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## DECENTRALIZATION, PRO-POOR LAND POLICIES, AND DEMOCRATIC GOVERNANCE

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# DECENTRALIZATION, PRO-POOR LAND POLICIES, AND DEMOCRATIC GOVERNANCE

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## 1. INTRODUCTION

Decentralized approaches to development are gaining increasing prominence. Land tenure reform policy has been affected by many different types of decentralization. However, the literature on land tenure reform rarely explicitly addressed the implications of decentralization, and vice versa. This paper provides a review of how the issues of decentralization are linked to land tenure reform, in theory and practice.

Both decentralization and land tenure reform each encompass a number of different, but related concepts and approaches. We begin with clarifying some key terms related to these different approaches, then look in more detail at contending perspectives on decentralization, and how these relate to the United Nations Development Programme's (UNDP) pillars of democratic governance. We then review the different types of land tenure reform in terms of the role of centralized and decentralized institutions, illustrating the strengths and weaknesses, gaps and challenges with experience from a range of developing countries. The final section turns to conclusions and policy recommendations, considering how decentralized approaches to land tenure reform can contribute to goals such as gender equity, social cohesion, human rights, and the identity of indigenous peoples.

### Types of Decentralization

Decentralization is often part of a number of related policy reforms, in which central government agencies transfer rights and responsibilities to more localized institutions.<sup>2</sup> Three broad types of decentralization can be identified, depending on the particular functions being transferred from central government authorities. Administrative decentralization transfers responsibility for administrative procedures; political decentralization delegates electoral and legislative authority to the periphery; financial decentralization transfers both resources and responsibility for financing government services to local entities.

It is also critical to distinguish among the reforms that are referred to as decentralization according to the type of institution to which authority or functions are devolved. Is it more local offices of government line agencies, or local government bodies, or user groups? Each of these will have different types of

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<sup>2</sup> Many different types of reforms are often referred to under the broad heading of decentralization or devolution. For discussions of such reforms, see Agrawal and Ribot, 1999; van Zyl et al., 1996; Carney and Farrington, 1998; Ostrom et al., 1993; Rondinelli et al., 1989; and Vedeld, 1996. For an analysis of the types of institution involved, see Ribot, 2004; Uphoff, 1998.

accountability and incentive structures, which will influence the outcome of the reforms.

As diverse as these approaches are, they share a common theme of bringing the functions of the state closer to the people, literally and/or figuratively. They thereby have the potential to contribute to the UNDP pillars of democratic governance: responsive state institutions, inclusive citizens' participation, as well as values and principles that are rights-based, gender sensitive, and advocate for social cohesion. However, the extent to which they fulfill these goals in practice varies enormously, as discussed below.

### **Types of Land Tenure Reform Policy**

Although the term "land reform" is still associated with redistribution of land, there are many types of land tenure reform or land policy. In this brief we deal primarily with four broad categories:

- *Registration* of existing rights to land, ranging from relatively simple registration procedures to full cadastral surveys and titling.
- *Redistribution*, including state or market led land reform to achieve more equitable distribution.
- *Restitution*, rectifying past injustices by reinstating rights or providing alternative land where original landholders were evicted by war, conquest, forced collectivization, or other expropriation deemed unjust.
- *Recognition* of rights that are currently being exercised by individuals or groups, but have not previously been sanctioned by the state.

Each of these categories involves some form of administration, allocation of rights, enforcement, and conflict mediation and resolution. Although they are conceptually distinct, a particular case may involve a combination of these.<sup>3</sup>

## **2. UNDERSTANDING DECENTRALIZATION**

Decentralization has been on the development agenda for a long time, with shifts between centralization and decentralization registered in most countries. The first wave of decentralization during the 1950s-60s focused on deconcentration and strengthening of local government, often in countries still under colonial rule. At this time most programs to foster decentralization focused on public administration measures to determine the best way to delegate administrative functions of the central state to local state agencies, as a means to increase efficiency of government functions including containing central expenditures.

A second wave occurred in the 1970-80s when newly independent governments, established on centralized principles, gained renewed interest in decentralization. Case studies concentrated in countries engaged in decentralization programs, particularly where donor driven projects were underway. During this period decentralization was seen as a means for goals of participation, rural development, and the maintenance of national unity (Conyers, 1983).

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<sup>3</sup> Registration and recognition can be seen as variants of formalization.

In the 1990s the so-called “third wave” of democratization added the crafting of democratic institutions at the local level as a component of new decentralization projects. The democratic component of these projects focused on fostering participation and accountability, as vehicles to increase empowerment, equitable benefit sharing and thus reduce poverty. Introduction of direct election at the local level and increased local legislative powers vis-à-vis the executive and the bureaucratic apparatus were seen as vehicle to strengthen people’s participation.

The 1990s were also marked by a number of devolution programs in natural resource management that sought to “roll back the boundaries of the state,” in particular by retransferring control over natural resources to user groups (Vedeld, 1996). Like many delegation and political decentralization programs, one impetus for devolution programs was recognition of the limitations of state capacity to manage natural resources. Objectives of such programs were usually a mix of: reducing the fiscal costs of the state, improving resource management by tapping into users’ greater local knowledge of the resource, and empowering local resource users (Meinzen-Dick and Knox, 2001). These programs were found regarding both aquatic (fisheries and irrigation) and land-based resources, notably forestry and rangelands.

### *Types of Decentralization*

One useful way of sorting through the various types of reform that are sometimes referred to as “decentralization” is to examine the accountability structures of each, as illustrated in Figure 1. While particular programs may combine these in different combinations, in practice several broad patterns can be discerned:<sup>4</sup>

- Deconcentration or delegation refers to administrative decentralization in which functions are transferred to lower-level units of a government agency. This represents the least fundamental change, because authority remains with the same type of institution, and accountability is ultimately still upward to the central government (which is sometimes taken to represent society at large, but the mechanisms are quite indirect).
- Political decentralization transfers authority and functions to local government. Where local government is elected, such reforms are referred to as democratic decentralization, and may be assumed to be responsible to the entire local populace. However, for this to hold in practice requires effective local democratic representation and accountability of local authorities to the local populace, in other words, substantive democracy-devolution to user groups at the local level creates accountability to their membership, usually those who depend on the resource, but these members do not necessarily represent others in the

