

USAID INVESTMENTS IN LAND MARKETS AND PROPERTY RIGHTS: INTERIM SYNTHESIS BASED ON SECONDARY SOURCES

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1. ASSESSMENT BACKGROUND

In 2001, the Center for Development Information and Evaluation (CDIE) of USAID determined that a review was needed of USAID's programs to develop land markets and strengthen property rights. The purpose was to assess how these programs have contributed to secure rights and lower transactions costs in developing countries and countries in transition, thereby helping to achieve economic growth and sustainable development.

The Land Tenure Center (LTC) has been working with USAID to carry out this review. First, a conceptual paper was written outlining the theoretical framework for USAID's efforts in promoting land markets and property rights (Stanfield and Bloch 2002). Most of these efforts consist of modernizing and streamlining titling and registration institutional processes, and adjudicating title to land for the holders of land without legal title.¹

For land markets to function most effectively, land in private ownership must have a title attached to it, that title must be registered in a legally sanctioned registration system, and a legal framework must support the registered rights. Registration and legal systems may be formal or informal. In the African context, for example, local authorities may recognize exclusive use rights and a functional system to resolve disputes may be in place, consistent with customary law. Formal titling, registration, and legal structures are costly and not always required to assure sufficient security for increased land market activity.

USAID's overall strategic plan aims to assist developing countries in achieving sustainable development, of which the promotion of economic growth and agricultural development are integral. With regard to land market programs, USAID seeks to improve tenure security and enhance the marketability of land. A further concern is to ensure that land policy is devised so that vulnerable and disadvantaged groups are the focus of land reforms. By contributing to more efficient use and allocation of land, land market programs can support the goals of improved access to land for the landpoor, economic growth, and agricultural development. The proposition that motivated this review of USAID's pro-poor land market and property rights programs is:

A key to sustainable rural development is legally secure entitlement to land on the part of the disadvantaged.

¹ The assessment focused on USAID efforts that had a broader goal of stimulating and guiding land markets as the mechanisms by which people access land. Excluded from this assessment are USAID's initiatives to improve sustainable management of water, land and forest resources through strengthening group rights to land and natural resources, both traditional and formal. Typically, these programs do not have land market development as an intermediate goal. Such programs, however, may be very important for sustainable resource use and deserve a special assessment.

The 2002 conceptual paper suggested three fundamental sets of issues the review should address: (1) concepts and information needed for judging the success of land markets and property rights activities, (2) policy and institutional factors that affect the success of these activities, and (3) implementation techniques and approaches that affect activity success. Based on these issues, the following key questions guided the review:

- What are the causal connections between investments in land markets and property rights on the one hand and, on the other, economic growth and agricultural development, especially for disadvantaged sectors, environmental sustainability, and conflict prevention?
- How do policy and institutional factors determine, a priori, the feasibility of implementing programs to improve land markets and protect property rights? That is, what are the necessary and sufficient institutional transformations—legal, informal, cultural, and economic—that must accompany programmatic initiatives to facilitate the development of markets in land and related assets?
- Assuming an appropriate policy and institutional framework, what key operational issues tend to hamper (or facilitate) implementation of programs to improve land markets and security of tenure? That is, what specific steps and procedures are essential—both in their presence and in their sequencing—to ensure that land and related assets are securely held and become “marketable”?

After the conceptual paper was circulated within CDIE and to the ad hoc Advisory Group², a list was made of USAID projects in all four regions that had significant activities relevant to property rights and land market promotion. From this list, a subset of 28 projects in 18 countries³—particularly those that focused on titling and registration—were analyzed in 18 “Country Assessments” based on a review of USAID documentation found in the Development Experience Clearinghouse (DEC).⁴

The Assessments found that most USAID investment since the early 1980s have been made in privatization programs (E&E and SSA regions), titling and registration programs (E&E and LAC regions), and land administration programs (E&E and LAC regions). The findings based on USAID documentation were minimal with regard to attainment of project objectives and targets, and non-existent with regard to their long-term impact on land market development and socio-economic development. The paucity of findings was due both to the lack of project documentation, particularly end-of-project reports and final evaluations, and to the quality of information provided in the reports that were available. The lack of post-project impact evaluation studies made it impossible to determine economic and social impacts.

² This group advises the assessment effort and is composed of a broad representation of USAID/Washington staff: Jon Anderson, Kevin Bohrer, Rebecca Cohn, Mary Melnyk, Marcus Winter, Jolyne Sanjak, Lena Heron, Fred Witthans, Michael Kitay, Joan Atherton, Jonathan Sleeper, John Wilson, Diane Ray, Ross Wherry and Robert Navin. The assessment coordinator is Don McClelland, under the overall direction of John Simon.

³ By region, the countries chosen were: *Sub-Saharan Africa*: Gambia, Guinea, Guinea-Bissau, Mozambique, Niger, Uganda; *Latin America & Caribbean*: Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, St. Lucia; *Europe and Eurasia*: Albania, Armenia, Georgia, Moldova, Ukraine; *Asia & Near East*: Philippines.

⁴ Projects that supported the strengthening of community or group rights to land for improving natural resource management without reference to land market improvement were not considered (with the exception of projects in Sub-Saharan Africa) but should be the subject of a separate review.

After the completion of the Assessments, the Advisory Group selected eight countries⁵ for more extensive review in the form of “Country Briefs” based on secondary sources available in the University of Wisconsin-Madison library system or on the Internet.

This synthesis report draws from both the Country Briefs and the prior Assessments. After analyzing the findings, subsequent sections of this report focus on:

1. evaluating the adequacy of the secondary literature to answer CDIE’s questions
2. suggesting next steps for the Review team
3. recommending future directions for USAID investments in land markets and property rights.

2. ANALYSIS BASED ON SECONDARY SOURCES

This section analyzes information appearing in the Country Briefs and the Assessments. The Briefs are based on an exhaustive search of published literature in English, French, Spanish and Russian. The amount of available documentation ranged from very little (Moldova) to hundreds of references for El Salvador and the Philippines. The LTC team drafted the briefs and circulated them for comment in March 2003.

