend towards public-sector reform and delegation of decision-making over public land assets to local authorities.

Public land is land which is owned by the nation or state. Land rights (such as freehold, leasehold, use rights or other forms available in the country) are issued by the government. The state’s mandate may as well be delegated and transferred to local authorities. Public land accounts for a large portion of public wealth of both developed and developing countries. There is one common uncertainty when discussing public land.

The property category PUBLIC LAND is neither rigid nor exclusive. Generally there are bundle of rights and partial interests related to public land as well as dynamic relationships between public land, common property, private land and public law restrictions. Before discussing public land matters in more detail we need to better understand this relationships and overlap between land categories.

**Table 1:** The relationship between property categories. (unfinished table for discussion)

<i>Unbundling the bundle of land rights and partial interests</i>	<i>Public property</i>	<i>Common property regimes</i>	<i>Private property</i>
<i>Public law restrictions and rights</i>	Zoning and land use control Protection zones (water, environmental, cultural heritage) Hazard zones Recovery of public land (restitution of land grabs) Anti-eviction rules Public land registration and/or public land inventory	Group recognition Zoning and land use control Protection zones (water, environmental, cultural heritage) Hazard zones Land registration of common property	Pre-emption rights in favour of public interest Zoning restrictions Protection areas (water, environmental, coastal zone, cultural heritage) Hazard zones Minimal distance to forest boundary and public infrastructure Public right of way Building regulations Eminent domain The vertical layer restrictions (air space and underground) Land registration
<i>Common property rights</i>	Long term common property rights on public land (customary, indigenous land rights) Lease rights Temporal use rights Restricted land use rights (in natural reserves and forest)	Fuzzy boundaries between different groups of right holders based on seasonal factors and cultural tradition  Restricted access to resource rights (water wells or forest products)	Temporal transhumant corridor For example land use rights on private property claimed only after harvest
<i>Private law and property rights</i>	Leasing and contractual arrangements Land concessions Private right of way Adverse possession Easement	Private land concession on common property  Common property share holder arrangement on extractive industry concession	Private right of way Mortgage Easement Usufruct

Public property assets are often mismanaged, and nearly all countries underutilize these resources. The power to allocate public land is of great economic and political importance in most countries, and it is a common focus of corrupt practices. Public land is often treated as a “free good”, whereas “good” land in terms of location, use and service delivery is in fact scarce and valuable. Public land management is quite often flawed and contentious because it is dominated by a top-down process that encourages favours to special interests and promotes polarization to obtain such favours. As a consequence, public land rights are often transferred through rule of power processes (Box 1) and not a transparent market mechanism.

In many countries, the state itself is the primary threat to secure land tenure arrangements related to public land.

Violation of good governance principles is most common in managing state property assets. Some big issues are unresolved in many countries, such as:

- the lack of policy orientation (fiscal policy and public land policy) compared with other sectors;
- the strong resistance to transparent procedures and independent audit in many countries because of vested interests of political leaders and officials at central level and in local government;
- power-related political interference in public land acquisition and public land allocation;
- the high incidence of state capture through land grabbing, illicit land swaps, and corrupted concession arrangements by powerful people;
- the low awareness of public property problems at all levels – government institutions and international development organizations;
- the lack of information on what is where and where is what;
- the weak statistical information, reliability of information, and analysis on state property, e.g. transfers to local governments, state and municipal enterprises and trusts;
- the fragmented and inefficient institutional arrangements combined with the lack of clarity of role and functions of stakeholders at central and local government level.

By its nature, the whole history of public land management has been ad hoc and opportunistic. This is because decisions about its use are power-related rather than institutional. So far, the institutions of good governance have not matured to the point where they are capable of handling the vast amount of data needed to manage public land effectively. At present, we are conditioned by the consequences of the fact that this is what the government of the day in a particular society has at its disposal to use as an immediate tool for meeting some agreed-upon problem.

The possible impact of illicit misappropriation of state assets on development processes and poverty eradication is enormous. It has both direct and indirect negative impacts on development.

