

# Good governance in public land management

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

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

*Reforming the management of public land must contribute to a basic set of development principles, namely, reduction of severe poverty, achievement of the Millennium Development Goals, progress in good governance and transparent fiscal management of the public sector. Good governance in managing public land first of all means establishing a sound policy regarding how government should intervene in land matters. The most critical element in guiding improvement in this area is the formulation of an explicit public land management policy in line with land policy and fiscal policy that sets out clear objectives related to economic growth, equity and social development, environmental sustainability and transparent fiscal policy.*

## ISSUES

Public land is land owned by the state or by local authorities. Public land accounts for a large portion of public wealth of both developed and developing countries. Yet, public property assets are often mismanaged, and nearly all countries underutilize these resources. The power to allocate public land is of great economic and political importance in most countries, and it is a common focus of corrupt practices. Public land is often treated as a “free good”, whereas “good” land in terms of location, use and service delivery is in fact scarce and valuable. This raises obvious questions:

- Why is the management of government property so badly handled across the world?
- Why do so many countries share the same symptoms regardless of their

political leanings or socio-economic status?

These questions take on added weight in the former centrally-planned economies and in post-conflict countries. Public land management is flawed and contentious because it is dominated by a top-down process that encourages favours to special interests and promotes polarization to obtain such favours. As a consequence, public land rights are often transferred through rule of power processes (Box 1) and not a transparent market mechanism. In many countries, the state itself is the primary threat to secure land tenure, especially for the poor.

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

## BOX 1 Global survey on forced evictions

The forced evictions covered in the global survey occur to a large extent on state land as a result of development projects, discrimination, urban redevelopment schemes, delineation of national parks, land alienation in both rural and urban areas, and in situations of armed conflict and ethnic cleansing, or in their aftermath. Examining the practice of forced eviction from a human rights perspective reveals that the reasons and justifications commonly provided by governments for implementing forced evictions, and the manner in which evictions are carried out, rarely meet the international standards required by human rights law and rarely correspond to basic notions of human dignity.

*Source:* COHRE (2006).

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

By its nature, the whole history of public land management has been ad hoc and opportunistic. This is because decisions about its use are power-related rather than institutional. So far, the institutions of

good governance have not matured to the point where they are capable of handling the vast amount of data needed to manage public land effectively. At present, we are conditioned by the consequences of the fact that this is what the government of the day in a particular society has at its disposal to use as an immediate tool for meeting some agreed-upon problem.

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

Weak governance in managing public property assets shows enormous consequences on all sectors – economic development, poverty alleviation, the environment, political legitimacy, peace and security, and development cooperation. It has both direct and indirect impacts on the security of common property rights, on access to land and on revenue generation for the state. It directly diverts public funds and assets away from the public sectors into the hands of the select few. Moreover, it directly undermines the public's trust in the ruling government and governance processes – a factor essential for good governance and lasting development reforms. Corruption and the looting of state assets at the top sends a negative signal to the other civil servants and can encourage a corrupt culture and unethical conduct throughout the civil service (Box 2). Without

## BOX 2

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

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

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

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

a strong, competent and clean civil service, development reform is bound to fail.

#### GOOD PRACTICES

Only a few countries have tackled explicitly and comprehensively the deficiencies of their public land management systems, and only incomplete information is available on such reform processes. This makes the lessons learned from experience rather limited compared with reforming land administration systems, which many countries have embarked on with support from the international community (Table 1).

Good practices for reforming public land management are designed to regulate the topics covered in the following sections.

#### Public land inventory and information systems

One central point has to be made. No accountability, transparency and effective management is possible without adequate knowledge about the qualities and quantities of public land, related legislation and regulations (where is what and what is where). Many governments share a common problem. They do not know where and how much public property they own

and what rights are attached to it, where all of the existing information is located in a complex institutional environment, and how complete, accurate, reliable and relevant the information is for planning and decision-making. There is wide divergence in approaches and institutional arrangements for managing state land information. Some governments implement a central database while others opt for departmental or decentralized information systems. Ultimately, all public land should be properly registered. As an intermediate step and complementary management tool, there are good experiences with public land inventories. They contain all the information on public land for management purposes but do not replace the register. In a first approach, compromises could be accepted in terms of survey accuracy but not in terms of regulatory content. Most countries have established some sort of land information system but, perhaps surprisingly, only very few are showing good examples and functionalities of information systems for the specific requirements of public land management (Treasury Board Canada, 2000). Comprehensive, easy-to-

TABLE 1  
Country cases in a learning environment

Country	Good practices
<p><b>Canada</b> Monitoring guide: <a href="http://www.tbs-sct.gc.ca/common/us-nous_e.asp">www.tbs-sct.gc.ca/common/us-nous_e.asp</a> Source: DRFP: <a href="http://www.tbs-sct.gc.ca/dfrp-rbif">www.tbs-sct.gc.ca/dfrp-rbif</a></p>	<p>Overall reform of the public sector. Consequently, transparent public asset management is based on a comprehensive accountability system and has been implemented at all levels. Guiding principle is to acquire, manage and retain real federal property only to support the delivery of government programmes and in a manner that is consistent with the principle of sustainable development. The design of the Directory of Real Federal Property (DRFP) with its functionalities and standards as well as the audit guide and the monitoring guide could serve as good practice in other countries.</p>
<p><b>Egypt</b> Public Land Management Strategy Draft Policy Note Source: World Bank, April 2006</p>	<p>Reform of the public sector and reform of state land management has been initiated in the last few years, and valuable material has been developed with the support of the World Bank. There is broad support for the state land reform from the highest political level. Internal and external dialogue is a strategic component of the learning process. Policy orientation within a long timeframe is defined before the legislation will be amended. Several institutional and organizational scenarios with the discussion on pros and cons are supporting the decision-making process. There are some difficulties in integrating military and security interests.</p>
<p><b>Cambodia</b> Multi-donor supported Land Management and Administration Project (LMAP) Source: LMAP project documents</p>	<p>Tackling of the huge overall state land problem in a post-conflict and post-transition country by enabling legislation, land policy formulation, countrywide reform of the land sector, inter-institutional arrangements (land policy board), delegation of power to provincial committees, implementation and capacity building with international support. Nevertheless, positive impact is still limited by weak governance. State land problems reflect power relations at the highest level of the government. Tackling the problems goes far beyond project measures.</p>
<p><b>Ghana</b> The first five-year Land Administration Project (LAP-1) Source: LAP Information brochure 2006</p>	<p>The overall objective of the state land audit (as a component of LAP in the central region) is to enable the Government of Ghana to formulate and implement across the board a realistic, fair, timely and comprehensive policy on State-acquired and State-occupied lands. Ascertain the stock of state or public lands, including the effective usage of such lands. These included lands that had been either compulsorily acquired or occupied by the State without formal acquisition. Determine the acquisitions for which compensation had been paid and those for which partial or no compensation had been paid. Ascertain acquisitions for which there had been change of use as against the original purpose of the acquisition. Assess the extent of encroachment. Sensitization workshops and review meetings were held in 2005 and 2006. The exercise was successful and many lessons have been learned.</p>
<p><b>Central European transition countries</b> Source: Urban Institute, 2006 and Open Society Initiative, 2003</p>	<p>Political and professional debate on public-sector reform around political decentralization, re-assignment of public functions and devolution of state-owned assets. All assets connected to functions assigned to local government should be transferred. Special issues are: the legislative process; the scale, sequencing and timing of the transfer of public land; the competencies of local government for acquisition, management and disposal of public land; the related rules for financial management of public assets; and introducing standardized accounting practices, new forms of internal and external audit and transparency, and rules for minimizing conflicts of interest.</p>

access and easy-to-use systems have been established in only a few countries.

### Public land policy and the regulatory framework

A public land policy provides fundamental directions. However, it has to be complemented by a law on public land management or a similar piece of legislation that should provide parameters as to what can and cannot be done with state land, and spell out the fundamental responsibilities of government and the necessary decision-making processes as well as setting general parameters for allocating public land. A guiding principle

of the government in acquiring, managing and retaining public property is that it should only do so to support the delivery of government programmes and in a manner that is consistent with the principles of sustainable development, poverty reduction and good governance. Within this context, public property must be managed to the maximum long-term economic advantage of the government, to honour social and environmental objectives, to provide adequate facilities for users, and to respect other relevant government policies.

The essential policy goal is to set forth the criteria for deciding who is to benefit from

how much of these resources, for how long and for which purposes. At the very least, the policy of public land management has to clarify:

- policy goals, especially state land policy for implementing ecological, social, economic and cultural goals;
- a clear commitment of the government and the outline of an action plan;
- a statement that the public land asset is held in trust for the people;
- principles for regularization of public land;
- how it will guarantee security of common property rights, indigenous land rights and resource rights on public land;
- the framework for the institutional jurisdiction and public use by different authorities;
- devolution of public property to local government (if needed for its portfolio);
- the framework for special-purpose cooperation, public-private partnership, and land trust;
- transparent principles for the allocation of state land, and for what purposes;
- principles of fiscal management, performance reporting and audit;
- accountability and transparency requirements for managing public land.

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

or public land commission for overseeing the process. Examples are the Higher Committee for State Land Management (Egypt), the National Land Commission (Kenya), and the Council for Land Policy (Cambodia).

The basic regulatory framework on public property should focus on fundamentals to limit discretion and, thus, abuses. It should provide the principles and not very detailed rules or terms, which are better left to executive regulations or contracts. Land law and public land law reform need fresh attention because much legal reform is often concerned with formalization of “informal” land rights in favour of the state (Bruce *et al.*, 2006). For example, customary systems are not informal but represent an alternative formality.

A regulatory framework (land law, law on public land, by-laws or regulations) is required for the following critical public property areas, which often show weak governance realities:

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

Nevertheless, we do not need to wait for a comprehensive and complete regulatory framework for achieving better results towards improved public land governance. Most importantly, a public land inventory, an inter-institutional technical secretariat, and a board for overseeing the process combined with accountability and transparency are the ingredients for making a start. Law and legislation are just part of a process, not the end.

Regularization is an important good governance tool for avoiding land conflicts, human rights violations and eviction.



### BOX 3

#### Directorate on Corruption and Economic Crime, Botswana

After the enactment of the Corruption and Economic Crime Act on 19 August 1994, the Directorate on Corruption and Economic Crime (DCEC) was established on 5 September 1994. The Act sets out its functions, prescribes the powers and duties of the director, states the procedures to be followed in handling a suspect, and specifies the offences involving public officers, employees of public bodies, agents and those in the private sector. The Government of Botswana saw that significant results had been achieved by implementing what has become known as the “three-pronged attack” of detailed investigation, corruption prevention and public education.