2.1 ANALYSIS BY REGION

2.1.1 Sub-Saharan Africa

Africa differs from other regions because of the strength and vitality of customary tenure systems despite colonial attempts to individualize land in some countries, and constitutions in other countries that declare land to be owned by the State. While rights to most land are de facto private, they are not necessarily individual private property rights but rather community rights governed by customary norms.

Under customary tenure, the community has overall rights to land and the resources on the land; households and individuals hold rights derived from the community to some land. Land transfers and transactions are usually not done through a land market but rather through allocation by community authorities, inheritance, or temporary transfers such as borrowing and “rentals” with symbolic payments. This does not mean that land transactions based on market value do not occur in the region—in highly commercial agricultural and peri-urban areas, market-based land transactions do take place. Land administration institutions were established during colonial rule and were designed to deal with those relatively small areas under freehold tenure or with state-owned land. The titling and registration of individualized private land has not been generally regarded as an urgent issue.

In general, USAID-sponsored land-market and land tenure activities in sub-Saharan Africa over the past 15 years differ from those in other regions. Typically, projects in sub-Saharan Africa:

- address natural resource management more broadly, as opposed to focusing more directly on titling/registration and land-market programs in particular

⁵ Albania, El Salvador, Guatemala, Honduras, Moldova, Niger, Philippines, and Uganda. A ninth Brief had been produced for St. Lucia prior to the review of USAID documentation.

- often promote clear rights and responsibilities with regard to land use rather than land markets
- often emphasize community natural resource management within customary tenure systems rather than the granting of individual titles to land.

There are two Country Briefs for Africa: Niger and Uganda. Niger was chosen because of its innovative legal and institutional efforts to reconcile customary tenure with national legislation, supported by USAID. Niger took the first steps towards formal recognition of customary property rights by enacting a Rural Code and establishing local *commissions foncières*, or land commissions, to verify and record landownership claims. After a promising start in the mid-1990s, however, political turmoil and consequent withdrawal of international donor assistance appear to have slowed the process of implementation. The latest relevant document is from 1996, so that it is not possible to learn about subsequent activities of application of the Rural Code. Neither does the literature on Niger contribute to an understanding of the impact of the improvement in security of property rights on sustainable development.

Uganda's effort at legislative development to formalize emerging private property rights was also supported by USAID. Studies in Uganda on the land titling efforts of the 1950s and 60s, on the other hand, suggest that there is little difference in investment on land or productivity of land among the different tenure regimes (customary, *mailo*, leasehold, and freehold).

2.1.2 Asia and Near East

The principal characteristic that differentiates USAID activities in the ANE region from those in other regions is the lack of support for land market-related programs. USAID has had projects in ANE that strengthen the property rights of groups and communities, for example establishing community boundaries for improved management of natural resources. This is certainly an important entitlement, but these projects have not shown much concern for improving the functioning of land markets. One project was identified in this region that dealt with land entitlement and land markets: an 18-month, \$50 million contribution to the Comprehensive Agrarian Reform Program (CARP) in the Philippines.

The program was an ambitious attempt to redistribute most of the country's agricultural land—10.3 million hectares and nearly 3.9 million beneficiaries. Land to be transferred included state-owned "alienable and disposable" land suitable for agriculture, other publicly-owned land, and all private land devoted to or suitable for agriculture over a maximum size of holding. USAID decided to be minimally involved in implementation because of the controversial, politically sensitive nature of land redistribution. Assistance, therefore, was in the form of budget support rather than technical assistance.

The new rights of reform beneficiaries were to be secured by land titles and registered in the Registry of Deeds, although support for titling and registration was not directly a part of CARP, and although there were sales restrictions on the titles.⁶ In the meantime, other donors, especially the World Bank and AusAid, have been assisting in the development of a more efficient and

⁶ Under the principal component of CARP, sale could not take place during the 10-year period when the land was being paid for nor for 10 years thereafter.

transparent set of land market institutions, recognizing the huge disincentives to the formalization of transactions inherent in the current system of land administration.

The huge literature on CARP contained surprisingly little information on its impact on the disadvantaged or sustainable development, apart from a few very recent studies demonstrating modest income gains and poverty reduction for agrarian reform beneficiaries.

2.1.3 Eastern Europe and Eurasia

In transition countries such as those in Eastern Europe and Eurasia, the privatization of state-owned real property is the principal requisite for the establishment of viable land markets in combination with the creation and proper functioning of registration/cadastral institutions to record and display the private ownership and other rights to real property. Thus projects from that region have focused in some countries on privatizing state-owned property (land and buildings) including the issuing of legal and registered titles to the privatized properties, and in other countries on establishing registration/cadastral institutions to facilitate the functioning of efficient and transparent land markets.

While agricultural enterprise restructuring is common in the E&E region, these efforts have not always produced marketable land titles nor have they invested in improving land administration institutions such as title registration offices. In Russia, Kazakhstan and Uzbekistan, for example, reforms have tended to encourage the evolution of new farm management forms that move the collective and state farms toward corporate enterprise models. Individual farm families are issued shares in the corporation, not land or property titles.

USAID documentation and Country Briefs provided some level of information leading to answers to CDIE's questions in the E&E countries.

(1) evidence of success of land entitlement projects in reaching their developmental goals

Several steps have been taken toward achieving legally secure entitlement to land and improving the operation of land markets and encouraging farm investments resulting from legally secure titles.

a) Issuance of Certificates of Title

In general, USAID-supported projects that focused on the issuance of certificates of title for agricultural land have achieved their quantitative objectives. In Albania, just over 2 million properties were initially registered, a 99% achievement of original program goals, although only half of all properties were registered under the program. In Moldova, the USAID-supported effort produced the privatization and subdivision of 826 collective farms and the registration of 844,800 agricultural land parcels, although in total there have been approximately 1.6 million private agricultural land parcels created and registered. The project in Moldova was focused more on developing cost/effective methodologies for subdivision of farms and on the issuance of title certificates and their registration than on achieving precise targets of number of parcels affected. In this sense, the project did achieve its objectives.