Weak governance in managing public property assets shows enormous consequences on all sectors – economic development, poverty alleviation, the environment, political legitimacy, peace and security, and development cooperation. It has both direct and indirect impacts on the security of common property rights, on access to land and on revenue generation for the state. It directly diverts public funds and assets away from the public sectors into the hands of the select few. Moreover, it directly undermines the public's trust in the ruling government and governance processes – a factor essential for good governance and lasting development reforms. Corruption and the looting of state assets at the top sends a negative signal to the other civil servants and can encourage a corrupt culture and unethical conduct throughout the civil service. Without a strong, competent and clean civil service, development reform is bound to fail.

Box 1

Political corruption and the looting of state property assets is a development issue

Political corruption in the form of accumulation or extraction occurs when government officials use and abuse their hold on power to extract from government assets, from government revenues, from the private sector, and from the economy at large. Political corruption takes place at the highest levels of the political system, and can thus be distinguished from administrative or bureaucratic corruption. Bureaucratic corruption takes place at the implementation end of politics, for example in government services such as land administration and the tax department. Political corruption takes place at the formulation end of politics, where decisions are made on the distribution of the nation's wealth and assets and on the rules of the game.

Extraction takes place mainly in the form of the looting of state assets, soliciting bribes in bidding processes for concessions, procurement, in privatization processes such as the disposal of state land and in taxation or negotiation of concession fees. Extracted resources (and public money) are used for power preservation and power extension purposes, usually taking the form of favouritism and patronage politics. It includes the politically motivated disposal of state property resources. By giving preferences to private companies for land concessions (agro-industry, forest and extractive industries), the perpetrators can obtain party and campaign funds, and by paying off the governmental institutions of checks and control they can stop investigations and state asset audits and gain judicial impunity.

Source: Adapted from Utstein Resource Center ([www.u4.no](http://www.u4.no)).

## 2. GOOD PRACTICES

Only a few countries have tackled explicitly and comprehensively the deficiencies of their public land management systems and only incomplete information are available on such reform processes. This makes the lessons learned from experience rather limited compared with reforming land administration systems, which many countries have embarked on with support from the international community (Table 2). Good practices for reforming public land management are designed to regulate the topics covered in the following sections.

**Table 2 - Cross-Country Reform Comparisons**

<b>Country cases in a learning environment</b>	<b>Action and lesson learned</b>
<p><b>Canada</b></p> <p>Monitoring guide:  <a href="http://www.tbs-sct.gc.ca/common/us-nous_e.asp">www.tbs-sct.gc.ca/common/us-nous_e.asp</a>                      DRFP: <a href="http://www.tbs-sct.gc.ca/dfrp-rbif">www.tbs-sct.gc.ca/dfrp-rbif</a></p>	<p>Overall reform of the public sector. Consequently, transparent public asset management is based on a comprehensive accountability system and has been implemented at all levels. Guiding principle is to acquire, manage, and retain real federal property <i>only</i> to support the delivery of government programs and in a manner that is consistent with the principle of sustainable development. The design of the Directory of Real Federal Property, DRFP, with its functionalities and standards as well as the audit guide and the monitoring guide could serve as good practice in other countries.</p>
<p><b>Egypt</b></p> <p>Draft Policy Note, World Bank, April 2006</p>	<p>Reform of the public sector and reform of state land management has been initiated during the last years and valuable material has been developed with support of the World Bank. There is broad support for the state land reform from highest political level. Internal and external dialogue is a strategic component of the learning process. Policy orientation within a long time frame is defined before the legislation will be amended. Several institutional and organizational scenarios with the discussion on pro and contra are supporting the decision making process. There are some difficulties in integrating military's and security's interests.</p>
<p><b>Cambodia</b></p> <p>Multi-donor supported Land Management and Administration Project</p> <p>LMAP project documents</p>	<p>Tackling of the huge overall state land problem in a post-conflict and post-transition country by enabling legislation (incl. by-laws in state land inventory and mapping, reform of economic state land concessions, distribution of state land (social concession), land policy formulation, country-wide reform of the land sector, inter-institutional arrangements (land policy board), delegation of power to provincial committees, implementation and capacity building with international support.</p> <p>However; state land problems reflect power relation at the highest level of the government. Tackling the problems goes far beyond project measures.</p>
<p><b>Central European Transition Countries</b></p> <p>Urban Institute, 2006</p> <p>Open Society Initiative, 2003</p>	<p>Political and professional debate on public sector reform around political decentralization, re-assignment of public functions and devolution of state-owned assets. All assets connected to functions assigned to local government should be transferred. Special issues are the legislative process, the scale, sequencing and timing of the transfer of public land, the competencies of local government for acquisition, management and disposal of public land, the related rules for financial management of public assets, introducing standardized accounting practices, new forms of internal and external audit and transparency, and rules for minimizing conflicts of interest.</p>