The Corruption Prevention Group examines the practices and procedures of public bodies, and the private sector if so requested, in order to identify corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices. For example, abuse of land board procedures and allegations of corrupt allocations of state land were received by the DCEC in 2001. The DCEC conducted a detailed study of the procedures involved in the allocation of lands with a view to eliminating opportunities for corruption and making the allocation processes fully transparent. Being a scarce resource, land is a very contentious issue. Thus, one of the recommendations was to have land board members adequately trained and fully conversant with applicable policies and legislation. In a few cases, land board members and public officers were sentenced for issuing false documents involving the allocation of land.

*Source:* [www.gov.bw/government/dcec](http://www.gov.bw/government/dcec)

In many countries, there is no straightforward inventory or registration process for public land visible for many reasons. There are numerous cases of invasion, informal urban and rural settlements, appropriation of public rights of way, residual claims, and unclear overlapping or conflicting interest between communal properties and public land. Therefore, a process of regularization is recommended based on a participatory approach with transparent rules.

Legal instruments vary from country to country. They include statutes, decrees (presidential, ministerial, federal, state or provincial, and municipal), ordinances and by-laws of local governments, regulations and government contracts. These various legal instruments define who has enforcement powers, and under which legal instruments. They also establish the legal basis for sanctions or charges as well as the penalty provisions, all of which are central to the enforcement system. However, which ones are involved in any given case are usually determined in a rather ad hoc way at best and in a self-interested way at worst.

There are several important issues in the design and operation of a successful compliance and enforcement system. Enforcement involves a number of components (legislative groups, legal instruments, enforcement agencies and courts) that act independently, or are autonomously administered, yet must function together to be effective. There is also a relatively broad range of enforcement responsibilities involved in the administration and management of public lands and land resource utilization contracts. Compliance and the effectiveness of enforcement depend critically on the conditions and clarity of the legislation, on the strength and clarity of the commandments written into these laws, and on all four components working together.

#### **Law enforcement by specialized anticorruption agencies**

Anticorruption strategies will usually have to consider whether to establish a separate institution such as an anti-corruption agency (Box 3) to deal exclusively with

corruption problems, whether to modify or adapt existing institutions, or some combination of both. A number of legal, policy, resource and other factors should be considered in this regard.

The United Nations Convention against Corruption requires the establishment of such agencies. Nevertheless, anticorruption commissions are problematic when political leaders are only responding to demands from international donors. In such countries, policy-makers can ignore domestic demands for reform and enact minimal reforms to satisfy external agents. This minimum may be nothing more than the establishment of an anticorruption commission, an office of the ombudsman, or an antifraud unit without enabling legislation, competent staff, or a budget.

### **Devolution of public land from central institutions to local level**

Decentralization reforms are one of the fundamental components of public-sector reform and democratic development. In many countries in transition, property devolution was simultaneously implemented with the dismantling of the socialist ownership model in the context of privatization and restitution. Devolution of public property was and still is discussed extensively during the political reform process, and arguments are exchanged for and against property devolution. There can be no real local autonomy without a sound economic base. Significant own resources are required for fiscal decentralization, and public land can be an important source of municipal revenue. The most common arguments against devolution were the risk of inefficient management of public land and the lack of capacities. Useful experiences for countries still facing the reform process have been made during the last two decades. The challenge of governance and accountability at local-government level is big and similar to the challenge at central government level. Basic principles and clear rules must be defined and enforced for avoiding weak governance and corruption in managing public land at

local level. At local-government level, special attention must be given to the sometimes non-transparent and non-accountable behaviour of local leaders (Open Society Initiative, 2003).

Examples can be: corrupt practices of land disposal and land conversion (less than market value and favouritism); misusing the instrument of compulsory land acquisition for undercover purposes; the shift of public ownership to municipal enterprises (where surplus public land and the revenues could disappear in a non-transparent system); and manipulating zoning combined with land conversion for private gain.

### **Public land and the commons**

Common property regimes are management systems where resources are accessible to a group of rights holders who have the power to alienate the product of the resource but not the resource itself. Common property can be legally owned by the state, a community or an organization. Within this legal framework, a group of traditional rights holders manages the resource exclusively to preserve and enhance its long-term productive capacity for the benefit of all current and future members of the group. All members share reciprocal rights and duties that can only be amended by collectively binding decisions. It is particularly useful to look at which users have rights of access, withdrawal, exclusion, management and alienation, and for what uses. Access and withdrawal are considered use rights, while management, exclusion and alienation are rights of control over the resource. "Ownership" is often conceived as holding the full bundle of rights. From this listing of the bundle of rights, it is already apparent that state common property is much more complex than simple ownership. The concept of land resources being divided into mutually exclusive "properties" is gradually giving way to one of being a mutually inclusive set of "partial" interests. Much of the innovation is a result of the continuing evolution in managing scarce resources,

natural and human-made. It would be much more resource efficient if a number of individuals and/or enterprises could discover non-competing uses of the same resource base. Yet all too often government agencies fail to recognize community-based land and resource rights on state land. There has been the steady appropriation of many of the most valuable local common properties by the state and their re-designation as state or public lands. This has been undertaken on the assumption that the state is the only proper guardian of such properties and the rightful primary beneficiary of their values, and often on an assumption that these same properties are in any event weakly tenured at best.

Even in countries where public land is registered, there is generally no registration of partial interest and recognition of the bundle of rights. The regulatory framework must provide a clear legal base for the registration of partial interest over space and time and the recognition of the group. Comanagement models (e.g. through participatory land-use planning) for clearly defining the role of the state and the role of the local group in managing the public land resource on the ground should complement the regulatory framework.

### **Integrated land-use management and public land**

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

In the context of managing public property it is clear that the legal status and classification of public property, present land use and the desired (best) land-use options are interlinked and should not be dealt with separately in policy discussions or in the operation and delivery of public property. Integrated land-use management and public land management are closely connected and should be seen

as complementary objectives in order to provide win-win development options. There is generally a lack of knowledge and awareness of this broader implication in rural as well as in urban land management. Examples of the linkage between legal status and land use are:

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

### **Accountability and transparency**

Good governance and anticorruption measures in public land management can take a variety of forms, and their adequacy will depend on the prevalence of the respective types of corruption and on the political and institutional environment of the country in question. As an entry point for assessing and discussing the current state of the art of public land governance in any country, one could best check the Governance Research Indicator Country Snapshot (GRICS) rule of law dimension (WBI, 2005). The rule of law dimension reflects the power relations in a country and is directly related to the quality of managing public assets.

This is particularly important where political corruption occurs, where institutional and enforcement capacity is likely to be weak, and where, consequently, the timing, sequencing and design of reform are crucial to ensuring the feasibility and



sustainability of the reform process.

There is the need to curb high levels of administrative discretion, which, coupled with a lack of clear rules and regulations, are conducive to the persistence or facilitation of phenomena such as land capture, the corrupt allocation and management of public land, and land allocation more generally. Most of the causes and conditions contributing to weak governance and corruption in these areas are best and most sustainably addressed by comprehensive institutional reform and capacity building. They concern performance evaluation, regular auditing and reporting, service orientation, budgeting and access to information, and the nomination of an inter-institutional oversight board. Especially in countries with political corruption, the design and implementation of good governance and anticorruption strategies is a politically sensitive issue, with powerful interests standing to lose out in the process and with results manifesting themselves in the medium to long term rather than in the short term.

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

## **CONCLUSIONS AND RECOMMENDATIONS**

Even advanced economies have generally managed their public land assets very poorly in the past, and many countries are only now launching reform efforts and improvements. This new interest is mainly driven by public-sector reform and fiscal reform in some countries, or devolution of state assets from central to local government or the challenge of governance and accountability in other countries.

There are numerous good practices, but such experiences are scattered, not systematically analysed, and not easily accessible or properly documented. There is an enormous need and interest not only for sharing experiences about work in progress in all countries but also for tailored capacity-building opportunities in the effective management of public land.

Public land will continue to take on greater social and economic significance. In doing so, the related institutional, legal and operational arrangements that should secure multiple interests in specific parcels will take on additional political importance. We have not yet scratched the surface on crafting new institutional arrangements pertinent to land in this broader sense (Bromley, in press).

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

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

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

Reviewing, complementing and making the legal framework coherent, providing mechanisms for enforcement and for the right to access information.

4. Develop and apply a comprehensive accountability chain: Performance benchmarks, fiscal control, internal and external public land audit, conflict of interest rules, and interacting with anticorruption framework of the government.
5. Develop transparent fiscal management procedures: Valuation of public land and accounting (eventually accrual accounting), revenue transparency, and reporting.
6. Develop alternative institutional and organizational scenarios for the acquisition, management and disposal of public land: Broad discussion of pros and cons for centralized, decentralized, mixed custodian models or special-purpose state cooperation.
7. Nominate high-level body for overseeing the decision-making process and for control: For example, interministerial public land board with trustee function of the government.
8. Develop the regulations, technical tools and standards for the registration of public land and land inventory.
9. Design and implement a capacity-building strategy and specific training modules for professionals involved in managing public property.

The role of the international community is first of all to be aware of the importance of public land for development. There is a need to integrate public-land matters much better in the formulation of land policies, public-sector reform and fiscal reform initiatives as well as in public-good policies. There is certainly a need for more research on dealing with the recognition and registration of the bundle of rights on public land, on global analysis and on innovative institutional models for acquisition, management and disposal, for example, special-purpose agencies or public-private partnership models. Specific training modules for effective management of public

land should be designed and offered by the international community, and curricula on land administration should be updated. Global statistical information and analysis on public land at central-government and local-government levels is extremely weak compared with other relevant indicators on sustainable development. Creating a global learning network for exchanging information and developing a knowledge base for effective public land governance would certainly contribute to sustainable land management.

