PRO-POOR LAND TENURE REFORM AND DEMOCRATIC GOVERNANCE

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Abstract:

This discussion paper provides a review of how different forms of land tenure reform relate to decentralization and local governance, in theory and practice. It will guide readers who are familiar with decentralization and local governance approaches to understand the main issues and challenges posed by land tenure reforms to achieve pro-poor impact. Because land tenure reform assigns control over resources that are critical for both identity and livelihood, it will be contentious. It is, therefore, important to distinguish among four different types of land tenure reform and critically assess the political economy context and the type of decentralization as well as national-local governance relationships in which land tenure reform will be implemented. It is equally important to understand the implications of various land tenure reform types for democratic governance and social inclusion / cohesion.

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OUTLINE

1 INTRODUCTION

This discussion paper provides a review of how different forms of land tenure reform relate to decentralization and local governance, in theory and practice. It will guide readers who are familiar with decentralization and local governance approaches to understand the main issues and challenges posed by land tenure reforms to achieve pro-poor impact.

Land issues are complex and have to be looked at within the specific political and local context. Thus, decentralization alone will not guarantee that land tenure reforms lead to poverty reduction and more social justice. Since land is a highly politicized issue, reforming land relations touches on and in many cases challenges local power relations. Designing reform policies in a given governance context will thus require the rules, structures and processes to protect the land rights and human rights of marginalized groups of society including women, the poor, and indigenous peoples.

2 LAND TENURE REFORM, DECENTRALIZATION AND DEMOCRACY

Certain land governance functions are needed for all land tenure reform: Some form of land administration is needed to allocate or determine who should hold land rights, and to record them. There is also continuing need for enforcement of rights and conflict mediation and resolution. Responsible institutions can vary from a centralized state authority, to elected local bodies, customary authorities, newly formed user groups, or even service providers from the private sector or NGOs.

Decentralization involves central government agencies transferring mandates and responsibilities to more localized institutions as diverse as local offices of government line agencies (referred to as *deconcentration* or *delegation*), locally elected government bodies (*political decentralization*), or user groups (*devolution*). Each of these bodies has different types of accountability and incentive structures, which influences the outcome of reforms. Three factors are particularly important in shaping the outcomes of decentralization reforms: (1) the technical and financial capacity of the body ultimately delivering various services and regulation; (2) the degree of economic and social inequality; and (3) the inclusiveness and accountability of the local institutional context to ensure that everyone's voice is heard. Depending on national and local political conditions, a combination of central and different decentralized institutions (polycentric governance) is likely to be found.

Analytically it is useful to distinguish between major types of land tenure reforms which have different characteristics and objectives. In this paper we refer to "4 Rs": *Registration*, *Redistribution*, *Restitution* and *Recognition* of land rights. In reality countries may engage in several types of land tenure reform simultaneously, as in South Africa. Even a single program may combine aspects of different types of reforms. Nevertheless, looking at each type (as in the following sections) helps to identify how they interact with state and society at different levels, especially in the context of decentralization.

Table 1: Comparison of different forms of land tenure reform

	Type of reform			
	Registration	**Redistribution**	**Restitution**	**Recognition**
Strengthen existing or transfer rights	Strengthen existing rights	Transfer from large landowners to landless	Transfer land back to original holders	Strengthen existing rights
Tenure Context	Customary or informal tenure	Highly unequal landholdings	History of expropriation or conflict	Indigenous people, others using forests, rangelands, etc.
Individual/collective	Usually individual	Usually individual	Usually individual	Usually collective
Typical bundles of rights	Ownership	Ownership	Ownership	Use, some management rights

3   LAND REGISTRATION

Land registration is one of the most prevalent forms of land tenure reform, often designed to reduce ambiguity and increase tenure security. Although other forms of tenure reform also generally involve some form of registration, at its "simplest," land registration involves the recording of existing rights. Registration can include marking of plot boundaries, local mapping of holdings, community land registries, up through full cadastral surveys and titling. In most cases registration focuses on individual rights, but in some cases collective rights are registered.