### **3. PUBLIC LAND INVENTORY AND INFORMATION SYSTEM**

One central point has to be made. No accountability, transparency and effective management is possible without adequate knowledge about the qualities and quantities of public land, related legislation and regulations (where is what and what is where). Many governments share a common problem. They do not know where and how much public property they own and what rights are attached to it, where all of the existing information is located in a complex institutional environment, and how complete, accurate, reliable and relevant the information is for planning and decision-making. There is wide divergence in approaches and institutional arrangements for managing state land information. Some governments implement a central database and others opt for departmental or decentralized information systems. Ultimately, all public land should be properly registered. As an intermediate step and complementary management tool, there are good experiences with public land inventories. They contain all the information on public land for management purposes but do not replace the register.

In a first approach, compromises could be accepted in terms of survey accuracy but not in terms of regulatory content. Most countries have established some sort of land information system but, perhaps surprisingly, only very few are showing good examples and functionalities of information systems for the specific requirements of public land management (Treasury Board Canada 2000, KAMCO South Korea 2006). Comprehensive, easy-to-access and easy-to-use systems have been established in only a few countries.

### **4. PUBLIC LAND POLICY AND REGULATORY FRAMEWORK**

A public land policy provides fundamental directions. However, it has to be complemented by a law on public land management or a similar piece of legislation that should provide parameters as to what can and cannot be done with state land, and spell out the fundamental responsibilities of government and the necessary decision-making processes as well as setting general parameters for allocating public land. A guiding principle of the government in acquiring, managing and retaining public property is that it should only do so to support the delivery of government programmes and in a manner that is consistent with the principles of sustainable development, poverty reduction and good governance. Within this context, public property must be managed to the maximum long-term economic advantage of the government, to honour social and environmental objectives, to provide adequate facilities for users, and to respect other relevant government policies.

The essential policy goal is to set forth the criteria for deciding who is to benefit from how much of these resources, for how long and for which purposes. At the very least, the policy of public land management has to clarify:

- policy goals, especially state land policy for implementing ecological, social, economic and cultural goals;
- a clear commitment of the government and the outline of an action plan;
- a statement that the public land asset is held in trust for the people;
- principles for regularization of public land;
- how it will guarantee security of common property rights, indigenous land rights and resource rights on public land;

- the framework for the institutional jurisdiction and public use by different authorities;
- devolution of public property to local government (if needed for its portfolio);
- the framework for special-purpose cooperation, public–private partnership, and land trust;
- transparent principles for the allocation of state land, and for what purposes;
- coherent rules and regulations for compulsory purchase
- principles of fiscal management, performance reporting and audit;
- accountability and transparency requirements for managing public land.

Reforming the management of public land must contribute to a basic set of development principles, namely reduction of severe poverty, the achievement of the Millennium Development Goals (MDGs), and progress in good governance and transparent fiscal management of the public sector. The development objectives of growth, poverty reduction and revenue generation need to be balanced and made compatible in designing the strategy for public land management. As in many countries there is still not much awareness and interest in properly managing public land, the question will always be who will define the development objectives and guide the policy development for public land.

Some good experiences have been made by nominating a high-level, inter-ministerial board such as a national land policy board or public land commission for overseeing the process. Examples are the Higher Committee for State Land Management (Egypt), the National Land Commission (Kenya), the Council for Land Policy (Cambodia) or the National Superintendent of State Property Peru (SBN 2000).