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## **Réforme du système d'enregistrement des droits de propriété en Géorgie: vers une bonne gouvernance en matière de régime foncier et d'administration des terres**

*Dans la décennie qui a suivi l'indépendance de la Géorgie en 1991, les réformes consistant à passer d'une économie centralisée à une économie de marché avaient essentiellement un caractère ponctuel. L'absence de base juridique solide empêchait l'administration foncière d'être réellement efficace. L'omnipotence d'une seule entité sur la gestion des terres publiques ainsi que la gouvernance défailante, tant au sommet de l'État que dans les collectivités locales, le chevauchement des activités et le manque de consensus dans le processus décisionnel et de transparence et d'information du public conjugués avec la fragilité de l'État de droit ont fait le lit de la corruption. De plus, les activités des donateurs étaient mal coordonnées, ce qui aggravait l'inefficacité du système.*

*Après 2003, le gouvernement a commencé à réformer l'enregistrement des droits de propriété en se fondant sur des principes de bonne gouvernance. Cette volonté politique a bénéficié de l'aide des donateurs qui se sont engagés à appuyer les processus. Les réformes ont mis principalement l'accent sur: la protection des droits de propriété et des droits fonciers; et la création d'un système d'enregistrement exempt de corruption, transparent et axé sur le client. Une approche tenant compte des besoins des parties prenantes a été élaborée en vue de garantir une indépendance financière par rapport au budget de l'État et de créer des revenus réguliers. Ces facteurs ont contribué à la mise en place d'un système national d'enregistrement des droits de propriété durable, efficace, exempt de corruption, impartial et unifié.*

## **Reforma del sistema de registro de derechos de propiedad en Georgia: hacia una buena gestión pública de la tenencia y la administración de la tierra**

*En el decenio que siguió a la independencia de Georgia en 1991, las reformas dirigidas a pasar de una economía de planificación centralizada a una economía de mercado tuvieron principalmente un carácter ad hoc. La eficacia en la administración de la tierra se vio obstaculizada por una base legal deficiente. La concentración del poder sobre las cuestiones relacionadas con la tierra en una sola entidad, la mala gestión pública por parte de sus máximos dirigentes y las entidades locales, la duplicación del trabajo y la falta de decisiones adoptadas por consenso, de transparencia y de conciencia pública, todo conjugado con una aplicación escasa de la ley, creaban una base para la corrupción. Además, las actividades de los donantes estuvieron deficientemente coordinadas, lo que agravó la ineficacia del sistema.*

*Después de 2003, el Gobierno inició reformas en el registro de los derechos de propiedad que tuvieron en cuenta los principios de buena gestión pública y modelos logrados de países desarrollados. Esta voluntad política claramente declarada se vio reforzada por una disposición por parte de los donantes a respaldar los procesos. Los principales objetivos de las reformas eran: seguridad de los derechos de propiedad y tenencia, y la creación de un sistema de registro público unificado, orientado al cliente, transparente y libre de corrupción. El planteamiento adoptado para responder a las necesidades de las partes interesadas trataba de garantizar la independencia financiera respecto al presupuesto estatal, así como la generación de ingresos sustanciales. Estos factores contribuyeron a la creación de un sistema nacional eficaz, eficiente y sostenible para el registro unificado, imparcial y libre de corrupción de los derechos de propiedad.*

# Property rights registration system reform in Georgia for good governance in land tenure and administration

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*In the decade following Georgia's independence in 1991, reforms aimed at moving from a centrally planned economy to a market economy were mainly ad hoc. Effective land administration was hampered by a weak legal base. The concentration of power over land issues in a single entity as well as poor governance by top management and local government, duplication of work and a lack of consensus-oriented decision-making, public awareness and transparency all combined with the weak rule of law to create a basis for corruption. Moreover, donor activities were poorly coordinated, compounding the inefficiency of the system.*

*After 2003, the government initiated reforms in property rights registration that took into account good governance principles. This political will was reinforced by a readiness on the part of donors to back up the processes. The main thrusts of the reforms were security of ownership and tenure rights, and the creation of a unified, customer-oriented, transparent and corruption-free public registry system. A responsive approach to the needs of stakeholders was intended to guarantee financial independence from the state budget as well as good income generation. These factors contributed to the establishment of an effective and sustainable national system for unified, impartial and corruption-free ownership rights registration.*

## INTRODUCTION

Georgia has two autonomous republics and it is divided into 9 regions and 67 districts (rayons). After the breakup of the Soviet Union, Georgia became an independent country in 1991.

During the first decade of independence, the country suffered from internal conflict, corruption, poor governance and high poverty levels. Georgia has also been heavily over-aided in recent years, which has led to a degree of donor fatigue. However, the change in leadership in 2003 presented a new opportunity for the government and donors to engage in a more harmonized and efficient way in order to implement reforms.

## INCENTIVES AND DRIVERS FOR CHANGE IN TERMS OF GOVERNANCE ISSUES TO BE TACKLED

From 1997 to 2004, the State Department for Land Management (SDLM) was the principal autonomous land administration agency.

The chief registrar managed the land cadastre and registration. This institution consisted of a national (central) office, 67 rayon (district) offices and 7 regional offices. These offices were headed by a zone registrar, responsible for the operations and other registry activities in the zone. The SDLM supervised the work of the regional offices. However, in practice, the regional and district offices were the



subject of horizontal management from the local governments. The decision-making process of the SDLM's regional and district offices was often influenced by the local governments, and by different land committees and councils.

The responsibilities of the SDLM were wide-ranging and included legal-technical functions (land registration, cadastre, and land valuation) and functions of a more political nature (land reform, land allocation, alienation, change of land use, and state control over land use and protection).

The SDLM made some progress in the execution of first registration. Support from donor organizations contributed greatly to this progress. However, because projects were donor-driven, their implementation followed several different approaches and standards. There were no unified technical specifications or standard instructions for cadastre and registration in place. Moreover, donor coordination was very poor.

In addition, a "weak or non-existent legal base hindered land administration after independence" (UNESCO, ECE & CHS, 2001). After the adoption of the new constitution in 1995, great progress was made in the development of land-related legislation. However, much of this was very ad hoc. There were still gaps that needed to be filled, and legislation was often drafted to meet the needs of individual projects. The long term still requires a sustainable legal framework.

The situation in urban areas was very different. Systematic registration was limited to the German project in Tbilisi and little progress was made through sporadic registration. The Bureaus of Technical Inventory held ownership registrations and other records for apartments. The rights on real estate were recognized by the State only after registration in the Public Registry. However, owing to duplication of works and poor public awareness in terms of registration and titling, many people considered the technical inventory records to be sufficient to prove ownership.

Thus, a good basis for corruption was created by:

- the concentration of the whole decision-making power on land issues under the one entity;
- poor governance in terms of unclear distribution of responsibilities between the SDLM's top management and local governments;
- duplicated registration works by the Bureaus of Technical Inventory;
- a lack of consensus-oriented decisions;
- the almost non-existence of public awareness and transparency;
- the vague legal framework;
- the weak rule of law.

Moreover, the absence of a land policy, of a clear development strategy and of unified cadastral and registration standards resulted in poorly coordinated donor activities, and helped to form an ineffective and inefficient system.

After the so-called Rose Revolution (23 November 2003), the SDLM was liquidated and the National Agency of Public Registry (NAPR) was established under the Ministry of Justice. This process initiated the reforms considered necessary for the creation of an effective electronic registration system using modern technologies and the standards of good governance of developed countries.

Fundamental reforms were initiated for the registration domain for movables and real estate as there was both a clearly stated political will from the government to reorganize and the readiness of the donors to back up the processes. The reforms had to cover institutional and legislative aspects, ensure transparency, and enable participatory and consensus-oriented decision-making. A responsive approach to the needs of stakeholders and customers would guarantee financial independence from the state budget as well as good generation of income. All the above would contribute greatly to the establishment of an effective, efficient and sustainable system with a unified, impartial and non-corruptive registration of ownership rights all over the country. The reform package

was prepared and the initial steps were taken.

In the course of the structural reorganization (Parliament of Georgia, 2004a), the SDLM became subordinate to the Ministry of Justice and had to be reorganized. The NAPR was then established (Parliament of Georgia, 2004b). The NAPR is a legal entity under public law and it enjoys autonomy and financial independence in its management and decision-making. Establishment of the NAPR entailed the liquidation of the SDLM and of the Bureaus of Technical Inventory in 2004.

Currently, the land management and land administration functions are separate. The NAPR is responsible for the cadastre and for movables and real-estate right registration. Its duty is to continue the process of integrating the cadastre and registration, the two fundamental elements of ownership and parcel information. Land management issues, such as soil erosion, land protection, and land-use management, have been transferred to the Ministry of the Environment and Natural Resources Management, and some functions (e.g. land consolidation) have been transferred to the Ministry of Food and Agriculture.

As mentioned above, the new law determined the liquidation of the Bureaus of Technical Inventory. The information formerly kept there has been transferred to the Public Registry. The Public Registry has had to ensure the proper systemization and processing of the data obtained after the liquidation of the Bureaus of Technical Inventory.

## **DESCRIPTION OF THE REFORM**

### **Major objectives**

The major directions of the reform were:

- provision of security of ownership and tenure rights;
- creation of a unified, modern, customer-oriented, one-stop-shop, transparent, corruption-free public registry system through comprehensive institutional, financial, technological and legislative reform;

- capacity building of personnel;
- coordination of donor organization activities;
- computerization of the processes according to modern standards.

The task of the NAPR is state registration of ownership and other rights to real estate and movables. In view of the reform objectives, from the outset, the NAPR aimed to provide easy access to public registry information, secure ownership rights and simplify registration procedures in order to stimulate small and medium-sized business development.

Previously, the Department of Geodesy and Cartography had regulated surveying and mapping activities conducted by state organizations and the private sector. Until 2005, cadastral surveys had to be conducted by the licensed surveyors. However, the Government then abolished the licensing system for the cadastre and backed up this decision with the argument that it was a measure to remove extra barriers for private surveyors. For the NAPR, the principle objective for implementation in the course of the reform became that of defining the precisely determined standards and procedures for the cadastre and registration. A comprehensive framework of registration instructions/procedures and cadastre standards had to be prepared in order to ensure mechanisms for producing high-quality work and the elimination of corruption.

The establishment of a single Informational Cadastre Centre under the NAPR was determined in order to integrate and update systematically the geo-information handed over by the donor-financed projects. The main objective of the Informational Cadastre Centre is to establish an information service of district registries / territorial registration offices, and to digitalize all the information in each registration office, and archive it in a digital format, as well as to implement the consequent computerization of registration procedures. In addition, the Informational Cadastre Centre is also responsible for

preparing specific registration software. The main types of information are: ortho-photos, satellite images, digital maps, registration geo-information database, and cadastral database. The registration database will be systematically updated and information accumulated in the Informational Cadastre Centre.

The NAPR also has to conduct rights registration in relation to movables. However, movable property registration is a relatively new field in the country. Considering the practices and lessons learned from developed countries, the NAPR intended to establish movable property rights registration. However, there were precedents of mortgage registration, although the cases were scattered among the Chamber of Notaries and land management offices. There was neither a legal framework for movable property mortgage registration nor clear procedures to make the process transparent and customer-oriented.

One of the major aims of the reform was to improve the legislative framework, which needed updating through new laws and amendments to existing legislation, normative acts, etc. Obviously, without a comprehensive and clear legislative framework and strong monitoring, all reform efforts would be ineffective.

To ensure achievement of the defined objectives effectively and efficiently, human resources development was crucial. It was decided to prepare a capacity-building plan, which would be supported by donor projects.

However, in order to attract and retain qualified personnel and carry on operations in an effective manner, the NAPR had to ensure a stable financial and material-technical base (to provide adequate salaries and working conditions). Being a legal person under public law, the NAPR should function on a self-financing base and no longer be dependent on the deficient state budget allocations.