Even where the rights do not change hands, codification of the rights changes land tenure in some way, if only by freezing them as they existed at one point in time. Codification and registration of rights involve reduction in the flexibility of customary tenure arrangements and contingent negotiations of rights. These more rigid rules are assumed to provide "security", but may be inappropriate in areas subject to high climatic variability and extensive agricultural systems. In some cases the change in the content of rights is inadvertent, whereas in others there is a deliberate effort to change the content of the rights held (e.g. by the Derg regime in Ethiopia or the Swynnerton Plan in Kenya). Hernando de Soto's reference to customary property rights arrangements as "extralegal," which need to be "legalized," can in fact translate into cancellation of customary rights, often to the detriment of the poor, and is based on a narrow conception of what is "legal" as deriving only from, and conforming to, statutory law. Recognition of legal pluralism—the coexistence of statutory, customary, religious, and other types of normative frameworks from which people define their property rights, may better protect local exercised land rights.

3.1   LIMITATIONS OF LAND TITLING

Codification can strengthen existing rights by making it clear that the state will enforce the rights that are duly registered. But this may come at a cost to other users of the resource

whose rights are not recorded. In particular, registration is often associated with full owner-ship, following a western model. Secondary claimants such as pastoralists with customary rights to graze on the fallow fields, landless households catching wild fish on flooded paddy fields, or gatherers of wild foods on the land are generally not registered, and may thereby lose their claims. When rights are registered in the name of the male "head of household" only, it can also increase women's insecurity of tenure, or require that they work more on husbands' fields to gain access to plots for their own production.

Although some have claimed that codification is critical for investment, either to provide incen-tive or access to credit, most empirical studies in Africa have found that full ownership is not necessary, and registration does not always provide increased tenure security. Indeed, some find the titling process and transferability to be a source of insecurity, either because elites would have an advantage in obtaining titles, or because alienable land is easily sold in times of distress, often to wealthy commercial interests. Similarly, the younger generation is often left out, if the elder male "land owner" has other opportunities to lease out or sell the land beyond the family.

Experience from Honduras and Nicaragua with "market-friendly" reforms also shows that as-sumptions underlying many titling reforms that legally secure, marketable rights provide access to credit and additional assets via rental and sales markets are not always realized. Major rea-sons include limited access to credit for the poor, alternative forms of collateral that provide as much assurance as the titles, and reluctance to use land as collateral.

Pro-poor land registration can relate to much more limited but important things than full titling. For example, strengthening tenancy agreements can provide for relatively secure temporary ac-cess to land and create more stable incomes for the rural poor. Simplification of procedures for registration may also make it more affordable for smallholders to register their land. Successful implementation of any reform hinges upon the development of decentralized systems with ac-tive local involvement

3.2 DECENTRALIZATION AND WOMEN'S RIGHTS TO LAND

To create more democratic and transparent local management of land resources, special mechanisms to protect women against direct and indirect discrimination, as well as the estab-lishment of local land committees and land tribunals for conflict resolution are needed. Women should be represented in local bodies involved in land registration to increase the likelihood that women will be able to register their rights.

In Amhara, Ethiopia for example, only where women were part of committees, they were active in protecting women's rights, particularly of vulnerable women who lacked family support or so-cial networks. Experience has shown that increasing women's participation is harder to achieve in practice than in theory. In Niger, decentralized land commissions seemed to strengthen women's land rights, but were not enough to offset pressures on the land and the economic marginalization of women in agriculture. Similarly, in Uganda provisions for recording third-party rights over customary land (occupation or use) to ensure women's, absent persons' and minors' rights, as well as provisions for women's representation on decision making bodies re-main rules on the books, largely not implemented. Consequently, the incidence of land conflicts has not reduced, with women and female-headed households particularly affected. The ques-tion of how to provide land registration at the local level that is accessible to the interests of women and the poor and safeguards against elite capture remains unresolved.