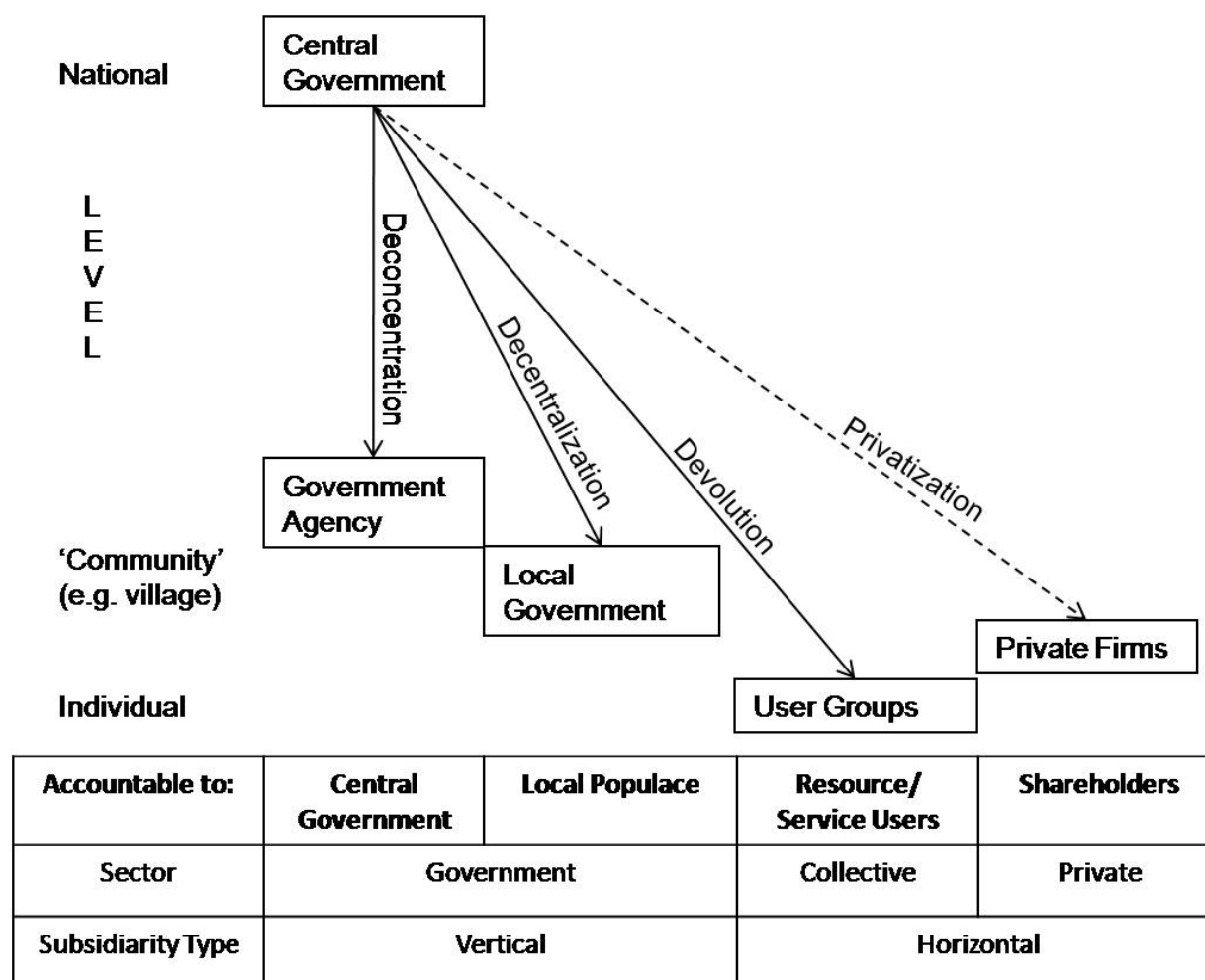
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<sup>4</sup> While the same broad reforms are described in many sources, terminology used is not always consistent. Ribot (2004) includes both deconcentration and democratic decentralization as decentralization, but does not include what is here referred to as devolution or privatization as forms of decentralization. Conversely, UNDP (2006:12) does not include deconcentration or delegation in decentralization, noting that “[b]y definition, decentralization involves the empowerment of local communities through the devolution of political, administrative, legal, fiscal and other powers from the central government down the geopolitical hierarchy to local levels in a country.”

local community, nor society at large. The extent to which these groups (like local governments) are, in practice, accountable to their members or are dominated by the elites will depend on the degree of checks and balances within these groups, and their adherence to democratic decision-making.

- Privatization reforms are also related to “rolling back the boundaries of the state.” But whereas the other reforms transfer authority to some other form of public body, privatization transfers authority and responsibility to private groups or individuals. It therefore has the least accountability to the public at large. If the transfers are to firms, they are accountable only to their shareholders (who may not even live in the country); even if the transfers are to non-profit service organizations such as grassroots or external nongovernmental organizations (NGO), they are accountable to their donors.

**Figure 1: Types of decentralization reforms**



Source: Adapted from Meinzen-Dick and Knox, 2001



Behind all these trends is the broad principle of subsidiarity, meaning that decision making should be devolved to the lowest appropriate level.<sup>5</sup> Within this, transfers of authority to lower levels of government (deconcentration and decentralization) represent vertical subsidiarity, while transfers to non-governmental institutions (user groups or private firms) represents a horizontal dimension of subsidiarity (Döring, 1997).

### *Decentralization Outcomes*

In each case, the stated intention is usually to reduce the geographic or social distance between the governance structure and the people affected. But the extent to which this is achieved varies. Effective decentralization requires detailed knowledge of local conditions and institutions and a nuanced understanding of the impact of the process of decentralization itself (Di Gregorio et al., forthcoming; Litvack et al., 1998).

“Instilling democracy” from the top or from external actors is likely to work only where the preconditions for substantive democracy are in place, with strong civil society or customary mechanisms for check and balances. The Brazil experience shows that “although decentralization fosters democracy, there are many political and economic factors influencing its outcomes, exposing the many limits of decentralization: the limits of financial decentralization in countries affected by regional inequalities, the limits of political decentralization when old political coalitions live on, the limits of decentralization on policy results when there is a lack of social consensus on what is to be achieved by decentralization. These limits help to understand why decentralization has generally promised more than it has delivered, both in the political system and in policy results, emphasizing that decentralization is not the panacea promised by its advocates, and that its results are influenced by political and economic factors” (Souza, 1996:551).

Two factors are particularly important in shaping the outcomes of decentralization reforms: the technical capacity of the body ultimately delivering various services and regulation, and the degree of economic and social inequality.