The basic regulatory framework on public property should focus on fundamentals to limit discretion and, thus, abuses. It should provide the principles and not very detailed rules or terms, which are better left to executive regulations or contracts.

Land law and public land law reform need fresh attention because much legal reform is often concerned with formalization of “informal” land rights in favour of the state (Bruce et al., 2006). For example, customary systems are not informal, but represent an alternative formality. A regulatory framework (land law, law on public land, by-laws or regulations) is required for the following critical public property areas, which often show weak governance realities:

- registration of public land and inventory;
- public land classification and reclassification;
- public land disposal and exchange;
- compulsory purchase, valuation of public land, and compensation;
- regularization of bundle of rights;
- resettlement;
- land concessions, leases and contracts;
- law enforcement and public land recovery (in cases of illicit allocation);
- audit and fiscal control.

Nevertheless, we do not need to wait for a comprehensive and complete regulatory framework for achieving better results towards improved public land governance. Most importantly, a



public land inventory, an inter-institutional technical secretariat, and a board for overseeing the process combined with accountability and transparency are the ingredients for making a start. Law and legislation are just part of a process, not the end.

Regularization is an important good governance tool for avoiding land conflicts, human rights violations and eviction. In many countries, there is no straightforward inventory or registration process for public land visible for many reasons.

There are numerous cases of invasion, informal urban and rural settlements, appropriation of public rights of way, residual claims, and unclear overlapping or conflicting interest between communal properties and public land. Therefore, a process of regularization is recommended based on a participatory approach with transparent rules. Legal instruments vary from country to country. They include statutes, decrees (presidential, ministerial, federal, state or provincial, and municipal), ordinances and by-laws of local governments, regulations and government contracts. These various legal instruments define who has enforcement powers, and under which legal instruments. They also establish the legal basis for sanctions or charges as well as the penalty provisions, all of which are central to the enforcement system. However, which ones are involved in any given case are usually determined in a rather ad hoc way at best and in a self-interested way at worst. There are several important issues in the design and operation of a successful compliance and enforcement system. Enforcement involves a number of components (legislative groups, legal instruments, enforcement agencies and courts) that act independently, or are autonomously administered, yet must function together to be effective (for example Public Land Encroachment Committee Thailand, PLEC). There is also a relatively broad range of enforcement responsibilities involved in the administration and management of public lands and land resource utilization contracts. Compliance and the effectiveness of enforcement depend critically on the conditions and clarity of the legislation, on the strength and clarity of the commandments written into these laws, and on all four components working together.

Anticorruption strategies will have to consider whether to establish a separate institution such as an anti-corruption agency to deal exclusively with corruption problems, whether to modify or adapt existing institutions, or some combination of both. A number of legal, policy, resource and other factors should be considered in this regard. The United Nations Convention against Corruption requires the establishment of such agencies. Nevertheless, anticorruption commissions are problematic when political leaders are only responding to demands from international donors. In such countries, policy-makers can ignore domestic demands for reform and enact minimal reforms to satisfy external agents. This minimum may be nothing more than the establishment of an anticorruption commission, an office of the ombudsman, or an antifraud unit without enabling legislation, competent staff, or a budget.

## **5. DEVOLUTION OF PUBLIC LAND**

Decentralization reforms are one of the fundamental components of public-sector reform and democratic development. In many countries in transition, property devolution was simultaneously implemented with the dismantling of the socialist ownership model in the context of privatization and restitution. Devolution of public property was and still is

discussed extensively during the political reform process, and arguments are exchanged for and against property devolution. (Open Society Initiative, 2003) There can be no real local autonomy without a sound economic base. Significant own resources are required for fiscal decentralization, and public land can be an important source of municipal revenue. The most common arguments against devolution were the risk of inefficient management of public land and the lack of capacities. Useful experiences for countries still facing the reform process have been made during the last two decades. (see Republic of Albania 2001, law on the transfer of state public immovable property to local government units). The challenge of governance and accountability at local government level is big and similar to the challenge at central government level. Basic principles and clear rules must be defined and enforced for avoiding weak governance and corruption in managing public land at local level. At local-government level, special attention must be given to the sometimes non-transparent and non-accountable behaviour of local leaders. Examples can be: corrupt practices of land disposal and land conversion (less than market value and favouritism); misusing the instrument of compulsory land acquisition for undercover purposes; the shift of public ownership to municipal enterprises (where surplus public land and the revenues could disappear in a non-transparent system); and manipulating zoning combined with land conversion for private gain.