3.3 LAND REGISTRATION, DECENTRALIZATION AND DEMOCRATIC GOVERNANCE

Although the role of democracy is not clear-cut with regard to land tenure reforms, it is likely that a democratic system would facilitate acceptance and implementation of land registration

programs that extend legal standing to a larger section of the population. If registration does broaden legitimate access of land for more people—and in particular for previously socially and economically marginalized groups--this should also contribute to broader participation in the polity.

In summary, registration is the most basic of the four types of land reform, with the aim of codifying existing and mostly individual land rights, previously often managed by customary or traditional systems. While reform can generally be planned and administered centrally, decentralized bodies have a crucial role in tapping into local knowledge to identify right holders, and conflicting or multiple rights and to be able to solve conflicts.

4   LAND REDISTRIBUTION

The term "land reform" is generally associated with redistribution of land from large land owners to the tenants or the landless, but in many cases, rather than taking land from existing land owners, it is state land that is (re)allocated. These reforms have been variously associated with objectives of increasing equity or productivity, reducing poverty, and responding to political demands and agitation.

Redistributive reforms require strong central government commitment, either to expropriate land from private landowners or to transfer state lands to individuals. Unless peasant initiatives to take over land reach critical mass or are supported by the state, they are often repressed. Decentralization can make redistributive reforms more difficult if landed elites dominate the locally-elected bodies and can block redistribution (but can create opportunities for local pressures if elites dominate line ministry offices).

4.1   STATE-LED LAND REDISTRIBUTION

As important as this centralized state commitment is, implementation of redistributive reforms requires considerable local information—about land characteristics as well as about the people (management capabilities, farming experience) who should receive it. Inadequate administrative capacity is a recurring problem for land reforms, not only because accurate records are needed, but also because informing people of their entitlements and facilitating legal processes of land acquisition and distribution require a large field staff. Because redistributive reforms are politically charged they require strong central government institutions and a network of grassroots organizations to maintain the pressure for reforms.

Transfer of state land also requires local involvement to assure equitable outcomes. In particular, there is a risk that transfers can actually hurt some of the poor, where local rights are exercised by smallholders (informal owners, tenants, or farm labourers), pastoralists or forest-dependent communities, but not recognized by the state.

Given the potential for rent seeking, clientelism, and the exclusion of ethnic minorities and women, checks on those who implement redistributive reforms are also needed. Even after the land is (re)allocated, ongoing support is needed to ensure that those who acquire it can use it productively. In Zimbabwe, for example, initial land tenure reform efforts included state support for the new farmers and their welfare improved, but as the support decreased, the livelihoods of resettled households shifted back to resemble other farmers in communal areas who had not benefited from reform.

4.2   MARKET-LED LAND REDISTRIBUTION

Negotiated or "market-assisted" land reforms have been proposed as a means of reducing the administrative burdens of redistributive reforms. Market-led agrarian reform is implemented in a very decentralized manner whereby local government facilitates direct interaction between buy-

ers and sellers of land. However, experience with market-assisted land reform has been mixed. If land markets are "thin" (with few sellers and many potential customers) the poor are often unable to buy land, because they cannot find information about possible sellers and prices. Even with credit, people with less education and access to information may not be able to identify or obtain suitable land. Central coordination (even expropriation) is often needed to match sellers and buyers, particularly when the buyers are not located in the same place as the sellers. But if those who purchase land cannot farm it profitably enough to repay, they may end up in debt.

The 'willing buyer, willing seller' approach in South Africa proved to be a major bottleneck because of the requirement of individual business plans, which most potential beneficiaries did not have the knowledge and resources to develop. Critiques of market-led approaches also emphasize the lack of attention to the political nature of redistribution. Market-led approaches in Brazil, Colombia, and the Philippines largely resulted in corruption and unfavourable outcomes for poor farmers, while the most successful state-led reforms were centrally implemented and obtained needed local information through interaction with a wide array of societal actors.