Many types of decentralization programs have been implemented in response to the limited capacity of government agencies to provide adequate services, particularly in remote rural areas. But if local bodies do not have the human and financial resources to do the job, they will do no better. Creating new institutions at the local level is also costly, both in time and resources. For this reason many devolution programs, in particular, have sought to use existing customary institutions for service delivery and some specific government functions. In many countries, for example, the judicial role is delegated, sometimes informally, to local customary leadership. With regard to land tenure in Africa, for example, local chiefs often seem a logical starting point, particularly where government bodies have been shown to be inadequate and customary authorities are strong, as in areas of Ghana (Kasanga and Kotey, 2001). But this might be problematic if these authorities are patriarchal, biased against certain sub-groups, and lack clear

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<sup>5</sup> Although we deal mainly with transfers of power from national to local level, there are many cases (such as for rangeland and water management) in which an intermediate level between local and national is needed.

accountability mechanisms to local constituencies (Agrawal and Ribot, 1999; Ribot, 2004; Ntsebaz, 1999; Manor, 1999).

### *Decentralization and Local Accountability*

If there are strong social or economic differences at the local level, or if local authorities are not accountable to local people, decentralization can contribute to elite capture, to the exclusion of the landless, poor or marginalized social groups such as low-caste or indigenous people, and women (Edmunds and Wollenberg, 2003). Local power elites, particularly powerful landowners, may even block critical reforms to address poverty.

Furthermore, decentralization efforts are often posited as reforms to strengthen the involvement of local people, referred to as “community participation,” with an assumption that this will tap into stronger local institutions for appropriate resource management and give greater voice to the poor. But although reference to “communities” conjures up images of solidarity, in fact many local groups are very heterogeneous, with patriarchal or other inegalitarian institutions (Agrawal and Gibson, 2001; Kepe, 1999). In addition, in heterogeneous communities, decentralization can reduce the accountability of local governments to the interests of the marginalized, while the central government may provide more consideration for their interests. There are thus no uniform conclusions about which levels of government are most susceptible to special interest capture; rather, it depends on poverty levels and the strength of different political institutions (Di Gregorio et al., forthcoming).

The decentralized institutions do not operate in a vacuum. In particular, the central state continues to play a critical role, and civil society can play an important role in demanding democracy and pro-poor policies. Thus, the redefinition of links between central and local government and civil society is critical. Rather than one ideal type of institution, what is critical is to develop *polycentric governance* in which a range of central and local institutions, public and private, each play a role (Ostrom, 1999; Wunsch, 1999).

These issues are particularly relevant to land tenure reform, particularly as there is renewed attention to land issues to address poverty and legal empowerment of the poor. A fairly high degree of technical competence is needed to identify and adjudicate property rights, develop cost-effective mechanisms of land valuation, land taxation, make records, and settle disputes. Enabling people who have acquired stronger land rights to use them effectively for poverty reduction may require even further capacity development. For example, even with a strong constitutional mandate to redress inequalities, the impact of South Africa’s land reforms has been limited by the training, finances, and development support needed to transform rural relations among people affected by unemployment, land scarcity, and weak local organizations. This is especially the case where new arrangements call for communities to take on responsibilities for autonomous management that include registration, policing, and other duties that require high costs and capabilities (James, 2007; Wisborg and Rohde, 2005).

As in the case of devolution of natural resource management mentioned above, fair execution of these tasks for land tenure reform also requires the articulation of local with external, technical, and management knowledge. Decentralization can contribute to this, provided it does not sacrifice too much on

the technical capacity, or is not subject to elite capture. But because land is such a critical resource and still the basis for power differences, especially in rural areas, landlords and other local elites may block land tenure reform, or use it to secure rights for themselves unless there are strong countervailing pressures.

Furthermore, where decentralization also involves fiscal decentralization policies whereby local governments become responsible for their own revenues, land can become an important source of revenue for the local authorities as well. With decentralization, the central government reduces services, and if local units are to provide critical services (for land administration as well as for other functions such as education, health, or policing), they need revenue. Local property tax is a relatively predictable revenue stream, and easy to administer (FAO 2004), but this dependence on the rural tax base will affect the tenure reform process. In Indonesia, indigenous ethnic minorities anticipated that they would receive stronger land rights as a consequence of decentralization and regional autonomy policies that transferred responsibility and authority over resource extraction and local governance, from the central government to district authorities by participation in local-level politics. However, because the same laws give district level governments a percentage of revenues from natural resource exploitation, the local governments had incentive to disregard minority land rights in efforts to raise income to cover their new expenses (Duncan 2007). The combination of raised expectations and lack of clear procedures for implementing decentralization and addressing disputes contributed to increased violence (Peluso 2007). Similar problems over revenues from land have been identified in China, where local governments have expropriated farmers' lands to provide to industries to relocate, thereby reducing local land tenure security to increase local government revenues (Zhang, 2006; 2007).

In practice, many countries adopt a combination of approaches to decentralization in different sectors, and may fluctuate between decentralization and recentralization policies (Banana et al., 2007; Ribot et al., 2006). Nor is decentralization always associated with democracy. There are numerous examples of autocratic decentralization (Eaton, 2006) as well as recentralization occurring under democratic rule, or in order to reduce elite capture and local authoritarian enclaves (Montero and Samuels, 2004). To identify pro-poor policies, development planners should take into account both national and local political conditions before suggesting specific decentralization policies. The exact interactions between decentralization and outcomes depend on local conditions and the types of reform, as discussed in the following section.

### **3. 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 rights or determine who should hold them for each resource unit, and to record the rights in some form. There is a continuing need for enforcement of the rights and conflict mediation and resolution. The exact arrangements for these can vary, from a single centralized state authority that does everything, to elected local bodies, customary authorities such

as chiefs or elders, newly formed user groups, or even service providers from the private sector or NGOs,<sup>6</sup> and combinations of these different institutions.