Besides legislative and institutional reform, the NAPR management targeted

minimization of the procedure for the registration period. Registration service fees had to be fixed and differential in terms of timing. Reasonable registration fees combined with transparent, customer-oriented, corruption-free services had to ensure good income.

Another key issue of reform was that of improving donor coordination, because “coordinating efforts taken by State Department of Land Management were going on but had to be considered as not sufficient” (Kaufmann, 2003). Improvement meant achieving consensus among the stakeholders, and exploiting the synergies of donor efforts, expertise and resources in order to establish a sustainable, effective and efficient cadastre and registration system according to the standards of developed countries.

The development strategy of the NAPR involves six main areas:

- institutional,
- legislative,
- technological,
- administrative,
- financial,
- donor coordination.

### **Institutional reform**

Since the reform, the Public Registry has been under the Ministry of Justice, and operated by the NAPR. However, it is not part of a vertical management of the government.

The Ministry of Urban Development and Construction formerly shared responsibility with the SDLM for land-use planning and policy formulation. The Bureaus of Technical Inventory were subordinated to the above-mentioned ministry and held the records for real estate in urban areas. The Bureaus of Technical Inventory continued functioning for almost 14 years after independence. They duplicated registration work.

To achieve system unity and to improve service in terms of establishing a one-stop-shop, the Bureaus of Technical Inventory were liquidated. The information kept there was transferred to the NAPR (above).

In addition to the Bureaus of Technical Inventory and the SDLM, there was another registry – the lien registry. This registry provided access to small credits. The registry ensured rights registration on mortgaged real estate and movable property and, accordingly, issued the appropriate abstract upon request for credit unions or other interested bodies. The Georgian Chamber of Notaries operated the lien registry. In 2004, it was decided that the lien registry was also to be operated by the NAPR.

The above-mentioned steps ensured the implementation of the one-stop-shop principle for citizens. There is no longer any need to make separate enquiries at different organizations. The database of the Bureaus of Technical Inventory and lien registry operate under the same institution – the NAPR, where details on property ownership on property and any other type of rights registration are held alongside the movables charges registry. This makes it possible to conduct the process securely and conveniently for customers. The customers no longer have to go back and forth from one place to another place several times in order to collect documents according to different procedures and different fees. All the arrangements are now handled by the NAPR. The process is now much less time-consuming and rather inexpensive for customers compared with the previous system.

### **Administrative reform**

#### ***From the SDLM to the NAPR***

Owing to the lack of a comprehensive land policy, the absence of a clear development strategy and the existence of many gaps in legislation, the heads of the regional offices of the SDLM had no mechanism for ensuring a unified registration model at least on the regional level. Moreover, separate decrees or orders issued by the Central Office or the Government about land issues were not clearly explained to the staff of district offices or monitored by the regional office. “Information

exchange” was limited to the distribution of such decrees, orders, etc. Besides, the regional offices (as well as local offices) were participants in the land distribution committees, and the heads of regional offices frequently used to influence district offices in the decision-making process as they were considered higher in hierarchy. The accumulation of non-transparent, decision-making power on land issues was creating a good opportunity to smoothly adjust or re-adjust facts and processes and so cover corrupt dealings. As the regional offices did not undertake land management, registration or cadastre work, their existence, rather than facilitating communication, acted as an extra barrier to direct communication between the central and district offices. Moreover, the maintenance of the whole office was an additional financial burden.

In consideration of the above arguments, the regional offices were abolished (as they were mainly bureaucratic bodies). It was recognized that registrars were independent in their decision-making, while the Central Office needed to support them administratively in terms of providing a comprehensive legislative framework as well as explanatory seminars on every new or amended legislative or normative act. Following the reform, the registrars became solely accountable for every single registration entry provided according to the law. Their performance is monitored randomly by a special department of the Central Office of the NAPR as well as by the General Inspection Unit of the Ministry of Justice of Georgia. Independence of the registrars in their decision-making was a clear delegation not only of tasks but also of responsibilities.

Salaries were very low, with a minimum wage of lari 35 and a maximum wage of lari 150 (lari 1 = US\$1.74 in August 2006). These low salaries were necessary at the time owing to the need to make rational and effective use of human as well as financial resources. Staff numbers were optimized while implementing

administrative reform, and the number of personnel was reduced from 2 100 to 600. The overstuffed entity had been neither effective nor efficient. An important decision was that to abolish accounting departments in the territorial registration offices. It was important to eliminate the flow of cash at the registries. The NAPR now distributes staff salaries by plastic cards through bank accounts. The sole focus of the registrars has become the registration process. The Central Office of the NAPR provides management for administrative, logistical and financial issues. After implementing the administrative reforms, the average salary rose immediately from lari 57 to lari 452.

The administrative reforms also aimed to recruit highly skilled professionals for an effective and efficient operation of the NAPR. To that end, in the first phase of the reform process, qualification exams were conducted. The examination strategy and written test was prepared in consultation with donor-funded projects and local non-governmental organizations (NGOs). The exams were conducted by the Ministry of Justice of Georgia. In this way, the NAPR staff were recruited.

Human resources development, capacity building and training are considered essential components for the sustainable development of the institution. New opportunities have been provided by the Swedish International Development Cooperation Agency (SIDA) project. This management and training support project will greatly help the NAPR in its initial three-year period of establishment. Within this project, the main directions of capacity building are: (i) management; (ii) registration; (iii) information technologies; and (iv) geo-database development.

The service known as the “improved registration concept” has been established at the Tbilisi Registration Office in order to enhance service quality. The main principle of the concept is the focus on system safety, transparency, and ensuring adequate service. Later on, this principle will also be applied in district registries.

In accordance with the above-mentioned concept, the registration service has been reorganized to provide system transparency and adequate service. The physical and functional separation of the front-offices and back-offices of the registration service is considered a significant change in the system. This has meant the elimination of citizens’ involvement in the registration process and, therefore, the creation of an appropriate working environment for registration officers. Within this process, free legal consultancies are held at the offices. Citizens can easily find appropriate services on the clear notice boards. Moreover, the registration procedure has been simplified from 67 steps to 9. These two aspects have reduced registration times. To this end, registration software has been created, which has already been introduced at the Tbilisi Registration Office. Moreover, the database for Tbilisi has been placed on the Internet. The NAPR has a Web site, where the basic information has been placed.

An internal control and audit division has been established. It has a hotline and is charged with the following main tasks:

- Plan and conduct preventive activities for disciplinary and legislative violations by NAPR staff, and conduct internal investigation of such facts.
- Analyse the activities of the staff within the limits of its competences, and monitor the activities of the NAPR offices.
- Check applications and accusations, and respond; prepare conclusions about internal investigations and submit them to the chairperson in order to enable sound and impartial administration of the rule of law and appropriate responsiveness to claims by customers; and monitor the operations of the registration clerks.

### ***Donor coordination***

There has been a significant focus on improving donor coordination from the outset of the initial phase of establishing the NAPR as the synergy of expertise,



finances and efforts will make it possible to create the most effective and efficient system. The target for everyone has been the same, but the implementation methods, approaches and procedures have been different. It was important to make the process target-focused and consensus-oriented, with improved levels of accountability, participation and inclusiveness. With these aims in mind, working groups with representatives from all the projects were set up to address four aspects: (i) registration database and software; (ii) development of legislation; (iii) registration procedures/instructions; and (iv) administration structure and a human resource qualification improvement strategy. The World Bank expert (Sharp, 2004) evaluated the effectiveness of this synergy of efforts thus: "It should be recognized that the both the work groups and the management of the new Agency have been extremely active...and significant progress has been made." The other assessment (Danielson, 2004) on that decision stated: "The progress in general is impressive." and "The coordination between National Agency of Public Registry and the donor organizations is much better now than a year ago. The cooperation between the involved parties seems to be closer and direct treating the subjects. The Informational Technology-people showed how they care about each other's competence." When the working groups had accomplished their tasks, the Donor Coordination Council was established in early 2006.

The NAPR cooperates closely with the Chamber of Notaries of the Ministry of Justice and with the Tax Department of the Ministry of Finance on developing enterprise registration and tax lien/seizure regulations. In addition, it has broadened stakeholders' inclusiveness in the decision-making and problem-solving processes. The main stakeholders, such as NGOs, bank associations, representatives of the ministries, independent experts, etc., have been identified, and a deliberative council has been established. The council

operates in a consensus-oriented way. Within its framework, periodical meetings are arranged in order to develop common approaches to customer-oriented problem-solving.

Thus, the registration system of the public registry has become a centralized body in terms of independence, finances, functions and administration (separate from local governments/authorities) and, at the same time, a decentralized one, considering the complete delegation of tasks and responsibilities to the local district offices, which have excluded conflicts of interest with regard to public administration.

### **Legislative reform**

#### ***Law on the State Registry***

The initial formation of a new legislative framework started with the approval of the Georgian Law on the State Registry in 2004. The scope of the law is to define the type of State Registry, the State Registry system, its organizational and legal principles, and the terms of references of the registry bodies.

#### ***Law on fee for services rendered by the NAPR***

The law on fee for services rendered by the NAPR was a significant innovation for Georgia (Parliament of Georgia, 2004c). It is the cornerstone for strengthening the NAPR's financial independence and has helped in combating corrupt dealings between registration staff and customers. Customers usually paid a bribe in order to speed up the registration procedure (rather than for falsification of documents). The registration procedure was time-consuming (40–45 days) and the service was frustrating because of long queues. Therefore, customers were content to pay a bribe.

The new law has established fee rates, payment procedures and terms for services. The Registry has introduced an accelerated registration service (Box 1).

This law regulates fairly the correlation of the services rendered in obligatory terms and the money paid. In short, it has set service standards. It gives possibilities

## BOX 1

### Key innovations of the law on service fees

The law has introduced an accelerated registration service with a fixed fee and the following terms and conditions:

- Initial registration: 1, 3 or 5 working days.
- Further registration, including registration of transfer, encumbrance, limitation or termination of property right (except mortgage): 1 or 3 working days.
- Mortgage: 1 working day.
- Movable property rights registration: 1 or 3 working days.
- For initial registration of right on real estate, including preparation of cadastral maps, completion of registration cards, and issuance of registration certificates or/and abstract, the following fee rates and terms were set:
  - registration of agricultural land: 10 working days, free of charge;
  - registration of non-agricultural land: 10 working days, lari 36;
  - accelerated registration of non-agricultural land: 1 working day – lari 150, 3 working days – lari 108, 5 working days – lari 72.
- Where an amount exceeding the fee payable under this law is paid, the difference between the paid fee and the fee rate determined by this law is to be refunded. The amount paid is to be refunded in full in the event that:
  - the NAPR refuses to render service on legal basis;
  - an interested person refuses service before commencement thereof;
  - the service is not rendered by the NAPR within the terms determined by this law.

for refunds and/or reimbursement where obligations are not met by the Registry.