## **6. PUBLIC LAND AND THE COMMONS**

Common property regimes are management systems where resources are accessible to a group of rights holders who have the power to alienate the product of the resource but not the resource itself. Common property can be legally owned by the state, a community or an organization. Within this legal framework, a group of traditional rights holders manages the resource exclusively to preserve and enhance its long-term productive capacity for the benefit of all current and future members of the group. All members share reciprocal rights and duties that can only be amended by collectively binding decisions. It is particularly useful to look at which users have rights of access, withdrawal, exclusion, management and alienation, and for what uses. Access and withdrawal are considered use rights, while management, exclusion and alienation are rights of control over the resource. "Ownership" is often conceived as holding the full bundle of rights. From this listing of the bundle of rights, it is already apparent that state common property is much more complex than simple ownership. The concept of land resources being divided into mutually exclusive "properties" is gradually giving way to one of being a mutually inclusive set of "partial" interests. Much of the innovation is a result of the continuing evolution in managing scarce resources, natural and human-made. It would be much more resource efficient if a number of individuals and/or enterprises could discover non-competing uses of the same resource base. Yet all too often government agencies fail to recognize community-based land and resource rights on state land. There has been the steady appropriation of many of the most valuable local common properties by the state and their re-designation as state or public lands. This has been undertaken on the assumption that the state is the only proper guardian of such properties and the rightful primary beneficiary of their values, and often on an assumption that these same properties are in any event weakly tenured at best. Even in countries where public land is registered, there is generally no registration of partial interest and recognition of the bundle of rights. The regulatory framework must provide a clear legal base for the registration of partial interest over space and time and the recognition of the group. Co-management models (e.g.

through participatory land-use planning) for clearly defining the role of the state and the role of the local group in managing the public land resource on the ground should complement the regulatory framework.

## **7. INTEGRATED LAND USE MANAGEMENT**

The major objective of land management is matching the land rights with land-use rights and land-use options for achieving sustainable development objectives. International agreements are affecting national legal systems, and national and local land-use systems are paying attention to the urgings of international declarations and conventions.

In the context of managing public property it is clear that the legal status and classification of public property, present land use and the desired (best) land use options are interlinked and should not be dealt with separately in policy discussions or in the operation and delivery of public property. Integrated land-use management and public land management are closely connected and should be seen as complementary objectives in order to provide win-win development options. There is generally a lack of knowledge and awareness of this broader implication in rural as well as in urban land management. Examples of the linkage between legal status and land use are:

- regularization of informal settlements on public land for supporting upgrading programmes;
- providing public land for housing the poor and for rural landless;
- facilitating exchange of public land (land swap) for development or conservation purposes;
- guiding acquisition and disposal of public land for achieving broader development objectives;
- land readjustment combined with public land banking and for rural and urban development;
- land exchange for facilitating zoning and land-use regulation;
- co-management models (state and local communities) and participatory land-use planning for securing resource rights in time and space.

## **8. COMPULSARY PURCHASE**

Compulsory purchase is one of the most extreme forms of Government intervention. Debates about its application can therefore serve as a prism for viewing deep changes of society and governance. There are current signs of crisis in several countries that stem from a growing disparity between law and practice.

There are significant legal differences across countries, especially between Statutory and Constitutional Law countries. In most countries, statutory law is the major determinant of expropriation powers and compensation principles. In addition, some countries grant property rights for constitutional protection. Europe has a “meta-constitution” in European Convention on Human Rights, 1953 with Protocol 1 protecting property rights. Nevertheless, differences in constitutional protection matter much less than legal scholars assume.

