

**FIG/FAO International Seminar
State and Public Sector Land Management
9-10 September 2008
Verona, Italy**

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1. OVERVIEW

The seminar took place at the Hotelissimi, Villafranca, Verona, Italy on 9 and 10 September 2008. It was organised by FIG Commission 7, Consiglio Nazionale Geometri (CNG), and the Food and Agriculture Organization of the United Nations. There were 24 substantive papers or presentations. These included three scene-setting papers, a session on Italian experiences and issues, and 15 other papers from a wide range of countries and regions.

1.1 Introductions from sponsors

Professor Stig Enemark (1.1), President of FIG, introduced the work of FIG in this area. He emphasised the land aspect of good governance and its contribution to the Millennium Development Goals. He argued that land governance is a cross-cutting issue confronting all traditional silo-organised land administration systems. This required high level geodesy models to predict future change, modern surveying and mapping tools to support management and implementation, spatial data infrastructures to aid decision-making, secure tenure systems, and sustainable systems for land valuation, land use management, and land development.

Mika Törhönen (2.1) introduced the work of FAO on good governance and on state and public land management. He argued that weak governance of land and natural resources can undermine all development and mainly affects the poor and vulnerable. Particular problems were the poor management of public assets, their treatment by others as being free and available to be acquired for personal gain, undefined tenure arrangements, poor recording of land rights, and in different places the under- and over-utilisation of public land. Examples exist of good practice in areas such as the recording and definition of responsibilities, accounting and auditing, asset management, public reporting, and land policies. With factors like uneven population growth, urbanisation, changing food production and consumption, increased international mobility of goods, capital and labour, and climate change affecting food security, it was important to improve the management of public lands. FAO is well-placed to promote this as a knowledge network, with established ways of disseminating good practice, and as a neutral meeting place.

The importance of public land management can be illustrated by some of the statistics introduced by presenters. Willi Zimmermann (2.2) argued that 37% of the planet was owned by 147 states in which ultimate landownership was vested in the state and 21% of the planet was owned by 26 monarchs who held ultimate landownership. A further 30% of all land was common property, mostly in the form of property rights on state

This report expresses my personal views as one of the participants in the Seminar and should not be interpreted as necessarily being those of any of the organisers or sponsors, to whom I am grateful for organising the Seminar and inviting me to take part.

land. The importance of public land in countries committed to private landownership was demonstrated by Stig Enemark (1.1). He noted that 89% of Canada was crown land in the hands of the federal or provincial governments with just 11% in private ownership.

1.2 Scene-setting papers

Three scene-setting papers discussed some of the principal issues surrounding the management of state and public land.

- Willi Zimmermann (2.2) showed how poor governance of public lands disproportionately affects the poor and discussed ways of improving the governance of public lands
- Richard Grover (2.3) looked at how the New Public Management and introduction of accruals accounting is changing the delivery of public services and management of operational property
- Jenny Franco (2.4) set out the need for a pro-poor policy on public lands because of the dependence of the rural poor on such lands and argued that pro-poor policies can be justified by reference to human rights. She used case studies from the Foodfirst Information and Action Network (FIAN) to illustrate the problems of achieving pro-poor policies on public lands and the potential for land reforms to be thwarted or misdirected by landed elites.

1.3 The Italian Experience

The session on Italian experiences focussed on the role of the public sector in landscape planning, the tools available, and how successful this has been. Enrico Rispoli (3.1) argued that public land is highly important for public benefit. If it is properly managed and preserved, it can be an important resource for inhabitants and allow for sustainable development based on a fair balance of social needs, economic activity and environmental management. Daniela Sandroni (3.3) discussed how the laws to protect the landscape and antiquities that dated back to 1939 had been strengthened by the 2004 legislation. Carlo Cannafogli (3.2) raised the question of the function of the cadastre and whether it was primarily to support taxation or land administration, such as recording data to support conservation. Francesco Marangon & Tiziano Tempesta (3.4) argued that market failure in the form of externalities is a justification for government intervention in the land market to correct inefficiencies. They showed in a case study of the Veneto Region that economic growth has left the region deeply compromised in spite of attempts to plan development.

1.4 Case studies

There were 15 papers that presented case studies of the experiences of particular countries. The geographical spread was as follows.

- Africa: Ghana (4.1), Nigeria (4.2)
- Asia: Azerbaijan (5.2), Cambodia (5.3), South Korea (5.1), Nepal (5.4)
- Australasia: Kiribati (7.3), New Zealand (7.2)
- Europe: Germany (4.4), Hungary (6.2), FYR Macedonia (6.3), Norway (4.3), Poland (6.1, 6.4), Ukraine (4.4)
- North America: Canada (7.1)

None of the case study papers were from South America though Jenny Franco (2.4) included a case study from Brazil, as well as ones from Mozambique, the Philippines and Vietnam.

The case studies can also be classified by the type of experience they represent. Three of them – those from Canada (7.1), New Zealand (7.2) and Norway (4.3) – came from countries with reputation for high standards of public land management and governance. In addition Richard Grover's paper on the New Public Management (2.3) drew extensively on examples from the UK. Although South Korea is not normally considered to be a leading country in terms the transparency of its property market, it is a high income country and a member of the OECD. The issues raised in the paper by Youngho Lee (5.1) about how to improve the efficiency of public services are similar to those that predominate in discussions of state land management in this group of countries. The papers from OECD countries reflect concerns about the efficiency with which public lands are managed and how the quality of management can be improved. In these countries there is no strong ideological support for the state to own land for its own sake. Rather state ownership and occupancy of land is expected to further public objectives. These can be to facilitate the production of public goods and services requiring the state to own and/or occupy land for operational purposes. The state may also hold land as a custodian for a group or for society as a whole. The questions about state land being raised in these countries tend to be about how well the state is discharging these functions and by what means can the management of state land be made more technically efficient.

The remaining case studies are good practice examples of responses to challenges in society, environment and economies requiring changes in public land management and the strengthening of governance. The majority came from the transitional countries of Europe and Asia - Azerbaijan, Cambodia, East Germany, Hungary, Poland, and Ukraine - where the principle issue has been the transfer of land from the state to the private sector and the need to create the necessary infrastructure to support private land markets.

Neither Ghana nor Nigeria has been communist. After gaining independence from the UK, both have experienced periods of democratic government and military rule. Collectivist ideas of land management influenced many countries which were not formally communist. During the Cold War the Soviet Union trained officials from non-aligned countries in collectivist management philosophies and techniques and its influence was reflected in the land nationalisation legislation adopted by many of these countries. Nigeria's Land Use Act 1978, the subject of Muhammad Bashar Nuhu's paper (4.2), under which the ownership of land was vested in the state, can be argued to be a product of that era. In Ghana past military rulers expropriated private land without paying compensation and Odame Larbi's paper (4.1) discusses how this can be rectified. These papers have a number of themes that are similar to those in the papers from the transitional countries.

Nepal is also a country in transition but following the cessation of internal conflict. It has a legacy of poor management of state land and of encroachment on these. The relationship between the state and those who occupy its land is a significant issue, particularly as there has been a poor record of defending state and public land rights

in the face of pressure on land. Approximately half the land in Kiribati is state land. In addition the state rents customary land. The management of the relationships with private occupiers and private landlords is an important issue, particularly how to provide private access to state lands that are not required for a public purpose.

In the papers coming from the countries from outside the OECD the issue of state and public land management most frequently raised has been about the relationship between the public and private sectors. Often the state finds itself in the position of being the landlord of land used by the private sector. Sometimes this is through a deliberate act of policy with ownership rights being vested in the state. Sometimes, however, it is inadvertent because of encroachment on state land or through ignorance resulting in the declaration that land is state land being made without reference to the reality of how the land is actually being used and who is in occupancy. The welfare of large parts of the population, including disproportionately that of the poor, depends upon how the state manages this relationship. In many parts of the world it is managed very badly. Sometimes the state's capacity to manage occupied land is poor. For example, it does not have accurate information about its property rights or where they are located or lacks technical competence in tenant management or the efficient exploitation of natural resources. More often the problem is a governance one. The state either operates in the interests of an elite that is exploiting its resources or fails to curb encroachment on its rights by an elite. It fails to be accountable to its citizens or to operate in a predictable and consistent fashion. In other words it is not democratic or a respecter of the rule of law and human rights, but is corrupt.