The law has set strict registration terms, down from the previous 40–45 days to a maximum of 10 days for initial registration, with the possibility of registration in 1 day with equivalent payment, at five times less the normal term and fee (lari 36). The new accelerated registration service is optional for the customer, and it has contributed greatly to eliminating corrupt dealings as well as to enhancing the financial independence and strength of the NAPR.

#### ***The law on the registration of the rights on real estate***

Broadly speaking, the Law of Georgia on Registration of Rights on Immovable Property (Parliament of Georgia, 2005) defines the terms more clearly, fully and structurally (Box 2). Moreover, it has considered the active development of the construction business in Georgia, which required security of rights through the registration of initial ownership and

transfers of multiapartment buildings/condominiums under construction (Article 15).

Another important provision is the registration of linear constructions (Article 16), something not envisaged previously. It allows and defines registration for oil, gas and other pipelines. The demand for registration of such objects has been increasing from various entities and/or organizations, such as railways and oil companies. The legislative gap or so-called “blank spot” was a critical impediment for investment and economic development as there was no legal stipulation to acknowledge ownership or tenure rights on such objects by the state.

The new law defines clearly and precisely for each specific case the list of registration documents to be submitted to the registration office (Article 20). It has simplified the registration procedure for when the reference notice issued by the former Bureaus of Technical Inventory has been lost or damaged beyond identification.

## BOX 2

### The Law on Registration of Immovable Property Rights

Complex reforms have been carried out with the aim of developing a secure, transparent and simplified registration system of real estate rights. Important innovations of the Law of Georgia on the Registration of Immovable Property Rights are:

- specification of the documents for public register;
- definition of the initial and further registration of right to multiapartment buildings under construction;
- definition of the special cases for registration of real estate having an independent property right (linear constructions, e.g. pipelines);
- prohibition imposed on the registration service to demand any documentation or information from the applicant other than that required by law;
- stipulation of the basis for the suspension, refusal or termination of the registration;
- stipulation of the basis for making changes, additions, and rectifications of the technical errors in the public register entries;
- demarcation of the rights that are subject to the compulsory registration in the public register and the rights that are subject to voluntary registration in the public register;
- lien registration establishment.

Previously, the applicant had to make a claim in the courts. Now, the applicant just has to provide a signed written statement.

In brief, the innovations of this law have improved the registration system considerably. Its definitions are in plain language, which has reduced registrars' possibilities for "interpretation" and has created a more simple and transparent system. Moreover, it clearly and impartially empowers the citizen to obtain reimbursement in the event of violation of the registration terms by registration clerks or owing to other circumstances.

#### Financial reform

The law on fees for services provided for the financial independence and strength of the NAPR. It represents the cornerstone for further reforms and for the sustainable maintenance of the system in terms of its material and technical basis and human resources development. Under the financial reform, an Internet banking service was introduced, and a computerized accounting system (known as Orisi) was set up and connected to the local computer network. This system has considerably facilitated accounting procedures.

To ensure proper arrangements for staff wages, the registration offices have been divided into five categories (Box 3), taking into the account the income received by nine separate district offices concerning the defined fee.

Flexibility to move from one category to another is ensured, according to the increase in income generated per registry.

As mentioned above, the decision to abolish the accounting departments in the territorial registration offices and to make fee payments through the bank was important for eliminating cash flow at the registries. The NAPR now distributes staff salaries by plastic cards through bank accounts. The sole focus of the registrars has become the registration process.

For the NAPR, the income ensured by registration service fee was lari 8 162 400 (including VAT) in 2005. Of this amount, lari 1 062 500, as VAT, was transferred to the State Budget. In the past, the State Budget allocation for the SDLM had been lari 1 200 000 – almost the same sum as that contributed by the NAPR to the State Budget as VAT.

### BOX 3

#### Salary-scale categories for registries established according to income generation

There are five salary-scale categories:

- the first category covers 2 offices: Central and Tbilisi registration offices;
- the second category includes 4 registration offices with average monthly income exceeding lari 10 000;
- the third category includes 9 registration offices with average monthly income of lari 4 000 – 10 000;
- the fourth category includes 12 registration offices with average monthly income of lari 2 000 – 4 000;
- the fifth category includes 41 registration offices with average monthly income not exceeding lari 2 000.

Source: NAPR (2005).

#### Technological reform

##### ***Main goals of technological reform***

The main goals of technological reform are:

- development of registration software;
- establishment of secure electronic registration – cadastre system;
- establishment of e-governance-ready system.

Technological reform has also envisaged the establishment of a unified electronic registration system with a well-protected central database. The key aspects of the technological reform are: (i) registration system networking; and (ii) information publicity.

The electronic registration system needs to encompass: (i) systematic integration; (ii) information integration; and (iii) information publicity.

The future land information system should support users at all levels and provide stakeholders with easy access to information. The Information Management Centre of the NAPR will handle the new database at national (central) level. The Information Management Centre will act as an umbrella department for the registration and dissemination of data from the NAPR systems.

##### ***Software development***

The prerequisite of technological reform was registration software development. The registration software (known as NAPReg) was developed at the Information Management Centre in close cooperation

with donor projects. The main objective during the development of the software was to create a customer-oriented, transparent and secure system for the registration of ownership and other property rights. The software has simplified the registration procedure – reducing a 67-step procedure to 9 steps. It has envisaged promoting access to registration data via the Internet. The interested parties (notaries, banks, etc.) will be able to access data without leaving the offices. In addition, it is planned to establish a unified geo-database in order to enhance data security, increase accessibility, and raise publicity. The enhancement of information accessibility and publicity related to real estate will promote the development of the property market.

#### **EXPERIENCES AND LESSONS LEARNED**

The activities undertaken by the NAPR for system improvement have already generated successful outcomes.

##### **Introduction of a framework for transparency**

In order to ensure publicity for and transparency of the system, one of the main priorities of the NAPR has been to inform the mass media and the public about the ongoing reforms. Citizens have been provided with full information. A public-relations plan has been developed, press conferences and briefings are organized frequently, and media releases are prepared and disseminated. In order to ensure

transparency, the NAPR has also opened a Web site, which contains all the basic information.

### **Setting of service standards**

The NAPR has established fixed fee rates and clear payment procedures with strictly determined times. The setting of the service standards for registration has been a key factor in combating corruption. It has also contributed significantly to financial improvements and institutional development.

### **Capacity building**

As a result of the reforms, the registration procedure has been much simplified (from 67 to 9 steps). For monitoring performance, a hotline was set up to detect and respond immediately to any problem faced by customers of the registry. For the same reason, a glass box for complaints, claims and suggestions was installed in the Tbilisi Registration Office. This is a useful tool for fostering responsiveness, participation, equity and inclusiveness.

### **Improvements to systems and processes**

The institutional reforms that have been implemented have supported improvements to systems and processes. The separation of functions of land management and land administration was a first step to building up an effective unified registry. The previous practices of the registration system were complicated, vague and in some cases duplicated by the Bureaus of Technical Inventory. The NAPR has developed and introduced back-offices and front-offices in order to improve the registration service. The processes have been consolidated in accordance with the one-stop-shop principle.

### **Capacity building and the development of a human resources policy**

As a first step in administrative reform, the NAPR initiated and conducted qualification exams through massive open-vacancy announcements in order to recruit highly-

qualified staff through a transparent process. In addition, as human resources development and capacity building through training were identified as a cornerstone for effective functioning, the special Management and Training Project was developed and submitted to the SIDA for that purpose (SIDA, 2005). The project is being successfully implemented by Landmateriat. The NAPR budget envisages the updating and maintenance of the proper equipment.

### **Secure financing**

Reforms have been made in the financial sector in order to attract and retain qualified specialists at the NAPR and at the same time to ensure a sound material and technical base (in order to provide adequate salaries and working conditions). A first step in this direction was the gaining of financial independence from the State, which has meant operating on a self-financing basis. This has provided the opportunity to establish competitive salary scales and introduce categories according to income provided per registry. Making fee payments through banks has been important in eliminating cash flow at the registries (above).

### **Establishing audits**

In order to ensure the rule of law, responsiveness to claims by customers, and monitoring of the work done by registration clerks, the internal control and audit division has been operating successfully to detect and act against disciplinary and legislative violations by NAPR staff. It monitors and analyses the activities of the staff within the limits of its competences, checks claims and responds to them, and prepares conclusions about internal investigations and submits them to the NAPR management to aid in decision-making.

### **Making effective use of information technology and communications**

Technological reforms have focused on the establishing of a unified electronic



registration system with a central database, registration system networking, and information publicity. To achieve these goals, the first step was the development of registration software and the computerization of land records. The development of the software has itself facilitated the simplification of the registration procedure. Reforms in technology and communication have focused on improving data accessibility via the Internet for banks and notaries.

### **Being effective, efficient and consensus-oriented**

Improvement in donor coordination was essential as the synergy of expertise, finances and efforts would then make it possible to have the most effective and efficient system functioning. It was important to make the cooperation process target-focused and consensus-oriented, with improved levels of accountability, participation and inclusiveness. With these aims, it was good practice to have a functioning donor coordination council.

### **Stakeholder inclusiveness**

Active cooperation with the stakeholders made it obvious that in order to achieve effective functioning of the system it was necessary to broaden stakeholder inclusiveness in the decision-making and problem-solving processes. To this end, the establishment of the Deliberative Council has proved a successful initiative.

### **Less positive experiences**

In most cases, making clear, distinct borders between levels of subordination and independence among institutions is a delicate issue. Such sensitive issues often have an impact on good governance characteristics such as participation and accountability among the institutions, which are considered stakeholders. In this regard, some processes of the NAPR (e.g. various administrative management issues, qualification exams, and staff recruitment processes) were cumbersome or obstructive because of exaggeration by the supervising body.

The hotline shows that more questions regarding registration issues are coming from the district/rural population. This highlights the need to enhance public awareness in district areas.

Implementation by the NAPR of development plans was not always possible in the times as anticipated and scheduled originally, e.g. software development, and approval of instructions for registration procedures and cadastre standards.

In general, the registration software was developed in a very accelerated and optimal period (1.5 years). However, at the start of the process, it was estimated that it would take only 6–8 months. The implementation process showed that perfecting technical details in order to keep pace with changing legislation is rather time-consuming.

Notwithstanding the difficulties, the successes achieved through the reforms for system re-engineering are important. It is important that the above-described achievements be recognized internationally.

## **EPILOGUE**

The application of the principles of good governance, such as participation, the rule of law, transparency, responsiveness, consensus-oriented approach, equity, inclusiveness, and accountability<sup>1</sup>, in reaching the overall objective of the registry (i.e. the development of a unified, simple, customer-oriented, transparent and corruption-free registration system) are essential. Therefore, it is highly recommended that they be considered during the re-engineering of a property rights registration system. Taking into the account the positive trend, the NAPR is purposefully continuing to implement strictly defined customer-oriented reform (one-stop-shop principle) in order to establish a transparent, incorrupt and effective registration system equipped with modern registration-informational technologies.