In both countries, the focus was on the agricultural sector and the main beneficiaries of the titling and title registration efforts were the ex-workers on the former state and collective farms. The bulk of the titling and initial registration work was oriented to the disadvantaged, in the sense of the beneficiaries being very small-scale farm families. In Albania, steps were taken also to

protect the property rights of women, through the concept of “family ownership” of the land, and the insistence on wives and other adult children being required to approve any transaction. Questions remain, however, about how effective these requirements have been in overcoming the traditional patriarchal norms and practices of many rural families, and the predominant role of the eldest male in dealing with the outside world.

Attainment of quantitative goals of number of registered titles, however, has not always been matched by the quality of the titles issued. In Moldova, at least 7% of the titles are likely to have serious defects; a new \$3.5 million project has been launched to detect and correct these errors. In Albania it was estimated that about 15% of the registered titles are likely to be defective in some way. Errors in initial registration discovered in 2001 in Albania are probably similar to those in Moldova, due to contractor misreporting of work done which led to the initial registration of a large number of “fictitious” parcels. Unfortunately, little effort has yet been made to identify and correct these errors.

b) Land Markets

In the region, land markets are just beginning to function. Moreover, the proportion of transactions that do occur and that are being registered is less than expected. In Albania about 0.3% of all properties were legally transacted in the year 2000. In that same year there were sales of about 0.2% of privatized agricultural land parcels. In Moldova registered sales, mortgages and leases in 2001 involved approximately 1.5% of all private properties. In Georgia, the cumulative total of all registered property sales transactions between 1997 and 2001 reached about 0.5% of all private properties created since 1992. As a point of comparison, in 2001 in Latvia, 8.7% of property units were legally transacted (Adlington 2002). These transactions represent a small proportion of the total number of privately owned properties, but at least formal land markets are beginning to function.

An important phenomenon that deserves attention, however, is the number of informal transactions that do not pass through the registration offices. In Albania, in informal settlements, this proportion is almost over 50% and near 100% in some settlements, based on initial studies near Tirana (Jazoj and Kelm 2001). While there are no data for informal transactions in the other countries, the proportion is likely to be quite high. We base this conclusion on the observation that natural life cycles for the group of new owners (frequently elderly men) should produce high rates of transmissions of title due to death of the owner. Most of these necessary changes of ownership are not being captured by the formal registration systems, let alone capturing sales and gift transactions. In peri-urban areas the informal transaction rates where neither the buyer nor seller has a registered title appear to be as high as in the formal market transactions involving registered titles. Legal security of tenure is not a necessary and sufficient condition for dynamic land markets under certain conditions. The exact role of tenure security over the long term for influencing the dynamism of land markets needs further analysis.

Renting of agricultural land parcels seems to be of increasing importance in the region. In Moldova, for example, one study estimated that the majority of owners of agricultural land parcels have entered into lease agreements with “peasant farms” and corporate farms,⁷ which

⁷ About two-thirds of the beneficiaries of the land share distribution entrusted their land shares to enterprising persons willing to manage the land and assets of a group of individuals, forming approximately 1,000 corporate farms and controlling about 46% of the agricultural land.

often manage several hundred hectares, most of which is leased. Such arrangements focus on the consolidation of land parcels not from a legal but purely economic point of view. The cultivation of large areas and the production of larger quantities in an organized way allow the peasant farms to achieve economies of scale intended to raise the incomes of both the farms and the lessors. Such arrangements also facilitate delivery of agricultural products to processing firms, which function very successfully in Moldova. Whether the benefits of larger scale agricultural enterprises are significant is not clear, since around half of privatized corporate farm enterprises showed losses in one study. Also, it is not clear whether the managers of these farms are operating in a transparent way with the lessors, showing them what profits there are.

c) Investment

There are no time series data in the E&E region concerning investment on formally titled and registered parcels compared to that on unregistered parcels. One Albanian study⁸ done at the beginning of the titling and registration process noted differences in perceived security of tenure between registered owners and non-registered owners, but very little investment by either group. From a more macro perspective, in Albania the value of agricultural production has been increasing in recent years. In Moldova and Georgia the agricultural sector, particularly the crop sub-sector, has been declining since the reforms, with some signs of improvement in Moldova in the recent two years. The macroeconomic picture is distinctly mixed from country to country. Factors such as output markets, credit access, and the prices of agricultural products are important determinants of agricultural growth, in addition to the security of tenure provided by registered titles.

(2) identification and assessment of policy and institutional factors that affect success

In most countries, the legal framework to support legal security of tenure on newly privatized and titled land is mostly in place. The USAID-supported programs have focused on this aspect of the consolidation of the transition. Land market professionals (brokers, valuers, surveyors, lawyers, notaries) have become established, with some successes in establishing their professional “self-regulating organizations.” However, the real property registration offices have proven to be weak in most countries, with bribery of officials and lack of professional staff, leading to the introduction of fraudulent information into the registration systems and the gradual degradation of registration information due to inappropriate land records management.

(3) effect of implementation techniques and approaches on project success

USAID-supported titling and registration projects in E&E have used innovative approaches combining land information technologies (including surveying methods) with practical approaches to dealing with lack of electricity and technically trained staff in regions outside of the capital cities. The combination of organization and technology adaptation has led to mass titling and registration in short periods of time at low costs per property registered. As noted above, however, issues concerning the quality of work done have yet to be addressed adequately.

Country Briefs were prepared for Albania and Moldova, and these two countries had similarities and differences in terms of implementation approaches. The Albania program represents a broad focus on developing land market institutions. The privatization of land was done by Albanian local entities, under special legislation developed for that purpose. The initial registration of 2.1

⁸ See Lemel 2000.

million immovable properties, urban and rural, private and public, was done by a specially chartered semi-public agency, through which Government, EU, USAID and World Bank funds were channeled.

The Moldovan effort evolved into a comprehensive program for the privatization of land parcels and their subsequent registration, with minimal efforts to develop property and land market institutions. Implementation was done by a private US company, cooperating with the Moldovan Department of Privatization under the Ministry of Economy and Reforms.