4.3   LAND REDISTRIBUTION, DECENTRALIZATION AND DEMOCRATIC GOVERNANCE

Redistributive reforms address issues of social justice and are aimed at levelling inequality in a society. Land is mostly redistributed to individuals with full ownership over the land. Market-led redistributive reform can be seen as the most decentralized type of land tenure reform, whereby sellers and buyers find each other in a land market. In practice, however, land markets favor large landowners because potential beneficiaries lack information, resources and capacities to enter into negotiations. Beyond the planning of a land tenure reform, state-led redistribution requires central coordination and, at times, force to overcome resistance of large landholders. But involvement of local institutions is still required to successfully implement the reforms. Both market- and state-led reforms thus require a central commitment and coordination as well as considerable involvement of decentralized bodies to plan, manage and implement the reform.

Democratic governance should facilitate acceptance and political will of elites to accommodate land redistribution policies. It is likely, though, that in countries with skewed land distribution, the limited political representation of substantial sections of society might reduce the likelihood of reforms in the first place. Usually pressure from below, demands by civil society organization and a degree of contention is needed to design and implement reforms. If redistribution results in more equal distribution of land it might contribute to broadening of access of citizens to the political system, possibly strengthening democratic tendencies. However, these are by no means automatic outcomes. What is important for redistribution to contribute to broader citizenship, participation in the polity, and poverty reduction is that it is designed and implemented in a way that truly results in a widening of access to land and complementary resources without penalizing already marginalized groups. It is therefore important that the rights of indigenous and marginalized groups be recognized by the state before redistributive reforms are undertaken.

5   LAND RESTITUTION

Land restitution can be seen as variant of redistributive reforms that addresses past injustices, as in South Africa, Zimbabwe, in post-socialist societies such as Eastern Europe and Central Asia, or after violent conflict.

5.1 LAND RESTITUTION TO ADDRESS PAST INJUSTICES

In addition to the challenges of regular land redistribution programs, land restitution requires the state to decide what constitutes legitimate claims, including how recent the expropriation of land has to be to qualify for restitution, and how well compensation substitutes for restitution. Such a process requires new institutions to do the necessary analysis (eligible claims, current users or owners etc.) and also to settle disputes that arise and settle old disputes. Although many countries have addressed restitution at the individual level, South Africa and Namibia included restoration of communal property.

Even where there are legal provisions for restitution, it may be beyond the capacity of those who have lost land to reacquire it without external assistance, especially when those who have lost out are from indigenous groups or other ethnic minorities with less familiarity with the statutory legal system, or where expropriation took place generations ago, as in the former Soviet Union or South Africa. Powerful individuals and corporations may further block access, especially where valuable minerals or forest resources are involved. For example, Bolivia's 1996 agrarian reform law created a provision for indigenous people to claim their "original community territories" but it took 11 years and the assistance of several outside NGOs for the 33 Chiquitano communities to document their claims, refute the claims of non-indigenous people, and to receive title to their territory.

5.2 LAND RESTITUTION AFTER VIOLENT CONFLICTS

Land restitution is also on the agenda in post-conflict settings such as Rwanda, Guatemala, and Bosnia. Claims after wars deal with dislocation, migration, resettlement, and eviction. For example, returning refugees find their house and land occupied by other displaced people who have not yet, or do not want to return to their former village. Furthermore, wars often destroy both central government capacity and that of local institutions. Loss of land and other records, physical changes to the countryside, and disruption of the social fabric through migration or death make restoration more difficult. But setting up processes to deal with land disputes through adjudication and negotiation using formal courts, land commissions and customary negotiation mechanisms are necessary for reconciliation as well as for people to use the land effectively.

Post-conflict situations also represent windows of opportunity for land tenure reforms as in Mozambique and East Timor. With the right support new land policies can be developed with considerable input from below. Extensive local knowledge of history of the land and people is required to settle claims and to build legitimacy for the settlement—which is equally necessary for rebuilding after violent conflict.