The reform strategy of the NAPR, which is the principle entity for land administration,

<sup>1</sup> [www.unescap.org/huset/gg/governance.htm](http://www.unescap.org/huset/gg/governance.htm)

has worked in six main areas (institutional, legislative, technological, administrative, financial, and donor coordination) in order to establish an effective and efficient system.

It is a matter of pride for us that in the World Bank / International Finance Corporation publication *Doing Business in 2006*, Georgia, as a rapidly growing country in terms of doing business and developing, obtained a positive assessment mainly for the reforms carried out in property registration. The report (World Bank / International Finance Corporation, 2006) says: “Georgia the top reformer in 2004 – made the most progress. The newly created Agency of Public Registry offers expedited registration and combines other procedures to allow entrepreneurs to obtain a registry extract, certificate of property boundaries and proof of no other claims all at the same time. Before, that took visits to 3 agencies... Georgia also cut fees and eliminated the transfer tax, reducing the costs of registration by 75%.”

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## **Bonne gouvernance dans la privatisation et la restitution des terres agricoles pendant le processus de réunification de l'Allemagne**

*L'article commence par une présentation courte de la situation et des problèmes rencontrés en 1990, dans la phase initiale du processus de transformation du paysage politique allemand. Il explique les motifs principaux de la réussite de la mise en place du programme politique relatif à la transformation de la structure de la propriété agricole et forestière et appliqué par le Gouvernement fédéral allemand dans le cadre du processus de réunification de l'Allemagne. La responsabilité de ce processus ayant été confiée à un «organisme d'État» unique, le processus de mise en œuvre a pu être incorporé dans un cadre de gouvernance public-privé, ce qui a facilité l'instauration d'une «démarche pédagogique» pour résoudre les problèmes imprévus et de réaliser le suivi des performances, de la capacité de contrôle et de l'efficacité. Des mesures organisationnelles importantes adoptées pour améliorer l'efficacité et la bonne gouvernance sont décrites, ainsi que des mesures internes visant à rendre le marché foncier plus souple et dynamique et à protéger et accroître la valeur des actifs devant être gérés et vendus.*

## **Examen de la buena gestión pública de la privatización y la restitución de tierras agrícolas durante el proceso de la reunificación alemana**

*El artículo comienza con una breve descripción de la situación y los problemas a que se enfrentó Alemania en la fase inicial de su proceso de transformación en 1990. Se explican los elementos clave para el éxito de la ejecución del programa político «Transformación de la estructura de la propiedad en el ámbito de la agricultura y la silvicultura en el proceso de reunificación alemana» del Gobierno Federal de Alemania. La atribución de la responsabilidad de este proceso a un solo «organismo estatal» implicó que el proceso de ejecución pudo incorporarse a un marco de gestión a cargo de una entidad pública, lo que permitió reaccionar a los problemas imprevistos y supervisar la ejecución, la controlabilidad y la eficiencia desde una perspectiva de aprendizaje. Se describen importantes medidas de organización encaminadas a fomentar la eficiencia y la buena gestión pública, y medidas internas para apoyar la flexibilidad y el dinamismo del mercado de tierras así como para garantizar y aumentar el valor de los bienes por administrar y vender.*

# Addressing good governance in the process of privatization and restitution of agricultural land during the German reunification process

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*The article begins with a short overview of the prevailing situation and problems faced in the initial phase of the transformation process in Germany in 1990. Key elements leading to the successful implementation of the political programme “Transformation of the ownership structure in agriculture and forestry within the German reunification process” by the Federal Government of Germany are explained. The allocation of responsibility for this process to a single “state agency” meant that the implementation process could be embedded in a public- and corporate-governance framework, which facilitated a “learning orientation” in reacting to unforeseen problems and in monitoring performance, controllability and efficiency. Important organizational measures aimed at fostering efficiency and good governance are described, as well as internal measures to support a flexible and dynamic land market and to secure and increase the value of assets to be managed and to be sold.*

## INITIAL SITUATION IN 1990

In a first step of the privatization process, beginning already about six months before the official *Unification Treaty* of 31 August 1990, all (formerly “state-owned”) property holdings of the German Democratic Republic (GDR), namely all companies, were converted into stock companies/legal entities. The shares were transferred to the ownership of the Trust Agency (THA), founded on 8 March 1990 (Fischer and Schröter, 1993). The legal contract privatizing all shares was stated in the *Trustee Act*. Later on, a precise date for bringing the activities of the THA to an end was set by the Federal Government of Germany (31 December 1994).

The situation in the agriculture and forestry sector was somewhat different. The agricultural business entities were organized either as socialist cooperatives

(4 500) or as state-owned companies (515) – the Socialist Agricultural Production Cooperatives (LPGs) and the so-called State-owned estates (VEGs). Forest areas were managed by state-owned forestry companies. The transfer of the agricultural cooperatives to stock companies was governed by the *Agricultural Adjustment Act*.

All cooperatives and companies farmed agricultural or forestry land on the basis of extensive use rights (more or less free of charge) by law (e.g. § 74 LPG Law). Thus, only the state-owned agricultural and forestry areas were transferred to the THA. In 1990, such State-owned land totalled 2.1 million ha of agricultural land, or 35 percent of all agricultural land, and 2.2 million ha of forestry land (90 percent). Although all other land had not been expropriated by 1989 and, therefore, was still legally owned by individuals or the

church, these properties were more or less worthless assets because of the above-mentioned use rights granted by the GDR (Willgerodt, 1993).

### **FOUNDING AND TASKS OF THE GERMAN AGRICULTURAL AND FORESTRY PRIVATIZATION AGENCY (BVVG)**

Because of the foreseeable long-term nature of the transformation process for ownership of agricultural and forest land and to move political pressure off the Federal Government and the THA, with respect to § 1 Para. 6 of the *Trustee Act*: “For the privatization and reorganization of publicly-owned assets in agriculture and forestry, the THA is to be organized to take into consideration the particular economic, ecological, structural and property law-specific features of this area.”

The THA, in close collaboration with the Federal Government, set up the German Agricultural and Forestry Privatization Agency (BVVG) on 1 July 1992.

The BVVG was charged by the THA and the Federal Ministry of Finance with two tasks. First, it was to manage all former State-owned agricultural and forestry land until a concrete privatization decision could be made by other authorities on the basis of the most important *Property Act* (which re-privatized expropriated land to

individuals or corporations) or the *Allocation of Ownership Act* (which restored land needed for the execution of public tasks to municipalities, the Federal States or the Federation itself by “allocation”) (Fieberg and Reichenbach, 1997). Second, it was to sell all land not expected to be privatized by the above-mentioned or other laws.

### **External and internal measures of financial control**

Choosing one-single state agency to be responsible for managing and executing the selling of all agricultural and forestry land to be privatized facilitated controllability of the business operations and monitoring of performance by the Federal Ministry of Finance (BMF) on behalf of the Federal Government. Modern management principles were able to be adopted much more easily than in a “normal state-authority”, e.g. in regard to time limits on the appointments of managing directors, annual written agreements on objectives, and monthly meetings on all current key issues between the BMF and the board of management of the state-agency responsible for implementation.

As a limited liability company (Table 1), the BVVG is embedded in the systematic monitoring and controlling instruments of the public-governance and corporate-governance frameworks.

**TABLE 1**  
**Governance frameworks and the BVVG**

As a “limited liability company”	As a “state agency”
<p>The BVVG is subject to all general legal regulation mechanisms (in particular, the German Commercial Code [HGB] and all ancillary commercial and tax laws) and to the principles that apply for all “large stock companies (such as limited liability companies)”<sup>1</sup>. Uniform provisions for the setting-up of transparent accounting apply in particular.</p> <p>Assets, financial and revenue situation must be audited by an independent and capable audit company each year on the accounting date, and a corresponding auditing report has to be published.</p>	<p>Every state/agency has to include in the “normal” auditing report a protocol, after § 53 of the Act on Budgetary Principles of the Federation (HGrG), in which detailed questions for checking the regularity of business operations, management and other public governance aspects have to be answered.</p> <p>Like all federal authorities, the BVVG is subject to external financial controlling by the government and can be audited at any time by the Federal Court of Audit (BRH), for example.</p>
<p>All commercial and tax-related offences also apply without restriction to the BVVG. As office-holders, the employees of the BVVG are subject to the offences of accepting benefits and accepting bribes (§§ 331–338 of the Criminal Code [StGB]). As a result, the public prosecutors and the police must officially investigate employees of the BVVG if they receive information.</p>	<p>The federal administration has passed a guideline for corruption prevention for its offices and authorities. Among other things, this guideline defines the legal prevention mechanisms for creating more transparency and traceability for administrative actions in areas particularly vulnerable to corruption. This prevention guideline applies directly to the BVVG.</p>

<sup>1</sup> According to the classification in § 267 HGB, “large stock companies” are companies with a balance sheet total of more than 21.24 million DM, sales revenue of more than 42.48 million DM and more than 250 employees.



The Federal Court of Audit (BRH), whose members are judicially independent, audits the complete accounts as well as the economic effectiveness and regularity of the Federal Government's financial and economic management, using cross-sectional audits for several government authorities and selective audits. It reports annually and directly to the Bundestag (Federal Parliament) as well as to the Federal Administration (Art. 114, Para. 2, Clauses 1 and 2 of the Basic Law). As part of this overall contract of external control of the execution of policy programmes of the Federal Government, in recent years, the teams of the BRH have repeatedly audited the way in which the BVVG conducts its tasks. Through their audit reports, the Bundestag, BMF and the BVVG have been informed of the results.

As part of the company, the Internal Audit Department is directly subordinated to the BVVG board of management and is an organ of internal financial control. It supports the board of management as well as those responsible at a divisional and branch level in fulfilling tasks by providing independent and objective assurance and consulting services. One of its tasks is to add value and improve the operations of the organization as well as to evaluate and improve the effectiveness of risk management, control and governance processes. Inasmuch, the Internal Audit Department carries out a subsequent cross-checking of functional instructions and implementation.<sup>1</sup>

### **Learning orientation and self-organization of the transformation process**

In the early years of the transformation process (primarily from 1989 to 1992), enactment of legal regulations had to be carried out in the absence of full knowledge of all concrete problem situations, and solutions were required in order to make

<sup>1</sup> See the Definition of Internal Audit by the Standards of the Professional Practice of Internal Auditing; The Institute of Internal Auditors, Altamonte Springs (also available at <http://www.theiia.org/guidance/standards-and-practices/>).

the privatization process successful. Often, investment needs were pressing for fast problem-solving.

