

**FAO LAND TENURE STUDIES**

**9**

ISSN 1020-3117

**Good governance  
in land tenure  
and administration**



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**Good governance  
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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Rome, 2007

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ISBN 978-92-5-105753-7

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## **FAO Land Tenure Studies**

FAO's Land Tenure Studies are concise presentations on the often complicated and controversial subject of land tenure, especially as it relates to food security, poverty alleviation and rural development. These studies do not seek to be exhaustive but instead reflect what FAO and its many international collaborators have discovered are "good practices" for a particular aspect of land tenure and its administration. The studies cover various aspects of improving access to land and other natural resources and increasing tenure security. They address the role of land tenure in rural development, gender and access to land, improved access to land through leasing arrangements, rural property taxation systems, land consolidation, land access and land administration after violent conflicts, and good governance in land tenure and administration.

More information on the Land Tenure Studies, and on FAO's work in land tenure, is available at:

[http://www.fao.org/sd/LTdirect/ltstudies\\_en.htm](http://www.fao.org/sd/LTdirect/ltstudies_en.htm)

[http://www.fao.org/sd/IN1\\_en.htm](http://www.fao.org/sd/IN1_en.htm)

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## **Acknowledgements**

*Guide prepared by Richard Grover, Mika-Petteri Törhönen, David Palmer and Paul Munro-Faure.*

*Review panel: Helen Andreasson, Danilo Antonio, Clarissa Augustinus, Brett Ballard, Theo van Banning, Keith Bell, Lorenzo Cotula, Noha El Mikawy, Bjørn Førde, Szilard Fricska, Andreas Gläsel, Åsa Jonsson, Detlev Kuchar, Christiaan Lemmen, Tomas Lindemann, Fernando Medina Rosales, Elisa Morgera, Victor Mosoti, Eric Patrick, Heidi Pihlatie, Anu Saxén, Pekka Seppälä, Victoria Stanley, Raf Tuts, Paul van der Molen, Babette Wehrmann, Alexandra Wilde, Wael Zakout and Willi Zimmermann.*

*The Guide was prepared as part of FAO's Regular Programme work in land tenure, and was supported by a project funded by Finland (GCP/GLO/164/FIN). The work was conducted in close collaboration with the World Bank Thematic Group on Land Policy and Administration.*

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## Foreword

The present volume is part of a series of Land Tenure Studies produced by FAO's Land Tenure and Management Unit of the Land and Water Division. Land tenure arrangements are a key to food security and sustainable rural development. Equitable and secure access to land, especially for the rural poor, is a crucial factor for reducing poverty and hunger, for increasing agricultural productivity and for improving rural conditions. Effective land tenure institutions are needed to administer who has rights to which natural resources for which purposes, for how long, and under what conditions.

Weak governance in land tenure and administration is a common and severe problem that is increasingly recognized. It has been a significant feature in the transition economies, reflecting the challenges of moving from centrally planned economies with largely state-owned resources to market economies. It is commonly a substantial issue in developing economies, and it is not an alien matter for the developed world. International initiatives to improve the situation have been launched, mainly focusing on technical improvements of systems and procedures. FAO has been working with generous support from the Government of Finland since 2005 on raising awareness of the importance of this issue and on preparing joint publications of Guidelines and other policy materials with partners, including the World Bank, the United Nations Human Settlements Programme (UN-HABITAT) and the International Federation of Surveyors (FIG).

This volume is intended to support land tenure and land administration professionals and their partners who are committed to improving governance in a land administration system or in an institution managing lands held under customary tenure. The book, like others in the series, does not

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seek to be exhaustive but rather reflects what FAO and its many collaborators have discovered are “good practices”. FAO’s Land Tenure and Management Unit looks forward to continuing collaboration with its larger audience.

**Paul Munro-Faure**  
Chief  
Land Tenure and Management Unit

# 1. Introduction

- 1.1 This guide is written for people who work in land administration and all those with an interest in land, land tenure and their governance. Although much has been written about the importance of good governance in achieving development goals, there is comparatively little material on good governance in land tenure and administration. Failings in governance have adverse consequences for society as a whole. By contrast, good governance can help achieve economic development and the reduction of poverty. Good governance matters.
- 1.2 Land is the single greatest resource in most countries. Access to land, security of tenure and land management have significant implications for development. Land administration provides important parts of the infrastructure for an efficient economy, which means that it touches all aspects of how people earn a living. Land administration through taxes on land plays a significant role in raising revenue for public finances. Through registration and cadastre systems, land administration provides security of tenure and allows people to obtain loans through mortgages. Yet formal land administration systems commonly fail. Customary land tenure arrangements also may not adequately serve citizens – especially when those arrangements are weakened by transition and commercialization.
- 1.3 Weak governance, whether in formal land administration or customary tenure arrangements, means that the land rights of the poor are not protected. It affects the poor in particular and may leave them marginalized and outside the law. Weak governance may also mean that land is not used appropriately to create wealth for the benefit of society. Lack of competence in land administration can be an important constraint on development and the eradication of poverty. Good governance in land administration is one of the central requirements for achieving good governance in society.
- 1.4 Weak land administration may be part of the overall problem of governance. Land administration may suffer from a lack of transparency and accountability

as a result of confusing regulatory frameworks and complex administrative processes. People who work in land administration may be exposed to the temptation of corruption. They may corruptly enrich themselves by preventing land registration until bribes are paid; allowing state land to be grabbed by private interests; valuing assets at inflated prices as security for fraudulent loans; and awarding contracts to those who offer private rewards rather than to those who offer best value for money. Land administrators have monopoly powers over certain tasks. With monopoly comes power, and power can be abused.

- 1.5 Even where land administrators behave in a relatively honest manner, they might not take action to stop attacks on good governance by others. While carrying out their technical work, land administrators may become aware of illegal activities by others, e.g. illegal logging or encroachment on forest reserves or state lands. Such activities will continue if land administrators do nothing about them. The message to land administrators is that they cannot pursue technical excellence in isolation. Their skills and techniques should serve the interests of society as a whole.
  
- 1.6 Land administrators can, and should, recognize their responsibilities and take them seriously. Their technical skills can help tackle economic, social and environmental problems and to fix injustices. This is particularly the case where there are interlocking systems that relate to land. Land issues cut across society, and a well-governed land administration system can strengthen local institutions, thereby contributing broadly to governance. Banking and financial systems have their own governance issues identified in the relevant standards, policies and procedures as, for example, in the valuation of property for mortgage security purposes. These governance issues relate strongly to those of land tenure and administration in their technical concerns for valuation and involvement in the registration of mortgage interests. Land administrators act as guardians of the rights to land and of the people who hold those rights. In doing so, they act to stabilize public order and provide the preconditions of a flourishing economy. The choice for land administrators is to benefit personally from the opportunities that corruption offers for private enrichment in societies

in which governance is weak, or to be a strong force working towards good governance, economic development and the reduction of poverty.

- 1.7 In this guide, land tenure is the relationship, whether defined legally or customarily, among people with respect to land. Land administration is the way in which the rules of land tenure are applied and made operational. It includes land registration, land use planning, land consolidation, land management and property taxation. The guide explains what governance is, and what constitutes good governance in land tenure and administration. It examines the consequences of weak governance in these areas. It looks at how governance can be improved, in general, in land administration as well as in some specific areas in which governance can be problematic. It draws out the lessons that can be learned in land administration from the extensive field programme of FAO and the World Bank, and from parallel work on governance in urban areas, corporate governance and campaigns against corruption. The focus of the guide lies mainly, but not exclusively, on statutory land tenure arrangements and land administration.
- 1.8 Some people are more vulnerable than others to the effects of weak governance. Good land administration practices recognize these groups and ensure their protection and empowerment. Vulnerable groups often include women and children, ethnic minorities and indigenous groups and the elderly and disabled. Women may be disadvantaged from holding property rights under statutory law as well as customary law. They may face cultural sanctions when defending their rights. Children who are separated from their family as a result of a violent conflict, or orphaned because of HIV/AIDS and other illnesses, may be extremely vulnerable and lose inheritance rights. Ethnic or religious minorities, internally displaced people and refugees may be discriminated against. The poorest, who are usually the least educated and are often illiterate, may face difficulties in understanding the processes and may lack the political connections or financial resources to hire professional advisers needed to navigate through a complex land tenure setting. This guide addresses the issues of special groups embedded in the broader picture. The solutions put forward should be adapted as required to fit local circumstances.

- 1.9 There are special conditions that aggravate governance problems in land tenure. Violent conflicts cause significant changes to land tenure and administration, such as the displacement of people and the destruction of land administration records, and are associated with long-lasting problems of low resources, weak institutions and unclear, insecure land tenure arrangements. Similar problems can occur after emergencies and natural disasters or through sustained severe poverty. There is as much a need to improve governance in such conditions as there is in more stable situations, yet there is a difference as to what can be achieved in the short term. The principles set forth in this guide are valid for agencies working in difficult situations, but it is recognized that it may not be possible to implement some of the recommendations in the short term.
- 1.10 Governance in land tenure and administration cannot be separated from governance of other sectors. The guide is likely to be of most use in countries that are making progress in improving governance of society as a whole. Working to achieve higher standards of land administration is one way in which a dysfunctional society can improve its governance. Improvements in land administration can help realize a society's commitment to democracy, the rule of law and human rights.

## **2. What is good governance in land tenure and administration?**

- 2.1 Explicit recognition of the importance of governance in land tenure and administration has come relatively recently. Growing interest in governance in other sectors has spread to land administration. However, the ideas behind governance in land administration are not new. Land administrators are used to codes of professional ethics that define their duty of care to clients and society. This chapter defines the term governance, examines what is meant by good governance, and discusses what good governance in land administration involves.

### **THE CONCEPT OF GOVERNANCE**

- 2.2 Governance is the process of governing. It is the way in which society is managed and how the competing priorities and interests of different groups are reconciled. It includes the formal institutions of government but also informal arrangements. Governance is concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens and how society obliges its members to observe its rules and laws.
- 2.3 There are differences among those working to improve governance as to how it should be defined. On the one hand, authority and power in society can be seen as being vested in many institutions and to stem not only from governments. This definition of governance reflects the role of the private sector and civil society in decision-making alongside that of the government. On the other hand, the view of governance may be restricted to how the state serves its citizens: how officials and public agencies acquire and exercise power and authority to determine public policy and provide public goods and services.
- 2.4 These differences have important practical policy implications for land tenure and administration. What type of policies should be pursued to achieve good governance in land tenure and administration? Should the policies be aimed at

improving the work of the state or should they seek to influence how society as a whole treats land? The rights and responsibilities over land are administered by the state but also by many private, communal and public bodies. Civil society, including professional associations, plays an important role in setting technical and behavioural standards. Accommodating conflicting interests and obtaining stakeholders' cooperation for the common good are major aspects of land administration in activities as diverse as rural development, urban renewal and the protection of the environment.