2.1.4 Latin America and the Caribbean

Country Briefs were prepared for El Salvador, Guatemala, Honduras, and St. Lucia. These countries share a history of structural inequality and inadequate institutions: concentrated landownership,⁹ high levels of landless and landpoor families, segmented land markets, and inefficient land administration institutions. The principal focus of USAID land market interventions in those countries, with the exception of Guatemala, has been on implementing titling and registration programs and in modernizing registration/cadastral institutions. Often, the need to provide assistance in modernizing and making these institutions more efficient was discovered when attempting to title and register landholdings in an efficient, timely, and transparent manner. In Guatemala, USAID program funding focused on developing a land market by providing financial assistance to an NGO that had established a private land fund for buying large landholdings and selling family-sized parcels to landless and landpoor rural families.

Titling and registration programs were developed to provide greater security of tenure for small farmers already in possession of land but without legal title. In Honduras, where the occupation of municipal and *ejidal* lands was common, titling initially targeted these parcels in coffee-producing areas in the 1980s, later shifting titling efforts to agrarian reform beneficiaries who had received land parcels from agricultural cooperatives. In El Salvador, USAID also supported the settlement of former combatants and the parcelization of agricultural production cooperatives and titling the land that individual beneficiaries were assigned. In St. Lucia, reforming land administration institutions and adjudicating all land parcels, mapping them, and recording them in the new Torrens title registry was seen as a means of activating the land market. One of the perceived obstacles to land market transactions in St. Lucia has been the existence of a significant amount of land held under family land tenure.¹⁰ The titling and registration effort was supposed to convert family land into individualized private property, family land trusts, or co-ownership with identified co-owners.

In Guatemala, USAID made a major investment in an innovative land fund in the 1980s that was to provide access to land for landless families. A private foundation purchased land, parceled it, and then sold it under favorable conditions to beneficiary families, while providing technical assistance as these families attempted to establish their new enterprises. Since the large landholdings acquired for parceling and resale were purchased outright by the foundation, the

⁹ Gini coefficients for the four countries range from 0.61 (1970s) in El Salvador, to 0.78 (1974) in Honduras, to 0.80 (1996) in St. Lucia, to 0.85 (1979) in Guatemala.

¹⁰ Family land is land held *pro indiviso* by several heirs. In St. Lucia, many family lands had come down several generations resulting in many heirs, all of whom may not be known.

amount of land and number of families who could be incorporated was very limited. Another limitation encountered by this program was the rural families' difficulties in paying market prices for land and production credit. When it came to titling and registering these newly acquired parcels, the program found a number of obstacles in dealing with the property registry; Government has to date not made the necessary changes in its registration and cadastral institutions to provide the new landowners with legal and registered titles.

A nagging problem for this review has been the lack of time-series data (with the exception of Honduras) to show one way or the other whether landless and landpoor families' ability to participate in that country's land markets has or has not increased as a result of USAID's and other agencies land market programs.

In Honduras, four years after the titling program began, titled farmers did not engage in sales more than the un-titled, although this period of time is very short for observing changes in market transactions. However, even in that short period, research showed that titled farmers were more likely to arrange credit than un-titled farmers. In a later study conducted 10 years after the titling program in Honduras and using the same panel of farmers interviewed in 1983, a higher proportion of titled farmers got access to credit than did the un-titled farmers, although credit access was limited for both groups (29% versus 22%). Titled farmers exhibited higher fixed capital investment per capita than untitled farmers in a multiple regression analysis, controlling for age and education of the head of household, land size per capita, being a coffee producer, receiving credit and having electricity. However, there was little evidence that titling affected overall farm income per capita.

The Honduras studies provide evidence of the impact of titling on credit access and investment. However, credit access and market access continue to favor the larger farms, in a country where the distribution of land is highly skewed—most of the good land is owned by a few landholders and most of the farming families have little land. Moreover, there have not been other studies that attempt to measure the long-term impacts of these interventions on the land market, and on the participation of landpoor rural families in the land market. Landownership in the four countries continues to be highly concentrated, landlessness remains high, and rural poverty is still a serious problem.

Monitoring of project effects has been deficient. For example, no studies were found on whether land purchasers in the Guatemala land market program were able to finish paying for their land and whether they received registered titles for that land. Nor were any studies found in the countries where titling and registration were implemented that systematically investigated the incidence of subsequent registered and unregistered transactions, and analyzed why many titleholders do not register these transactions. More importantly, there have been few studies on whether the landpoor's ability to participate in the land market has improved. It is therefore not possible to assert that these interventions have improved the functioning of the land market in these four countries, that they have improved the landpoor's access to land, or reduced rural poverty. Certainly the Honduras studies point out positive effects of titling on credit access and investment in fixed capital in coffee producing areas, which are important findings. It seems, however, that these two positive indicators are generally limited to the wealthier segments of local communities. Also, it appears that access to credit through banks is dependent on the policies of individual banks and the orientations of the bank managers at the local level. Where banks do not actively embrace formal titles as evidence of ownership, the titles themselves make little difference.

A major problem in the LAC region is that land markets remain highly segmented, with only limited access to land across social strata. In addition, it has become apparent that some landholders, for economic, social, and/or cultural reasons, prefer tenure forms other than individualized private property. In St. Lucia, the amount of family land after the termination of the project remained high (25-33%), reflecting landowners' reluctance to do away with a type of landholding they perceive as beneficial, even though it is not easily marketable nor economically profitable. In Guatemala, many people in indigenous communities prefer communal land rights, and not individual title.

Another cultural/social factor is that many landholders felt secure in the occupation of their land even without title (for example, in St. Lucia and Honduras). More troubling is that many new titleholders are not registering subsequent land transactions, suggesting that for many rural families, Property Registry records are not widely valued as a source of tenure security. It would seem, therefore, that other factors, besides titling and registration, are needed for tenure security and for ensuring that smallholder families are able to participate in land markets and to benefit from them.

2.2 ANALYSIS BY THEME

As the previous section indicates, the types of land-related projects, the state of land markets, and the impact of USAID projects on land markets and socioeconomic development vary widely among countries and regions. This section presents the findings across all regions with regard to the projects' impacts on land markets. The secondary literature reviewed in the Briefs contributed a great deal to the understanding of the context and history of land tenure systems and their relationship to the broader economic and political experiences of the countries, but did not contain much evidence as to the impact of the donor interventions in land markets and property rights. There may have been significant impacts, but the evidence is lacking. Section 3 provides more detail on the issue of documentation of achievements.