**Table 1: Comparison of different forms of land tenure reform**

<b>Type of reform</b>	<b>Registration</b>	<b>Redistribution</b>	<b>Restitution</b>	<b>Recognition</b>
<b>Strengthen existing or transfer rights</b>	Strengthen existing rights	Transfer from large landowners to landless	Transfer land back to original holders	Strengthen existing rights
<b>Context</b>	Customary tenure	Highly unequal landholdings	History of expropriation or conflict	Indigenous people, others using forests, rangelands, etc.
<b>Common bundles of rights</b>	Ownership	Ownership	Ownership	Use, some management rights
<b>Individual/collective</b>	Usually individual	Usually individual	Usually individual	Usually collective
<b>Potential role of decentralized bodies</b>	Identify right holder, 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
<b>Links to democratization</b>	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	Facilitate 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 minorities; recognition signals move toward social inclusion
<b>Care needed for pro-poor outcomes</b>	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

Rather than lumping all types of land tenure reform together, it is useful to distinguish between major types of reforms which have different characteristics and objectives. In this paper we use "4 Rs": registration, redistribution, restitution, and recognition. However, as with different forms of decentralization, countries may engage in several types of land tenure reform simultaneously, as in South Africa, which has had constitutionally mandated programs of land restitution, redistribution, and recognition of communal land rights to redress the highly

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<sup>6</sup> For example, Kasanga and Kotey (2001) argue that Ghana's Lands Commission other government service agencies should be split into independent self financing agencies.

skewed distribution of land rights that is seen as both a manifestation and cause of injustice (Wisborg and Rohde, 2005). Even a single program may combine aspects of different types of reforms. Nevertheless, looking at each type helps to identify how they interact with state and society at different levels, especially in the context of decentralization.

This section will look at the 4 Rs each in turn, explaining what types of reforms are undertaken as part of the specific process, and what role decentralized bodies have in the implementation of the reforms.

## **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 the other forms of tenure reform discussed below 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, and 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, as in Liberia (Wiley, 2007) or Mozambique (Chilundo et al., 2005).

Even where the rights do not change hands, this codification of the rights changes land tenure in some way—if only by reifying the rights—freezing them as they existed at one point in time, and with whatever understanding of those rights existed at that time (Benda-Beckmann et al., 2003; Platteau, 1996). Hernando de Soto's reference to customary property rights arrangements as "extralegal," which need to be "legalized," can even become the basis for effective cancellation of customary rights (de Soto, 2000). But this uses a very narrow conception of what is "legal" as deriving only from, and conforming to, statutory law, whereas many others would recognize legal pluralism—the coexistence of statutory, customary, religious, and other types of laws and normative frameworks from which people define their property rights (Benda-Beckmann et al., 2003; Meinzen-Dick and Pradhan, 2002; Nyamu Musembi, 2007).

In particular, codification and registration of rights involve reduction in the flexibility of customary tenure arrangements and negotiations and their substitution by inherently more rigid rules which are assumed to provide "security" (Fourie, 2004), or which are based on intensive agricultural production systems, rather than extensive systems (such as a lack of recognition of rights over fallows or grazing). 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 (for example, by the Derg regime in Ethiopia or the Swynnerton Plan in Kenya). The focus of such reforms is on "what rights" rather than "whose rights." Such reforms could for example involve privatization, collectivization, tenancy, or the introduction of more complex systems of periodical reallocation, as in Ethiopia (Sjastaad, personal communication, 11/15/2007).

### *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 ownership, following a western model. Secondary claimants such as pastoralists who have a customary right to graze on the fallow fields, landless households who have been able to catch wild fish on flooded paddy fields, or those who have gathered wild foods on the land are generally not registered, and may thereby lose their claims (Lund, 2006; Meinzen-Dick and Mwangi, forthcoming; Odgaard, 2002). The efforts to codify customary tenure in Niger's Code Rural became very contentious, with political repercussions (Lund,

### **Box 1. Informal Land Registration in Madagascar**

Madagascar is an example of a highly decentralized informal registration system practiced at the local level, which runs parallel to the official land administration. Instead of updating the land titles, which is a very costly process (in terms of both money and time), local people go the village head to have their land transactions certified in the form of contracts (Jacoby and Minten, 2007). These have the advantage of tapping into local knowledge of who is the rightful holder of the land by calling witnesses. This system of using contracts, generally called "petits papiers," to serve as proof of purchase and ownership is also practiced in other African countries. While it often serves as adequate security of tenure within the community, it may not withstand challenges from outsiders who may use their greater access to formal titling systems to place a claim on the land. Jacoby and Minten (2007: 462) point out that "*[i]ndigenous tenure, through a set of well understood and respected rules governing land use and transfer within the community, imparts a certain degree of tenure security and could thus render land titling largely redundant. Indeed, establishing a modern property rights system without legally recognizing informal rights may expand the scope for rent-seeking, thus creating additional insecurity (Atwood, 1990). Such tenure uncertainty can in turn create demand for formalization where previously none existed. According to Bruce et al. (1997, p. 259): "Much of the titling demand for smallholders in Africa can be viewed as 'preemptive'—representing an attempt to prevent the state from allocating the land to someone else, rather than the expression of a felt need for new operating rules of tenure."*

1997). 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 put in more labor on husbands' fields in order to get use of plots for their own production (Lastarria-Cornhiel, 1997, van Koppen et al., 2000).

Although some have claimed that codification is critical for investment, either to provide incentive or access to credit (such as Feder and Feeney, 1991), most empirical studies in Africa have found that full ownership is not necessary, and registration does not always provide increased security (Migot-Adholla et al., 1993; Sjaastad and Bromley, 1997; Sawadogo and Stamm, 2000; Jacoby and Minten, 2007; Nyamu Musembi, 2007). 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 land would become alienable, particularly to wealthy commercial interests (Lund, 2006). The younger generation, in particular, is

often left out, especially if the elder male “land owner” has other opportunities to lease out or sell the land beyond the family (Amanor, 2003). Wiley notes that the market-driven titling reforms in the African context often seek more to bring as much customary land into the market place for investor acquisition than to secure customary rights and benefits (Wiley, 2006). Ensuring that the poor, in particular, are not dispossessed, she argues, requires a more action-based and community driven evolutionary process in which local people identify the priorities to reduce the chronic tenure insecurity of the poor.

Nor is this confined to Africa. There is an assumption underlying many titling reforms that assigning legally secure, marketable rights will give access to credit as well as additional assets via rental and sales markets (Carter, 2004; de Soto, 2000). But in reviewing the experience in Honduras and Nicaragua with “market-friendly” reforms, Boucher found that although there were major increases in titling, these were not accompanied by increases in credit and land access (Boucher et al., 2005). In part this is because access to credit is limited for the poor, especially in remote rural areas, and there are alternative forms of collateral that provide as much assurance as the title to land, given the difficulties in eviction and so on. But it is also that people are reluctant to use their land as collateral. In a review of a number of titling programs in Africa, “there is little evidence in the case studies that poor groups seek to use land titles as collateral. In general, the risk of losing land is felt to be too great, and employment and income are key factors in obtaining loans” (Lund, 2006:11).