### **WHAT IS GOOD GOVERNANCE?**

- 2.5 Under what circumstances should governance be regarded as “good”? Should emphasis be placed on the outcomes of governance, i.e. is governance good if certain outcomes stem from it? Or is the process of governance more important, i.e. how should governance take place?
- 2.6 The avoidance of corruption is one obvious aspect of good governance. However, features of good governance also include accountability, political stability, government effectiveness, regulatory quality and rule of law, as well as control of corruption. Good governance means that government is well managed, inclusive, and results in desirable outcomes. The principles of good governance can be made operational through equity, efficiency, transparency and accountability, sustainability, subsidiarity, civic engagement and security. Governance can be poor if government is incorruptible but tyrannical, or is democratic yet incompetent and ineffective.
- 2.7 **Good governance and human rights.** Ideas about good governance are derived from work done on human rights and fundamental freedoms. Certain aspects of good governance are embedded in international human rights law. There are specific human rights with respect to property that have implications for good governance in land tenure and administration. The Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the (European) Convention for the Protection of Human Rights and Fundamental Freedoms contain protections for private property. They have resulted in case law that



- helps to clarify the relationship between human rights and the rights to land in areas such as unfair taxation, the deprivation of ownership rights, land registration, land use planning, and restitution. For land tenure and administration, it is feasible to define some aspects of good governance in terms of legally enforceable human rights. However, there is no overall consensus in international law as to what constitutes good governance, though certain key principles are universally accepted.
- 2.8 **Professional ethics and corporate governance.** A different approach to governance can be derived from professional ethics concerning the relationship between professionals and their clients. The main themes incorporated are competence, integrity, confidentiality, transparency and accountability. Codes of professional ethics often argue that there are obligations to society as a whole as well as to specific clients. A number of codes of professional ethics have been produced by professional organizations that work in land administration. Professionals owe a duty of care to their clients and should not exploit their relationship for their personal advantage to the detriment of their clients.
- 2.9 These principles of ethics and service orientation were used to create systems of corporate governance in the private sector but they can be applied to the public sector. The principles are designed to influence the behaviour of individuals. They stem from recognition that the person who is best placed to steal from the owner or misuse power is the person who has been placed in a position of trust, irrespective of whether that person works for an individual client, for a company or for the government. There is no fundamental difference in the duty of care and its ethical basis between a person who works for a commercial property company and one who works for a state land registry or cadastre. The principles add two important dimensions to good governance. First, they are opposed to petty corruption, e.g. the payment of bribes for the provision of routine services. Second, professional integrity implies that a land administrator should not be a silent witness, a willing partner or a facilitator of grand corruption where the state is “captured” by a powerful group. The principles are important to good governance because they add the notion of personal responsibility by individual land administrators.

- 2.10 **The measure of good governance.** Good governance is not an absolute condition. Rather, there is a continuum between weak and good governance. This implies that it should be possible to devise ways to measure the governance of a country and to compare it to that of other countries. Indicators allow the trends in governance within a country to be observed over time.
- 2.11 There are a large number of potential indicators of different aspects of governance, e.g. corruption, elections, the functioning of the judicial system and freedom of the media. Governance indices are generally compiled by taking a series of indicators and weighting their scores to produce an aggregate measure. Indicators can be quantitative, such as voter turnout, or qualitative, such as perceptions of corruption. Deviations from a base can be used instead of absolute numbers. Well-chosen indicators identify causality so that a change in the indicator is related to a change in the quality of governance. Indicators can be modified to consider vulnerable groups, e.g. in the form of gender-sensitive indicators. Criteria for selecting indicators include ease of collection, universality, relevance and credibility. Widely used indicators of governance include the World Bank's Governance Indicators and Doing Business Index, UN-HABITAT's Urban Governance Index, the Bertelsmann Transformation Index and Transparency International's Corruption Perceptions Index. Indices provide tools for comparison and are particularly useful for identifying trends. However, indices have limitations and should be interpreted with caution. There are no specific indices of governance in land administration, though several leading indices include aspects of land administration.
- 2.12 Table 1 presents characteristics of good governance. From this, one can draw out features of good governance in land tenure and administration and derive policies that can promote good governance.

### **GOOD GOVERNANCE IN LAND TENURE AND ADMINISTRATION**

- 2.13 This final section summarizes what constitutes good governance and what these ideas mean for land tenure and administration. Differences in emphasis on what good governance is have significant policy implications. A land administration system that is designed to enhance a pro-poor and gender-sensitive agenda is likely to place a high priority on areas such as achieving

**TABLE 1**  
**Characteristics of good governance**

| Good governance is:   | Weak governance is:   |
|---|---|
| 1 Efficient, effective and competent: It formulates policy and implements it efficiently by delivering services of a high quality.  | Inefficient, ineffective and incompetent: It fails to formulate policy effectively or to deliver efficiently services of adequate quality.  |
| 2 Responsive: It delivers the services that citizens want and need.   | Unresponsive: It does not deliver the services that citizens want and need.   |
| 3 Legitimate: Those in power have earned the right to govern, have been endorsed by society through democratic processes and can be replaced if the citizens are dissatisfied with them.  | Illegitimate: Those in power have not been endorsed by society, nor have they earned the right to govern, but have achieved power undemocratically, and the citizens are unable to remove them from power.  |
| 4 Transparent: Open.  | Opaque: secretive.  |
| 5 Consistent, predictable and impartial: Outcomes from the governance processes are predictable and in accordance with published laws, rules and regulations. There is legal redress and enforcement of law by an impartial judiciary in the event of inconsistency.  | Inconsistent, unpredictable and partial: Outcomes from the governance processes are unpredictable, do not follow discernable rules, and there is no redress from a judiciary that behaves with partiality.  |
| 6 Accountable: It demonstrates stewardship by responding to questioning, explaining its actions and providing evidence of how it functions.   | Unaccountable: It does not account for its actions and fails to produce evidence of its performance. There are no effective checks and balances to compel accountability.   |
| 7 Equitable: It deals fairly and impartially with individuals and groups providing non-discriminatory access to records and services.   | Inequitable: It is unfair and partial in dealings, favouring particular groups with access to power and discriminating against others, for example, by gender, ethnicity, religion.   |
| 8 Sustainable: It balances the economic, social, and environmental needs of present and future generations.   | Unsustainable: It fails to balance the needs of future and present generations.   |
| 9 Locally responsive: It locates service provision at the closest level to citizens, consistent with efficient and cost-effective delivery.   | Locally unresponsive: It pays no regard to the convenience of citizens when locating services.  |
| 10 Participatory: It enables citizens to participate fully in governance through consensus-building and engages with civil society without curbs on the media or on freedom of expression and association.  | Exclusive: It excludes citizens from participation in governance with curbs on the media and on expression and association.   |
| 11 Providing of security and stability: It provides security of livelihoods, freedom from crime and from intolerance, security from human conflicts and natural disasters and security of tenure.   | Unwilling or unable to provide security and stability: Citizens cannot look to the government for security, and the government may even be the source of their insecurity.  |
| 12 Dedicated to integrity: Officials perform their duties diligently and objectively without seeking bribes and give independent advice and judgments, and the government respects confidentiality. There is a clear separation between the private interests of officials and politicians and the affairs of government. | Supportive of corruption: Officials are bribed to do what citizens have a right to expect. They distort decisions in favour of those who reward them and make use of confidential information for their own gain. Officials and politicians treat government as a vehicle with which to pursue their own private interests. |

security of tenure for lessees and sharecroppers, the recognition of informal and customary property rights and the development of gender-neutral inheritance rights. A land administration system designed to promote economic development is likely to place the priority on areas such as the speed of re-registration after sale, the speed and accuracy of searches to check for charges against properties for loan purposes, the clarity of regulations for planning and building and the procedures for changing land use. This does not mean that a choice has to be made between eliminating corruption and improving the responsiveness and efficiency of services. Land administration can benefit the poor as well as promote economic development – at the same time, and with the same effort. In contrast, land administration that serves a limited purpose makes an equally limited contribution to the overall development of society.

- 2.14 Achieving good governance in land administration requires a strong commitment of the people involved. A well-communicated land policy with clear objectives for legal and institutional reforms helps to establish the ownership of such people in the change process. Table 2 presents some examples of embodying good governance values.

**TABLE 2**  
**Samples of embodying good governance values**

| Good governance values in land tenure and administration  | Examples of practice embodying good governance values  | Relationship to Table 1 |
|---|--|-------------------------|
| Land administration systems should be efficient, effective, and competent.  | Work is accurate and timely, with enquiries being answered within a reasonable period. Work is undertaken by competent persons. Good performance is awarded. Ineffective professionals are disciplined or dismissed.   | 1                       |
| Land policies that embody value judgements should be endorsed by elected politicians after consultation with interested and affected parties. | Land use plans are approved by democratically elected politicians after effective public consultation.   | 2, 3, 10                |
| Land information is freely, available subject to the protection of privacy.   | Land register information can be freely accessed (subject to privacy constraints). Prices paid for properties are available from the land registry. Land tax assessments can be inspected so that taxpayers can challenge the fairness of assessments. Decisions on changes to land use are made in meetings that are open to the public, and citizens can present arguments to the decision-makers. | 4                       |

| Good governance values in land tenure and administration   | Examples of practice embodying good governance values   | Relationship to Table 1 |
|--|---|-------------------------|
| Land laws and regulations should be freely available, well drafted in a participatory transparent manner, responsive and consistent, and able to be enforced by the government and citizens. | Citizens can bring land disputes before an independent and impartial judiciary that is supported, as appropriate, by technical experts. Laws are clear and consistent and translated into local languages. Alternative dispute resolution processes are available so that disputes can be settled by mediation and conciliation as an alternative to court actions. The decisions of the government in areas such as land use planning, land taxation, and compulsory purchases can be challenged by citizens in the courts on points of law. Valuations used by the government for taxation and compulsory purchase can be challenged by citizens. | 5                       |
| Land administration agencies should be independently audited and should publish their accounts and performance indicators.   | Land administration agencies publish their accounts and key performance indicators, which are independently audited. Government accounts are kept on an accruals basis. Professional bodies separate their promotional and disciplinary activities.   | 6                       |
| Land administration services should be provided for all without discrimination, e.g. on the basis of gender, ethnicity, religion, age or political affiliation.                              | Inheritance laws do not discriminate by gender. Information is accessible for all, including illiterate people. The land rights of minorities are protected by land registration. Indigenous rights to land are recognized. The cost of land registration is affordable. Registration does not require expensive services or examinations.  | 7                       |
| Sustainable land development should be encouraged.   | Regulations to prevent unsustainable development are enforced.  | 8                       |
| Land services should be provided close to the user.  | Land records can be accessed remotely using Internet technology. Service points are accessible for citizens who live far from the registry.   | 9                       |
| Land registration and legal systems should provide security of tenure for those with a legitimate interest in a land parcel.   | Registered rights of people are legally protected against claims of others. Records can be altered only by authorized officials according to a law-stipulated process. Back-up systems for land registration allow records to be recreated if destroyed by natural disasters or conflicts.  | 11                      |
| Land administration officials should behave with integrity and give independent advice based upon their best professional judgement.   | Policies exist to prevent and identify corrupt practices, insider trading and favouritism, and to discipline or prosecute those following such practices. Policies protect and provide incentives for "whistleblowers". Officials and politicians are required to disclose potential conflicts of interest and not to act in such cases. Government property is accounted for.  | 12                      |



### 3. Consequences of weak governance in land tenure and administration

#### SOURCES OF WEAK GOVERNANCE

- 3.1 Weak governance tends to flourish where the law is complex, inconsistent or obsolete. Fragmented institutional arrangements, weak institutions, ambiguous laws and a weak judiciary aggravate the situation. Corruption is one common factor in governance problems. Sometimes poor motivation, low pay and poor training of staff are at the heart of the problem. Favouritism is another factor; jobs may be reserved for a particular ethnic or religious group or those who support a political party or a favoured gender rather than being allocated on merit. Sometimes low pay means that officials give priority to other sources of income. Land agencies are particularly vulnerable to practices of weak governance after a violent conflict or emergency. Bad practices can spread rapidly when there are no safeguards to stop them. Weak governance is often associated with two principal types of corruption: “state capture” and “administrative corruption”, each with its own characteristic set of behaviours.
- 3.2 **State capture** is corruption on a grand scale. It illegally or inappropriately transfers economic resources from the state to private interests. The state can be “captured” by individuals, families, clans, groups or commercial companies. Those who capture the state are able to direct government policy for their own benefit. This can include the passing of laws and regulations, civil and criminal court decisions, favourable tax and customs treatment and the corrupt mishandling of funds. Land administration can be used to serve the interests of those in control, for example, by:
- the illegal transfer of state lands and common lands into private possession of those in control or their allies;
  - the implementation of redistribution policies and laws in ways that favour those who have captured the state;
  - the manipulation of the banking system to provide cheap credit on loans backed by inadequate security;
  - favourable property tax assessments or exemptions from payment;

- favourable decisions to change land use that cannot be justified on objective grounds;
- unjust compensation for those whose land is expropriated.