The boundaries between what society considers ought to be state land and private land are not fixed but change from time to time in response to shifts in the political consensus as to the appropriate roles of the public and private sectors. Since 1980 there has been a significant shift in landed resources from the state to the private sector. One of the principal factors has been the ending of Communist rule in many countries. This has resulted in the creation of private land markets through major transfers of land from the public to the private sector through the privatisation of assets and the restitution to its former owners of land that had been expropriated in the past. The process is not restricted to former Communist countries but also affects many other countries, particularly former colonies of western countries, whose land management was influenced by collectivist ideas. This has not always been a smooth process, with questions arising about the efficiency and equity of the process, particularly whether it is fair to claimants, buyers, and taxpayers.

When land has been transferred to the private sector it is still subject to controls and influences from the state. For example, the taxation of real estate provides an important contribution to government budgets, particularly those of local authorities. Nor does the market always function efficiently. For example, it can be difficult to overcome problems of fragmented holdings unless the state facilitates land consolidation. Although the current direction of change is to move land from the public to the private sector, the state still needs to acquire land from time to time for public purposes. Often it has to do so from unwilling sellers and requires powers of compulsory purchase to do so. This raises questions as to how equitable are the processes used and how fair is the compensation that is actually paid.

The case studies were concerned with two main themes:

- **The relationship between the state and private sector interests in land.**
 - The relationship between the state and those who occupy state land – Kiribati (7.3), Nepal (5.4), Nigeria (4.2). In addition the theme-setting papers by Jenny Franco (2.4) and Willi Zimmermann (2.2) were concerned with this.
 - Compulsory purchase – Ghana (4.1), Norway (4.3)
 - Divestment, privatisation and restitution – Azerbaijan (5.2), Cambodia (5.3), East Germany (4.4), FYR Macedonia (6.3), Poland (6.1), Ukraine (4.4)
 - Government's role in land use planning – Italy (3.1, 3.3,3.4)
 - State as a facilitator eg land consolidation – Hungary (6.2)
 - Real estate taxation and charges to support state/municipal budgets – Poland (6.4)

- **Improving the efficiency of public land management.**
 - The impact of New Public Management and accruals management on efficient management of operational properties - New Zealand (7.2), UK (2.3)
 - The use of Business Process Modelling and Quality Management in the management of state land – Korea (5.1), New Zealand (7.2)
 - The creation of public land cadastres – Canada (7.1), Italy (3.2), New Zealand (7.2)

2 THE RELATIONSHIP BETWEEN THE PUBLIC AND PRIVATE SECTORS

One of the main themes to emerge from the seminar was the relationship between the public and private sectors. The public and private sectors do not occupy separate spheres but there is considerable overlap between them. Households and businesses may occupy state land so that the state is in the position of being their landlord. Sometimes this occurs deliberately, as in Nigeria (4.2) where the state has taken possession of the land on behalf of society. In other cases, such as Nepal (5.4), this may be inadvertent as a result of encroachment on state land. Since many of the poorest people in the world occupy land that is classified as state land, the relationship between the state and the occupiers of state land has important implications for their welfare and for development. Commonly the relationship between the state and the occupiers of state land is problematic. State land may be an arena in which the struggles between different groups are acted out. The propensity of the state to capture by elites who make it work for them and for state assets to be grabbed by elites can mean that public land policy does not operate in a pro-poor manner – often quite the reverse. Making the management of state land responsive to the needs of citizens is often a matter of improving governance rather than primarily requiring improvements in technical capacity, those these may be needed as well. Sometimes the state occupies private lands as a tenant, which, as in Kiribati (7.3), may be customary lands.

Land belonging to private individuals and companies can be acquired by the state by compulsory purchase. When this happens there are questions of how equitable the processes of expropriation are, as well as whether fair compensation is paid. The state

also disposes of land to the private sector. In the transitional countries significant amounts of land have been returned to the private sector through privatisation and also through restitution, by which land that was previously expropriated is returned to their previous owners or their heirs. Issues arise in both cases as to whether the processes are equitable and also whether they produce efficient results that benefit buyers, claimants, and citizens.

Market failure is frequently used to justify government intervention in the property market. Sometimes this is to prevent harmful externalities for other property owners and occupiers. There are goods and services which are best provided collectively because of the beneficial externalities they generate or because if provided for one, they are provided for all. The production of such goods and services is funded through taxation and real estate taxes are a good means of raising revenue, particularly for local government. In a number of countries, it is argued that outside intervention is needed to create an efficient farm structure. Without the role of the government in land consolidation, farms would remain uneconomically small and holdings fragmented as individual owners lack the power to bring change about.

2.1 The state and occupiers of state land

State land and the poor

Land and access to it, as Jenny Franco argued (2.4), is crucial to constructing livelihoods for the rural poor, for securing social inclusion, and empowering political participation. However, much of the land occupied by the rural poor is considered to be state or public lands. In many countries, therefore, development and the future prospects of the poor are closely connected with the management of state land. How the state defends its property interests and manages the productive resources it owns therefore has important implications for the livelihoods of many of the rural poor. For example, an estimated 1.6 billion poor people live in forested land worldwide, approximately 80% of which is considered to be state or public lands. The position of many of the poor can best be described as that of tenants whose landlord is the state.

Franco raised the question of whether attempts to draw a distinction between private and public land are flawed. Many such lands fall into both spheres with both public and private rights and uses existing. The formal legal construct of ownership rights oversimplifies complex realities. What is mapped or recorded by government may be very different from the reality on the ground, particularly where boundaries of public land are porous or the designation of state land has paid little attention to the uses to which an area has been put historically. The de facto situation can be different from the de jure one requiring change strategy, particularly when the de facto situation is one of land grabbing of state land by an elite.

The hold of the poor on the land is often insecure and problematic, with access a struggle between different social groups and classes. Franco is critical of analyses that see land as a thing rather than view land rights and access as the embodiment of social relations. The former underestimate the importance of social stratification in land questions. Access to public land is a struggle between social groups and classes played out, in part, in the arena of government and the state. There is a propensity for elites to capture the state and use its apparatus – including the military, police, justice system and legislature - to further their interests. Central to this is land grabbing of state land by an elite who can use their position to coerce the actual occupiers so that they are able to extract private rents from state assets. Public assets are thereby

misappropriated for private gain. The occupiers may use land laws, land policies, and litigation as weapons in their struggle, as well as “resistance” and direct action.

The poor are reliant upon the state defending its property from encroachment by elites so that they are not forced into subservience by a usurping private landlord. This raises questions of for whom the government should work, including whether the poor are acknowledged as having the right to have rights. Franco therefore argues for a human-rights based approach to land policy. This sees people as rights holders and not just beneficiaries of public services. It sees states as duty bearers who should be held to account when they fail to meet their obligations, and not just as service providers. She argues that whilst there is no human right to land per se, this is implied in other human rights, such as those of self-determination, the right to food, and the rights of minority ethnic groups. Good governance is not just about the technical efficiency with which the state apparatus functions, but that the governance of public land should be concerned with democratic land empowerment.

Land policies are not neutral but reinforce or undermine the status quo. Putative pro-poor policies may have perverse effects, favouring elites rather than the rural poor. According to Franco, to be truly pro-poor the transfer of land-based wealth and socio-political power to the landless or near-landless rural poor must take place, in other words what she terms democratic land governance to empower the poor and make the state increasingly accountable to them. The policies can follow a variety of trajectories and their consequences can be difficult to forecast. Franco puts forward a four-fold classification of land policies and their consequences.

- **(Re)concentration.** Land-based wealth and power is transferred from the state, community or small family farm holders to landed classes, corporate entities, the state, or community groups. Such cases include the grabbing by an elite of state land held in trust for an indigenous group or of state land occupied by rural poor, and the state using its powers of expropriation to reallocate land belonging or occupied by rural poor to a company, or the elite, or for its own use, for example, for mega development projects like hydroelectric dams. These policies result in a less egalitarian distribution of land-based wealth and power, and work to the disadvantage of the rural poor.
- **Non-(re)distribution.** Land-based wealth and power remain in the hands of the few landed classes, the state or community. A status quo that is exclusionary is preserved. This can take the form of failing to implement agreed land redistribution policies and permitting opt outs from such policies. Redistributive land policies have proved to be difficult to implement in post conflict situations such as in Central America and the southern Philippines. Land titling programmes can also serve to reinforce the land claims of non-poor at the expense of the poor.
- **Distribution.** Land-based wealth and power are received by landless or near-landless working poor without any landed classes losing in the process as the transfers come from state land. This should, in principle, be a positive sum game in which there are no losers, for example, the resettlement of landless on to empty state land. However, often the “empty” land is actually occupied and this is ignored by policy makers. Civil society and those with knowledge of

conditions on the ground may be marginalised. This type of policy can also involve officially recognising and legitimising de facto occupancy of state land by poor rural communities.