#### *Decentralization and Pro-poor Land Registration*

But 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 access to land and create more stable incomes for the rural poor (de Janvry et al., 2001). Simplification of procedures for registration may also make it more affordable for smallholders to register their land. For example, registering a lease on stool land in Ghana can involve four government agencies, seven procedures, and take more than a year on average and cost over 4 percent of the total value of the land (Knuty-Mensah, 2006). By contrast, the computerization of the land registry in Karnataka, India, has dramatically reduced the time and cost of obtaining land registration information and made the information available at internet kiosks in villages, which has also improved the transparency of the land records and reduced bribes paid to obtain titles (Bhatnagar, 2003). But not all reforms require high technology: there are innovative processes for registering land rights in Ethiopia, Niger, Mozambique, South Africa, and Uganda, such as the use of verbal as well as written evidence for registering land rights, and the registration of individual or collective rights in Mozambique and Niger (Lund, 2006). The successful implementation of all of these, however, hinges upon the development of decentralized systems with active local involvement.

Decentralization can help registration become more attuned to the needs of the poor in several ways. First, by bringing registration opportunities closer to the rural areas, decentralized land administration—whether through local branches of central authorities or through local government entities—can reduce the transaction costs for registering the land. Without this, urban elites have a considerable

advantage in terms of knowledge of how to register the land and lower costs to get to the necessary government offices. Decentralized offices are also more able to tap local input about who is the holder of the right. They could even use local expertise on what secondary claimants exist, although this is less likely to be recorded and not always in the interest of local elites. Finally, where central state institutions are not trusted by the poor, the involvement of decentralized local institutions can build legitimacy for the land registries (Lund, 2006), but this is more likely to succeed where there is relatively high social capital and good leadership (Deininger, 2001).

### *Decentralization and Women's Rights to Land*

After studying the effects of conversion of customary tenure to titling and development of land markets in Malawi, Holden found that women, in particular, had lost land rights in the process (Holden et al., 2006). They recommend special mechanisms to protect women against direct discrimination and indirect processes of marginalization, as well as the establishment of local land committees and land tribunals for conflict resolution to create more democratic and transparent local management of land resources. Where local tribunals or other bodies are involved in land registration, it is critical that women be represented in these bodies, to increase the likelihood that women will be able to register their rights. In Amhara, Ethiopia, although the land registration policy stipulates that both husband and wife be listed on the form, most local land administration committees were only composed of men and local leaders and government officials had not promoted women's participation, but where women were part of committees, they were active in protecting women's rights, particularly of women who were vulnerable and lacked family support or social networks (Teklu, 2005).

But 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 as yet had limited influence and were not enough to offset pressures on the land and the economic marginalization of women in agriculture (Diarra and Monimart, 2006). Uganda's experience with decentralization accompanying changes in the land law exemplify the challenges involved. The 1998 Land Act made provision for parish-level Land Committees and District Land Boards. The Land Committees were charged with recording third-party rights over customary land (occupation or use) "to safeguard rights of women, absent persons, minors" (Coldham, 2000: 68). The Act also made provisions for significant women's representation on these bodies, to increase the accessibility of rural people to registration and arbitration systems. However, funding has not been appropriated to implement these provisions consistently. Consequently, the incidence of land conflicts has not reduced, with women and female-headed households particularly affected (Deininger and Castagnini, 2006). District Land Boards had to rotate through different areas, resulting in long delays in hearing cases and arbitrating disputes. The question 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.

Although the role of democracy is not clear-cut with regard to land reforms, it is likely that compared an authoritarian system, a democratic system would facilitate acceptance and implementation of land registration programs, which extend legal standing to a larger section of the population than previously. If



registration does indeed broaden legitimate access of land for more people—and in particular for previously socially and economically marginalized groups—this should contribute to broaden 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 rights holders, and conflicting or multiple rights and to be able to solve conflicts. Examples reviewed for this paper also reveal that local registries, when kept transparent, decrease the cost for registration by local people.

## **Redistributive Land Reforms**

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, as in the first phases of the Philippine land reform program. 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 a strong central government commitment, either to expropriate land from private land owners or to transfer state lands to individuals (a form of privatization). Unless initiatives by peasants to take over lands reach critical mass or are supported by the state, they are often repressed (Paige, 1996). Decentralization can make redistributive reforms more difficult if landed elites dominate the locally-elected bodies and can block redistribution.

### *State-led Land Redistribution*

But as important as this centralized state commitment is, the implementation of the reforms requires considerable local information—about land characteristics as well as about the people (management capabilities, farming experience) who should receive it. In reviewing land reforms, inadequate administrative capacity for land reform is a recurring problem because not only are accurate land tenure records needed, but it also takes a large field staff to inform people of their entitlements and facilitate the legal processes of land acquisition and distribution (Adams, 1995). For most countries, land reform is an extremely difficult and politically charged process to carry through, requiring strong central government institutions and a grassroots organization being part of larger NGO network to maintain the pressure for reforms. In the Philippines, partnership between government, NGOs and people's organizations provided many of the field staff. But in Colombia, centralized state-led implementation of agrarian reform redistributed properties with limited local government, private sector, or civil society involvement restricted beneficiaries' ability to gain access to productive and social infrastructure, markets, and technical assistance, and reduced transparency and independent monitoring and evaluation (Deininger, 2007). In Nicaragua land reform policies have even tried to replace the authority of community leaders in decision-making on land transactions (Williams, 1992).

### *Market-led Land Redistribution*

Negotiated or “market-assisted” land reforms have been proposed as a means of reducing the administrative burdens of redistributive reforms. However, experience with market-assisted land reform has been mixed (Carter, 2004; World Bank, 2003). If land markets are “thin” (especially when there are few sellers and many potential customers) the poor are often unable to buy land because they cannot find information about possible sellers and adequate prices. Even with credit, people with less education and access to information may not be able to identify or obtain suitable land. Central coordination (and 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 (Di Gregorio et al., forthcoming).

Because they do not require such lumpy payments, rental markets are an easier mechanism for the poor to access land, but ironically, many conventional land reforms have put in restrictions on land rentals or prompted landlords to evict their tenants for fear of having land expropriated (de Janvry et al., 2001). Identifying an appropriate balance between security of tenancy and encouragement of land rentals is critical for ensuring that the poor have secure access to land.

Market-led agrarian reform is implemented in a very decentralized manner whereby local government facilitates direct interaction between buyers and sellers of land (Binswanger and Deininger, 1997; Deininger, 1999). The “willing buyer, willing seller” approach as it is implemented in South Africa for example, proved to be major bottleneck because properties are transferred one-by-one, each requiring an individual business plan. Yet, most potential beneficiaries do not have the knowledge and resources to develop such a plan (Cliffe, 2007). Critiques of this market-led approach also emphasize that it does not take the political nature of redistribution, and of markets, into account (Bobrow-Strain, 2004; Lahiff et al., 2007).