The THA and the BVVG responded to this problem with the implementation of "learning procedures" in their organizational and operational design and organizational behaviour. In order to secure investments while reorganizing ownership structures, the decentrally-organized branches were often under great pressure (often political pressure) to solve problems. Central directorates/departments at headquarters (in Berlin) supported (e.g. with legal advice) the development of new solutions to problems and communicated these best practices to all other branches as well as to the legislator and representatives concerned. Thus, the two institutions took on the often needed "transaction costs" for creating new solutions and acted as "change agents" within the transformation process (Czada, 1996).

In later reviews of the *Property Law* or the *Allocation of Ownership Act*, the Federal Government enshrined "opening clauses" to enhance the use of such consensually deviating, substatutory solutions to speed up the self-organization transformation process (and to reduce state costs by unburdening the courts).<sup>2</sup>

### **THE AGENT – INTERNAL PROVISIONS FOR EFFICIENT AND TRANSPARENT IMPLEMENTATION**

This section describes various internal governance processes that helped to ensure transparency and high efficiency in the day-to-day operations of the implementing state agency.

Transparency here must not just be understood in the sense of corruption prevention, but also as a general requirement for traceable administrative actions, customer friendliness, and above all the fairness of access to land in the privatization process. The aim of these strategic measures has been to counteract

<sup>2</sup> § 31 Para 5 Property Law, § 2 Para 1 Clause 6 Law of Allocation of Property

accusations of systematically favouring certain groups of buyers or obstructing potential buyers (Kaufmann, Kraay and Mastruzzi, 2002).

An organizational manual, available to all employees, defines the main tasks, procedures, processes and responsibilities. The accompanying check on decisions by various organizational units is ensured through the ruling on signature and deputization authorization. This means that obligations of participation and responsibility are observed in order to prevent sealed-off, independent actions by individuals.

The principle of dual control applies for external correspondence (and not only). External correspondence is always signed by two employees. Another example of the principle of dual control is the separation of land valuation from the pressure of achieving sales – the aim is to ensure that privatization is carried out at a market price that has been determined as objectively as possible.

#### **Staff rotation**

The lowest organizational level in the BVVG's operational sale and lease business is that of regional teams. These teams usually consist of one section head and one officer, who are responsible for all sale/lease activities in a region – an administrative district. After a maximum of five years, these heads and officers must take on other administrative districts/regions, this in order to prevent the formation of non-transparent networks.

#### **Awarding of public contracts to third parties**

An area particularly vulnerable to corruption is the selection and awarding of public contracts to provide deliverables (purchasing) and services, and in particular building services. The BVVG is affected by this in the procurement of goods and services for its own work (including IT, vehicles, and office equipment), assessor services (valuations), and building services (demolition, and emergency safety measures). Even if the individual cases

regularly involve only small order sums, particular attention must always be paid to procurements in order to ensure open and transparent competition. Most important, the parts of planning, awarding and settlement within a procurement process are separated from organizational or personal measures in order to prevent price collusion or other actions that could involve corruption. The same European standards of equal opportunities for access to public orders apply to the BVVG as a state-owned agency as to all public authorities.

#### **Staff awareness and education**

The contracts of employment expressly state that every form of corruption is forbidden. All employees are informed that the *Guideline on Accepting Rewards and Gifts by Government Employees* of the Federal Government applies to them. The applicable working conditions of the BVVG include a requirement of approval by a superior for acceptance of gifts with a value of more than €10. Where prior approval is not possible, the receipt of such a gift must be reported immediately. Monetary gifts should be donated to a generally-recognized charitable institution. In addition, all BVVG employees are called on to report all cases of suspected corruption – anonymously if necessary – if there are specific indications and transparent evidence.

#### **Internal auditing / full-time investigators**

All facts that form the basis of a known suspicion of corruption are first investigated internally by the Internal Audit Department. Once the results of a process of (internal) pre-investigation are known, the BVVG board of management has to decide on further measures (possibly the involvement of the public prosecutors).

#### **Corruption prevention**

The above-mentioned sections have explained in brief the organizational standards against the background of the *Corruption Prevention Guideline of the German Federal Administration*, which was optimized and revised in

2004. It now includes the instructions and recommendations on the preventive measures of the United Nations treaty against corruption, which was signed on 9 December 2003. The prevention guideline contains binding instructions for all Government authorities and offices for identification of areas particularly vulnerable to corruption, and the minimum measures that should be taken against corruption (Federal Ministry of the Interior, 2004).

### **PRIVATIZATION STRATEGY AND INTERNAL MEASURES TO INCREASE ASSET VALUES AND TO SUPPORT THE DEVELOPMENT OF A FLEXIBLE AND DYNAMIC LAND MARKET**

#### **Flexible and dynamic land lease market**

A modern and sustainable agriculture policy needs to ensure access to land in a flexible and low-cost way that protects liquidity for farms. Leasing arrangements secure income from assets for owners who are no longer engaged in agriculture as well as providing access to this land for farms. One in eight farms in Germany is a leased farm. In 2005, 63.9 percent of farmed land in Germany was secured by lease contracts, while 90 percent of the owners of leased areas do not or no longer work in agriculture. In eastern Germany, the proportion of leaseholds for farms was 81.2 percent (85.1 percent in 2003) (German Farmers Association, 2006; Federal Statistical Office of Germany).

The most important underlying conditions for this leasing of land are regulated in the §§ 585–597 of the German Civil Code (BGB). The prerequisites for concluding or changing lease contracts have not been increased unnecessarily. In contrast to the situation in some transforming economies, lease contracts are not registered in the land register – thus, the lease contracts are usually concluded between the owner and the user in a written form. German lease law does not stipulate a duration for leasehold rights either. However, a term of from 2 to 12 or 18 years is usually agreed on.

However, the landowner must report the lease contract to the Regional Offices for

Agriculture of the Federal States.<sup>3</sup> These offices keep a record of leasehold rents and hold statistical data on the usual local (average) leasehold rents. In addition, the Federal Statistical Office collects data on the lease market from about 100 000 farms every two years. Thus, the land lease market in Germany is embedded in an institutional framework that enables market monitoring and reduces the risk of speculation or asymmetric information between landowner and tenant without interfering with the basic right of freedom of contract (FAO, 2001).

#### **Privatization strategy**

The privatization strategy chosen by THA/BVVG was implemented successfully because different instruments of privatizing State-owned land (leasing and selling) could be combined in respect to three major (overlapping) stages and there was the capability to react sensitively to several secondary conditions:

- The liquidity situation of many newly-founded farms and forestry companies did not permit the sale of areas of land in the formation period.
- The legal claims to transfer land back without payment or the assignment of real estate were specific to the areas; therefore, the sale of areas required clear clarification that these areas of land were not underlying such legal claims.
- Thus, the above-mentioned legal framework for land lease came into force with unification on 3 October 1990. The land market in the former GDR first needed to consolidate itself. Institutions had to be built up, staff had to be trained, and data on the market had to be collected.

#### **Lease phase**

The conscious prioritizing of first concluding 1–2-year lease contracts, and

<sup>3</sup> Land Lease Transaction Act, 8 Nov. 1985 (BGBl, I, S. 2075) and Ordinance to the Land Lease Transaction Act, 6 Feb. 1995.

then 6–12-year contracts was a suitable reaction to the secondary conditions mentioned, as it was easier to revise lease contracts concluded on the basis of uncertain data than if irreversible sales decisions had been made. With extensive checking and clarification processes with the regional agricultural offices, the capability of potential lessees were proved before long-term lease contracts (> 6 years) were concluded. The lease phase gave farms the opportunity to become more stable in view of the new market conditions and to allocate liquid assets for a later purchase.

### **Preferential sale**

In the second phase of implementation of the privatization process, the farms in eastern Germany were first to be given the opportunity to increase their property resources by purchasing formerly state-owned land at preferential conditions within a federal land-purchasing programme (referred to as land-purchasing programme within the *Indemnification and Compensation Act* [EALG] and the *Land Purchase Implementing Regulation* [FlErwV]).

### **Sale at the full market value on the developed land market**

Coupled with the idea of increased performance and, thus, better financial resources in farms, a price increase in the agricultural land market is expected. With the prioritization of sales at the full market value as of around 2008, it should be possible to take maximum advantage of this expected price increase – in other words, the added value compared with a sale at the price level on the non-developed land market in 1998 (Klages, 2001).

### **Internal measures to increase asset values and to support the development of a land market**

#### **Land lease market – high leasehold rents**

The conclusion of lease contracts with the THA enabled the farms in eastern Germany to manage the areas of land used by them before 1990 after the use-rights by-law lapsed with unification. However, it was extremely difficult to identify appropriate

lease prices because the regional agricultural offices responsible for issuing official lease-price statistics did not have appropriate data on which to base their information. As a result, simple valuation methods initially had to be used by way of precaution; rough figures such as euro per land point (soil quality) were used as a guideline.

With external assistance from experts, the THA drew up a guideline for determining leasehold rents in 1993. Based on recommendations from the specialist advisory board of the BVVG (an advisory committee of agriculture policy experts, valuation experts, and agricultural economists), this guideline was turned into an internal leasehold-rent framework in 1996.

As described above, the German land lease market is based on a model whereby the lease prices can develop dynamically according to the performance of the farms and the general economic situation. For broadening the data basis for the official lease-price statistics and, thus, determining realistic typical local leasehold rents as fast as possible, in addition to the concluded land lease contracts being sent to the regional agricultural offices by legal obligations, negotiated and increased lease prices were often actively communicated to the regional agricultural offices.

With the improved economic situation of the farms and, therefore, a need to increase lease prices (and to secure lease prices from inflation), negotiations were possible because a frequent (e.g. three-yearly) reciprocal option of adjusting the lease prices was formulated in the lease contracts. While the share of the BVVG in the land-lease market decreased from about 35 percent in 1990 to 11.8 percent in 2005, the “announcement effects” of the negotiated lease prices by an institutionalized lessor such as the BVVG to the market should not be underestimated. Figure 1 shows the development of lease prices in eastern Germany compared with western Germany between 1991 and 2005.