- **Redistribution.** Land-based wealth and power is transferred from landed classes or the state or community to the landless or near-landless poor. This is a zero sum game in which some gain, whilst others lose. The land in question may be state land which a local elite has taken possession of, such as state forest land used as plantations. The entire state apparatus may be needed to enforce its will with the poor having to resist local attempts to thwart the will of the state.

The conclusion from this analysis is that conventional land policy interventions in state and public lands are fundamentally problematic, “tending to lead to crooked processes and less than pro-poor, if not wholly anti-pro-poor outcomes.” Property rights should not be thought of as things but as multi-dimensional and dynamic social relations. The reality of state lands is diversity and complexity that needs to be acknowledged and considered in policymaking. Policymaking initiatives that ignore or fail to confront the power imbalances in state and public lands will fail to make a positive difference to the poor. Land is scarce and landless and near-landless claimants are abundant. However, a human rights based approach does not help the choice of which category of poor claimants to choose over others.

The governance of state land

A key question raised by Jenny Franco was in whose interest is land policy made. Willi Zimmermann (2.2) started with the presumption that was public lands should be made to work on behalf of citizens and explored the question of how this can be achieved. In many countries all land is state land. Although the state is the nominal owner, long term property and use rights have been granted to others. The bundle of rights metaphor can help to identify and manage the many possible partial interests associated with public land. There is the question as to the extent of these rights and how robust they are. Do they provide security of tenure? Do they encourage investment? Is the state subject to the rule of law or does the rule of power apply?

Although there are examples of countries with good practice in the management of public lands, a range of problems are typically encountered. These include political interference in the management, allocation and acquisition of public land, policy reflecting the interests of powerful people, central government interests overriding local ones, a lack of clear policy orientation, poor information about public land and where it is located, the failure to protect public land from encroachment and land grabbing, and fragmented institutional arrangements. A major development issue is political corruption and the looting of state assets. This takes place at the highest level in government and should be distinguished from bureaucratic corruption in which lowly officials extract payments for undertaking services the state should provide free for its citizens. Political corruption takes the form of land grabbing and soliciting bribes for concessions, contracts, privatisation, legal judgements, helpful regulations, and favourable tax assessments. The extracted resources are used for the preservation of power and its extension. It is characterised by favouritism and patronage politics, which includes politically-motivated disposals of state property assets. State land concessions can be given to private companies in return for political funds and the

perpetrators can prevent the government agencies that should provide checks and balances from operating so that they thereby gain judicial impunity.

Zimmermann advocated the following policies for improving the management of public lands:

- Reforming the regulatory framework
- The regularisation of public land
- Land management rules for public property
- Fair and just compulsory acquisition
- Complementary governance support
- The improvement of institutional arrangements.

The regulatory framework requires a clear definition of public property and the classification or reclassification of property that ought to be public as being public lands. Public rights should be registered and there should be means of resolving disputes so that public land can be recovered. There should be fair, just and effective regulations for the disposal of public assets, compulsory acquisition, concessions, and land exchanges and these and the transactions that result should be transparent with public disclosure.

The current situation with public land is that there has been encroachment. In some cases this is because of lack of clarity about public land rights or the location of public land. It is important to regularise public lands. This means resolving existing cases of invasion and informal settlements. It means clarifying where public lands are located and what interests the state (and by implication the private sector) has in such lands. Public land and common property regimes need to be established with clarification of resource rights that provide security of tenure. This means clarifying what rights should be registered and which should be protected by other means. The formalisation of informal land rights and registration of customary rights often means redefining land rights in favour of the state. Zoning and land use regulation can be used as alternatives to ownership, and co-management models and participatory land-use planning can be used to secure resource rights in time and space.

The use of powers of compulsory purchase by the state is particularly problematic. The definition of the term “public purpose” is frequently very broad and includes using powers of pre-emptive purchase in support of private interests. Compulsory purchase is often used to further urban expansion when other means are available. The owners of expropriated property often have no right of appeal against the purpose, lack knowledge of their rights, and receive inadequate compensation. The acquiring authority often lacks the funds to make the acquisition so that compulsory purchase results in poverty for those whose land is expropriated as they fail to receive proper compensation.

Good governance in land administration cannot exist in isolation. Land administration professionals must be protected from power pressure aimed at coercing or persuading them to carry out activities that are improper, often on behalf of their superiors. They must also comply with codes of profession ethics in their own behaviour. These require a three-pronged attack in the form of investigation, prevention, and education, with complementary governance support from auditors, the judiciary, and anti-

corruption agencies. The key is the accountability of those making decisions and transparency in decision making. There is no universal model for institutional and organisational arrangements of state land. Options include an oversight body at a high level in government supervising government departments and agencies, specialised government agencies, decentralised management, special purpose co-operation with the private sector, and public private partnerships.

Improving the governance of public lands involves actions at national and international level. Governments need to show awareness and recognition of the problem. They need to develop explicit land policies and reform their regulatory frameworks into coherent structures. There must be accountability, benchmarks for performance, and transparency and auditing. There should be proper oversight. Information systems need to be improved and practice manuals and training developed. There is a role for civil society in holding the government accountable. The international community can create awareness and generate synergies between local governance initiatives and public sector reform. It could develop guiding principles for international co-operation based upon good practices, provide for exchanges of experience and knowledge, offer training, and promote research on specific topics. Public land matters need to be better integrated into the formulation of land policies, public sector reform, and fiscal reform that international donors press for.

Two of the case studies in particular looked at the relationships between the state and the occupiers of state land. Muhammad Bashir Nuhu (4.2) discussed the situation in Nigeria and the workings of the 1978 Land Use Act and Babu Ram Acharya (5.4) examined the problems arising in Nepal from encroachment on public lands.

Nigeria

The Land Use Act 1978 (LUA) was intended to provide a unified system of land law throughout Nigeria and to eradicate land speculation so as to protect the rights of all Nigerians to land. It was intended to enable Nigeria to cope with the pressures from population growth, urbanisation, and economic growth. It replaced a mixed system of statutory and customary land rights, with individual ownership mainly around Lagos. It replaced the different state land laws. Under the LUA individual ownership was disallowed and state governors replaced the chief, family head, or emir as the controlling force behind land. The LUA provides for Land Allocation Committees to dispense land through the granting of Certificates of Occupancy. This was intended to make title more certain. Ethnicity would then be less of a factor in urban areas making urban expansion easier. Large land holdings were to be broken up to facilitate the transfer of land for housing development and the rehabilitation of older indigenous areas in prime commercial locations in city centres. The reality has been different. The state lacked the will to implement it and the principles have not been upheld. Land hoarding and speculation has not been stopped. The acquisition and transfer of land and the issuance of consents is made problematic by bureaucratic processes and bottlenecks and by corruption. The rich are able to gain access to land. Local Government titles and Certificates of Occupancy are sometimes disregarded by state governments and treated as illegal, with those holding them being subjected to forced eviction without proper notice and with inadequate compensation. The bottlenecks and delays in handling applications need to be removed, fees reduced to allow greater investment, adequate compensation should be paid when property is compulsorily acquired, the Land Allocation Committees provided for in the legislation should be

created and made to function, registration systems simplified, the delays in the legal system tackled, and there should be investment in capacity building through training.

Nepal

Public land in Nepal falls into two categories: land owned by a government entity and used for a purpose such as a railway or government building; and land not owned by individuals but used by the public, such as waterways, uncultivated land, market places, sports grounds, and religious sites. Many different authorities and organisations have the legal responsibility to maintain records of public land and to protect it. Because of ambiguities, this work has not been very effective. There was more emphasis on the maintenance of records rather than the physical maintenance and management of public lands. Encroachment on public land in Nepal includes the clearance of forests, slum settlements on river banks and highways, and the turning of cultivatable public lands into farmlands. There are a number of forces behind this encroachment, including migration from rural to urban areas, poverty and landlessness, the open border with poor and heavily populated parts of India, and internal displacement as a result of the conflict between 1994 and 2006. Political instability has resulted in a lack of law enforcement and the political will to deal with encroachment and the reasons behind it, particularly landlessness. In the past governments have tended to legalise encroachment rather than provide the landless with alternative sources of income. Concern for the environment and the protection of public lands had a lower priority. An integrated land policy and land administration is needed with updating of the records of public lands. Devolving land administration to a more local level may help both maintain better records of public lands and also to protect them from encroachment.