State-led land reforms are controlled and implemented in a much more centralized fashion, because it is recognized that local level administrations often do neither provide information nor act in favor of the poorer and powerless but in favor of landlords, as the latter tend to control governance at local level. For example, market-led approaches in Brazil and Colombia and voluntary land transfers in the Philippines resulted in corruption and unfavorable outcomes for poor farmers. The most successful state-led reforms, on the other hand, were centrally implemented and were getting the needed local information through interaction with a wide array of societal actors (Borras, 2006). Involvement of local government (gram panchayats) in West Bengal, India in the land reform process, shows, however, that reform does not have to be carried out centrally to be successful, but the strong traditions of local democracy were instrumental in this. Still, limited knowledge of the land reform regulations and gender bias led to omissions of unmarried women on the beneficiary lists, and points to the need of control by higher level administration officials (Hanstad et al., 2004).

Rather than the politically or financially costly process of expropriating or buying land from large private owners, the state may also implement redistributive land reforms by transferring rights over public lands to individuals or groups. But transfer of state land requires no less local involvement than other types of land redistribution or registration to have equitable outcomes. In particular, there is a

risk that such transfers can actually hurt some of the poor where local rights are exercised by smallholders (informal owners, tenants, or farm laborers), pastoralists or forest-dependent communities, but not recognized by the state. In India, the village commons is generally registered as state land and may even be labeled “waste land” in government registers. The same applied for large parts of West African rangelands. It thus looks good if “waste lands” are given to certain poor families. But if in the process many more poor families can lose access to common property they depended on for their livelihoods. Some form of local involvement is needed to verify the existing users and claimants of the resource (see discussion of recognition, below).

Cross checks on those who implement redistributive reforms are needed, whether allocating state land or expropriated private land because of the potential for rent seeking, clientelism, and the exclusion of ethnic minorities and women (Di Gregorio et al., forthcoming). 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 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 land reform (Chimowu and Hulme, 2006). Similarly in Northern Cape province of South Africa, poor technical support and the risky nature of agriculture led to the land reforms having limited impact on reducing poverty (Bradstock, 2005).

Redistributive reforms aim at transferring land from large landowners to the landless to address issues of social justice and to level 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 reform, whereby sellers and buyers find each other in a land market. In practice, however, land markets favor large land owners because potential beneficiaries lack information, resources and capacities to enter into negotiations. Beyond the planning of a land 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 are 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 or contributing to democratic rule. 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 groups be recognized by the state before redistributive land reforms are undertaken.

## **Restitution**

Land restitution can be seen as variant of redistributive land reform that addresses past injustices, as in South Africa, Zimbabwe, in post-socialist societies such as Eastern Europe and Central Asia,<sup>7</sup> or after violent conflict. In addition to the challenges of regular land redistribution programs, land restitution is invariably linked to rectifying injustices of the past and the state has to decide what constitutes legitimate claims to that end. This, in turn requires addressing the question of how recent the expropriation of land has to be to qualify for restitution, and to what degree compensation has served as a substitute for restitution. Such a process requires new institutions to do the necessary analysis (eligible claims, current users or owners and so on) and also to settle on an out-of-court basis disputes that arise and settle old disputes that were never addressed by government. Land restitution itself can be seen as the settlement of long existing "old" land disputes as well as redistribution of a major economic asset in society.

Although many countries have addressed restitution at the individual level, South Africa and Namibia also used the approach of restoration of communal property ownership. This process has led to satisfying legal results but has not lead to full reconstitution of communities. The claims of unified communities who were capable of setting up a campaign for their land were accelerated under the first ANC administration because their claims resonated with the party. While communities portrayed themselves as unified to get their land back, they were not always unified enough to take on the challenges following the land restitution to manage the communal property. Tensions with neighboring communities or internal disagreement lead to stagnation in their development, particularly when the communities were not able to take advantage of other opportunities offered by the state that require cooperation among the community (Everingham and Jannecke, 2006).

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<sup>7</sup> Lerman et al., (2004) analyze the different strategies to reform the farming sector. While many Eastern European Countries decided to restore land to previous owners, most of the former Soviet Republics decided instead to distribute land to farm workers. In all countries large collective and corporate farms still play a prominent role, even though the countries which have gone through a restitution process have a much larger share of individual ownership. Restitution itself was a cumbersome process with many obstacles, and was handled in a rather centralized manner. The Hungarian example which gave beneficiaries the choice between different assets other than land to satisfy their claims seems to have been the most successful.

## Objectives of Land Restitution

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. This is especially the case 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 their 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

### **Box 2. Restitution in South Africa**

The Chatha "betterment" claim in South Africa is an example of the importance of the involvement of all stake holders in negotiation around restitution. Starting in the 1950s, the so-called betterment policies were used to control rangeland degradation by redefining land use in rural villages, and forcibly resettling villagers into new residential areas. Because returning to the original settlement pattern was seen as undesirable by all parties, negotiations led to the creation of a development package and support to develop and implement a development plan, which again resulted in the creation of a Settlement Support and Development Planning division within the Regional Land Claims Commission to support claimants after settlement.

Restitution claims over nature reserves constitute another complicated case. The case of Dwesa-Cwebe resulted in a decentralized management scheme, handing over two reserves to a trust and establishing co-management between claimants and national conservation authorities. This settlement agreement answers questions such as *"who represented the community and, in the context of powerful tribal authorities and traditional leaders, to whom, or to what structure, ownership of the land should be restored"* (Lahiff, 2003: 29).

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 3,830 square miles of territory that they had been evicted from in the 1700s (Hufstader, 2007).

The stated aim of restitution is generally to redress unjust expropriation of land or other assets. This inherently involves political assessments of what is "unjust," but it is not necessarily linked to poverty reduction in either aim or outcome. South Africa, for example, has given property back to those whose original ownership of it assured them a middle-class status, and was thus less an achievement of redistributive social justice than a re-establishment of the status quo ante (James, 2007). Many post-socialist societies have also engaged in restitution of land. Examples in Eastern Europe and Central Asia show that restitution was a difficult legal and administrative process that often led to a high degree of absentee ownership because those who were reclaiming the land are no

longer farmers or locally resident (Giovarelli, 1999). As in South Africa, the outcomes of restitution are likely to depend on whether restitution is sought to redress past wrongs or a present desire to reoccupy and use the land.