3.3 State capture is most likely to occur where economic power is concentrated and countervailing political and social interests are weak. In contrast, strong political competition and thriving civil societies limit state capture by producing mechanisms of accountability. Thriving civil societies can include professional organizations for surveying and valuation that promote ethical and technical standards and discipline people who breach them. Open and transparent land registration systems and democratic and accountable land use planning systems help to reduce the scope for state capture. State capture is by character a concealed system and therefore difficult to identify or measure. Visible problems such as administrative corruption may actually be low in a country captured by powerful state officials.

3.4 **Administrative corruption** is about the abuse of office by individual officials who use their power for self-enrichment rather than to execute the tasks for which they are appointed. Unlike state capture, administrative corruption is not organized to serve the purposes of one particular group or individual. Rather, it is the product of large numbers of individual officials each working to serve his or her own interests. Officials in a regime of administrative corruption seek bribes to evade or speed up administrative procedures and to produce results that favour the bribers. Administration in chaos and unclear procedures help officials to secure bribes. For example, users of land registration services may be obliged to make additional unofficial payments to get officials to process their documents. Officials discriminate in favour of the bribers. Administrative corruption is often downplayed as insignificant gift-giving, but the implications are serious. Administrative corruption is a significant issue because it helps maintain social exclusion and inequity and distorts the focus of development. Those without the resources to bribe corrupt officials are left out; inevitably the poor suffer, and women more than men.

3.5 Fraud is a common feature of administrative corruption. Officials may issue false claims, invoices, valuations and staff records in return for a reward. Officials may also engage in extortion, requiring individuals and commercial



companies to make payments to avoid being harassed. Payments may be required to prevent unfavourable and unjustified decisions on applications to change land use or to avoid arbitrary fines for alleged violations of building regulations. Officials may manipulate tax assessments to produce favourable valuations. They may award public contracts in return for private payments.

### **SYMPTOMS OF WEAK GOVERNANCE**

- 3.6 Where the state is captured by a particular group, the state apparatus may be used to undermine the interests of rival groups. Discrimination can take place against groups designated by ethnicity, gender, region, religion or political affiliation. By contrast, other people may unfairly enjoy the benefits of favouritism. Decision-making lacks objectivity, transparency, accountability and legitimacy. Box 1 lists some actions that are likely to arise from state capture. Box 2 shows features of weak governance that result from administrative corruption. Box 3 presents some features of weak governance in a regime that is lacking in capacity.

#### **BOX 1**

##### **WEAK GOVERNANCE AND STATE CAPTURE**

- Agencies are controlled by the powerful for the purposes of exploiting the state's power for their own purposes.
- The courts give decisions in land conflicts that favour the powerful irrespective of the merits of the case.
- Actions are taken with impunity as there is no one to hold the decision-makers to account. The organs of the state, such as the police and judiciary, that should be responsible instead serve the interests of the group that has captured the state.
- Powerful groups take the land of the poor through illegal forced evictions.
- Compulsory purchase is used to acquire the land of individuals and groups at a low value. This land is then redeveloped for private gain.
- The land of the powerful is rezoned for a higher value use without regard to principles of land use planning.
- State-owned land is transferred to the powerful without payment or for a small fee.
- State-owned land is privatized and transferred to third parties for informal payments.
- Mining or logging rights are allocated to the powerful without regard to existing customary or other tenure rights or to the environment.

## BOX 2

**WEAK GOVERNANCE AND ADMINISTRATIVE CORRUPTION**

- **Bribery.** Payment is extracted by corrupt officials to perform a free service, to prevent the enforcement of regulations, to secure a favourable decision or to speed up a process. Examples include bribes to process land registration, not to enforce building regulations and to secure favourable land use planning decisions. Violations go unpunished if payments are made to officials. Queues can be bypassed on payment.
- **Employment of “facilitators”.** In order to overcome frictions in the system, agents are employed. They offer benefits to officials to act in the interests of their clients. Sometimes threats or blackmail are used. Such agents earn fees from their clients, though they may cooperate with corrupt officials to enrich both at the expense of clients.
- **Theft.** State property is stolen and sold for private advantage. Government contractors may work on private projects, e.g. construction for officials and politicians using materials and labour paid for by the government.
- **Fraud.** False claims for payments are made. Valuations of land are understated to minimize the tax payments or overstated to support mortgage fraud. False invoices and non-existent staff members on the payroll are used.
- **Extortion and blackmail.** Citizens pay officials to prevent unfavourable treatment such as the enforcement of unreasonable or inconsistent regulations or tax demands. Businesses may be threatened when an inefficient administration and unclear practices act as a barrier to behaving legally. Having once behaved.
- **Nepotism and favouritism.** Officials use their influence in favour of family, political associates and friends. Official posts are obtained through purchase or influence, and not through open and competitive recruitment.
- **Misconduct in public office.** Officials misuse their position for private gain. Confidential information obtained through employment is used for private gain, through the buying or selling of shares or land, e.g. before news of a proposed government development is made public. Facilities provided for use in employment, e.g. official cars, are used for private purposes.

**IMPACT OF WEAK GOVERNANCE**

- 3.7 **Poverty and social exclusion.** Weak governance affects the poor particularly strongly. They lack the money to pay the bribes needed to benefit from corruption

## BOX 3

**WEAK GOVERNANCE AND A LACK OF CAPACITY**

- **Lack of resources.** Governance can be poor because there are limited technical resources to ensure good governance. Land use planning can be ineffective because of a lack of offices and resources for field work. Informality of tenure and a backlog of cases may exist because there is insufficient capacity to deal with them.
- **Lack of qualified or competent staff.** Those responsible for achieving good governance may lack qualifications, skills or experience. Insufficient qualified staff may be available. Regulations may not be translated into local languages or those responsible for land administration may have a poor command of the local languages.
- **Lack of institutional capacity.** In post-conflict settings in particular, land administration institutions may have been totally destroyed. The institutional memory and capacity and culture of work are lost, creating a perfect environment for a decline into weak governance. Similarly, a society can lose its capacity to manage land in communal settings.
- **Negligence.** A negligent act is the result of a lack of care rather than capability. Negligence also occurs when things that should have been done are not. These include anticipating problems that could reasonably be expected or supporting specific vulnerable groups, such as poor women, to defend their legal rights. If negligence is routine, this indicates that there is a failure to make officials accountable for their actions.
- **Mismanagement.** Failings in administration are not acknowledged or rectified. A

or to pay for legal protection to defend their rights to land. They may not even know their rights or how to defend them because of illiteracy or marginalization caused by other factors. Weak governance may promote inequality between genders, as poor women tend to be less literate and have fewer resources. It may also promote inequality between social classes, as the rich are able to benefit from the opportunities for self-enrichment while the poor may lose their rights to land and common property resources such as communal grazing areas and forests. The poor who cannot afford the formal legal services are doomed to rely on informal and extralegal arrangements, effectively becoming excluded from the protection and reach of the law. Politically, the consequences can be severe, as grievances may fuel violent conflict.

- 3.8 **Constraints on economic development.** Weak governance and corruption restrict development. They increase risks and reduce incentives for investment, saving and entrepreneurship. The distortion of incentives reduces productive capability. For international investors, investing in a country that is subject to state capture or administrative corruption exposes them to a moral problem. Their reputation can be undermined. Increasingly, companies that invest in countries with weak governance find themselves liable under the laws of their home countries for corruption carried out in their interests elsewhere. Even if an investor does no wrong, it may be difficult to persuade its shareholders, employees and the public in its home country that it can operate in a country with weak governance without using corruption.
- 3.9 **Environmental degradation.** Environmental problems arise from weak governance. People may pay corrupt officials to be exempt from controls on building or land use planning and over the extraction of water or minerals. Poor management of state land, including national parks, results in its abuse and degradation. Informal payments or political influence may prevent the enforcement of regulations to protect the environment. Unsustainable development can take different forms, including illegal logging; illegal hunting; excess water extraction; the discharge of pollutants into the air, water courses, the sea and landfill sites; devastation from mining; and the encroachment of development into areas of biodiversity and national parks. Poorly paid officials may be tempted to supplement their incomes with informal payments to overlook violations. Weak governance is likely to mean that people who protect the environment lack the resources to do their job. For example, officials protecting wildlife may be threatened by better-armed poachers.
- 3.10 **Reduced public revenues.** Weak governance reduces the finances available for public services such as health care and education. People may evade taxes by making informal payments to get lower tax assessments. Valuations of properties for tax purposes may be deliberately understated to lower the tax burden. Forged sales values reduce taxes on property transfers. Poor accounting systems and a lack of accountability enable potential revenue from fees and charges to be diverted into private hands.

- 3.11 **Tenure insecurity.** Weak governance reduces security of tenure. Illegal transfers may cause legitimate owners or occupiers to lose their rights. Informal transfers and informal ownership are not protected by law, and the protection offered by customary tenures may be weakened through external pressures, and may not be extended to newcomers. Those who capture the state may use land registration systems to reinforce their claims to land, even when the land has been acquired through land grabbing. Marginalized groups may have the evidence of their land rights suppressed by officials. Insecure tenure can have adverse effects on labour supply, as a family member may be required to stay at home to protect it rather than to seek work.
- 3.12 **Land disputes.** Weak governance leads to disputes. It provides opportunities for the powerful to claim the land of others, including the state. Rising land values in areas undergoing rapid urbanization are likely to fuel disputes as land use is shifted from agriculture to housing and commercial activities. The poor may not be able to defend their rights against unfair competition and may lose their livelihoods. Where agriculture or mining is introduced into remote areas, there are likely to be conflicts with indigenous populations. Those acquiring the land may prevent indigenous groups from having access to the natural resources necessary for their livelihoods. At the same time, weak governance impedes the resolution of disputes. Increased litigation may clog the courts, and cases that are heard may be weakly governed. Alternative dispute resolution mechanisms, which could help to ease the workload of courts and provide a transparent alternative to troubled judiciaries, are rare.
- 3.13 **Weak land and credit markets.** In countries where market economies are being established, weak governance leads to informal land transactions when land registration has high transaction costs. A purchaser of an informally owned land parcel may face high costs in establishing whether the seller has the right to sell the parcel. Weak governance may encourage people to seek a loan that is higher than the borrower's income would permit for the repayment, or higher than would be legitimate for the land parcel offered as collateral, under the lender's policy for the ratio of the value of the loan to the value of the collateral. Informal payments may allow borrowers to obtain

inflated valuations of the collateral or to make inflated statements of income. Inaccurate valuations increase the vulnerability of the banking system. The creditors may have difficulties in selling the collateral for the required price if the loan repayments fail. This, in turn, may threaten the ability of banks to repay their depositors. Insecurity in the credit markets causes banks to increase loan interest rates, which slows market development.