Kiribati

A rather different relationship between the public and private sectors exists in Kiribati (7.3). Although 63% of land is state owned, 37% is customary land, including all the land in the Gilbert group of islands. The government leases customary land on 99-year leases for public infrastructure, paying \$2 million per annum in rent. Some of this land is surplus to requirements and can revert to the landowners, or be sublet for development. There is an issue of expired subleases and requests to the government for renewal as well as landowners wanting to move on to their own lands to reside on them. It is important to ensure that customary land holders receive an equitable return through transparent and accountable arrangements, when they make land available for commercial and public purposes. In particular there is a high level of migrant workers working abroad, whose remittances are important to the economy, and they retain land rights during their absence.

2.2 Transfers of land between the public and private sectors

Land is transferred between the public and private sectors. The state has powers of compulsory purchase giving it pre-emptive acquisition rights so that it can expropriate private land for public purposes. Issues arise as to whether the state uses its rights for public benefit or to benefit a favoured group, whether it follows fair processes and procedures in acquiring land, and whether it pays fair compensation.

Compulsory purchase

Ghana

In Ghana 78% of the land is owned by traditional authorities and 20% by the state (4.1). Compulsory purchase is governed primarily by the State Lands Act of 1962 with the 1992 constitution guaranteeing private ownership. The state can acquire land for public purposes but there must be prompt payment of fair compensation. In the event of the state no longer needing to use the land, the previous owners should have

the first option to reacquire it and return the compensation. However as, W Odame Larbi noted, there is a legacy of problems from the state's expropriation of private land dating from the era of military government. Due process of law was not followed with acquisitions not being formally completed. The result was that the state took possession of private land without paying compensation as this was not payable until the formal processes had been completed. This amounted to 79.6% of the land it acquired with \$65.6 million of outstanding compensation being owed on 573 sites. The result is agitation from communities against the public use of the land. Moreover, some of the uses to which the expropriated land has actually been put raise the question as to whether the purpose can really be regarded as being a public interest. These include the use of expropriated land by private bodies, for example, for the Accra Mall. Land in excess of requirements was often acquired and put to other uses, with only 54% of the acquired area being utilised by the state. There has been encroachment on state land on a massive scale by expropriated owners which can thwart the state's efforts to develop the land for public purposes like the supply of public services. Under the Land Administration Project policy, proposals are being developed to deal with the problem of past compulsory acquisitions and to develop a framework for future ones. Options include returning excess lands to their previous owners, the development of alternatives to monetary compensation, such as infrastructure and shareholdings in viable public institutions, charging for encroachments and using the money to pay compensation to previous owners, auctioning state enterprises to pay compensation, and the use of government debt to pay compensation. There is also the issue of inter-generational inequality in the payment of compensation with lump sums being paid to the current owners of customary lands whilst future generations experience a loss of their patrimony. This could be addressed by setting up trusts into which compensation is paid and managed by trustees, and the use of non-monetary compensation as an alternative to paying a lump sum.

Norway

Central to the calculation of the compensation to be paid to those whose land is acquired compulsorily is the capitalisation rate to be applied to the loss of income. Håvard Steinsholt (4.3) discussed how the Norwegian Supreme Court attempted to resolve this issue in a series of cases between 1981 and 2008. When agricultural or forest land was expropriated, it was difficult for the owners to invest in direct replacements. This raised the question of whether the capitalisation rate ought to be appropriate for the business lost or reflect the yield that could be obtained from alternative investments. The yield from agriculture is low and would result in a much high capital value for a given loss of annual income than would be the case if that of an alternative investment was to be used generating an equivalent income. In essence, the question is whether owners should be compensated by receiving an annual income equivalent to that lost or should they receive a capital sum equivalent to the value of the property taken. If the former, the issue is whether it is fair to ask owners to substitute an asset from a higher risk class to that being expropriated. The court cases arose because agricultural and forest land were taken together from particular owners raising the question of whether the same capitalisation rate should be used to assess the compensation for both types of property, even though yields on forestry land are lower than those for agriculture. A further issue is whether the rate should reflect inflation or the long term real rate of return. In personal injury cases a 5% yield has been used and this has become the standard rate in land acquisition as well.

Privatisation and Restitution

The state also from time to time divests itself of land. Land may be privatised but may also be returned to former owners through restitution. A number of issues arise over both privatisation and restitution. These include whether fair processes are followed. In the case of privatisation, the state has a fiduciary duty to secure the most favourable result – though not necessarily the highest price - for its citizens and taxpayers and not to allocate on favourable terms publicly owned resources to those it favours. The terms and process of disposal should be fair to all potential bidders as well as being in the interests of society as a whole.

Restitution is an attempt to bring closure to previous wrongs in the form of expropriation or forced sale without fair compensation by returning property to those who lost land or their heirs and successors. The issues that tend to arise with restitution concern the fairness of the process and compensation offered. There is also a question of the efficacy of returning property to its original owners and their heirs where this leads, for example, to fragmentation of farm holdings or their abandonment. Restitution involves restoring the status quo in property rights as they existed at a particular point in time, which inevitably raises questions about why a particular date was selected and the equity of restoring property to one group whilst refusing similar compensation to those who may have lost their property at a different time or under different circumstances. Ways have to be found of behaving equitably towards those who have a claim for their ownership rights to be restored and the current occupiers, who may have invested in improving the property.

East Germany

The reunification of Germany required the transformation of the ownership structure of land in the former German Democratic Republic (East Germany). New laws were introduced governing restitution, privatisation and the allocation of land. The BVVG was established in 1992 as the implementing agency. As Katja Dells showed (4.4) this provided a case study of how to create a private land market without disrupting production. State farms had to be liquidated and a new ownership pattern and farm structures created. Restitution was limited to land which had been expropriated by the GDR between 1949 and 1989 or forced sales under the Nazis between 1933 and 1945. This meant excluding property expropriated by the Soviet zone of occupation between 1945 and 1949. The rationale for this was that the properties expropriated during this period largely belonged to those who had fled into the British, American and French zones of occupation and who subsequently benefited from West Germany's post-war economic miracle. The properties expropriated between 1945 and 1949 were mainly transferred to ethnic German refugees who had fled the lands lost by Germany in the east and from Poland and Czechoslovakia. The restitution policy had to satisfy the human rights requirements of the European Convention on Human Rights including article 1 of Protocol which provides for the protection of private property. The process of restitution and privatisation also had to satisfy EU requirements not to give hidden state aid. BVVG is a self-funding limited company with surpluses going to the Ministry of Finance. It was governed by both public sector rules of governance and also by corporate governance rules for companies. These have provided for transparency and accountability and its structure kept it out of day-to-day politics. There were three stages in the privatisation process:

- Clarification of ownership and the stabilisation of emerging farm structures
- Indemnification for lost property and consolidation of the agrarian structure
- The selling of agricultural land within a fully developed land market.

Lease contracts and investment incentives whilst the ownership structure was being resolved kept the land in cultivation. Resale of land within 20 years was prohibited as was changes of use so that speculative purchases were restricted. Out of a portfolio of 3.2 million hectares in 1992, only 600,000 hectares is still managed by BVVG, and 3.3 billion euros has been transferred to the state budget.

Ukraine

Approximately 49% of Ukraine, including 25% of the agricultural land is in state ownership (4.4). In contrast to East Germany only 18% of state-owned agricultural land has been leased out but 36% has been distributed free of charge to bodies such as state-owned agricultural enterprises for their permanent use. This land is often under-utilised and its existence blocks adjustments. Official recording of land use may overlook informal uses and an updated inventory of state land and its registration is needed. The process of preparing lease contracts is a lengthy one and imposes high transactions costs on the lessees, which probably accounts for the limited amount of land leased out. Information on land available for leasing is rarely readily accessible to the public. There needs to be incentives in lease agreements to encourage investment and the creation of a dispute resolution board to resolve contractual disputes. The process of privatisation has been slower in Ukraine than East Germany. It does not appear to have resolved the difficult task of ensuring that land remains in cultivation and that occupiers maintain investment during the uncertain period whilst issues of ownership are resolved. The policy and legal infrastructure to facilitate it have not been developed to the same degree as in East Germany.