5.3 LAND RESTITUTION, DECENTRALIZATION AND DEMOCRATIC GOVERNANCE

Restitution processes are the highly complicated land tenure reform processes as they require the state to make a judgement of past actions and take position for or against groups of society. This can only be done at a national level and needs to be based on a far-reaching societal consensus because of the high conflict potential that is part of this process. The implementation of this process, however, has to be undertaken in a decentralized manner. As the examples of Zimbabwe and other Southern African countries have shown, it is crucial to maintain a transparent and accountable process. Decisions by the central government without involvement from local people are in many cases not perceived as just, nor are cases in which local people are left to themselves, and where the more powerful party prevails.

Democratization processes might facilitate the acceptance of a restitution policy, and provide for the basis to put forth demands for restitution. Restitution to address past wrongs should extend participation of previously marginalized citizens within the political system, thus potentially

strengthening democratic governance. But it can be explosive as well, and conflict resolution mechanisms at the local and higher levels need to be an integral part of restitution programs.

6. RECOGNITION OF LAND RIGHTS

State recognition of land uses that are already being exercised without government approval represents a fourth category of land tenure reform. Even where local people have been de facto land users and managers and the state has had little capacity to manage land or evict people, recognition can strengthen security of tenure. The recognition of land rights of indigenous peoples provides an important example of such reforms. The rights of people living on land that the state claims as government property for protected areas (e.g. national parks), forests, or rangelands may also be strengthened or transformed through state recognition. These two categories often overlap, as in India's Scheduled Tribes (Recognition of Forest Rights) Bill, which recognizes the rights of certain tribal groups who had been living for three generations within lands declared as national forest areas.

However, even with good legislation to support indigenous rights, in practice commercial exploitation of resources for mining, forest concessions, plantations, etc., often has priority over indigenous rights. The prospect of foreign exchange income, tax revenue, or promised job creation exerts a powerful sway on governments, and this is too often reinforced by donors, often to the detriment of current land users.

Unlike redistribution or restitution (but like registration), recognition strengthens the rights of existing users rather than transferring the land to others. But whereas the majority of registration, redistribution, and restitution reforms are likely to deal with individual land rights, recognition reforms are more likely to deal with collective land rights (Table 1). Recognition is less likely than the other reforms to involve full ownership rights; instead, there is usually a more limited or conditional set of use rights with restrictions on what can be done with the land in terms of its management or transfer to others.

6.1 CUSTOMARY INSTITUTIONS AND ACCOUNTABILITY

The issues of recognition of customary land rights are not confined to indigenous groups. Over 90 percent of the rural population in Africa accesses land informally through customary mechanisms. Lack of formal recognition creates considerable insecurity and conflict, because the land is often reallocated by government to logging, agribusiness, or other powerful interests. Reforms in a small but growing number of cases in Africa that accord customary rights have equivalent legal force with those acquired through non-indigenous systems and can strengthen tenure security of local users. However, to be effective these need to be accompanied by support for devolved governance of these rights at local levels, and build upon customary norms.

Recognition reforms are closely associated with devolution programs because they involve the state ceding the right to use, and often to manage land and related resources to local user groups and indigenous people. The requirements for local involvement are even stronger in such reforms than in other types of land tenure reforms because local institutions also need to allocate the rights within the group and attend to the ongoing management of the resource itself. This requires that the beneficiary groups have authority to set and enforce their own rules.

There are calls to strengthen the role of customary authorities to build up democratic local governance systems. However, indigenous or other local resource users may not share land equally among their members, and women, in particular, may lack access rights. They may not manage the resource as outsiders would want, and this is compounded if there is fiscal decentralization and shortage of funds. Decentralization policies in the forestry sector in Uganda led to variable

outcomes on the extent of forest protection. Losses in forest cover were linked to a decline in government funding for forest guards, who had previously not only been technically competent, but both upwardly and downwardly accountable, and had monitored the rules for forest management. Thus, strengthening land rights of indigenous peoples is not a simple question of granting title, but involves addressing a more complex set of interrelated legal, technical, social, economic, and political issues.