Compulsory purchase is articulated in almost every nation's constitution, either specifically or broadly. Most countries supplement the constitutional basis for the power with additional laws and regulations that explain exactly how the power may be used through public law or administrative law. The commonly accepted purposes for applying compulsory land purchase are the "public good" or "public interest." Other obvious goals allow for some legal flexibility in the use of the power in some countries such as redistributive land reform and compulsory land acquisition for private development. Usually the national government has the special mandate to use the power of compulsory purchase. In some countries, local government (provinces, states, districts, counties and municipalities) can also use the power, as well as parastatal organizations supplying necessary utilities. A variety of bodies within one country may have the power to undertake compulsory purchase processes, each with their own regulatory guidelines.

If all of these regulations are not synched up, and a coherent national policy is not created by a central oversight body, numerous situations of injustice and insecurities might occur. The dimensions for determining the "public purpose (public interest)" in land-expropriation law and policy should be determined by (1) land use type (urban or rural function), Operator type (state parastatal, private), (3) Public beneficiary, (4) Plan-based specificity (requirements for approval), (5) Permitted time range for implementation

Most discussions of public purpose pertain only to the initial use. The issue of "public purpose" is heightened when questions are posed over time:

- The permitted time frame for implementing the public purpose
- Rules about what should happen if the public purpose is not implemented Rules about change of from the initial public purpose into a new public purpose after the first is no longer needed
- Rules about change from the initial public purpose to a non-public purpose

A central component of compulsory acquisition and compensation process is the right to contest the loss of one's property. Appeals provide necessary oversight, a crucial check on state power. Supervision by a reviewing body can stop corruption, correct error, and insure that justice is done.

Appeals about the purpose can include the reason underlying the appeal or may concern a person's conviction that their parcel does not need to be acquired for the project. Appeals about the process may be about corruption, improper timing, processing of claims, negotiation procedures, delay in payments, etc. Because these claims often have to do with bad faith or incorrect actions on the part of the acquiring authority, a separate complaints process might be established for immediate, expedited review separate from substantive claims. Appeals about compensation are by far the most prevalent, and may best be dealt with through alternative review mechanisms. People whose land is being acquired by the state should be given help to understand every aspect of the process. They may need assistance contesting the decisions and actions of the acquiring agency, getting second opinions on the value of their land, and ensuring that compensation is paid. Legislation should address the imbalance of power by providing mechanisms to assist people to become better advocates for themselves.

## Case Study Ethiopia: Some Major findings

### Authorizing Act: Proclamation 455/2005 for Federal & 9 semi-autonomous Provincial Governments

- but no Federal Regulations nor State Directives & Guidelines for implementation had been developed
- Large number of expropriations, 'Public Purpose' is widely applied, including for private commercial purposes (as per Proc 455)
- No right of appeal against the 'purpose' of the expropriation, farmers have right of appeal (against compensation) to regular courts, but evidence of courts having little knowledge of the law (455) and giving inconsistent decisions
- Township/Urban Expansion represents a large proportion of expropriation cases
- Availability of suitable land for substitution / resettlement is severely limited and generally of poorer quality, therefore cash compensation is payable in most cases
- Compensation payments were often delayed or received after eviction
- Farmers have little knowledge of their rights
- No compensation paid for 'communal' land
- No compensation paid for indigenous trees or land not 'worked
- Farmers without 'holding certificates' have received less compensation
- Assessment of compensation was by (unskilled) committees due to lack of capacity
- Evictees were rarely represented
- Acquiring Authorities often had insufficient finances, delayed payments, non-payments, manipulating formulae to meet budgets, and instances of money raising events (deductions from employees wages)
- Compensation payments too little to sustain life after eviction, or poorly invested (empirical evidence shows
- 57% increase in poverty levels following expropriation

Source: Andrew Hilton FRICS, FIG Seminar on compulsory purchase and compensation, Helsinki September 2007