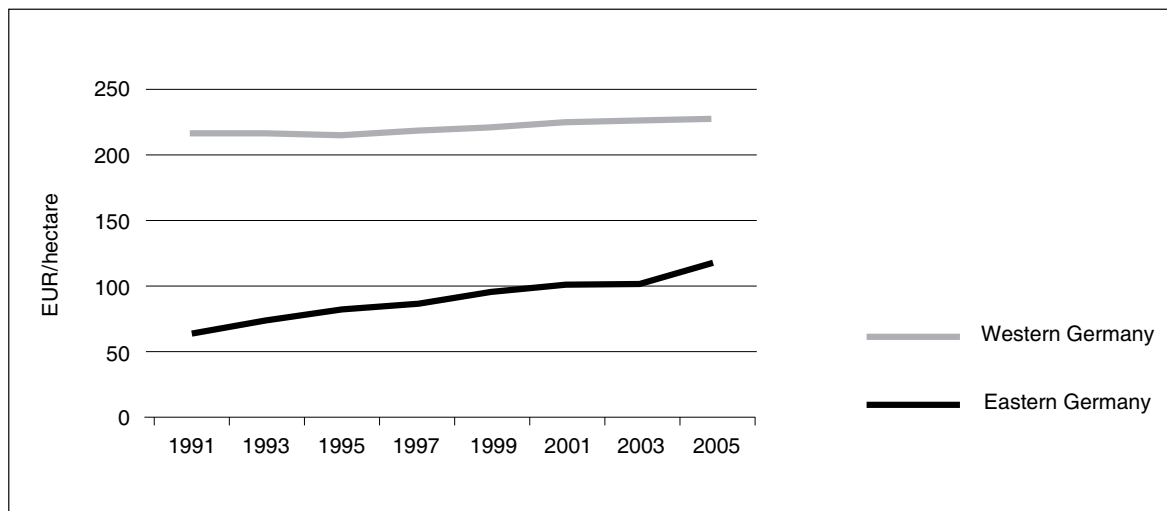


FIGURE 1

**Leasing fees for agricultural land in eastern and western Germany, 1991–2005**

Source: German Agriculture Publishing House (2006).

**Land sales market**

Because under a “good governance” perspective the aspects of transparency and flexibility are among the most desirable outcomes of state regulations on the land market, some general elements of the land market and valuation of real estates in Germany have to be explained here.

In 1960, the Federal Government enacted the Federal Building Act, which abolished a general price freeze for the real estate market of 1935. As a long-term strategy against speculation on the land market with all its side-effects, it was decided not to statically fix values/prices. Instead, instruments of a system of market monitoring were directly enshrined in §§ 193–199 of the Federal Building Code (BauGB).

The introduction of a concept and definition of the term “market value” brings the advantage that all participants in the land/real estate market have a uniform understanding of the “market value”.

The Federation has enacted the Federal States to establish committees of valuation experts (Gutachterausschüsse) charged with the task of collecting data on purchase prices and general data on the land market. Another task of these committees is to define standard ground values, which means constituting average values for a standard plot of land based on the sales prices for other comparable plots of land,

depending on the location. Standard ground values and other collected data are to be published in a suitable format (Kuse, 2006).

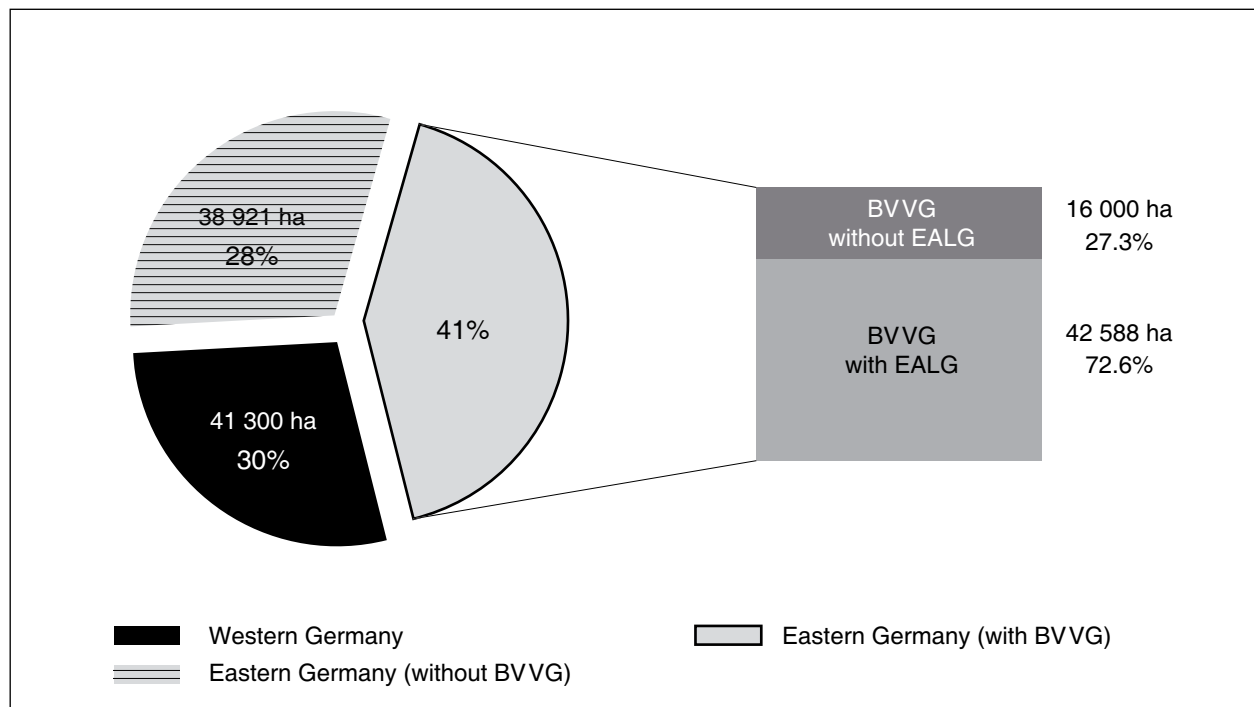
The *Valuation Ordinance* (WertV) contains binding rules for determining the market value using three standardized valuation methods (comparative method, income method, and depreciated reconstruction cost method), describes the necessary data, and refers to the data that were recorded by the committees of valuation experts.

In their valuations, publicly-appointed valuation experts and all other market participants refer to the methods provided by the *Valuation Ordinance* and the data provided by the committees of valuations experts in order to guarantee a level of comparability and transparency on the land market that is as high as possible (European Valuation Standards, 2003).

**Selling policy of the BVVG**

Because of the provisions in federal budget law, the BVVG is obliged to sell real estate at the market value unless it is transferred without payment on the basis of other laws or has to be sold preferentially as a result of the government’s land purchase programme. To identify sales prices appropriate to the market, the BVVG uses the system of market monitoring to meet its own objectives, and supports this system with own data and its selling policy.





Note: BVVG = German Agricultural and Forestry Privatization Agency  
EALG = Indemnification and Compensation Act

FIGURE 2

### The land market in Germany, 2003

Source: German Agriculture Publishing House (2004).

With a market share of about 60 percent of all agricultural land sold in eastern Germany, the BVVG is still the largest player in the agricultural land market (Figure 2), even though the privatization process has already been underway for 15 years.

As an element to provide fairness of access within the privatization process, the “selling policy” (i.e. the yearly amount of agricultural land being offered to the open market) must reflect the ability to provide sufficient liquidity by the farms to invest in the purchase of land. In consultation with the Ministries of Agriculture of the Federal States, the BMF and the representatives of farmers’ interests, the BVVG has recently limited the amount of land being offered to 25 000 ha/year. Single lots should be smaller than 50 ha, because the amount of money needed to bid for a lot of more than 50 ha would exceed the financial capability of many farms in eastern Germany.

#### Transparency in the selling process

Another element of fairness of access is to sell all areas for which there are no claims

for transfer without payment or sale within the land purchase programme in a publicly bid procedure on the open market (to anyone in Germany and also to any citizen of the European Union).

As part of the organizational manual of the BVVG, detailed guidelines for using various awarding methods and procedures depending on the market opportunities of specific groups of real estate ensure a uniform, transparent privatization process. This helps to secure equal opportunities for all prospective buyers, to achieve an optimal economic result in the selling process and to minimize the influence of manipulation or corruption.

#### Internal and external valuation of specific real estates or lots

A two-step valuation system with enshrined cross-checkings of results ensures a transparent valuation of land that is geared as closely as possible to the market value.

Specially-trained employees in the branches of the BVVG are allowed to value plots of land up to a probable market

value of €40 000 (or a maximum area of 10 ha) using an internal mass valuation procedure. Another employee conducts sales price negotiations and the actual sale with the buyer. Deviations from the originally determined market value must be justified and documented in a clear way. This separation of land valuation from the pressure of achieving sales aims or the expectations of a prospective buyer ensures that privatization is carried out at a market price that has been determined as objectively as possible.

For all real estate not covered by the internal mass valuation procedure (> €40 000 or > 10 ha), an assessment must be obtained from an external, specially-trained and independent publicly-appointed valuation expert (or a valuer certified according to the EN 45013 standard); the costs for this valuation are borne by the seller.

## LESSONS LEARNED

Notwithstanding of all the contradictions and critical arguments, the reorganization process for the ownership structure has been relatively successful if we measure success by the support for the set-up of an effective land and forestry economy in eastern Germany after 1990 and the economic and financial success of the privatization work conducted to date by the BVVG for the government.

It is not just the task of the State to guarantee property rights and the inheritance of these. Another sign of “regulatory quality” is that the “State” defines and implements underlying legal and institutional conditions, so ensuring that the public good of “the ownership of land” can be used to the maximum possible added value for all. Therefore, German land policy is based on market transparency and flexibility. Precautions in favour of competition over use rights and against speculation and the manipulation of prices are structurally enshrined in this. This existence of a clear vision for the future land policy strategy – anchored in the “model” of existing land policy and legal

provisions from the “old Federal Republic” of Germany – has significantly eased the transformation process in eastern Germany.

The flexible lease market helped to prevent a breakdown in agricultural production and in the stabilizing and emerging of new farms after 1990. However, even in the quite strong German economic environment, the participants in the agricultural land markets – the farmers – are restricted in their ability to provide sufficient liquidity to invest in the purchase of land. In this respect, the sensitivity of agricultural land markets requires a longer-term State commitment that provides appropriate support for the process with the goal of developing a healthy ownership structure that treats all farm and property forms in the same way.

The chosen privatization strategy has met these requirements by avoiding excessive selling pressure in the land market, which would have favoured only the financially strong participants. In view of the long-term nature of a process such as this, modifications to the process goal and implementation procedure may be necessary and can be implemented with reasonable effort. The systematic incorporation of “learning cycles” of this kind can increase “government effectiveness” within a process.

At the level of organizational design for implementation, the Federal Government consciously decided to transfer responsibility for the administrative and utilization-related tasks associated with the privatization of formerly State-owned land to one single “state agency” (in the form of a limited liability company). The execution of implementation tasks by this “federal agency” has combined successfully a high degree of flexibility with “dual” control mechanisms – in addition to budget-related provisions for all government authorities, independent auditors must be used to ensure that commercial and tax reporting and auditing obligations are met.

As we have attempted to show, the control processes present at various levels can help to achieve privatization objections efficiently

as well as help to prevent corruption. The implementation of a government programme such as the “reorganization of the ownership structure in agriculture and forestry” can be organized within a good governance environment.

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ISBN 978-92-5-005854-2 ISSN 0251-1894



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A1423Mul/2/06.09/400