6.2   LAND RECOGNITION, DECENTRALIZATION, AND DEMOCRATIC GOVERNANCE

Recognition differs from the other three types of land reform in two ways. First, it looks at recognizing or strengthening the rights of current land users and does not aim to take land from one to give it to another, although there might be overlapping claims which need to be settled in advance. Secondly, it usually deals with collective rights to land and other resources by user groups or whole communities such as indigenous peoples. Almost by definition recognition entails self-governance of localized and complex land relations. It is important though to ensuring that group leaders are accountable to all members and not only to the group's elite. Still, recognition policies require a preliminary important role for the central government, namely the revision of the national legal system to include new actors as legal holders of land (e.g. recognition of indigenous people, tribal social groups or others).

Recognition itself is a way to widen citizens' participation in social life and can increase democratic space. However, when recognition policies involve considerable changes in rights to valuable resources, central governments—authoritarian as well as democratic--often tend to prioritize economic development over social justice, unless civil society exercises considerable pressure. To broaden social inclusion, recognition policies should be considered and implemented before any policies regarding registration or redistribution policies in countries where a substantial section of the population manages lands under unclear legal status, especially where traditional land management is based on collective or mixed collective-individual property rights arrangements.

7   CONCLUSIONS AND KEY POLICY QUESTIONS TO ASK

Because land policies assign control over resources that are critical for both identity and livelihoods, they will be contentious. Although there is currently considerable discussion about land tenure reform, it is important to distinguish among the different types of reform. In the "4 Rs" discussed in this paper, there is a rough progression in terms of how politically contentious the processes are, from registration to recognition. *Registering* existing rights is generally less politically contentious to pass in legislation (particularly where parliamentarians are influenced by Western training), although it is often problematic to put into practice, particularly if the reforms are not only registering existing rights, but changing the nature of those rights in the process, as often happens with titling. *Redistribution* is considerably more contentious and requires more political commitment. However, where there are large constituencies who receive land, this can be quite popular. *Restitution* inherently involves judgments of what are considered "unjust" expropriation of land, and often occurs in stressful times, such as post-conflict or in other times of social transformation (e.g. post-socialist or post-apartheid). *Recognition* may be the most difficult, politically, because, whereas registration involves the extension of the state's authority over land, recognition involves the state recognizing the rights of whole groups to land that has often been, at least on paper, state land. When this is accompanied by stronger recognition of other types of autonomy for these groups, who are often marginal groups, politically, it can be even more controversial.

Table 2: Land tenure reform, Decentralization, and Democratic Governance

Links to Democratic Governance	Type of land tenure reform			
	Registration	**Redistribution**	**Restitution**	**Recognition**
What is potential role of central government?	Coordination; least likelihood of resistance from landowners	Coordination; Strong political will to challenge landed elites at the local level	Coordination; Strong political will to redress past injustices; set up conflict resolution system	Coordination; Willingness of government to legally recognize rights of local user groups
What is the potential role of decentralized bodies?	Identify right holders, keep local registry, conflict resolution	Identify recipients (and sellers if market-based) , conflict resolution	Identify rightful claimants, conflict resolution	Identify claimants, manage resource on continuing basis
What is the potential impact on democratization?	Less critical than in other reforms; providing recognized status can integrate claimants into the polity	Facilitates political will to redistribute; redistribution should facilitate inclusion of citizens in the political system	Facilitates equal access to courts and acceptance by elites; restitution can broaden participation of marginalized groups in political life	Facilitates legal recognition of indigenous people and ethnic minori-ties; recognition signals move toward social inclusion
What is the potential impact on pro-poor outcomes	Include recognition of secondary rights important for poor and marginalized groups, including women	Support (e.g. credit, marketing) to enable poor to access land and use it productively	Avoid further exclusion of poorer sections without restitution rights, but who have been investing in land	Safeguard women's rights in patriarchal systems