2.2.1 Privatization, Titling and Registration of Land

Initiatives promoting privatization were undertaken in the E&E Region and in some countries in Africa. Most of these initiatives developed significant legislative reforms. For example, all programs in E&E had substantial input into the legislative and regulatory framework being created to support and guide the operations of land markets. Similarly, all privatization projects in that region attempted to launch strong programs of public awareness and education concerning the new system of private property and the rights and responsibilities of the new owners of land and buildings. In Africa, USAID programs supported legislative reform in Uganda, Mozambique, Niger, and Guinea-Bissau that, while not generally privatizing land, set the legal basis for restructuring and recognition of local community and individual land rights. There was direct support to the privatization effort in Moldova that began as an intense and rapid campaign for the privatization of agricultural land, combined with the registration of the titles issued. In Ukraine, the program focused on the restructuring of agricultural enterprises and on political and legal issues.

USAID-supported activities in Eastern Europe also focused on land registration, particularly on privatized parcels of agricultural land. The Albania program of land market development registered both public and privately-owned properties, urban and rural, while in other countries

the USAID effort dealt only with privatized agricultural land parcels. The USAID projects also developed procedures for the first registration of privatized land and the registration of subsequent transactions that were applied to all properties, agricultural and urban. To an important extent this initial registration work contributed to the correction of errors committed during the privatization process. Also included in the E&E region projects was support for the development of land market professionals (brokers, surveyors, assessors, and notaries).

Quite a few of the projects in LAC also implemented titling and registration, initially as discrete projects and later as part of larger agricultural support programs. In general, titling and registration in LAC were not part of a privatization process but rather attempted to formalize landownership rights of smallholders and agrarian reform beneficiaries already occupying and working agricultural land.

The Briefs showed that projects dealt with a variety of titles, not just individual titles. In some African countries there are community entitlements to relatively large pieces of land. In St. Lucia, inherited land was titled without subdivision to descendants of the original owners. Ownership of agricultural land was granted to families in Albania and to households in Georgia, although titles were issued in only one person's name.¹¹ In some countries, such as Albania, community titles to some forest lands have been granted. Such titles require special legal treatments to enable low-cost land transactions and to protect the security of landholders.

In the E&E region, the distribution of privatized agricultural land has been quite egalitarian, especially in comparison with the older agrarian structures of Latin America and the Caribbean. The concern in the E&E countries is that the emerging farming enterprises are not succeeding economically for reasons other than their ownership status. Similarly in the LAC region, the investments in titling of smallholders have targeted a disadvantaged sector, the small farmers, but the overall economic outlook for agriculture has not been good, and the structural advantages of the large landholders for credit and market access appear to undermine the abilities of the small farmers to be successful regardless of their tenure status.

2.2.2 Registration/Cadastral Institutions

Many projects in both E&E and LAC made major investments in establishing or reforming registration/cadastral institutions that display evidence of the legal owners of land and buildings. In the E&E region in particular, new Registration/Cadastral institutions have been established while entities that had functioned for recording the occupation and use of land and buildings under the previous regime had to be closed or adapted to new conditions. Programs in Albania, Armenia, Moldova and Georgia made investments in newly established systems for the registration of titles and land transactions, and for the mapping of property boundaries, including major investments in the computerization of these land information management systems. The approach in LAC has been to reform, modernize, and link registration and cadastral (mapping) agencies in order to make them more efficient and accessible to all landholders and to facilitate land market transactions.

¹¹ This was true as well in the three Central American countries. This is a frequent issue in land policy. The household is frequently assumed to be a cohesive unit, with the household head making decisions (including land use and transactions) that reflect the views of all the members. There is abundant research evidence (see, for example, Lastarria-Cornhiel 1997) that shows that household heads often act in individual self-interest.

In E&E and LAC efforts were made to make these registration/cadastral agencies accessible to the population and as efficient as possible. Registry officials, however, often have taken advantage of their control over property records to extract bribes from clients for expedited service or for manipulation of those records thereby producing serious threats to the integrity of the Registries and to the efficiency of their functioning.

In both regions, there appear to be a significant proportion of transactions that are not being channeled through the Registration Offices, which indicates either higher than acceptable transactions costs (including taxes, “facilitation fees”, time) or a lack of public appreciation of the value of registered title. Serious consideration should be given to re-thinking the institutional design of the registration/cadastral system in order for the investments in titling and initial registration to be durable.

2.2.3 Impact on Land Markets

The evidence on whether entitlement programs produce more dynamic land markets is mixed. One objective of entitlement programs is the clarification of title to facilitate access to credit. Studies in the LAC region that compared titled and untitled landholdings at one point in time typically showed that the holders of legal title have more mortgage agreements with credit institutions and get more loaned funds than do holders of land without legal title. These studies are instructive, but they do not demonstrate that improving legal status of titles to land “causes” improved access to credit. Other factors may be producing both legalization of title and access to credit, such as local bank lending policies and the amount of investments that landholders have made in their parcels, particularly in coffee-growing areas. Those who have expanded their coffee plantations may seek legal protections of these investments, and at the same time with these investments may find it easier to get loans for more investments. Longitudinal studies are needed, before and after titling.

Data gathered in Honduras from a sample of titled and non-titled landholders before and after the issuance of new titles showed that legal titles appeared to have an impact on access to credit, even in the relatively short time period of the study (four years between the baseline study and the follow-up study of the same sample). Private banks that require collateral for loans accounted for all of the additional loans, and the amount of money loaned to titled landholders, as compared to those in the (untitled) control area, rose dramatically. When it was noticed that the great majority of these loans occurred in only two communities, case studies were undertaken and revealed the willingness of a single private bank manager¹² to accept the new titles as collateral for loans in the two communities. In the communities not serviced by this bank manager, there were no significant changes either in the number of clients or in the amount of money loaned.