FYR Macedonia

FYR Macedonia, like Ukraine, has also had issues with the management of state-owned agricultural land and with its privatisation (6.3). There is approximately 200,000 hectares of state agricultural land, of which half has been leased out for periods of between 5 and 30 years. This generates 1.2 million euros per annum in rent but management costs amount to 350,000 euros (35% of revenue). It is estimated that the land could generate rents of 5 million euros per annum. There are problems from high management costs resulting from small fragmented holdings and lack of capacity in management. There is a lack of experience amongst managers, a need for clear policy, and for a sound accounting system. The expert recommendation is for selective sales with the state retaining mineral rights and 50% of the development rights, or for 99 year leases to be granted if sales are politically unacceptable. Public ownership provides opportunities for patronage and corruption. There is a heavy price to pay for continuing the present arrangements in terms of inhibiting investment and the loss of potential revenue.

Azerbaijan

Azerbaijan (5.2) has created the legal basis for a market economy. Land in state and collective farms has been distributed to those who worked for them and the debts of the enterprises liquidated, resulting in the creation of a large number of new co-operatives and collective entities. Houses and gardens were transferred free to the occupiers. Foreigners cannot buy land only lease it. Agricultural production increased by 28.6% between 2003 and 2007. However, 47.5% of agricultural land remains in the hands of the state and a further 28% is municipal land, with just 24% being private land. Part of the increase in production would appear to be due to subsidies for sowing and for fuel. In addition, agricultural producers have been exempted from taxes except the land tax since 1999 and enjoy favourable terms for leasing machinery.

Poland

Although Poland has undertaken privatisation of land since the 1980s, significant amounts of land remain in public ownership. Radoslaw Cellmer & Jan Kuryl (6.1) investigated where there were differences in the prices of land sold by the public to the private sector and between individuals, in other words, whether a dual market exists. They examined the sales of undeveloped plots for residential construction in Olsztyn between 2004 and 2007. The state and local authorities are obliged to sell through auction whereas individuals can sell through private treaty. They carried out an analysis of variance to see if there were statistically significant differences in the prices between the two types of sale. Their analysis showed that auction prices achieved by public bodies were higher than those in transactions between individuals. It is not clear why the prices achieved by public bodies are higher than for private sales. Cellmer & Kuryl do not explain the difference though they suggest that one possible explanation is timing as there is some evidence that auction prices lead price changes so that later private transactions do reflect these. The amount of land sold in private transactions was significantly greater than that at auction and the plots were on average larger so there may be a discount in the price per square metre for quantum. It is also possible that there was greater certainty in gaining development consent for the land sold by the public sector and this could have been factored into the bids. The evidence does indicate that public bodies did not dispose of land at prices below the market ones and that the reserve prices set look to be at least equal to market prices.

Cambodia

In Cambodia (5.3) the government owns all land that is not under royal property, individual possession, or common property. State land can be distributed for social and economic concessions or other purposes only after legal registration. This requires the identification and mapping of state land from one village to another in a commune, a process that is made difficult by past disruptions to state administration and the destruction of records. The process requires transparency and participation from all concerned institutions, local authorities and villagers with information being made available for consultation. The aim is to reach consensus on boundaries. Once classification has been determined, state land can be registered and distributed as appropriate.

Creating a land market in a former centrally planned is not an easy task. East Germany is a relatively successful example. In particular, the land remained in cultivation throughout the process and a significant sum of money was generated for public funds. Fragmented and uneconomic land holdings were avoided. The difficult political question of providing restitution for those families who lost property under the Nazis and the GDR but not during the Soviet occupation was navigated. This was possible because of a coherent legal framework, consistent policy for managing state-owned agricultural land, a transparent land market, and functioning cadastre and land registry. The advantage that East Germany had was that the land market infrastructure was already functioning in West Germany which has a high standard of governance in public life, so they did not have to be created out of nothing. Such structures can be created though this takes time. The advantage that East Germany had in being able to import a market infrastructure was accompanied by the development of suitable policies for privatisation and restitution. These are lessons that could be applied to other transitional countries.

2.3 Interventions by the state in private property

Private landowners rarely have complete freedom to do as they wish with their property. Rather, the normal situation is for private owners to have their property rights constrained and to be subject to some forms of government intervention. This may restrict what they are able to do, for example, the discharge of pollutants. Government can also compel owners to do things that they may not wish to, such as to hand over part of the rents they charge as taxes. The reason usually put forward in a market-orientated society for government intervention to limit the property rights of private landowners is market failure, which can be caused by a number of factors.

Externalities A common cause of market failure is the existence of externalities. Externalities exist when production or consumption causes a third party, not directly involved, either to bear an additional cost or to receive an additional benefit other than one directly related to their own consumption or production. They are the unintended incidental or collateral results of an otherwise legitimate action. Some externalities are harmful and impose costs, for example pollution and congestion, and governments often intervene to try to control them. Much spatial planning regulation is designed to limit the creation of harmful externalities. Other externalities can be beneficial and governments may seek to encourage their production. For example, a method of agricultural production may aid the survival of wild bird, animal or plant species or a building may enhance the landscape or be of cultural significance. Much government action on conservation is concerned with encouraging beneficial externalities or preventing landowners from carrying out actions that would lead to the curtailment of these externalities. When government takes steps to intervene in externalities, this has the effect of reducing the quantum of private owners' rights. Their bundle of rights is reduced whilst those of the state are increased.

Italy Francesco Marangon & Tiziano Tempesta (3.4) argued that market failure in the form of the consumption of non-renewable resources, such as irreversible urban sprawl, externalities, like traffic congestion and landscape degradation, public goods, and the irrationality of economic agents provide a justification for government intervention in the land market to correct inefficiencies. Unfortunately governments are often no better at managing natural resources than the free market. They can fail to act in the interests of the community, not obtain the right information, or prove to be unable to translate well-framed laws into effective implementation. In a case study of the Veneto Region, they showed that 40 years of economic growth has left the region deeply compromised in spite of attempts to plan development. Urban planning has failed to control urban sprawl or to reduce the gap between developed and marginal areas. The growth of urban areas was largely driven by developers pursuing increased rents, resulting in landscape degradation, soil consumption and traffic pollution. The public administration has tended to favour the interests of developers and economic growth rather than environmental protection.

Enrico Rispoli (3.1) argued that in Italy only in the last 30 years have legislators recognised the need for a land preservation policy. At first the public administration just had the task of safeguarding public hygiene and environmental wholesomeness, such as air and water quality. Later on, whilst regulating specific sources of pollution, legislation identified the responsibilities, competencies and control systems necessary for environmental protection. It has been finally recognised that it is a fundamental right for the whole community for the environment to be protected. The enjoyment of

the environment by one individual is constrained by its concurrent enjoyment by other members of the community. However, human well-being depends upon development, so government cannot focus its action just on preservation. Ecological and socio-economic benefits must be balanced.

Daniela Sandroni (3.3) noted that laws to protect the landscape and antiquities dated back to 1939 but had been strengthened by the 2004 legislation on cultural heritage and landscape. Approximately 50% of the land is subject to landscape controls. Article 9 of the constitution treats the landscape as a cultural asset. There is a challenge from illegal activity, such as building without permits and of recovering jeopardised areas. Protection requires knowledge and cadastral can act as repositories of information.

The Prisoners' Dilemma Game

Another form of market failure occurs when it is in the best interests of all participants in the market to co-operate but not all are willing to do so. In such a situation each participant is obliged to pursue his own interest in isolation but this may lead to a worse outcome for all than if each collaborated with his neighbours. Such situations are often described using the Prisoners' Dilemma Game. In this game two prisoners are arrested and accused of a crime. The ideal outcome is for both to agree to deny the crime and corroborate each other's alibi. However, they are interrogated in separate cells so that collaboration is impossible. Each is offered a deal by their interrogators: confess to the crime and testify against the other prisoner and receive a low prison sentence; or deny the crime and receive a higher sentence when convicted on the basis of the evidence supplied by the other prisoner. Since ensuring the collaboration of the other prisoner is impossible, the least bad outcome is to confess and receive a lower sentence when clearly the best outcome for both is to remain silent and go free. However, such a policy is extremely risky as it may result in a higher sentence if the other prisoner agrees to testify. This game is often applied to explain why blight can develop in urban areas even though it is against the interest of the landowners. Each property generates externalities for its neighbours – beneficial if well-maintained and harmful if in a state of disrepair and neglect. The ideal outcome is for all owners to maintain their properties to a high standard, which will result in higher values for all the properties. However, if an owner is rational, he will maintain his property in a slightly worse state than that of his neighbours, thus minimising his own costs whilst gaining the benefit of his neighbours' externalities. Co-operation in such a situation would produce the best outcome for all but can be impossible to achieve since the owners are not in a position to enforce the co-operation of those who would like to be free riders. Rationally each acts in his own interests but the result is second best. Government, however, can intervene and secure co-operation. It can encourage actions that benefit others, for example, through subsidies, and prevent self-interested actions that can act to the detriment of all.