### *Land Restitution after Violent Conflicts*

Land restitution is also on the agenda in post-conflict settings such as Rwanda, Guatemala, and Bosnia (Leckie, 2003; Philpott, 2006). Claims after wars deal with dislocation, transmigration, 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. Problems also arise because the population does not wait for a new legal system to put deal with their tenure issues as informal and formal tenure systems often evolve in different ways in post-conflict situations (Unruh, 2004). 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. Restoring the land to the original holders may not be possible where there has been much death and destruction. 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 (FAO, 2005).

Post-conflict situations, however, also represent windows of opportunity for land policy reforms as the examples of Mozambique and East Timor, and 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 (Unruh, 2002). At the same time countries after a conflict, especially after civil war, focus on national unity and central governments will be reluctant to decentralize power to the local level. In Mozambique, for example, communities have the first right to exploit their area and any investor will have to negotiate with the local community to be able to exploit natural resources commercially. To apply for a concession the investor still has to go to central government and some of the benefits the community receives are also channeled through central government (Tanner et al., 2006).

Restitution processes are the most complicated land reform processes as they require the state to make a judgment 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 example of Zimbabwe, and case in 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.

Restitution usually occurs after a substantial political change or end of conflict. Democratization processes might facilitate the acceptance of undertaking 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 strengthening democratic governance.

### **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. The recognition of the land rights of indigenous peoples provides an important example of such reforms.<sup>8</sup> The rights of people living on land that the state claims as government property for protected areas (such as 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 (Sen and Lalhrietpui, 2006), which recognized the rights of certain tribal groups who had been living for three generations within lands declared as national forest areas. Even where local people have been de facto users and managers of the resource and the state has had little capacity to actually manage the resource or evict them, recognition can strengthen the security of tenure for the users.

However, even with good legislation to support indigenous right as in the Philippines and Nicaragua, in practice commercial exploitation of resources, often promoted by donors and multilateral development agencies, has priority over indigenous rights (Xanthaki, 2003). Similar problems have been found in India, where mining or other major commercial interests compete with tribal land uses in forest areas (EPW, 2007), and in Africa, where commercial interests seek concessions to exploit forest resources, develop plantations, mining, or even ecotourism (Lund, 2006; Wiley, 2006). The companies seeking concessions are often foreign, and the prospect of foreign exchange, tax revenue, or promised job creation exerts a powerful sway on the governments, and this is too often reinforced by donors. These expectations are relatively easy to quantify, but the loss of livelihoods, environmental quality, and right of self-determination for people currently using the land are too easily overlooked or undervalued.

Unlike redistribution or restitution, recognition strengthens the rights of existing users, rather than transferring the land to others. In this recognition is similar to registration. However, recognition differs from registration in several important ways. 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 (see Table 1). However, 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. For example, the Sarawak and Sabah states in Malaysia recognize the "native customary rights" of indigenous groups that allows them a degree of control over land they have been occupying and cultivating, but stop short of ownership. Both Vietnam and Cambodia constrain indigenous people's agricultural activities (Xanthaki, 2003). One reason for this is that many of these lands are areas of particular ecological significance (often for their biodiversity and or hydrological

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<sup>8</sup> Confirming the rights of indigenous people to land in their ancestral domains may also be considered restitution.

functions) or of economic interest (timber). Special efforts are required to assure national and even international stakeholders that the local users will not deplete the resource base (Jairath and Smyth, 2003). These limited rights may still require changes in national legislation, such as the Pastoral Land Act in Mauritania or the Scheduled Tribes (Recognition of Forest Rights) Bill in India to reconcile state law with customary practices and resource use patterns.

### *Effectiveness of Customary Institutions in Resource Management*

The issues of recognition of customary land rights are not confined to indigenous groups. Wiley notes that in Africa over 90 percent of the rural population access land through customary mechanisms (Wiley, 2006). There is considerable insecurity because the land can be 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 equivalent legal force with those acquired through non-indigenous systems can strengthen tenure security of local inhabitants and users. However, to be effective these need to be accompanied by support for the 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 to local user groups and indigenous people the right to use, and often to manage, land and related resources that the state has claimed. The requirements for local involvement are even stronger in such reforms than in other types of land tenure reforms. In the other types, local institutions can play a key role in the allocation of rights and settlement of disputes, but in devolution, 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 groups have authority to set and enforce rules. Consequently, as in the case of indigenous land rights claims in Latin America, land rights are stronger when the legal system also recognizes the rights of indigenous peoples to manage their own affairs (Ortiga, 2004). Thus many of the indigenous rights movements frame their demands for land within claims for broader political and territorial rights (Haughney, 2006)—that is, going beyond devolution programs focusing on resource management to demands for effective political decentralization to provide for stronger local control. This is particularly important because for many indigenous people, the meaning of land goes beyond its economic value to include social identity and even spiritual values, which can, in turn, reinforce social capital and solidarity (Hitchcock and Vinding, 2004; Kuba and Lentz, 2006).

Achieving this involves giving autonomy to groups (be it indigenous people or other types of community) to devise own management rules, including rules managing individual rights within communal areas. Although some devolution programs convey only use rights, management and exclusion rights are more meaningful because they empower people to make decisions about the resource and prevent others from using it. Allowing local people to manage the resource is important to exploit the potential advantages of decentralization, tapping into local knowledge to develop rules that are adapted to local conditions, rather than generalized, externally-imposed rules that may lack local legitimacy. There are numerous studies to indicate that communities can craft effective rules to manage natural resources like rangelands, forests, farm lands (Ostrom et al., 1994). But



such collective action does not always arise. The likelihood is conditioned on a number of characteristics of the resource itself, of the user group, and of the governance system. In particular, the way that the state interacts with user groups is critical—it can either support users with recognition of their rights to set rules and providing backstopping through technical information and resources, or it can undermine local decision-making by devolving responsibility without meaningful rights, or transferring rights over only the most degraded lands, and generally provide disabling, rather than enabling, framework.

### *Customary Institutions and Accountability*

There are calls to strengthen the role of customary authorities to build up democratic local governance systems. Such reforms have to be carefully administered, however. In Ghana for example, timber is recognized as the property of the chiefs. National policy vested all trees in the president who manages timber on behalf of the chiefs. This system was set up to secure timber concessions on farm land, and practically stripped farmers of their rights to the trees on their land, giving the chiefs the authority to allow and benefit from timber exploitation (Amanor, 2004).