## 9. ACCOUNTABILITY AND TRANSPARENCY

Good governance and anticorruption measures in public land management can take a variety of forms, and their adequacy will depend on the prevalence of the respective types of corruption and on the political and institutional environment of the country in question. As an entry point for assessing and discussing the current state of the art of public land governance in any country, one could best check the Governance Research Indicator Country Snapshot (GRICS) rule of law dimension (WBI, 2005). The rule of law dimension reflects the power relations in a country and is directly related to the quality of managing public assets. This is particularly important where political corruption occurs, where institutional and enforcement capacity is likely to be weak, and where, consequently, the timing, sequencing and design of reform are crucial to ensuring the feasibility and sustainability of the reform process. There is the need to curb high levels of administrative discretion, which, coupled with a lack of clear rules and regulations, are conducive to the persistence or facilitation of phenomena such as land capture, the corrupt allocation and management of public land, and land allocation more generally. Most of the causes and conditions contributing to weak governance and corruption in these areas are best and most sustainably addressed by comprehensive institutional reform and capacity building and concern performance evaluation, regular auditing and reporting, service orientation, budgeting and access to information, and the nomination of an inter-institutional oversight board. Especially in countries with political corruption, the design and

implementation of good governance and anticorruption strategies is a politically sensitive issue, with powerful interests standing to lose out in the process and with results manifesting themselves in the medium to long term, rather than in the short term.

Some “new public management” (NPM) countries such as New Zealand, Canada and others have established legal and operational requirements for easy-to-access performance and accountability reporting on state assets, including public land. However, there is also good reason why countries in political reform processes should be careful in adapting NPM. It could lead to the fragmenting of an already weakly integrated state and/or accelerate the waste of public goods.

## **10. CONCLUSIONS AND RECOMMENDATIONS**

Even advanced economies have generally managed their public land assets very poorly in the past, and many countries are only now launching reform efforts and improvements. This new interest is mainly driven by public-sector reform and fiscal reform in some countries, or devolution of state assets from central to local government or the challenge of governance and accountability in other countries. There are numerous good practices, but such experiences are scattered, not systematically analysed, and not easily accessible or properly documented. There is an enormous need and interest not only for sharing experiences about work in progress in all countries but also for tailored capacity-building opportunities in the effective management of public land. Public land will continue to take on greater social and economic significance. In doing so, the related institutional, legal and operational arrangements that should secure multiple interests in specific parcels will take on additional political importance. We have not yet scratched the surface on crafting new institutional arrangements pertinent to land in this broader sense (Bromley).

Reforming the management of public land must contribute to deliberate policy and development principles, namely the reduction of severe poverty, the achievement of the MDGs, and progress in good governance and transparent fiscal management of the public sector. The development objectives of growth, poverty reduction and revenue generation need to be balanced and made compatible in designing the strategy for public land management.

The following steps highlight and summarize the major points made towards reforming the management of public land:

1. Create awareness and recognition at the highest level in central and local government, development institutions and civil society: What could be the driving force for reforming public land management? (For example, public sector reform, MDGs, poverty reduction strategy papers, governance reform, and social justice.)
2. Develop a good deliberate policy around how governments should intervene in public land management and land markets: Governance checks could be good starting points for understanding the scope of problems to be solved and discussion of principles and options on managing public land.
3. Develop and reform the regulatory framework: Reviewing, complementing and making the legal framework coherent, providing mechanisms for enforcement and for the right to access information.

4. Develop and apply a comprehensive accountability chain: Performance benchmarks, fiscal control, internal and external public land audit, conflict of interest rules, and interacting with anticorruption framework of the government.
5. Develop transparent fiscal management procedures: Valuation of public land and accounting (eventually accrual accounting), revenue transparency, and reporting. Adapt the IMF guide on resource revenue transparency to management of state land resources (IMF 2005)
6. Develop alternative institutional and organizational scenarios for the acquisition, management and disposal of public land: Broad discussion of pros and cons for centralized, decentralized, mixed custodian models or special purpose state cooperation.
7. Nominate high-level body for overseeing the decision-making process and for control: For example, inter-ministerial public land board with trustee function of the government.
8. Develop the regulations, technical tools and standards for the registration of public land (and associated land rights) and land inventory and develop a manual for practical implementation
9. Design and implement a capacity building strategy and specific training modules for professionals involved in managing public property.
10. Mobilize complementary governance support: General Auditor, Judiciary and / or Anti-corruption Agencies. Land Administration professionals must be protected from power pressure and vested interest groups in government.