Land Consolidation

A common situation in which government intervenes to encourage co-operation is in land consolidation. The current pattern of land holding may be for units that are too small to be economic and fragmented. Consolidation would be in the interests of all but how can it be achieved? The conventional land market in which some owners buy out others and create a more rational land holding structure can fail if owners are reluctant to sell. There may be emotional attachments to the land but also the fear that by selling out now they will achieve a market price that is much lower than what could be achieved once the better land holding structure has been realised.

Government can work to achieve co-operation between owners so that land is exchanged to produce a better structure without anyone suffering losses and those who wish to sell are able to do so at prices that reflect the post-consolidation values.

Hungary

In Hungary land consolidation is carried out by the National Land Fund (6.4). This was created in 2001. It is a holding company answerable to the Ministry of Finance. It is charged with promoting the development of a rational land ownership and rental system. It seeks to maintain in cultivation land that is managed on a transitional basis and that the utilisation obligations incurred in sale contracts are fulfilled. The state owns approximately 2.5 million hectares of farmland and forests. Its functions include managing auctions for the sale of land, tenders of land for leasing, and managing land in state control. Land consolidation in Hungary obtained a bad reputation as a result of collectivisation during the Communist period. The transfer of land to private ownership has resulted in land fragmentation. As uncompetitive industries shed labour during the transition period, many unemployed industrial workers went back to trying to make a living off the land as social security systems proved inadequate. Voluntary land consolidation has been supported since 1994, including the provision of finance to allow for the purchase of scattered parcels. An important part of the National Land Fund is to persuade elderly owners to sell up to allow a more rational farm structure to develop. Since 2004 it has bought up land from elderly farmers by offering annuities in exchange. It has bought 54,000 hectares from 19,000 owners, paying on average an annuity of 120 euros per month. This is funded through sales of land. Whilst the sums may sound small, for many former owners they represent a significant proportion of their income and allow the release of the equity tied up in the land for owners whose incomes are often so low that they have problems in meeting utility bills.

Public goods

A further reason for government intervention in private property markets is the existence of public goods. These are goods that are best produced collectively. Technically, pure public goods are ones which can be said to be non-rival and non-excludable. A good is non-rival if one person's consumption does not diminish that of another. In other words if the service is provided for one, it is provided for all, such as law and order or public health. A good is non-excludable if it is either impossible or not worthwhile to exclude those who refuse to pay. Government can compel those who refuse to pay by levying taxation. Many publicly produced goods are not strictly public goods but often have features that are a mixture of public and private goods. They may be merit goods that provide private benefit but also benefits others, so the government encourages a higher level of consumption than individuals would otherwise choose. The problem the government faces is that the production of public goods needs to be financed. Whilst this can be done in different ways, it is usually achieved through the imposition of taxation. Many publicly produced goods provide benefit for a local community and so are produced by local authorities. This raises particular problems as many of the taxes that governments use to finance expenditure are difficult to make function efficiently in a small area, for example, sales, profits and income taxes. There is no reason why central government should not fund local services through grants financed from central taxes though this may reduce local autonomy and responsibility. However, real estate taxes can be used as real estate is immobile, the taxes are difficult to evade, and ownership or occupancy of real estate can be argued to reflect ability to pay.

Poland

Sabina Żróbek (6.4) discussed how real estate taxes are used to support local authorities in Poland. Table 6.4.1 shows how the revenue from real estate is divided between central and local government. The real estate tax is levied on the area and depreciated value, that on agricultural land on the area and type of land, and the forest tax on the area and type of trees. These taxes typically contribute 20% of commune budgets, with a further 20% coming from other local taxes and real estate charges. Real estate provides stable revenue. However, the tax revenue is primarily determined by the area rather than the market value of the properties. There are also discrepancies between the information in the cadastre and the real estate tax register, for example about changes in the use of buildings or land, with owners being slow to declare changes that increase the tax base. Communes are slow to update land values. They also are tardy in collecting rents from communal flats and in establishing charge rates for changes in land use when they adopt development plans. Some communes are actively pursuing the sale of apartments with discounts of between 50% and 99% of the market value. They could increase the revenue they obtain from their own sources by integrating the data they have on real estate from the different sources, engaging in public-private partnerships to develop infrastructure and services, developing a real estate management strategy, and making publicly available valuation and sales prices to improve market transparency.

Table 6.4.1 State and Communal Revenue from Real Estate in Poland

Revenue of the state	Revenue of communes
1.1. Income tax	2.1. Real estate tax
1.2. Court fees	2.2. Agricultural tax
1.3. Notaries fees	2.3. Forest tax
1.4. Charges and fees for excluding land from agricultural or forest production	2.4. Tax on donations and inheritance
1.5. Annual charges for durable management	2.5. Tax on civil law transactions
1.6. Annual charges for the right of perpetual usufruct of state-owned land	2.6. Income tax (% share in the revenues of the central budget)
1.7. Charges due to renting state-owned property	2.7. Planning charges
1.8. Charges due to lease of state-owned property	2.8. System development fees (adjacent fees)
1.9. Leasing instalments due to leasing state-owned property	2.9. Annual charges for durable (long term) management
1.10. For establishing the perpetual register	2.10. Annual charges for the right of perpetual usufruct of community-owned property
	2.11. Charges due to renting communal property
	2.12. Charges due to lease of communal property
	2.13. Leasing instalments due to leasing communal property
	2.14. Charges for failure to build-up land purchased from the commune within a set period of time

3 IMPROVING THE EFFICIENCY OF PUBLIC LAND MANAGEMENT

The OECD countries have problems with the management of public land. However, they tend to be different from those discussed in the previous section. They tend not to have serious governance problems in that that state is accountable to its citizens and

its activities are relatively transparent and open. Governments accept human rights and have generally signed up to regional human rights conventions that are enforceable by their citizens through the courts. The rule of law prevails so that the actions of government are predictable and consistent. Strong controls over public finances and contracts keep serious corruption, theft of public assets, and abuse of office under control. Public officials are generally appointed and promoted on the basis of merit. However, these controls do not necessarily mean that public management is efficient.

The New Public Management

Richard Grover (2.3) argued that controls over unwanted behaviour can have perverse effects. By stifling initiative, innovation and the pursuit of economy, they may result in more costly and less efficient public services. The public sector can often produce what it thinks its citizens ought to have rather than what they want or need. The production of public goods and services may serve the interests of the producers rather than the consumer citizens. A solution to this problem adopted by countries like Australia, Canada, Netherlands, Sweden, New Zealand, UK, and USA is to adopt the policies often described as the New Public Management. Central to these is giving greater freedom to front-line staff to determine *how* public services are delivered whilst retaining central controls over *what* is to be delivered. Front-line staff have greater control over budgets and resources, including real estate but are given targets which they must achieve. They have incentives for doing so not normally available to workers in the public sector but less job security and can be disciplined more effectively for failure. Front-line staff can question whether resources should be put into real estate assets or other areas that are better suited to achieve their targets. There is pressure on managers to use real estate assets efficiently which means that there is a need for coherent strategy for them, including what assets are needed, acquisitions and disposals, and whether they should be owned or leased. Emphasis tends to be placed upon activities and access to land rather than its ownership. Real estate may be seen as a non-core activity that can be contracted out. There are performance targets set for real estate, such as space and cost standards and greater customer orientation of public service facilities, for example redesign to make them more user-friendly.

Accruals accounting

These changes have been accompanied by a move to accruals accounting in the public sector. Accruals accounting requires public bodies to compile their accounts in a similar way to private sector companies rather than to use the traditional cash accounting systems employed in the public sector. Under accruals accounting income is matched against cost of earning it. This means accounting for the use of fixed assets like real estate so that full economic costs are charged for their use, including depreciation and amortisation. Charging public bodies the full economic costs of real estate assets, together with empowering the front line staff to determine which resources they will use to achieve their targets, results in a search for most efficient means of providing real estate assets. Underperforming assets are rooted out and there is a debate as to whether assets should be owned or leased. There is a convergence of the management approaches of the public and private sectors.