- 3.14 **Negative social behaviour.** Corrupt behaviour has a corrosive effect on ethics and social behaviour. Observing others behaving corruptly can reduce the sense of social obligation and the willingness to conform to laws. Constitutional guarantees protecting the property of other groups may be ignored or breached. Where rapid social change is taking place, those who have held a respected position in society may be tempted to seek opportunities for private gain. For example, a chief who is responsible for allocating rights of access to customary land for a token payment may start demanding substantial amounts of money that approach the value of the land. The norms and values of a society can become adjusted to the notion that corruption is normal. Why decline personal gain when others do not? Why pay taxes when they can be evaded by making smaller informal payments to officials? Eroding values may contribute to political instability.
- 3.15 **Abuse of compulsory purchase.** Large infrastructure projects (e.g. roads, railways, pipelines) may require land from many landowners. If any individual landowner refuses to sell, the project will not be possible. As a result, countries have mechanisms to compel the acquisition of land for public use while ensuring that people receive compensation for the land taken. Weak governance may prevent people from receiving fair or prompt compensation. Compensation might not be paid, or it may be paid at a falsely lower or higher value, or after an unnecessarily long period of time. It may not reach people such as lessees or sharecroppers who have lost access to the land they had used. Compulsory purchase may be a powerful tool for self-enrichment where corruption flourishes. Officials and politicians may use their inside knowledge to acquire land cheaply from the original owners, and then to sell it at higher prices when compulsory purchase takes place. With state capture, compulsory purchase can be used to deprive opponents of the regime of their legitimate property.

## **4. Experiences from applying good governance principles to land administration**

- 4.1 This chapter looks at how governance has been improved in land administration, specifically land registration, the management of state-owned land, property taxation, privatization and restitution, land use planning, professional services, the management of customary land, and in the development of projects. While the different contexts of these elements of land administration may require different solutions at times, they share some common approaches to improving governance.
- 4.2 Methods found to be effective in preventing corruption include having an organizational manual that sets out roles, procedures and expectations about the behaviour of staff. There should be staff awareness programmes so that staff are told what is and is not acceptable behaviour. Staff rotation exposes wrongdoers to detection by incoming officials. Outsourcing and tendering should be carefully supervised as high-risk areas for corruption. Checks such as having more than one person responsible for each decision may help to prevent problems. Effective internal auditing and sanctions are needed.
- 4.3 The transformation of agencies into “learning organizations” can be important. Learning organizations learn from their experience. Often, pilot projects help to test concepts and procedures. Best practices may be spread throughout the organization through training, and those with experience of change elsewhere in the organization can act as agents of change.

### **LAND REGISTRATION**

- 4.4 Land registration solutions must be appropriate for their context, but it is possible to identify, and learn from, trends and challenges. Starting in the 1980s, many developed countries restructured and modernized their land registration systems, which, until then, had been largely unchanged for decades.

More recently, a growing number of countries have introduced land registration systems, sometimes as part of their transition to market economies, and often with the support of donors. Improving the security of land rights and reducing costs of transfers are often seen as two of the key ways to stimulate economic growth through encouraging investment and the development of finance markets. The principal trends are identified below.

- 4.5 **A customer-oriented approach.** Registration systems in many developed and transition countries have become more affordable. Forms have been simplified so they are easier to use. Registration is quicker because the processes are more efficient. Services are made available at times and places that are convenient for customers. Registration has become a more pleasant experience with helpful and courteous staff and offices designed for customers. Processes have become more transparent, decreasing opportunities for extortion.
- 4.6 **Legal reform.** Confusing and inconsistent laws have been replaced by ones that are clearer and give greater certainty regarding the outcome. Gaps in land laws have been filled. Legal reforms have addressed the clarification of rights, the registration process and fees, improving transparency and access to information and supporting rights to challenge administrative decisions.
- 4.7 **Business operations.** Registration systems have become technically more efficient. They have stable and transparent finances, in many cases being self-financed through fees. There are stable multiyear planning processes. Attention is paid to human resources through training, encouraging staff retention and maintaining morale so that the staff enjoy a favourable environment to provide good service. Registration agencies collaborate with other land agencies in delivering services. They develop new products and services for their customers.
- 4.8 **Computerization** has been widely used to improve the quality of service. Initially, computers were used for internal purposes – to speed up searches, scan documents for archives and digitize maps to make updating easier. Later, computerization was used to enable people to view documents from remote



computers (typically through the Internet) rather than by visiting the land registry. The enhanced access to land records has improved governance by reducing the ability of corrupt officials to control access to information illegally. More recently, electronic transactions have been introduced in areas such as land transfers and mortgages; in such transactions, all documents exist in electronic form and are transmitted electronically to the registry. Computerization can be complex, particularly with large systems. Computerization can produce benefits but does not automatically do so. Investments require careful consideration of the long-term feasibility.

- 4.9 **Human resources and outsourcing.** Successful land administration requires personnel who are capable and motivated. A human resources policy has been a good starting point to address the issue systematically. Non-discriminatory employment policies enhance the legitimacy of the system among marginal and vulnerable groups. Agencies employ groups of specialists that require continuous upgrading of skills. It has proved challenging for land registration agencies to maintain high information technology capacities, and they are increasingly outsourcing the development and management of land registry databases. In many countries cadastral surveys are carried out by the private sector. The experiences from transition countries show that the private sector, with public sector support, has been very effective in restoring or establishing the cadastral surveying profession.
- 4.10 **Single agencies and “one-stop shops”.** Some countries have consolidated related land administration functions under the responsibility of a single agency, and have created “one-stop shops” that allow customers to get what they need from a single office and location rather than having to deal with a series of agencies. The advantage of a one-stop shop is that customers no longer have to go from one office to another to collect documents and signatures and make payments. Furthermore, vesting land registration in a single agency reduces opportunities for the legal creation of overlapping titles and claims. However, full institutional integration is not necessary to create one-stop shops; all that may be required is the common location of offices of the various land agencies, and to link their information systems.

- 4.11 **“Front-office/back-office” separation.** Modern land registration offices typically operate on a “front-office/back-office” concept, which reduces access by the public to the actual registration processes. The front office is where customers are received, and staff are available to assist customers with their queries and to receive official payments. Information materials (e.g. on services and fees and customers’ rights) and forms are usually on display and freely available for customers rather than having to be requested. In countries with illiterate populations, appropriate information materials are required. The back office is where transactions are processed and where the archives are located. Restricting customer access to the back office increases efficiency, as staff are not continually interrupted, and decreases the opportunities for them to demand informal payments from customers. Allowing customers to make appointments may reduce the waste of time that lengthy queuing represents and removes the opportunity for officials to seek informal payments for helping customers avoid queues.
- 4.12 **Monitoring of performance.** Registration agencies monitor their efficiency and effectiveness. Often monitoring involves input from key stakeholders. The areas in which performance indicators have typically been developed are the accuracy of transactions, the tenure security provided by the system, the time taken to process transactions, the cost of transactions, the financial stability of the system, customer satisfaction with the system, staff satisfaction and morale and cooperation with other land agencies. Registration agencies also monitor performance externally using complaint boxes, hotlines, actors pretending to be customers and customer satisfaction surveys.

#### **MANAGEMENT OF STATE-OWNED LAND**

- 4.13 Generally, state-owned land and other assets are badly managed throughout the world. There is limited awareness of both the consequences of weak governance in state land management and how to improve the situation. State land tends to be treated as “free” and the focus of corrupt activities. State land allocations are often not done transparently. The state may be stripped of its assets through “land-grabbing”, i.e. the transfer of state land into private hands through questionable, if not illegal, means. Illegal land exchanges may leave

the state with inferior property. Poor records help to conceal the truth. Special interest groups may be favoured in logging and mining concessions. There may be political interference in management decisions, and compulsory purchase may be used inappropriately to further private interests.

- 4.14 There is typically a lack of information about what state land exists and what rights the state possesses. Management responsibilities may be fragmented across different ministries and agencies, and with few or no defined policies in relation to the use of state land or standards for its management. Policies may be unclear or contradictory on the role that state land should fulfil. Land management may suffer from a lack of transparency in decision-making, a lack of accountability and a low level of expertise in land management.
- 4.15 Some countries have made significant progress in improving the governance of state-owned land. These improvements include the following.
- 4.16 **Production of accurate records.** Several countries have recognized that accurate, comprehensive and up-to-date records of state lands and rights are fundamental to efficient management. Registration of state lands should be included with the registration of other lands. Records of state land inventories and registration and cadastre systems include classification of state lands, descriptions of assets such as the location of parcels and their boundaries, and associated rights. Often the state has rights over private land, e.g. rights of way and corridors for water and gas pipelines and electricity cables. Equally often people enjoy land use rights, customary rights or resource rights over state land. State land protection is enhanced by public access to records.
- 4.17 **Identification of responsibilities.** A sound basis for state land management has been achieved when the agency that is responsible for managing each parcel of state land has been clearly identified. There may be competing claims between different ministries or branches that need to be resolved. Several countries have opted for a regulatory agency or state land board cooperating with custodian departments. In some countries the management of public lands is devolved to local government.

- 4.18 **Setting of clear policy objectives.** Land policies increasingly recognize the need to address state land management. The state should determine why it owns land and whether it is needed in order to fulfil its policy objectives. In some cases, ownership by the state may be needed for national security or other overriding public interest. In other cases it may be possible for the state to sell the land. This is a delicate governance matter, as public lands are commonly sold for the wrong reasons and to the advantage of the wrong beneficiaries. The sale of state land should be carefully regulated, and transparently approved and executed through a system of checks and balances to ensure that those involved do not exceed their authority but operate in the interests of the state. Where the state needs to occupy land but there is no requirement to own it, the land may be sold and leased back. This occurs if land is needed for the supply of public services but there is no investment potential in the site.
- 4.19 **Adoption of accruals accounting systems.** The costs of long-term assets such as buildings should be apportioned between the years during which they are used and their value depreciated according to use. This is normal practice for companies, but only recently have governments applied these ideas to the public sector. It requires the compilation of public sector balance sheets that list and value the assets of the state. State assets should be valued at their market value.
- 4.20 **Setting of target rates of return on investments and state assets.** Some governments now require investment appraisals using discounted cash flow techniques before funding is committed for improvements in public services such as education, health care and transport. Discounted cash flow analysis requires the use of a target rate of return, which may be set at a level comparable with that earned by the private sector. The logic is that the government should carry out an investment with the same efficiency that would be acceptable to a private investor. As the government is a lower-risk borrower than private borrowers, there is a danger that investors will lend to it and leave private industry short of investment funds. If the state decides, as happens in a few countries, that users of state assets should pay a market rent for their use, this prompts the questions as to whether the facility itself is needed and whether it should be rented from the private sector. The process is a strong driver

towards higher levels of efficiency for land owned by the state. In many countries, the state will invest only if the private sector could not do it as efficiently. This approach enhances the private sector and reduces state influence and costs.