The role of the international community is first of all to be aware of the importance of public land asset for development. There is a need to integrate public-land matters much better in the formulation of land policies, public-sector reform and fiscal reform initiatives as well as in public-good policies.

There is certainly a need for more research on dealing with the recognition and registration of bundle of rights on public land, on global analysis and on innovative institutional models for the acquisition; management and disposal, for example, special-purpose agencies or public-private partnership models. There is a need to develop a compendium of state land laws and regulations and a sourcebook on adaptive strategies and operational models. Specific training modules for effective management of public land should be designed and offered by the international community, and curricula on land administration should be updated. Global statistical information, indicators and analysis on public land at central-government and local-government levels is extremely weak compared with other relevant indicators on sustainable development. Creating a global learning network for exchanging information and developing a knowledge base for effective public land governance would certainly contribute to sustainable land management.

Effective and transparent management of public land is a critical aspect of land governance, respecting human rights, rule of law, poverty reduction strategies and revenue generation.

## REFERENCES

- Bromley, D. 2007, Land and economic development: new institutional arrangements for the 21st century. Cambridge, USA, Lincoln Institute of Land Policy. (also available at [www.lincolninst.edu](http://www.lincolninst.edu)).
- Bruce, J.W., Giovarelli, R., Rolfes Jr, R., Bledsoe, D. & Mitchell, R. eds. 2006. Land law reform, achieving development policy objectives. Washington, DC, World Bank.
- Centre on Housing Rights and Evictions (COHRE). 2006. Global survey on forced evictions, violation of human rights. Geneva, Switzerland. (also available at [www.cohre.org](http://www.cohre.org)).
- FAO 2007, Good governance in land tenure and land administration, land tenure studies no. 9, Rome [http://www.fao.org/nr/lten/abst/lten\\_071101\\_en.htm](http://www.fao.org/nr/lten/abst/lten_071101_en.htm)
- FAO bulletin land reform 2007/2, articles on good governance in land tenure and state land management, including case studies, Rome <ftp://ftp.fao.org/docrep/fao/010/a1423t/a1423t.pdf>
- FAO/FIG/CNG International Seminar on State and Public Sector Land Management 9-10 September 2008, Verona, Italy, [www.fig.net/commission7/verona\\_fao\\_2008/proceedings.htm](http://www.fig.net/commission7/verona_fao_2008/proceedings.htm)
- IMF 2005, Guide on resource revenue transparency, implementing the Code of Good Practices on Fiscal Transparency <http://www.imf.org/external/np/pp/2007/eng/051507c.pdf>
- IUCN 2007, Compendium of Land Use Laws for Sustainable Development
- Korea Asset Management Cooperation KAMCO 2006, Principle of State Land Management, Second edition, Seoul, South Korea.
- Open Society Initiative. 2003. Transfer of public property to local governments in central Europe (available at [www.lgi.osihu](http://www.lgi.osihu)). <http://www.mftf.org/resources/index.cfm?fuseaction=siteDetail&ID=188>
- The Urban Institute 2006, Managing Government Property Asset, International experiences, Washington DC
- Treasury Board Canada. 2000. Property management framework policy (available at [www.tbss-ct.gc.ca](http://www.tbss-ct.gc.ca)). [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/RealProperty/mfp-eng.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/RealProperty/mfp-eng.asp)
- World Bank Institute (WBI). 2005. Governance, Research Indicator Country Snapshot (available at <http://info.worldbank.org>). <http://info.worldbank.org/governance/wgi/index.asp>
- Zimmermann, W. 2006, Challenges of effective state land management, Land policies and legal empowerment of the poor, workshop document, World Bank Washington DC



## **COMMENT FOR READER**

The topic on public land management is still controversial. Therefore any comments, suggestions and recommendations to this article and topic would be most welcome. The author is interested to receive your comments and pass them on to FIG Commission 7 to help the Commission in its work on this important issue.

## **BIOGRAPHICAL NOTES**

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