New Zealand

Trevor Knowles (7.2) provided a case study of public land management in a country which has generally been regarded as being at the forefront of developments in the New Public Management and accruals accounting, namely New Zealand. Acquisitions and disposals of real estate by government bodies is through Land

Information New Zealand (LINZ). Once acquired for the purpose for which it is needed, assets are held by the relevant department with their property managers managing their asset on a day to day basis. The administration of land by central government is on functional lines. The Department of Conservation (DOC) is the largest state landowner with approximately 8 million hectares of land (approximately 44% of New Zealand's land area) including national parks, reserves and conservation areas. The second largest is the Commissioner of Crown Lands, which is within LINZ, and administers 2 million hectares mainly of perpetually renewable leases of pastoral land in the South Island high country. A voluntary process of tenant review aims at protecting land with significant inherent value with such land being restored to full government ownership under the DOC and the balance being to enfranchise with a freehold being granted to the lessee. The remaining land is for operational purposes, such as roads and schools. If an asset becomes surplus to requirement it can be used by another department, offered back to the former owners, used in a treaty settlement with the Maori, or sold on the open market. Private sector companies and individuals are accredited to carry out negotiations for the acquisition and disposal of state assets, with scrutiny and quality assurance by LINZ. Since 1998, LINZ staff no longer negotiate the acquisition of land from landowners. Whilst this system has the advantage of separating accountabilities and responsibilities, it does mean that the chief executives of acquiring or selling departments do not get to make decisions about the assets they need or the terms of compensation in acquisition or sale. An important part of LINZ's work is setting standards and developing a documented decision-making process to minimise litigation from aggrieved private owners. LINZ was also responsible for developing and manages the electronic system for title registration and access to survey and title information. Regional and local councils have operational properties. There is openness and transparency with public bodies being accountable to their electorates.

Public land records

One of the problems often encountered in the management of public lands is the poor quality of data and of records about public land and land rights. For example, in England and Wales (part of the UK) 59% of the land is registered and most of the unregistered land is public land belonging to central or local government. An important issue is how to improve the records of public land both in terms of the description of rights and the locations of the properties.

Italy

Carlo Cannafogli (3.2) raised the question of the function of the Italian cadastre. Was it to support taxation or land administration? When the Italian cadastre was created, land taxes raised 90% of government revenue. With the decline in relative importance of this source of taxation, the functions of the cadastre have changed with new priorities being reflected in service level agreements. The information has the potential to support policies to conserve historical or culturally significant buildings and sites.

Canada

In Québec many different government departments and bodies grant or acquire rights in public land, mainly in connection with natural resource exploitation (7.1). They also impose constraints on land use. Public lands are 92% of the surface area of Québec, with more than 300,000 active rights. The information on rights granted used to be recorded in different registers kept by each department and public body, which hindered coherent action. Sometimes it resulted in the granting of conflicting rights. The Ministère des Ressources Naturelles et de la Faune (MRNF) launched a process to

modernise the system of registering rights in public land. This led to the establishment of the Register of the Domain of the State, a public register providing up to date and accurate information, accessible via the internet. The register contains a graphic component showing the object of the right and a description stating the right concerned. Information that was previously only available as a result of an arduous search capable of being executed by a handful of experts has become publicly available. Achieving this required the support of all government departments who had to agree on the way in which data on existing rights would be prepared and loaded on to the system and on the procedure for registering new rights. MRNF had to help some issuers of right to adapt their computer systems. The new system also led to changes in the way in which land surveyors in private practice conduct surveys of public land and agreement had to be reached with them. Since 2000 the cadastre, land register and office of the Surveyor General have been part of a single organisation within MRNF, which involved transferring the land register from the Ministry of Justice.

Korea

The changing demands on state land call for more integrated management systems and more coherent work processes. Public land in Korea (5.1) can be state-owned or owned by a local administrative body and collectively this amounts to about 23% of the land area. The land is managed either by a local administrative body or the Korea Asset Management Corporation (KAMCO) or Korea Land Corporation (KLC). Land which is not needed is sold or leased through KAMCO, which also resolves non-performing loans and collects tax assessments that are in default, including disposing of confiscated assets. In 1994 central government changed the public land management policy from simple management and conservation to active management. This required in-depth analysis of current data and the development of a land information system. The complexity of the current administration can be reduced and the management of public land made more effective through the use of Business Process Management (BPM). This can eliminate unnecessary procedures by providing a better way of modelling the decision support system. Business processes are collections of consecutive or simultaneous work activities designed to produce a specific output for consumers. BPM designates a set of techniques to define work activities. Processes can be primary life cycle ones, which cover the principle tasks, support processes such as quality control and documentation, or organisational and concerned with the management of the organisation. Employees follow a pre-defined process and avoid possible errors. Each activity has its own inputs and outputs and permits the employee to handle in time what must be done in the process. It provides transparent work processes and reduces the duplication of work and roles within an organisation. The analysis follows the classic quality improvement cycle of analysis, designing improvements, deployment, and monitoring. As the processes take place electronically, a reform plan for the IT environment is an essential part of the process of improvement. Youngho Lee described how BPM has been used in Korea to organise the process of disposing of state land through sale.

4 CONCLUSIONS

4.1 Grappling with the problem of what public land is: the functions of state land

Part of the problem in trying to improve the efficiency with which state and public lands are managed and the quality of governance of public land is that there are many different types of public land. Management policies that may be appropriate in one context may not necessarily be effective in another. Attempts to improve the governance of public lands raise the question of what governance is intended to achieve. The answer is likely to differ for different types of public land.

One might suggest that state land exists for the following reasons.

- To deliver public services individuals cannot provide for themselves, such as defence.
- To generate an income from rents and charges on investment properties to support the state or municipal budgets as an alternative to raising money through taxation.
- To act as custodian of common property resources on behalf of society to protect environmentally or culturally sensitive sites and to exercise collective ownership responsibilities over those resources that anyone can make use of such as lakes, rivers and the sea.
- To act as custodian of trust lands on behalf of a group, such as indigenous peoples.
- To be the owner of an important means of production in situation in which private ownership is socially or politically unacceptable.

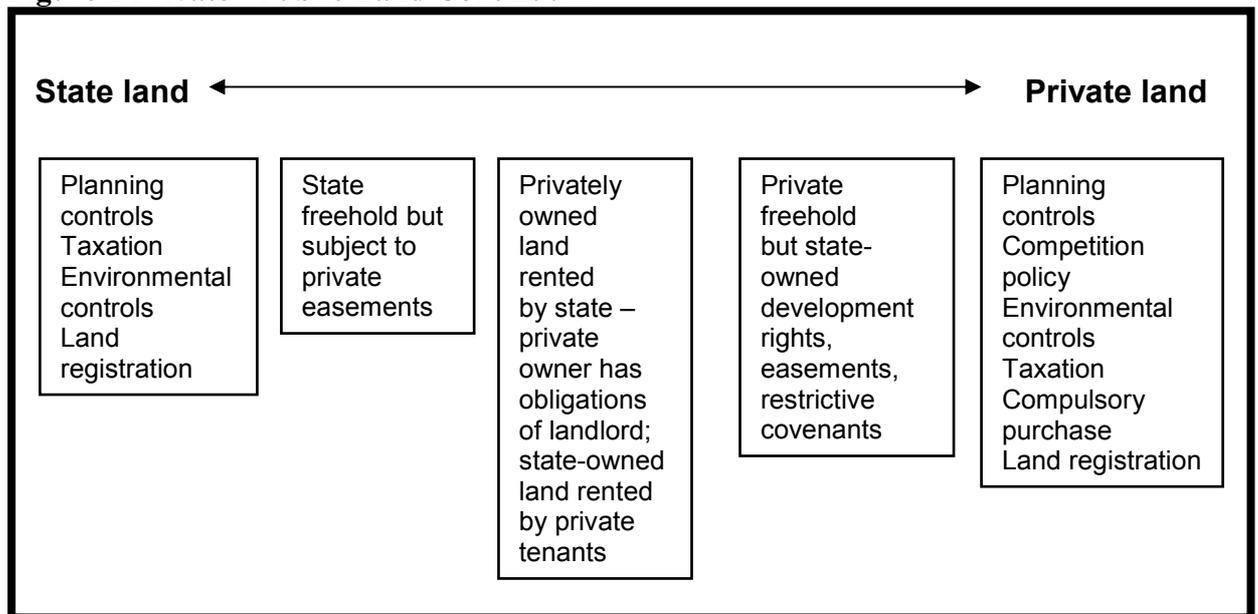
Different objectives are likely to require different policies and tools, and are likely to give rise to different issues. The management issues of operational land used for the production of public services, like defence, education or healthcare are likely to be different from those of land for which the state is acting as a custodian either on behalf of society as a whole or a particular group. The question of how to maximise the income from rents to support central or local government budgets requires different solutions than where the state is the landlord to impoverished groups trying to earn a livelihood on land that has been designated as state land. It is a truism to say that good management requires clear objectives. It is likely that governments throughout the world will have different objectives for different parts of the public lands. These may not be very well articulated or the management implication thought through.