- 4.21 **Adoption of independent auditing of state accounts.** Accounting standards have been developed for the public sector that match those used by the private sector. Independent auditing is required to ensure that these standards are followed. Government agencies and local governments may be audited by audit commissions established by, and reporting to, central government. Central government may be audited by a body that reports to the legislature. Audits should have full access to records and individuals. They should go beyond checking for fraud and ensure that there is value for money in government expenditure. This is likely to involve the auditing of key performance indicators, as well.
- 4.22 **Public reporting.** Transparency and accountability are served if there is public reporting of government accounts, audit reports and reports from those who manage government departments and agencies, and local governments. Just as a company reports to its shareholders, so some governments require the public sector agencies to produce reports for citizens and the legislature. While individual citizens may lack the capability to assess government reports and accounts, a strong civil society can.

## **PROPERTY TAXATION AND LAND VALUATION**

- 4.23 Property tax is an annual tax, commonly based on the capital or rental value of real property. In previous centuries, taxes on property formed the most important source of tax revenue for both national and local taxes. More recently, as tax bases have expanded, property taxes have seen a long-term decline in relative importance and now represent, for example, about five percent of tax revenues in Organisation for Economic Co-operation and Development (OECD) countries. The potential significance of property tax is considerably higher for developing countries. Property tax remains an important source of revenue for many local governments. Principle trends within property taxation in relation to governance are identified below.

- 4.24 **Property taxation and decentralization.** It is recognized that the importance of the property tax is not just in relation to the national tax base, but also in its role as a tax base for local governments. As local property taxes may represent the greatest source of autonomous income for local governments, the ability to influence the tax base, the tax rate or the collected revenues is a very important condition. Transparency and accountability in the use of such taxes at the local level are critical for their success.
- 4.25 **Avoiding conflicts of interest.** There should not be a conflict of interest between assessing the values and setting the tax rate that should be applied. A number of countries have adopted the principle that valuing the tax base and setting the tax rate should be separate and independent. Valuing properties for the tax base is done by valuers and is made transparent by requiring the completed valuation lists to be open to the public and by an appeals process. Tax rates are usually set by the elected bodies of politicians. Such a division of responsibilities should exist even if both the actions of establishing the tax base and setting the tax rate are carried out at the same level of government.
- 4.26 **Valuation systems and the need for revaluations.** International standards of valuation have been increasingly adopted. Valuers should employ appropriate methods and techniques to produce acceptable valuation outputs in accordance with requirements in the law. Standardized mass valuation systems, which allow large scale valuations to be undertaken with low unit valuation costs, can often operate in a manner that enables them to be integrated into land administration systems. Property values change over time, so laws must stipulate the need for regular revaluations.
- 4.27 **Computerization.** A considerable number of countries now use Computer Assisted Mass Appraisal techniques to undertake their regular revaluations of the property tax valuation list. It is appropriate where valuation skills and sufficient expertise with information technology are to be found to develop a computerized system that can then function reasonably inexpensively. With appropriate quality safeguards, the computerization of valuation processes for the bulk of standard properties should largely prevent opportunities for corruption in the valuation process.

- 4.28 **Working practices.** Dissemination of clear and accurate information on the taxes, and how the revenues will be used, has been found necessary to win public support and prevent abuse. An impact assessment should be undertaken on new, expanded or improved property taxes to identify how different target groups will be affected by proposed changes to the tax system. Appropriate phasing of the taxes should be considered, for example by gradually increasing the tax burden, to make the taxes more acceptable to those who will pay them.
- 4.29 **Appeals.** The appeals system has been recognized as an important part of property taxation. It should be independent from the responsibility for valuations. Appeals against valuations should be heard first by a locally based system of tribunals or courts within a reasonable time frame. Given the common overloading of courts, it may be practical to have an administrative body as the first appeals instance or to have a conciliation process. The appeals system may provide for a right to appeal to a higher court on questions of law.
- 4.30 **Collection** is often an important local function, particularly where all revenues collected are allocated to the local budget. A regional or central billing system can create economies of scale in terms of human resources and required technology. Where all revenues collected go to the local budget there is a financial incentive for effective collection at the local level that would be absent at the central level. Where local governments lack the capacity to collect taxes, a central government agency can provide a tax collection service to local governments. Appropriate quality controls and policies should be implemented to ensure the completeness of the tax list of all properties liable to property tax. Property taxation is best done with full transparency in terms of who pay taxes, how much is collected and where the money goes.
- 4.31 **Monitoring of performance.** Taxation and valuation agencies monitor their efficiency and effectiveness using measures that record the speed and accuracy of work processes and indicators of user satisfaction. Performance indicators, often against established targets, include measures of valuation accuracy, rates of resolution of valuation appeals, completeness and coverage of tax collection, coverage of other classes of work, auditing of the financial performance of

the agency, customer satisfaction with the output of the agency, and staff satisfaction.

### **PRIVATIZATION AND RESTITUTION**

4.32 Privatization of land has been a fundamental part of the radical restructuring of social, economic and political institutions during the transition from central planning to market-oriented economies in Central and Eastern Europe as well as in some African, Asian and Latin American countries. In many transition countries, land that had been nationalized has been restituted to its former owners rather than privatized. Elsewhere, restitution policies have resulted in indigenous people reclaiming land that had been taken away at the time of colonial settlements. Restitution has been used to enable displaced people to return home at the end of violent conflicts. The policies have not always worked effectively. Privatization has sometimes resulted in sales of government assets at too low a price, resulting in transfers of state property into the hands of powerful individuals or groups. At times restitution has been discriminatory. The consequences have sometimes been problematic, with land being restored to people with little interest in working it. The following lessons on governance have been learned from those countries that have implemented successful privatization or restitution programmes.

4.33 **A flexible land market.** Restitution has raised a number of practical problems. In many cases, it is heirs, rather than original owners, who recover land. This raises issues about whether the new owner is in a position to work the land, what to do about current occupiers and any investment they have made in the property and how to secure agricultural production in transition phases. These issues may be resolved if there is an active lease market; it can enable new owners to lease the land and the current occupiers to continue to use it as lessees without having to find the money to purchase it. Where restitution and privatization have resulted in fragmented farm holdings, leasing has allowed farmers to improve the size and layout of their operations. Where full restitution is not attainable, compensation may be offered in the form of alternative parcel or housing, or in the form of cash or vouchers that can be used to purchase another parcel.



- 4.34 **The framework for land administration** should be in place before the process of privatization or restitution takes place. This includes a legal framework that protects private land rights and sets out the role of the state, the terms under which compulsory purchase can be carried out and the means by which conflicts can be resolved. The infrastructure and processes for land transfers, such as land registration, should function effectively. However, establishing a functional land administration system within a short time has proven difficult for countries undergoing substantial restructuring of their social, economic and political institutions. Countries have to build capacity to carry out new functions, as well as having to address vested interests that have opposed increased clarity in laws and systems.
- 4.35 **Transparent and accountable systems.** Processes should be seen to be based on laws and regulations, and to operate in predictable ways. This requires transparent procedures, independent auditing and the publication of accounts and audit reports. Auctions or sales should open the offer of assets to the widest possible market.
- 4.36 **An effective valuation system.** At the start of the transition process, land markets were weak with few transactions, and countries had to overcome the challenges of determining market values and of building capacity in a new area of land administration. In privatization, the market value of land should be valued so that a fair price is obtained. With restitution, there are issues as to whether compensation should be paid rather than returning the original land parcel. If the current occupiers have added significantly to the value of the land, they should be entitled to compensation for those improvements. An effective valuation system requires laws or standards to define market value and acceptable valuation practices. There should be sufficient qualified and experienced valuers. Market prices should be recorded and made public. The valuations supplied by private valuers should be capable of being cross-checked to ensure that they represent the full market price.

#### **LAND USE PLANNING**

- 4.37 The planning of land use, and the policies, procedures and systems that control and monitor the use of land, are critical determinants of the legal use, and hence

value, of land. Where there is an effective planning regime, the prospect of a change in land use can greatly influence the market in its assessment of the value of the land affected. Although this is perhaps most commonly a feature of the rural–urban zone of transition, it is also a feature within urban areas, and within rural areas. As changes in use from agriculture to urban residential or commercial purposes may multiply the value of land significantly, there are potential incentives for abuse. Weak governance can enable people to bypass environmental safeguards that protect against the inappropriate conversion of forests and wetlands for agricultural purposes, or conversion of agricultural land for urban use. Principal recent approaches for well-governed planning of land use are identified below.

- 4.38 **Proactive land administration.** Land administrators play a significant role in facilitating and legalizing the conversion of rural land for urban purposes. The conversion is vulnerable to governance problems because of the high returns involved. Problems can be tackled by employing transparent planning processes that involve land users.
- 4.39 **Preparation of plans.** Introducing order into the use of land requires appropriate laws that address land use planning within the framework of relevant government policies, and their effective implementation on the basis of plans and narratives defining the relevant permitted uses of land. The preparation of plans also reduces the number of conflicts that may arise from increasing urban and other types of development.
- 4.40 **Participation.** Laws and plans should be prepared in an inclusive and transparent process to encourage and enable fully participatory mechanisms whereby all stakeholders have the opportunity to make inputs into the planning process and whereby these inputs are considered; consultation that fails to consider the opinions of the participants is not consultation. Participation-enhancing processes should be gender-sensitive, paying attention to the cultural, education and resource constraints that women may have.
- 4.41 **Avoidance of conflicts of interest.** Conflicts of interest have been minimized in land use planning by ensuring transparency. All relevant interests should

be declared during the planning process. The development of the plan and its adoption in compliance with the relevant laws and policies should be separate and independent and should typically be done by different levels of government. Decisions on the compliance of individual proposals for changes in land use in accordance with adopted plans should be transparent and public, and made through the appropriate technical and political decision-making mechanisms at levels appropriate to the scale of the given development. Mechanisms to ensure declaration of interests should be rigorously enforced.

- 4.42 **Appeals and balancing interests.** The adoption of plans and refusals of permission should be subject to the possibility of appeal by interested parties within the framework of relevant government policies and laws.
- 4.43 **Monitoring of performance.** Planning control affects the supply of land for given uses on the market. As a result, the performance of local government and other agencies responsible for land use planning is often monitored to measure their efficiency and effectiveness. Performance indicators include the time taken to make decisions.

### **PROFESSIONAL SERVICES**

- 4.44 Efficient land administration requires the input of a number of professional services. Some professionals such as lawyers and accountants are found in other areas of an economy; others such as surveyors and valuers are specialists who operate exclusively within land administration. Professionalism means considerable discretion and judgement. For example, valuers have discretion as to which land parcels are selected as comparables for determining market prices and what adjustments should be made. Close supervision of their work is difficult. Reliance has traditionally been placed on professionals conforming to a code of ethics. However, professionals may take advantage of their position for personal gain. Clients may also apply pressure or offer inducements to gain favourable results.
- 4.45 Countries have adopted a number of ways to improve the governance of professional services. This has been particularly important in areas where

development of land administration as a profession has been relatively recent, e.g. in countries that have transformed land administration to serve citizens and markets, rather than centrally planned economies. Such improvements have included the following.