7.1 THE POLITICAL ECONOMY OF LAND TENURE REFORM

Acknowledging political aspects of land tenure reform can also help to explain why there is often a gap between plans (which are often donor-led) and implementation. Decision-makers may lack incentives to implement programs or may have incentives to block them if they would lose out. Increasingly, pressures for land come from powerful commercial interests from outside the community, and often outside the country. The combination of firms seeking profit and governments seeking revenues — often abetted by donors encouraging these enterprises for economic growth — has too often led to the loss of land and livelihoods, especially for the poor and marginalized. Thus, donors such as UNDP who care about poverty reduction need to be careful to look at the consequences of such "development" enterprises, especially on the rights of those who have been using landed resources. This will require first policy dialogue regarding

what approaches are to be used and then, potentially, capacity building of central and local authorities to implement reforms to ensure that the poor benefit from land tenure reforms.

Registration and titling are part of many donor and national government agendas, but they often import ideas of property rights and "ownership" that are not grounded in the local social or physical environment. In some cases such as peri-urban contexts or where there is considerable risk of expropriation, registration can help strengthen property rights. However, national legal reforms for titling impose nation-wide definitions of rights, and therefore limit the scope of local land administration, as well as local practices of organizing land ("customary rights").

In policy dialogue, rather than pushing one form of reform such as registration, therefore, it is important of donors such as UNDP to identify the needs of different constituencies and regions may want to ask some key questions:

- What are the greatest sources of tenure insecurity for the poor, and how can they be addressed?

- What local practices can be built upon?

- Would registration of private lands or recognizing the collective use rights of groups be more beneficial?

- Is there space and capacity for programs that conduct registration to use local oral and written testimony to reduce the barriers for the poor to participate?

- Would registering land in the name of husband and wife help to reduce the loss of land rights of women—both within the marriage as well as in case of widowhood or divorce?

7.2 CENTRAL GOVERNMENT, DECENTRALIZATION, AND LOCAL INVOLVEMENT

The successful implementation of all forms of land tenure reform discussed here call for a substantial role of central governments as well as organized local involvement. This does not imply that all have to be subsumed into one formalized arrangement subject to state law. Legal pluralism will persist, and it is better to realize that state, "customary" and a range of local practices will shape what is seen as legitimate access to land. Then those arrangements that contribute most to the interests of the poorest and most disadvantaged can be played up. There is considerable potential for decentralization programs to contribute to strengthening local institutions to participate in the identification of the "right" right holders and in administration, adjudication, enforcement, and conflict management.

But getting that local involvement is not always easy. First, central authorities have often been reluctant to transfer real authority to local bodies. Second, there is some ambiguity and contention regarding whether the appropriate local bodies are outposts of government departments, locally elected councils, chiefs or other customary authorities, newly constituted user groups, NGOs, or even private firms. The local institutions that are selected are not always forthcoming to pick up the additional costs for their participation, and it generally requires a substantial state investment of time, personnel, and funds to set up the partnerships between central and local institutions and build their capacity to carry out their expected roles in land tenure reform.

Even if local institutions are developed, their participation does not always lead to equitable outcomes favouring the poor. Within local, as well as national, institutions there is the possibility of elite capture. Women, ethnic minorities, or other socially excluded groups may face more obstacles to securing land rights under local authorities than from other government entities, who as "outsiders" may not be as steeped in the particular norms that discriminate against these groups. Thus, while reallocation of land can contribute to more democratic decentralized

governance institutions, decentralized institutions may not be able to challenge local power structures enough to achieve this without continued pressure from the central state to ensure that equity concerns are addressed.

Although decentralization is not a panacea for achieving effective and equitable land tenure policies, it still offers important opportunities for building the necessary institutional framework for state-society interactions. This will not be achieved through blanket prescriptions, but by engaging in the complex social, economic, and ecological contexts that shape the outcomes of decentralization as well as land tenure reform. Unfortunately, the local reality often falls outside the realm of statutory legal structures, and efforts to "legalize" these "extra-legal" arrangements too often require national-level reforms, which do not easily accommodate local variations that have emerged to adapt to the biophysical and socioeconomic environment.