The experience of the innovative bank manager, however, is very instructive and could be explored further for demonstrating the value of using the new titles as he did. Local conversations about the new titles seem to have encouraged the bank manager to experiment

¹² The bank manager, who knew many landholders from the days when he had been the head of the local coffee cooperative, made loans based on this personal knowledge but did not register mortgages on the titled properties with the Property Registry. He simply put the new titles in his vault until the loans were repaid. A similar situation occurred in the other community where credit access dramatically increased following the titling program (see Stanfield, Nesman, Seligson and Coles 1990).

with using the new titles for issuing loans. If the policies of other banks could be the focus of special efforts for making them more responsive to the needs of the newly titled peasant producers, the increased importance that many farmers attach to their land titles could be leveraged into greater access to credit and, perhaps over the long term, begin to affect the more difficult processes of on-farm investments, increased productivity, and farmer income enhancement. Titling alone, without local educational efforts and institutional changes, will likely not bring about these effects. Longitudinal surveys of landholders will be insufficient to detect such relationships; they should be complemented by in-depth, historical case studies of the communities and farmers being touched by the titling and registration programs as well as movements toward or away from broader democracy of opportunity.

What about transactions in general? The study in Honduras compared the transactions in titled areas with transactions in untitled areas, four years after the titling program (Stanfield et al. 1990). In one Department, there was no change in the proportion of parcels affected by transactions after titling in comparison with the proportion before titling. In another, the proportion of parcels that had been transferred during a four-year period was actually *less* among the titled landholdings than in the untitled area. The titling program—the issuance of legal land titles to private owners in replacement of their customary titles—did not stimulate greater sales of land, at least in the short term. In the minds of titled landholders, however, the value of their parcels increased with the issuance of title much more than the increase in value for un-titled parcels. Actual market prices need to be examined to see whether this perception of changed value would translate into increased market values. What will occur over the longer term remains to be seen.

In the E&E region, agricultural land markets are inactive for the most part, except for agricultural land on the periphery of expanding urban areas and along highway corridors, which basically involves transactions for non-agricultural purposes. In the more stable agricultural areas, the low transaction rates may indicate that the new owners are not interested in selling what they have just acquired from the land reform. It may also be the case that the low profitability of agriculture does not tempt people with capital to wish to acquire agricultural land. There may be people who wish to sell, but there may also be few people who wish to buy. The low rates of transactions noted above in the E&E region may reflect a combination of these situations (see Adlington 2002). On the other side of the argument, there is evidence that *de facto* privatization without formal title (in squatter settlements, for example, around Albania's capital city) where the demand for house plots is substantial and the cost of formally privatized land is high, a large number of transactions occur (Jazoj and Kelm 2001).

Registered titles do not automatically produce transactions. Unregistered titles do not seem to hinder transactions. Then, why do more settled, market-oriented economies in Europe and North America require registered titles for market transactions? Probably the key term is “settled.” In the LAC region, highly polarized societies afflicted by war and internal conflict are not “settled.” Nor are many of the transition countries of the E&E region close to being “settled.” It seems reasonable to try to move toward a more settled state of affairs, step by step. Settling property rights of landholders and consolidating institutions which support them are important steps.

3. ADEQUACY OF DOCUMENTATION AND NEXT STEPS

In the published literature¹³, our assessment has found:

- good evidence about the establishment or strengthening of land market institutions that protect property rights, such as real property registers and cadastres
- good evidence about the efforts to improve tenure security through land titling and registration programs
- evidence from Honduras that titling improves access to credit, increases fixed capital investments on farms in certain situations, and increases the perceived value of titled land, although the large landholder sector continues to extract proportionally more benefits from credit and produce markets than do smallholders, regardless of their tenure status
- very little evidence of the impact of these interventions on sustainable rural development benefiting the disadvantaged, either through increased farm incomes or the operation of land markets.

Thus we conclude that the secondary-source evidence must be enriched to inform the CDIE Review about the proposition that has motivated this work:

A key to sustainable rural development is legally secure entitlement to land on the part of the disadvantaged.

Table 1 summarizes the information presented in the Assessments and Country Briefs concerning evidence of:

1. significant investments in strengthening the institutions of land markets, especially the real property registry system
2. significant investments in land titling/registration
3. the impact of (1) and (2) on investment in land
4. the impact of (1) and (2) on the operation of land markets.

In Table 1, the labels “sufficient,” “partial,” and “insufficient” pertain to the availability of documentation and its ability to describe USAID investments in land markets and property rights and/or their impacts. As the table makes clear, published documentation makes it possible to synthesize and assess what *types* of USAID investments have been made but does not make it possible to determine whether the investments led to improved land market performance or increased investment in the land.

¹³ “Published documentation” includes “gray” literature—internal documents and working papers from projects, research centers, and elsewhere that have been identified and collected by Land Tenure Center staff and cataloged in the University of Wisconsin’s libraries.

Table 1: Summary of relevant information in published documents

| | Institutional strengthening | Titling and registration implementation | Impacts on investment by disadvantaged | Impacts on land market behavior by disadvantaged |
|-------------|-----------------------------|---|--|--|
| El Salvador | Sufficient | Sufficient | Partial | Partial |
| Guatemala | Partial | Partial | Partial | Partial |
| Honduras | Sufficient | Sufficient | Sufficient | Partial |
| St. Lucia | Sufficient | Sufficient | Insufficient | Insufficient |
| Niger | Sufficient | Partial | Insufficient | Insufficient |
| Uganda | Partial | Partial | Partial | Partial |
| Albania | Sufficient | Sufficient | Partial | Partial |
| Moldova | Partial | Sufficient | Insufficient | Partial |
| Philippines | Sufficient | Sufficient | Partial | Insufficient |

Should follow-up studies be done in some of these countries? The answer to that question depends partly on the nature of the follow-up studies and partly on the resources available to conduct them. The complexity of the causal model makes it difficult to identify the social and economic impacts of investments in improving property rights and land markets in a short time with limited resources. However, it would be possible and helpful to explore key portions of that causal model.