- 4.46 **Setting of standards for education and training.** These standards determine who is capable of acting as a professional. Standards set the level of education deemed necessary, as well as the specific knowledge and skills that the professional must possess, and how these are to be assessed. Ethics and professional behaviour should be included, as well as technical skills. Standards are also set for maintaining training throughout the working life through continuing professional development. The standards may be enforced by government or by a professional association. In many countries, professionals need to pass a licensing exam before being allowed to practise or to become a member of a professional association.
- 4.47 **Setting of standards for professional activities.** Standards are concerned with the methods used by professionals. For valuations, for example, standards should define how buildings are measured, how particular types of property are to be valued and how valuation for particular purposes is to be carried out. Those professionals who do not operate in accordance with the standards may be sued for negligence or disciplined by a professional organization. Professional organizations in some countries require their members to carry professional indemnity insurance so that there can be adequate compensation for clients who successfully establish that there has been negligence.
- 4.48 **Setting of ethical standards for professionals.** Ethical codes set standards of behaviour for professionals. They cover issues such as the terms under which a professional works. They identify situations in which professionals should not act because they could appear not to be impartial. Codes set limits to behaviour in private life that could have adverse consequences for their clients, e.g. bankruptcy and dishonest practices.
- 4.49 **Provision of a review process.** This enables the judgement of one professional to be tested against the judgement of others. For example, taxpayers can appeal

against valuations, and the evidence of their valuers can be tested against that of the government through a judicial process. Similarly, those whose land is being expropriated can challenge the valuations provided for compensation. In this way, the government does not have a monopoly on valuations, but is accountable through a judicial process. Applied professional processes and methods may go through a peer review, i.e. independent external professionals review the work undertaken.

### **MANAGEMENT OF CUSTOMARY LANDS AND TENURES**

4.50 Efforts to improve land administration have focused largely on the agencies, functions and services of the formal sector. There is, however, growing recognition of the importance of strengthening customary institutions. It is a fact that similar governance problems can be found in customary tenure institutions and statutory land administration systems. Customary leaders, often custodians of land rights, can be corrupted when customs are affected by commercial interests and a changing economy. Rather than allocating land for a token fee to young members of the community, as may be customary, the leaders may be tempted to sell that land to outsiders. People who hold secondary rights, such as the right to fruit of trees or to gather firewood, are particularly vulnerable, as their rights may be extinguished without compensation. Improvements in the governance of customary lands in some countries have included the following.

4.51 **Providing legal recognition to customary rights.** A number of countries, particularly in Africa, have provided customary rights with the same legal status as other formally recognized rights to land. As a result, for example, the compulsory purchase of customary lands is now eligible for compensation. Legalizing customary tenure rights provides an opportunity to improve the transparency and accountability of the management of customary lands. Without legal recognition, customary systems may be marginalized, as they compete against commercial interests that are protected by law. Legal recognition may require amendments to a number of laws, such as on mining, to prevent conflicts between statutory and customary interests over access to land and other natural resources.

- 4.52 **Identification of the boundaries and responsibilities concerning customary lands.** The demarcation and registration of the customary lands associated with communities have provided formal recognition and enabled the communities to use legal means to defend their claim to their lands against the claims of others. It is necessary to resolve any competing claims of customary authorities for the same land. Clarifying responsibilities of customary authorities and central and local governments may be required.
- 4.53 **Improvements to record-keeping.** Strengthening the ability to keep and maintain records of allocations has reduced the possibility of allocating the same parcel to different people. The production of a map of community lands allows the identification of land to be held in reserve for allocation to new households. The creation and maintenance of financial records related to land transactions are an important step in introducing accountability.
- 4.54 **Ability to negotiate with external investors.** Customary lands are considered to be held by the state in some countries. This has resulted in communities fully or partly losing access to lands that they customarily use, when investors are able to get concessions of land directly from the state. This problem has been addressed by enabling communities to negotiate with investors, thereby allowing commercial development of agriculture to proceed in a way that does not dispossess people of their customary rights. Opportunities should be provided for communities to develop expertise in order to prevent negotiations from being imbalanced.
- 4.55 **Participation in urban development.** Increasing urbanization is a feature in most developing countries and, particularly in Africa, urban areas expand over their boundaries into neighbouring customary lands. In some countries, local governments collaborate with customary leaders so that the conversion of agricultural land to urban purposes is linked to the provision of infrastructure.
- 4.56 **Improvement of the legal framework.** While customary tenure may largely be unaffected by formal land administration, it is often subject to court rulings. Some decisions may conflict with other rules or with legislation. Improving

the legal framework by resolving conflicts or inconsistencies has reduced opportunities for interest groups to interpret customary law in ways that transfer the land of others to themselves.

## **DESIGN AND IMPLEMENTATION OF PROJECTS**

- 4.57 There is a wide consensus on the benefits of a functioning land administration system for a developing country as evidenced by the many national projects in this area supported by multilateral and bilateral donors. However, only recently has it been recognized that a modern land administration project should include a focus on improving governance. This is as relevant for projects that deal with statutory land administration systems as for those that deal with customary land tenure. The following issues of governance have been recognized as being relevant in the context of land tenure and administration projects.
- 4.58 **Focus on the impact.** Addressing governance issues is not easy. Governments and donors have been tempted to avoid political risks associated with governance and to focus on technical solutions that allow relatively full control of inputs and outputs. Governments and donors need both courage and realism. Addressing governance problems requires the recognition of the problems and the willingness to support governments in their responses. Bringing a dysfunctional agency into a project may be the only way of creating an incentive for change. However, few of the potential project targets are free of problems. Context is important, and what can be achieved in a well-governed environment is not possible when governance is weak. There is a limit as to how far weakly-governed land administration institutions can be successfully supported.
- 4.59 **What matters is the overall impact.** If there is a realistic chance of improving the standards of governance, it is worth trying. Modern land administration projects include a component targeting good governance. Technical fixes to a land administration system suffering from weak governance are likely to bring few benefits for society. It may be necessary to start with a technical approach when an agency has little technical capacity, but longer-term efforts require courage to tackle the difficult issues and the vested interests.

Governments and donors should also have the courage to identify problems of state capture of the land administration although attempts to resolve the problems require the leadership of local champions who are committed to change.

- 4.60 **Coordination and ethics.** Care must be taken to ensure that project design and implementation do not worsen governance problems. Governance may be weakened if a project is designed and implemented without proper coordination with other national and international players in the same field. Lack of coordination may give interest groups the possibility of “shopping” among donors. Instead of serving the interests of the target country and its society, some projects may be designed to serve the development principles of the donor or the interest of external project parties. Projects funded by different donors may support the same agency, but with contradictory objectives; alternatively, different donors may support competing agencies to perform overlapping duties. There may be poor coordination among donor projects that support sectors that are different but yet interlinked. The responsibility for coordination should lie with the recipient government, but the capacity to coordinate may be limited where weak governance exists, and donors should bear part of the responsibility. The selection of the implementing party and other agents may not be based on the best choice using objective criteria, but may be influenced by illegal or unethical incentives or political considerations. Governments and donors should require the highest of ethical standards from all parties involved in their projects.
- 4.61 **From projects to programmes.** Donor assistance in the land sector is slowly moving from isolated projects towards comprehensive sector programmes, where roles, inputs and responsibilities between donors and recipients are well distributed and known to all parties. Success requires a common goal, long-term commitment by the parties, a strong local ownership, wide stakeholder participation and good local management capacity.
- 4.62 **Monitoring of performance and impact.** On a positive note, projects are being increasingly and better monitored for progress and internal governance.



The progress rating should be based on a range of parameters from immediate impacts to overall questions of development. Identified shortcomings in governance should be faced, and unsuccessful approaches should be altered. A project should serve as an example of good governance, and be a beacon for disseminating good practices elsewhere in the country.



## **5. Practical measures for improving governance in land tenure and administration**

- 5.1 Public agencies and private companies both face the problem of ensuring that their employees do not pursue their own self-interests at the expense of the public or their shareholders. Many of the methods used in private companies have been found to work in the public sector. The methods of improving governance in land tenure and administration are rarely unique to it, and experience elsewhere can help to develop good practice.
- 5.2 Some people are likely to oppose changes in governance. They may be motivated by self-interests such as not wishing to lose the benefits of corruption. However, it is wrong to characterize all resistance to change as the result of self-interest or a desire to preserve opportunities for corruption. Resistance may also be the result of fear of the unknown. Trying to impose change from the top alone is unlikely to be successful. A transformation in governance is rarely possible through reform in a single area of activity. However, it is important to start with some areas where success can be achieved relatively easily so that momentum for change can be established.
- 5.3 The measures put forward in this chapter work where there is reasonable quality of governance and respect for its principles. They are likely to work best in a society in which progress is being made to improve the governance of society as a whole. In some countries, the standard of governance is so low that it is difficult to see how improvements in the governance of land tenure and administration can be made without fundamental changes in the system of government. If the government is not committed to democracy, the rule of law and human rights, improvements in the governance of land tenure and administration will be difficult to achieve. However, working to achieve higher standards of land administration can be one of the ways in which a dysfunctional society improves its governance.

**INTRODUCE A FRAMEWORK FOR TRANSPARENCY**

- 5.4 **Use of anti-corruption agencies and whistleblowers.** Anti-corruption units help to root out corruption through investigations. They may be proactive in preventing corruption, e.g. through the use of codes of behaviour. Proving a violation of a code is easier than proving corruption and may also result in penalties for the corrupt. Areas for codes include rules about what gifts – in the form of hospitality or otherwise – officials and politicians may accept. Evidence of wrongdoing is often exposed by insiders, sometimes referred to as “whistleblowers”. Protection for whistleblowers has been shown to be an important aspect of an anti-corruption policy.
- 5.5 **Development of effective contracting arrangements.** One of the areas in which corruption is strongest is in the award of public contracts. Improvements to help prevent corruption include wider advertisement of potential contracts. The ability of officials to determine preferentially which commercial companies may be on lists of approved contractors can be limited through effective formalization of entry requirements and strong appeal mechanisms for those excluded. Strict rules about terms and conditions prevent contracting from being skewed towards particular companies. Open procedures provide all companies with an equal opportunity to have their bids considered. These include establishing strict times and places for the returning and opening of bids so that officials cannot overlook unwanted bids or inform their favoured contractors of the prices proposed by others. Public agencies may opt to publish award notices and evaluation results to increase transparency and competition.
- 5.6 **Integrity pacts.** Public contracting has improved with integrity pacts developed by Transparency International. These are agreements between an agency and bidders for a public contract. A pact contains rights and obligations to the effect that neither side will engage in bribery, and introduces a monitoring system that provides for independent oversight and accountability.
- 5.7 **Development of a focus on citizens.** One of the most important transformations in some countries has been to increase the respect shown by the public sector to its customers. Customer charters set out the standards of service that citizens

can expect. Key performance indicators are used to measure success in achieving charter standards. Complaints systems and ombudspople give individuals redress where cases have been handled badly or charters have been breached. The introduction of competition in the public sector through devices such as the threat of contracting out services to the private sector obliges officials to work to improve service standards.