Decentralized governance may be less effective in delivering pro-poor land policies where there is a high degree of inequality, either within communities (potential elite capture), between communities and non-local stakeholders such as timber or mining companies (lack of bargaining power), and between communities. When there is strong heterogeneity between communities, decentralization gives variable performance because each local area has different starting points and local institutional arrangements. Thus, some variability, e.g. between individual and collective tenure, private agricultural land vs. common property, and in the exact specifications of rights, may be desirable. Indeed, many indigenous groups demand the right to be different from the rest of the society. But there also needs to be checks that certain regions or groups do not lag behind—another instance of how state-society interactions are important.

7.3   THE '4RS' AND DECENTRALIZATION

Each type of land tenure reform calls for particular types of competence from the central government and local entities. Registration and administration of rights can be done by central or local authorities, but the costs to local users are likely to be higher, the more the registration is centralized and formalized. Higher costs (and travel time) for registration are more likely to exclude women and the poor from registering. Local registration processes can help reduce this problem, but only if the local institutions are not biased against women or other disadvantaged groups. Programs to simplify procedures and strengthen the capacity of local groups are likely to create greater transparency and help ensure that registration processes benefit the poor.

Redistribution of land often requires a strong central authority to overcome resistance from landed elites. But local involvement is also needed to maintain pressure for reforms and identify the appropriate recipients of such land reform. Where state land is being transferred, local input is needed to identify any existing users that may lose out.

Similarly, restitution requires a commitment from the state, but perhaps even greater local input to identify the appropriate right-holders. Conflict management is likely to be particularly critical for such contentious reforms. Depending on the source of the disputes, local or state institutions may be better placed to increase the legitimacy of the restitution and mitigate conflict. Indeed, the process of adjudicating land disputes can play an important role in rebuilding the society after violent conflict if the process involves local people and is seen as legitimate, but it can also exacerbate conflicts if the process is seen as unfair.

Finally, millions of farmers, fishers, and foresters have no formal rights to the resources they depend upon. State recognition of such rights can do much to strengthen the tenure security, livelihoods, social cohesion and dignity of these people. Many of the unrecognized users are indigenous groups or other disadvantaged minorities, so strengthening their land rights can contribute to overall human rights. In these cases the state needs to act, but local organizations are also needed, not only for the allocation of the rights but also for the ongoing management of the resources when they are held in common. For this to be successful, recognition

of land rights must be accompanied by recognition of the communal or indigenous groups' rights to decision-making. This is essentially a form of political decentralization of decision-making.

7.4 SOCIAL COHESION, TENURE SECURITY AND LIVELIHOODS

Responsive state institutions for undertaking registration, redistribution, restitution or recognition of land rights certainly depend on the orientation of the government, but civil society can also contribute by demanding fair and transparent land tenure policies and implementation. Inclusive citizen's participation in the land tenure reform process is more likely in relatively egalitarian societies. Participation is facilitated by the structures that the state provides and its receptivity to work with communities, such as recognizing their management rights over landed resources in recognition programs, or their knowledge of local land issues in other types of reforms. Inclusive participation is fostered by the state's insistence on inclusion of women, minority ethnic groups, and other marginalized communities (e.g. pastoralists, forest dwellers) in decision-making processes. This also applies to social cohesion: because land is such a critical resource, land tenure reform will be contentious. And as we have seen, communities should not be assumed to be homogeneous in their assets or interests, especially when it comes to land. Substantial local social capital and good leadership are certainly critical for preventing this from creating greater conflict, but the extent to which reforms strengthen or undermine community cohesion will also depend on how the state approaches the reforms, e.g. whether it engages with communities to build legitimacy for the approaches. The extent of rights-based action and gender equity will depend on the extent to which the state and community espouse these values.

Based on this diagnosis of the critical institutions and the type of decentralization reforms that the government has embarked upon, interventions can be designed to strengthen the capacity to meet the tasks of pro-poor land tenure reform.

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A longer version published as CAPRi Working Paper No. 80, www.capri.cgiar.org/wp/cpariwp80.asp includes the full bibliography.

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