We recommend that a study be commissioned in each of a sub-set of countries to gather evidence that fills some of the gaps in the literature and enables us to make the Country Briefs more comprehensive. The topics of the country studies would include:

- evidence of effects on the perceived tenure security of the beneficiaries, particularly the more disadvantaged sectors, and on their intention either to invest in improving the sustainable productivity of their land or to transfer their land to others who would make such investments
- statistics of land transactions—number, value, type of property, location (urban/rural, regional distribution), and evidence on the linkages between the dynamism of land markets and the interventions carried out, particularly involving the participation of disadvantaged groups, such as small farmers, landless, women and ethnic minorities
- transactions procedures—steps, time taken, cost in the formal institutions in comparison with informal transactions, all sectors of the population
- assessment of land market professions—brokers, valuers, surveyors, lawyers/notaries in terms of the strength of their professional associations, their costs, and the adequacy of their numbers and services to all sectors of the population
- accessibility of land market information for all sectors.

As a cross cutting theme to be investigated in the follow-up work, the commissioned country studies should, where possible, explore whether there are differential impacts/access for various groups of the population (landpoor families as well as the better endowed, women and men, ethnic minorities and the majority), and thus impact on the potential for broadly based and sustainable rural development.

4. NEW DIRECTIONS FOR USAID INVESTMENTS IN LAND MARKETS AND PROPERTY RIGHTS

Based on the documentary evidence and LTC's knowledge of the issues that have arisen in the course of implementation of USAID investments in land markets and property rights, there is a need to rethink USAID strategy for the next generation of land-related development assistance. Policies and programs to consolidate the investments made in privatization and registration of property rights should focus on seven themes:

4.1 INCREASE SUBSTANTIALLY THE PROPORTION OF TRANSACTIONS RECORDED WITHIN THE FORMAL REGISTRATION AND CADASTRAL INSTITUTIONS

Constructing land market institutions and registering property rights in them is only the first step in the process of developing efficient, equitable and sustainable land markets. It is also necessary to ensure that subsequent transfers of rights are recorded there as well; if transactions are not recorded accurately, the registration system will quickly become unreflective of the true ownership situation. The disincentives to the recording of transactions, such as transfer taxes, bureaucratic hurdles, and corruption are high in most countries. As DeSoto (2000) argues, “[I]n every country we investigated, we found that it is nearly as difficult to stay legal as it is to become legal. Inevitably, [property owners] do not so much break the law as the law breaks them—and they opt out of the system.”¹⁴

Many landowners appear to be conducting sales, leases, inheritances, and gifts involving land and other real estate through private arrangements, often with documents such as deeds of sale, avoiding the formal registration/cadastre agencies. The evidence for this conclusion comes from field studies of informal settlements and from the low proportion of properties, which are being transacted through the formal registry offices. In Georgia, for example, only 1.2% of the 2.4 million privatized agricultural land parcels have been sold and legally registered over the past six years, a rate of 0.2% per year. Considering life expectancies and the fact that most beneficiaries of those programs tend to be the oldest family members, it would be logical to expect that at least inheritances would be occurring at a much higher rate. Sales, gifts, and mortgages together should add more. This very low rate (and similar results from other countries, including Uganda) leads to the suspicion that transactions are occurring outside of the formal registration system. Gradual degradation of the public records created by the titling and registration projects is therefore occurring, and seriously threatening the substantial investments made.

Possible interventions:

- Reduce transactions costs, including informal payments and transfer fees.

¹⁴ LTC research in Latin America had made this same point in the 1980s and 90s. See, for example, Hendrix 1993.

- Bring land registries closer to the population, geographically, socially, and culturally.
- Improve the efficiency of operations of the registries, providing rapid service in a one-stop shop.
- Substitute property taxation of registered owners for transfer taxes. Property taxation on registered owners will motivate them to register transactions which transfer their ownership to another person. Removing or reducing transfer taxes will remove one obstacle to the registration of transactions.
- Provide positive incentives for registering transactions, including lower property tax rates or preferential access to other government services.

4.2 ENCOURAGE MORE DYNAMIC LAND MARKETS

Potential sellers may prefer to keep their land idle for speculative or other purposes. Potential buyers will not effect purchases unless they have the information and resources needed to buy land. Real estate professionals or influential people may attempt to manipulate market information for speculative purposes if transparency is lacking.

Possible interventions:

- Improve the quality and broad availability of information about land owned by people who are interested in selling.
- Set a property tax rate noticeable enough to provide an incentive for people who are merely holding land for speculative purposes to either put the land to economic use or to place it on the market.
- Encourage financial institutions to broaden access to mortgage credit facilities, in order to provide long term capital for the purchase of and investment in land.

4.3 IMPROVE ACCESS TO CREDIT FOR TITLEHOLDERS

As numerous studies have shown, titling alone, without local educational efforts and institutional changes, will likely not bring about improved access to institutional credit. The experience of an innovative bank manager in Honduras who offered credit to new titleholders may be instructive and should be explored further for demonstrating the value of titles. The local conversation about the new titles seems to have encouraged the bank manager to experiment with using the new titles for issuing loans. If the policies of other banks could be the focus of special efforts for making them more responsive to the needs of the newly titled peasant producers, the increased importance that many farmers attach to their land titles could be leveraged into greater access to credit and, perhaps over the long term, begin to affect the more difficult processes of on-farm investments, increased productivity, and farmer income enhancement.

4.4 IMPROVE THE GUIDANCE OF LAND MARKETS

Environmental concerns and the high costs of retrofitting public utilities and other infrastructure once settlements have formed indicate that there is a public interest in developing rules to guide land use and the location of urban development, including land use zoning and development

control. Such rules require functional institutions, distinct from registration and cadastral agencies but sharing information, for their application.

Governance capacity is weak in most countries. In E&E, the centralized model inherited from the previous regimes is very resistant to the decentralization of the governance of land. In LAC, Asia and Africa, where there has been more experience with local government models, political instability and/or highly polarized landholding patterns often convert local government into local protectors of powerful elites. Under such situations it is difficult to conceive of governance models based on consultations with local stakeholders as well as local government officials. Centralized budget and fiscal structures frequently deprive local governments of the resources which they need to function. Nonetheless, without much strengthened local land governance, the sustainable use of land and more equitable access to land will be difficult to achieve by relying only on the unguided operations of land markets.