Thus, indigenous or other local resource users may not share land equally among their members, and women, in particular, are often excluded from land and other rights.<sup>9</sup> Moreover, they may not manage the resource as outsiders would want it managed, 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 (Banana et al., 2007). 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 (Ortiga, 2004).

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. Administering and managing these different rights at the national level is in most cases ineffective because land relations are very localized and complex. Instead, management of the resources is best devolved to the user groups themselves ensuring that group leaders are accountable to all members and not only to the group's elite. While recognition entails devolution of resources to local users, one crucial role for central government, which is often needed to undertake recognition policies, is the revision of the national legal system to include new actors as legal holders of land (such as recognition of indigenous people, tribal social groups, or others).

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<sup>9</sup> For a detailed discussion of these tensions in the case of the Ogiek in Kenya, see Kameri-Mbote, 2006.

Recognition itself is a way to widen citizens' participation in social life and can thus be interpreted as increasing democratic space. At the same time substantive democracy should facilitate this inclusion, thus possibly put less hurdles on the implementation of recognition programs. However, when these 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. Finally, in order 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. This is particularly important where traditional land management is based on collective or mixed collective-individual property rights arrangements.

#### **4. CONCLUSIONS AND POLICY RECOMMENDATIONS**

Both decentralization and land policies are highly politically charged issues. 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 (such as 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.

#### **Political Economy of Land Policies**

Acknowledging these political aspects can also help to explain why there is often a gap between plans (which are often donor-led) and implementation, because the people that are in the decision-making positions often have no incentive to implement programs if they would lose out, or they may be blocked from implementing reforms by those who stand to lose out. Moreover, the tensions are not only among farmers within a community: increasingly, pressures for land come from powerful commercial interests from outside the community, often outside the

country. The combination of these firms' seeking profit and the governments' seeking revenue—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 the 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 the reforms to ensure that the poor benefit from land tenure reforms.

Registration and titling are part of many donor agendas, and often find favor with national governments. But these policies 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, such reforms 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 common agenda such as registration, therefore, it is important for donors such as UNDP to identify the needs of each country and region—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 be more beneficial than recognizing the collective use rights of groups? When registration is selected, programs that conduct registration locally using oral and written testimony are likely to reduce the barriers for the poor to participate. And registering land in the name of husband and wife can help to reduce the loss of land rights of women—both within the marriage as well as in case of widowhood or divorce.

### **Decentralization and the Role of the State**

The successful implementation of all forms of land tenure reform discussed here call for some substantial role of centralized governments, as well as some forms of organized local involvement. However, 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 customs will shape what is seen as legitimate access to land. Then those that contribute most to the interests of the poorest and most disadvantaged can be played up. There is the 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. As in the case of other aspects of natural resource management (such as forestry, fisheries, water management), so also in the case of land tenure there has been growing recognition of the limitations of state capacities of delivering services, especially in rural areas. Not only are the costs of providing services in many rural areas very high, but state institutions often lack the local knowledge needed to be effective. This has prompted a search for ways to supplement state capacity by involving local people, often through decentralization or devolution programs.

But getting that local involvement is not always easy. First, central authorities have often been reluctant to transfer real authority to local bodies, which reduces the incentives and effectiveness of the latter. 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 favoring 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. Indeed, the more unequal communities are in terms of land distribution (and hence the greater the need for land reform), the less likelihood there is that local institutions will prioritize the needs of the poor (Galasso and Ravallion, 2005). 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.

Many decentralization programs fail to live up to expectations because the local bodies are given additional responsibilities without additional financial or human resources and capacity. In this context land tenure, in particular, may come under particular pressure because it represents a potential source of income. Rather than strengthening the rights of local poor people to land, the local governments may seek revenue by giving rights to business enterprises, even multinational companies, as indicated by the Indonesian, Brazilian, and Chinese cases cited above. Forest resources are especially vulnerable to overexploitation and depletion to provide revenue for local government when other financial resources are inadequate (Gregerson et al., 2004). Where local bodies get allocations from the center, they may not prioritize to spend it on land or other resource management (such as forest guards) instead of education, infrastructure, or other programs. Thus, ensuring adequate funding for land governance is a key concern.

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 any blanket prescriptions, but rather by engaging in the complex social, economic, and ecological contexts that shape the outcomes of decentralization as well as land tenure reform. Because of the high variability between sites and the complexity of claimants and tenure arrangements, “a detailed understanding of local reality, even if it takes time to develop, should be seen as essential in both land restitution and in the rights enquiry processes which government policy proposes to employ for resolving conflicting and overlapping claims to tenure rights” (Kepe, 1999:415). Unfortunately, the local reality often falls outside the realm of statutory legal structures, and efforts to “legalize” these “extra-legal” arrangements (de Soto, 2000) too often require national-level

reforms, which do not easily accommodate local variations that have emerged to adapt to the biophysical and socioeconomic environment.

### **Pro-poor Land Policies**

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. Although states often desire uniformity (Scott, 1998), land tenure needs to adapt to the ecological as well as social and economic environment to be appropriate. Thus, some variability, for example 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 need to be checks that certain regions or groups do not lag behind—another instance of how state-society interactions are important.

The analysis of different types of decentralization programs and land tenure reforms provides a starting point for identifying appropriate strategies to develop the central/local and state/civil society partnerships that can enhance land tenure security for the poor. Although the terms “decentralization” and “devolution” are often used inconsistently, it is important to consider what authority, resources, and responsibility are being transferred (or held by) which types of agencies or local groups. Looking for the accountability mechanisms in each arrangement can also help identify ways to make them favor the poor.

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 redress 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 do not contribute to elite capture of land resources.

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.

### **Social Cohesion, Tenure Security, and Livelihoods**

Whether the outcome of each of these types of reform will contribute to the UNDP pillars of democratic governance will depend on both the central government and local social institutions and structures. Responsive state institutions for undertaking registration, redistribution, restitution or recognition of land rights certainly depend on the orientation of the government, but a 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 homogeneous societies, and is greatly restricted by highly inegalitarian social structures. But here the onus is not all on the community institutions. Participation is facilitated by the structures that the state provides and its receptivity to work with communities, such as recognizing their management rights over resources in recognition programs, or their knowledge of local land issues in the other types of reforms. Inclusive participation is fostered by the state's insistence on the inclusion of women, minority ethnic groups, and other marginalized communities (e.g. pastoralists, forest dwellers) in the decision-making processes. This also applies to social cohesion: because land is such a critical resource, land policy 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. Good local social capital and 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, interventions can be designed to strengthen their capacity to meet the tasks of pro-poor land reform.

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