### **SET SERVICE STANDARDS**

- 5.8 Weak governance thrives where there are unclear service standards, such as the time that a procedure should take and what it should produce. Without enforceable service standards, inefficiency can develop unchecked, which, in turn, creates opportunities for bribery, corruption and favouritism. The setting of standards reduces the scope for variability. Reliability and the quality of inputs and outputs can be improved by standardization and clearer specifications. Simplifying procedures can reduce opportunities for informal payments.
- 5.9 The introduction of service standards is an important part of shifting the focus from the producer to the customer. The language used is important. Describing the people who use land administration services as customers, whether they wish to register a transaction, obtain consent for changing land use or check a tax valuation, accords them an important status. It implies that they, and not the officials, are the people who have to be satisfied. Existing attitudes and behaviour of officials may be based on the fact that the public usually have no choice but to use the services of a land agency; there is no competition. However, land agencies should treat citizens with the same care and attention that a business in a competitive market pays to its customers. Setting service standards has to be accompanied by training programmes designed to create and reinforce positive attitudes in officials.
- 5.10 As a first step, standards should be set for all elements of the service that is provided. These derive from the aims and objectives of the agency and its mission. Service standards should not be static but may be increased over time. Standards remove discretion from officials, as they cannot vary charges

or the quality of the service. Standards on the time required to process a transaction reduce the ability of officials to seek bribes to speed up the process, or to penalize those who do not pay such informal fees. Service standards apply to everyone and reduce the opportunities for officials to show favouritism or practise discrimination. For example, targets for a land registry might include:

- the fee payable by a member of the public for a service;
- the minimum percentage of registrations to be free of error;
- the maximum time permitted to process a registration;
- the proportion of queries to be processed within a specified time;
- the percentage of complaints to be resolved within a specified time.

5.11 Standards should be made public if they are to be credible. Land agencies should publish and disseminate information on the level of service that customers can expect. Standards can be displayed on notice boards in public waiting rooms, on the Internet, or advertised on television, radio or in newspapers.

5.12 Standards have little value if they are not monitored. Land agencies and their customers should know whether the standards are being met. Performance can be monitored in several ways. One approach is to monitor workflows, such as the time taken for land registration. Customer surveys can be used to assess the customers' experience of the service (Box 4). Systems can be tested through the use of a person who appears to be an ordinary customer, but is actually working for the organization and is monitoring the service. Some methods of monitoring may be less challenging to the staff. Initially, less threatening approaches could be used, e.g. the monitoring of workflows. When the standards have been widely accepted by the staff, other measures such as the recording and analysis of telephone calls could be introduced. The achievement of targets can be linked to staff remuneration and bonuses.

5.13 Specific problems may be identified by monitoring complaints. Customers should be encouraged to report problems through a variety of means, e.g. complaint boxes at the land agency, letters, e-mails and telephone. A complaints

BOX 4

**CUSTOMER SURVEYS**

Customer surveys can include such fields as the time taken for customers to be served, the number of visits that the customers had to make in order to complete the transaction, their satisfaction and the cost both in terms of the official fees and informal payments they were charged to receive the service.

Focus groups of customers can be used. They are particularly useful where there are groups of customers who make regular use of a service. For example, lawyers and mortgage banks will make use of a land registry much more frequently than the average landowner.

The quality of performance may be monitored, e.g. through the recording and analysis of telephone conversations. If this is done, both customers and staff should be aware that this may happen.

system should be transparent if it is to command credibility. The organization should publish information about the complaints it has received and the actions taken in response. Public confidence may be enhanced if there is independent oversight of the complaints system and if the public can take complaints to an independent review by an ombudsperson or to arbitration if dissatisfied by the outcome. Where a complaint is justified, the complainant can be compensated. Staff should be encouraged to report problems through telephone hotlines as well as internal complaints systems. They are more likely to report service problems if an environment is created in which individuals are not blamed for defects but instead the staff are encouraged to work together to improve systems.

- 5.14 The benchmarking of performance against that of comparable organizations may help to identify an organization's strengths and weaknesses. It may identify aspects that should be improved. Comparison with peers may identify good practices that can be adopted. Organizations are often reluctant to share data about performance, but this problem may be overcome if benchmarking is undertaken by a trusted third party. In some countries, the benchmarking of

public services and local governments is undertaken by national audit agencies. In such a culture, the publication of benchmarking results may be used as an incentive to improve performance, as poorly performing organizations are identified and good practices are more transparently identified as models.

- 5.15 Effective action should be taken if standards are not met. The analysis of the achievement of targets should reveal problems with the delivery of service. Corrective measures should be identified to improve performance. The identification of problems and their solutions should be shared among a wide range of staff. Teams to address quality could be formed from different grades and areas of the organization, and may include regular customers. The involvement of various stakeholders may identify important perceptions of service standards, what influences them and how these may have changed.

#### **IMPROVE SYSTEMS AND PROCESSES**

- 5.16 The achievement of standards requires planning and implementation. The processes for which standards are required should be identified. The Quality Management standard ISO 9001 notes that an organization can only function effectively by identifying and managing numerous linked activities. An output from one process is frequently an input to the next one. Chaotic and unclear processes provide an environment in which bad practices can flourish and avoid detection. Evidence of bad practices is likely to be missing if transactions are not well documented.
- 5.17 It is important that the management acknowledge their responsibility and their commitment to improving quality. This is unlikely to happen in situations in which powerful interests are using land administration to serve their purposes. If management does not accept responsibility, there is likely to be little chance of controlling bad practices by junior officials.
- 5.18 Land administration comprises a series of processes. For each process, a process owner can be identified who is responsible for that process. Analysis of the series of processes enables identification of which processes work well and which do not. Processes may have been established decades ago and never revised despite changes in conditions, or steps in the process may have been



introduced to increase opportunities for corruption. Simplification of the series of processes reduces costs and improves efficiency. It also improves governance by reducing the opportunities for corruption.

- 5.19 Responsibilities for a process may be shared by several agencies. One agency may provide an input to another, whose output in turn may be the input to a third agency. Every transaction has the potential to diminish efficiency and to provide opportunities for delay and the extraction of informal payments to speed up processes. Improved collaboration among agencies is required to reduce delays in transactions. Efficiency, synergies and service may be greatly improved by the establishment of a single agency with “one-stop shops” that allow customers to get what they need from a single office.
- 5.20 The simplification and consolidation of processes may require significant retraining of personnel to enable them to carry out the new tasks. Increasing standardization, along with tools such as information technology, may allow much work, such as the checking of information in transfer applications, to be carried out by clerical staff working under the supervision of professionally qualified registrars or surveyors.
- 5.21 Some simple changes can bring about significant improvements in efficiency and governance. For example, the introduction of the “front-office/back-office” concept in land registries does not require changes in legislation and policy, although some reconstruction of offices may be required.

### **BUILD CAPACITY**

- 5.22 Good governance in land administration is effective, competent and sensitive to its context. It cannot be found where there is insufficient capacity to deliver services. Capacity-building requires adequate investment in human resources in training and staff development, and in technical resources, including buildings and equipment.
- 5.23 Adequate human resources means that staff have the appropriate skills and competences, and have access to relevant training. This should be at all

levels in the organization. It is not sufficient to train lawyers to approve the registration of land transfers and surveyors to produce cadastral maps. It is necessary to ensure that those who work in any capacity have adequate skills. For example, people in the front office should have the “customer care” skills to respond to callers appropriately and to attend to their needs. Attention should be paid to retaining people who have been trained and ensuring that morale remains high. A longer-term impact requires continuous upgrading of the national education system in order to produce professionals who meet the needs of modernized agencies.

- 5.24 Good land administration requires the efficient application of adequate technical resources. The right equipment must be in place, properly installed and adequately maintained – all of which requires that investment take place on an ongoing basis and that there is not a one-off installation of equipment associated with a particular project or aid programme. Computers should be replaced before they become obsolete. Equipment depreciates, and budgets should provide for its replacement and updating.
- 5.25 The problem of adequate technical resources is not confined to equipment. The premises must be fit for the purpose. Records must be secured and not stored in buildings in which they deteriorate. They should be backed up regularly so that the system can be recovered in the event of catastrophe. The electrical systems for equipment and data links should function without interruption. Staff should be provided with adequate working accommodation and rest areas. The areas to which the public have access should be comfortable yet businesslike. Premises should be secure so that there is protection for staff and facilities and also for the public.

### **SECURE FINANCES**

- 5.26 Capacity-building requires stable finances. Money is needed for the physical environment, staff development and day-to-day operating expenses. Staff morale is crucial, and maintaining it requires that staff be paid on time and at a rate of pay that reflects the market wage. Staff should be paid salaries that are appropriate for their qualifications and experience. There is a deep-seated

problem if staff have difficulty in feeding their families and providing them with housing, medical care and education because of low or irregular pay. People who are forced to work with limited or inadequate equipment or in poor-quality buildings will be discouraged from improving governance. None of these problems can be solved without adequate and stable finances.

- 5.27 Land administration can be financed in different ways. Some functions such as the collection of taxes on land should be financed out of the government's budget. Other functions and systems can be financed by user fees, e.g. applications for land registration and changes to land use. The services may be provided by user fees on a full cost-recovery basis or with partial recovery of costs. User fees should be periodically reviewed, and it may be possible to reduce them as efficiency improves.
- 5.28 Land administration in the public sector has been traditionally provided through government departments. Relatively recently, some countries have transformed land agencies into independent state-owned agencies. As self-funding agencies they are able to raise finances to meet operating and investment costs, including providing competitive salaries that can motivate staff and ensure that they do not have to supplement their earnings with informal payments. In doing so, the agencies are able to overcome the obstacle that public sector salaries are determined by regulatory bodies that have oversight of the entire civil service, leaving individual government departments with limited ability to offer attractive salaries. Self-funding agencies may introduce performance-related pay and bonuses for their staff as improvements in productivity bring financial benefits. Government should control the level of fees to ensure that they are affordable and do not result in monopoly profits for the agencies. Government can delegate the monitoring of the agency to a board, which should include stakeholders who understand the agency's domain.
- 5.29 Another innovation is public-private partnerships. For example, private companies have been contracted to develop and maintain computerized systems for land registration. Agencies that consider the options of establishing an internal capacity for managing information technology and communications,

or outsourcing it, should carefully consider the feasibility of all options in light of the stability and security required for data and systems. Operational work such as cadastral surveying is often done by licensed surveyors from the private sector, with the role of the public sector administrators being limited to approving the quality of the work. The private surveying option is particularly suitable when the surveying profession has to be created or modernized. Contracting is a delicate part of public–private partnerships. Advertisement, selection of contractors and approval of work should be transparent, and those responsible for the process should be accountable for their decisions.

### **DEVELOP A HUMAN RESOURCES POLICY**

- 5.30 A human resources policy embraces all aspects of employing people. Land agencies must ensure that staff have the right skills and attitudes and are motivated to serve. To ensure that people with adequate skills and competences are recruited, organizations should draw up appropriate job specifications, setting out what tasks each particular individual should do, and the skills, qualifications and experience required for the position. Employment should be on the basis of merit with the recruitment process being transparent. Transparency requires written records of the recruitment process and the creation of an audit trail. Employment must be free of favouritism and nepotism. It should not be discriminatory, neither favouring nor discriminating against applicants, e.g. based on gender, ethnicity, religion, region, political affiliation, disability or age. Similar considerations should apply to promotions and to the remuneration of staff. A land agency that claims to provide an equitable and transparent service to its customers should apply those principles to its own staff: it is not credible for an organization to claim that it behaves in a non-discriminatory fashion towards its customers if it does not do so towards its employees.
- 5.31 The terms and conditions of employment should support the efficient delivery of services. Such policies should address pay, but also other benefits relating to health care, maternity and retirement, and perhaps to areas such as education and housing. Remuneration policies should be based upon merit, and be

transparent and not discriminatory. By implication, there should be transparent and objective systems of staff appraisal, performance review and personal development. Planned workloads need to be achievable.