4.5 IMPROVE THE SECONDARY USES OF REGISTRATION/CADASTRE INFORMATION

The theoretical basis of much of the land titling effort has been the private benefits expected to flow from greater security of land tenure via the adjudication of titles. These private benefits, according to the advocates of land titling programs, should accumulate sufficiently to be of benefit to the wider society.

The data indicate, however, that the expected private benefits of titling on the welfare of the landpoor have been small and difficult to realize, at least in the short run. However, the experience with various titling and registration programs has suggested that there may be significant social benefits from making the registration and cadastral information more widely accessible. Such information can improve the capabilities of the government, public utilities, private developers, and conservers of the land and attendant resources to administer these resources more effectively and closer to the people.

The users of this property records information come to have an interest in the quality and accuracy of the information. Pressures can emerge from these users on the registration offices to operate more transparently, at lower cost to the potential clients, and with more of a client satisfaction culture, in order to reduce the incidence of informal, un-registered transactions and to assure the accuracy of the information in the Registries. The following paragraphs outline some of the most attractive uses.

4.5.1 Inventory and Boundary Identification of Publicly Owned Land

Comprehensive registration information can provide detailed data concerning the distribution, use, and location of land, as well as identify the public authorities with responsibilities over public lands. This information can be extremely useful for planning development projects which affect the land, such as soil and water conservation, watershed management, technological transfer oriented toward particular crops, and programs seeking solutions to the problem of extreme poverty due to land fragmentation.

Comprehensive titling and registration also can contribute to the clarification of boundaries of land that cannot be titled nor alienated, such as forest reserves, certain critical watersheds areas along public roads, and lands assigned to municipal administration, which are subject to different rules for occupation and titling. By identifying publicly-owned lands that are not subject to

alienation, other lands that are potentially available for private ownership and use also are identified.

4.5.2 Demarcation of boundaries of administrative units

Boundaries between administrative units are frequently ambiguous and often undefined. Many titling and registration efforts confront this problem when carrying out the cadastral mapping of parcels, which requires the identification of parcels according to their location by administrative unit. In many instances the existing maps of boundaries do not correspond with geographical features on the ground, or there is a longstanding dispute as to which department or municipality had jurisdiction over a particular area.

This confusion has meant that in these administratively ambiguous areas, the public has difficulty knowing where to go to secure such documents as birth and death certificates and even to record land transactions. Such boundaries must be clear before the local tax authorities can collect land taxes.

4.5.3 Improvements in property tax collections

One of the most important products of cadastral mapping is the potential improvement of property tax collections. The collection of taxes is often based on local knowledge of who owns what land and on the propitious appearance of a property owner who wants to carry out some transaction which requires certification from the local registration/cadastral office. Both the valuation procedures and the rate of tax collection are often inadequate; the personnel administering the program are often poorly trained and/or corrupt, and have little information to guide them in assessing and collecting taxes. Discounting the cost of maintaining the tax rolls, it is estimated that the cost of producing the cadastral maps and property owner lists can be recovered from increased revenues in four to five years.

4.6 CHANGE THE APPROACH TO THE DESIGN AND IMPLEMENTATION OF LAND PROJECTS

Some USAID regional and country offices have had limited interest in programs to strengthen property rights and the operations of land markets, and in others there has been substantial interest in these issues. In the latter cases, it would be useful to consider changes in the ways that projects are developed to deal more adequately with land markets and property rights issues. Two effective approaches are participatory development of entitlement programs and stakeholder analysis before and during implementation. Several of the Country Studies revealed the (potential) usefulness of these approaches.

- The St. Lucia and Niger experiences with participatory development of their property rights programs illustrate the importance of wide-ranging and patient consultations with people and organizations, public and private, concerning property rights and land market issues and how to address them. In St. Lucia, land commissions held hearings for nearly two years, and there were special studies done before the actual project design effort was complete. Of course for a small island country, such consultations are much easier than in large, socially and economically diverse societies. Still, despite Niger's large size and poor communications, the Rural Code Committee managed to cast a wide net and received significant bottom-up input prior to the passage of the Rural Code and the establishment of land commissions. The public

education coming out of such efforts and the greater appreciation by project designers of the problems and their solutions would go far in the direction of more responsible project design and more effective project implementation.

- Another type of consultation should be done once the outlines of the proposed project are defined. At that stage, stakeholder analysis identifying the groups likely to lose from and hence to oppose the new system would be useful. Such analysis should result in recommendations for the neutralization or mitigation of the opposition, possibly via small concessions. For example, in St. Lucia, the simplified conveyancing procedures set up in the new Registration Law were opposed, silently, by the Bar Association. Once the project was underway, the Bar lobbied successfully for an amendment to the law which required that all conveyances had to be prepared by lawyers, with attendant fees. Perhaps the negotiation of a set of standard conveyance forms and fees for their preparation during the consideration of the Registration Law could have met the lawyers' concerns and yet kept the fees much lower than they actually became.

4.7 INCORPORATE LAND ISSUES INTO USAID'S STRATEGIC OBJECTIVES

The proposition that has motivated this work has arisen more or less empirically, as Missions have seen the need to deal with land issues. In USAID's Strategic Objectives, the land issue is not clearly defined. Missions have to somehow insert land projects into their country programs within the Agency's Strategic Objectives. It would be helpful for USAID to explicitly incorporate the following proposition into USAID's Strategic Objectives:

A key to sustainable rural development is legally secure entitlement to land on the part of the disadvantaged.

By "sustainable rural development" we mean the use of natural resources in ways that preserve them for future generations. By "legally secure entitlement to land" we mean the social and political means for assuring landholders that their access will not be threatened in arbitrary and capricious ways. By "disadvantaged" we mean the social groups who live in poverty and do not have the opportunity for getting out of that condition, such as the landpoor, ethnic and racial groups and gender identification who suffer discrimination from the dominant sectors of society.

Why is this objective explicitly targeting the disadvantaged important? Some would argue that simply by liberating markets, including land markets, economic growth will occur in the most sustainable form over the long term and with maximum benefits for all sectors of the population, including the disadvantaged. Whether this perspective is correct is partly an empirical question, but there is enough evidence to doubt the automatic linkages between unfettered markets and improvements in the lives of the disadvantaged.

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