- 5.32 Well-managed organizations constantly review their needs for skills and the qualifications of employees. They regularly retrain staff to update competences as well as providing opportunities for personal development. Providing opportunities for personal development is a good way of retaining and motivating staff. In addition to updating technical skills, training may include changing behaviour to conform to the values of the organization and reinforcing ethical principles.
- 5.33 Conditions of work include how employees are able to contribute to policy-making within their organization and how information is communicated to them. Individual staff members should be encouraged to contribute ideas for improvement. Staff should be provided with opportunities to work in teams for the improvement of the service. Staff surveys may be used to obtain views about issues such as salary, conditions of work, training opportunities, health and safety matters and diversity and equal opportunities.
- 5.34 Opportunities should be provided for people to develop their careers and progress to more senior responsibility. People may spend time in different units of a land agency to gain experience with various aspects of the work. The rotation of staff may also help to prevent the entrenchment of bad practices.
- 5.35 A human resources policy should address the disciplining of people who break employment rules. The disciplinary process should be fair, transparent and impartial. For example, staff must know of what they have been accused. There should be a right of challenge and appeal. Employers should be able to impose a range of sanctions according to the seriousness of the offence. A minor violation might result in a warning. The right to dismiss employees for gross violations is a vital sanction. Employers may need to pursue criminal actions against employees under certain circumstances, such as the taking of bribes, or to take civil action, e.g. to recover property taken by an employee. Successful

action against an employee requires keeping good records in areas such as instructions given and performance of the employee.

### **ESTABLISH INDEPENDENT AUDITING**

- 5.36 The function of an auditor is to review the accounts of an organization to establish whether they provide a true and fair view of the organization. Auditing has an important function in a private-sector company, as it enables shareholders to check on the operations and the activities of directors and managers. Independent auditing aims to provide transparency in accounting. An audit is more than the checking of the accounts and includes testing the systems of financial management and control. The work of auditors is supported by standards that determine how accounts are to be presented and how auditors are to perform their task. The auditing practices for the private sector have been adapted for use in a variety of different types of organization including charities, cooperatives, local governments, central government agencies and pension funds. They may also be applied to organizations such as land boards that are entrusted with customary land.
- 5.37 Accounting standards can only be applied to organizations that use “accruals accounting”, i.e. a system of double-entry bookkeeping in which income is matched to the costs incurred. One of the main challenges is how to apportion the costs of assets whose life is greater than one financial year. Asset registers should be adjusted to reflect the use that has been made of long-term assets during the financial year. A common difficulty is that government agencies do not have proper asset registers, particularly of state land. Governments have been slow to adopt accruals accounting and to use it to produce balance sheets of state assets and liabilities.
- 5.38 Independent auditing helps to improve governance in the public sector by making finances transparent and the government accountable. It helps to protect against the theft of government revenues and assets, and the misuse of office by officials and politicians. Genuinely independent auditing of the public sector requires an ability to report problems to an appropriate body. For local government, auditors might report to central government. For central

government, the solution may be for the auditors to report to the legislature. It is vital that whistleblowers be encouraged and protected. They are unlikely to be popular with those whose wrongdoing is being reported, and their actions may place them in danger or threaten their careers.

- 5.39 Auditors may benchmark organizations. They may comment on whether the use of resources represents value for money. Auditors may check on key performance indicators, which measure performance against the standards. Auditors may also audit standards of corporate governance. These involve issues about misuse of office, e.g. failing to declare an interest in the outcome of a decision, using public resources for private benefit, and bias in decision-making. While auditors may identify failings in corporate governance, other institutions should provide effective action. This action may include judicial sanctions, the ability of the legislature to remove a politician from office and the ability to require a person to pay the cost of rectifying an improper decision. This requires a culture of public service rather than a culture of public office as a means of personal enrichment.

### **MAKE EFFECTIVE USE OF INFORMATION TECHNOLOGY AND COMMUNICATIONS**

- 5.40 Information technology and communications (ITC) has the potential to improve the governance of land administration by improving efficiency, consistency, accountability, transparency and accessibility. Controls may be introduced to improve the quality of data entered into the system. Searches on the data necessary for a transaction may be carried out more rapidly. Productivity increases as large numbers of transactions can be carried out at lower costs. Digital records allow copies of data to be stored in secure locations, thereby allowing the system to be re-established if a disaster occurs.
- 5.41 The computerization of land records means that files can no longer be the “personal” property of corrupt officials. It prevents such officials from enforcing informal payments in order to access the files for legitimate transactions. Instead the records may be viewed by anyone who has the requisite security clearance. Open land registers may help to reduce corruption and state capture by enabling

the media and citizens to check on the personal interests of politicians and officials. However, this may not be attainable in some countries where the privacy of citizens is protected by allowing anyone to search the registry information using a parcel identifier, but not by using the name of a person. The context should be well understood when introducing computerization.

5.42 The computerization of records means that the ability to change them is restricted to those with access to enter and approve data in the computer system. The opportunity for corruption is reduced by eliminating the widespread ability to change data that usually exists when records are on paper. Computerization may help to prevent the destruction of records by those who want to undermine the ownership rights of others. However, opportunities for corruption are not eliminated, and audit trails and security features are required to minimize risk. Automatic audit trails should track who accessed what information, who did what to which files and which information was modified or deleted. It should be possible to recover data that were incorrectly deleted or changed in cases of errors or fraudulent activities.

5.43 ITC allows customers to access information remotely rather than having to travel to the office of the land agency. Improved access to information also reduces the ability of officials to monopolize information. A number of countries now provide access to lawyers, surveyors and banks through subscription services. For open access to computerized land records to bring benefits to citizens, they must have access to infrastructure such as the Internet and have computer skills. Access may be provided through computers at public kiosks and libraries. Improved accessibility enables individuals to check whether the data recorded about them or their rights to land are correct. This helps to decentralize land administration and bring it closer to the end user: while processes and records may be centralized, access may be granted from a number of locations.

### **SUPPORT PROFESSIONAL ORGANIZATIONS**

5.44 Professional organizations working in land administration tend to provide a code of ethics for their members. They exclude behaviour that contributes



to weak governance and set positive standards for the conduct of professional life. A government can support good individual behaviour by encouraging land administrators to form or join professional bodies that have codes of practice that comply with, for example, those produced by the International Federation of Surveyors (FIG) or the International Valuation Standards Committee.

- 5.45 Governments may support professional bodies in a number of ways. They may decide to employ only land administrators who are members of appropriate professional bodies. This means dismissing officials who are expelled from their professional body for technical incompetence or breaching the code of behaviour. Governments may promote the use of members of appropriate professional bodies. For example, banks can be encouraged to use valuers who are members of a professional organization for mortgage valuations. Government support for professional organizations could give them considerable power. It is prudent therefore for governments to ensure that professional organizations be subject to monopoly regulation. This may include professional organizations separating their role in promoting the services of their members from their regulatory function.

### **STRENGTHEN CUSTOMARY INSTITUTIONS**

- 5.46 The preceding sections describe improvements to governance within formal land administration, i.e. with regard to rights to land that are explicitly acknowledged by the state and which may be protected using legal means. However, formal land administration does not reach vast numbers of people in the world. Little of Africa, for example, is covered by formal land registration systems, and the majority of people gain access to land and secure their rights through customary institutions. However, the distinction between statutory rights and customary rights is becoming blurred in a number of countries that provide formal legal recognition to customary rights.
- 5.47 As with formal land administration, both good and bad examples exist regarding the governance of customary tenure. Where governance is weak, there is little or no accountability in the allocation of land. Corrupt customary authorities

may prefer to allocate a land parcel to a “stranger” in exchange for its market value rather than allocating it to a member of the community for a token fee. There may be multiple allocations of a land parcel to different people, with the customary authorities receiving a fee from each person.

- 5.48 While the rules of formal and customary tenure may differ significantly, the concept of good governance should be similar. That is, the tenure institutions should be efficient, effective and competent. They should also be responsive, transparent, accountable, equitable and predictable.
- 5.49 Customary institutions should be strengthened to improve the internal administration of land. Examples include customary land secretariats, improving the records of allocations of land to reduce possibilities of making multiple allocations of a parcel of land, and making procedures more transparent to reduce possibilities for authorities to allocate land without consulting others.
- 5.50 Customary institutions should also be strengthened to improve interactions with others. Disputes between neighbouring customary groups may be resolved if agreement can be reached on their common boundaries. The ability to interact with central and local government should be strengthened.

## 6. Final comments

- 6.1 Through governance, society is managed and competing priorities and interests of different groups are reconciled. Governance refers to the actions of government, and also to the actions of the many other institutions of society in which authority and power are vested. Weak governance in land administration has adverse consequences for the society as a whole. Good governance in land administration helps economic development and reduces poverty.
- 6.2 Features of good governance in land tenure and administration include:
- The legitimacy of land agencies and land administrators is widely recognized by citizens.
  - Land agencies serve all citizens, including the weak as well as the strong.
  - Land agencies provide services that respond to the needs of their customers, e.g. in the nature of the services and accessibility to them.
  - The results of the services are consistent, predictable and impartial.
  - The services are provided efficiently, effectively and competently.
  - The services are provided with integrity, transparency and accountability.
- 6.3 Reversing weak governance is a long-term continuing process rather than a project. Good governance requires a willingness to overcome both existing weaknesses and opposition from people who wish to maintain the benefits they receive from corrupt activities. Good governance also requires developing the capacity that is needed in order to make change possible. Achieving good governance in land tenure and administration is not easy, but it is attainable. Given the potential benefits to the poor, as well as to broader economic growth, it is certainly worth trying to attain.







**This guide on *Good governance in land tenure and administration* is written for people who work in land administration and all those with an interest in land, land tenure and their governance. Good governance can help achieve economic development and the reduction of poverty. In contrast, failings in governance have adverse consequences for society as a whole. Weak governance, whether in formal land administration or customary tenure arrangements, means that all land rights are not protected. It affects the poor in particular and may leave them marginalized and outside the law. Weak governance may also mean that land is not used appropriately to create wealth. Land issues cut across society, and a well-governed land administration system can strengthen local institutions, thereby contributing broadly to governance. The choice for land administrators is to benefit personally from the opportunities that corruption offers for private enrichment in societies in which governance is weak, or to be a strong force working towards good governance, economic development and the reduction of poverty. This guide explains what governance is, and what constitutes good governance in land tenure and administration. It examines the consequences of weak governance in these areas. It looks at how governance can be improved in land administration in general, as well as in some specific areas in which governance can be problematic. It draws out the lessons learned in land administration from the extensive field programme of FAO and the World Bank, and from parallel work on governance in urban areas, corporate governance and campaigns against corruption. The focus of the guide lies mainly, but not exclusively, on statutory land tenure arrangements and land administration. The guide is likely to be of most use in countries that are making progress in improving governance of society as a whole.**

ISBN 978-92-5-105753-7 ISSN 1020-3117



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TC/MA/1179E/1/06.07/1250

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