4.2 Grappling with the problem of what public land is: the different land rights of public lands

Part of the problem of improving the management of public land is that the model used is often one that sees public land as being a physical entity over which the state has dominium or absolute ownership rights. Whilst in some circumstances this will be so, such as situation is probably best thought of as being a limiting case. Rather, a more usual situation is for the state to possess rights over certain areas of land. To make use of the bundle of rights model, the state has rights over certain pieces of land but the quantum varies. State rights are not necessarily exclusive and others may have rights over the same areas of land.

Figure 1 illustrates the continuum between public and private land using the bundle of rights model. It suggests that at one extreme there is land in which there are predominantly private rights. However, whilst private owners enjoy most of the benefits from ownership and predominantly exercise control over it, it is not normal for private owner to have absolute and exclusive ownership rights. The state intervenes in property markets in the public interest. For example, because the way in owners use their land can impose harmful externalities on others, the state may introduce spatial planning and environmental controls, for example, to limit their ability to discharge pollutants. Although land rights are three dimensional, states do restrict these, for example, by taking possession of over-flying rights. The state can compel land registration even though owners may prefer privacy. It also reserves the right to compel private owners sell their land to it against their will for public purposes. It can limit the power of private owners to sell their property to whoever they wish under competition policy. For example the owner of a supermarket chain may be compelled to sell undeveloped land to a rival to prevent it from creating a local monopoly.

Figure 1 Private - Public Land Continuum



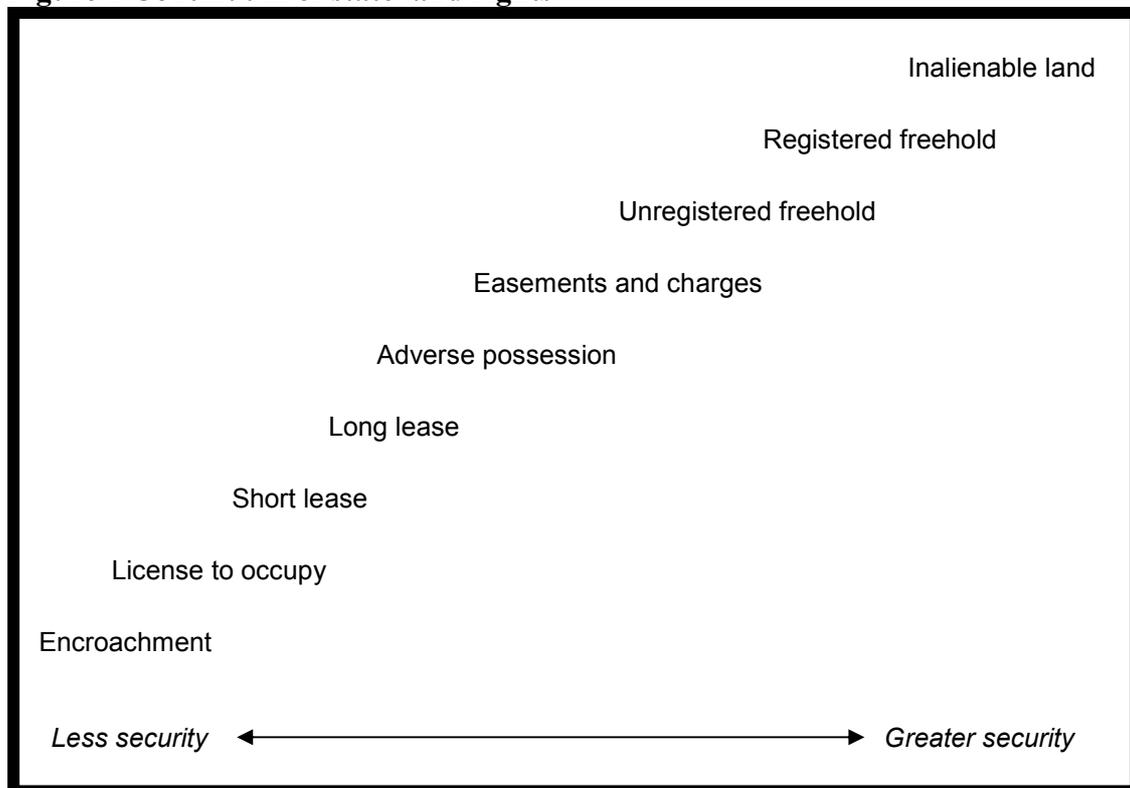
The state also may not have absolute ownership over public lands. Governments may be subject to spatial planning, land use and environmental controls, may have to register public lands, and may pay real estate taxes on their land. In other words governments may be subject to the same laws as any other owner. Between these ends of the continuum private land is increasingly subject to public land rights and private persons have increasing rights over public land. For example, the state may expropriate mineral rights but not surface rights. If private owners are obliged to obtain planning consent for development, then, in effect, the state has nationalised development rights.

The state does not necessarily own the land it makes use of. Commonly real estate assets are rented from private owners. A private owner can have obligations to the state as its landlord and the state has obligations as a tenant, such as paying rent and

not diminishing the rights of the owner. Similarly the state may let public lands to private tenants and have obligations as a landlord.

The implication of unbundling the bundle of state land rights is to recognise that the state may have different types of rights in land. Figure 2 seeks to analyse the range of public land rights in terms of the security of tenure that they offer the state. The idea is borrowed from UN Habitat's continuum of rights between legal or formal rights and illegal or informal rights. At one extreme it is likely that many governments will have land that they regard as being inalienable that they could not dispose of under any conceivable circumstances. Within a Torrens system, unregistered freeholds are less secure than registered ones since there is a theoretical possibility of another claimant and the real possibility of losing land through a successful claim for adverse possession. Easements and charges give the state claims over private land but not control over it. It is also possible for the state to claim private lands through adverse possession. Leases and licenses give the state access to land for fixed periods of time as a tenant or licensee. This may be desirable if a government expects the pattern of demand for public services to change over time and does not want to find itself burdened with assets for which it no longer has a use or which may have little invest value. For example, the growth of internet access and the use of money transfers through the banking system have reduced the need for public access to offices in areas such as land registration and social security. A lease can provide sufficient time for the tenant to recoup any fixed investment he makes in the asset. As some of the papers above show (eg 4.1) the state can be a trespasser encroaching on private land, for example, by using powers of compulsory purchase to acquire land but failing to follow due process or paying compensation.

Figure 2 Continuum of state land rights



Different types of land right ought to result in different management approaches. The answer would seem to be yes. There is a great deal of difference between being a tenant of someone else's real estate assets and owning them oneself. The owner is faced with issues about obsolescence and how to maintain the long term value of the asset that a tenant is not concerned with. The issues of managing an unregistered freehold, which is at risk from trespass and adverse possession claims from intruders, are different from those of managing a registered freehold in a Torrens system which provides close to an absolute guarantee of title.

4.3 Improving the management of public lands

If the problems of improving the management of public lands are diagnosed as being primarily about poor management, then there are a range of technical solutions that can be adopted. These fall into four main areas:

- Clearer management objectives
- Improving competence and capacity
- Improving the recording of data about public lands
- Better management systems
- Better management techniques and processes
- Improving incentives for employees.

There is no question that there are technical problems with the management of public lands in most countries. There are a number of bodies that have drawn up guidance on how to improve its management. This usually involves a combination of ensuring that there are clear objectives and that policies relate to the objectives set; that capacity is improved, particularly through the training of personnel; that data handling is improved, particularly that state land rights are accurately recorded and reflect the real situation on the ground; that reward systems encourage employees to achieve the objectives set by governments; and by having management systems, processes and techniques that achieve the objectives set. If the problem of managing public lands is seen as being primarily a technical issue, then the key problems to be tackled will be in areas such as:

- The recording of land rights and the location and boundaries of properties
- Defending public lands from encroachment
- The management of tenants and occupiers of public lands.

The importance of technical solutions should not be ignored. However, technical solutions are fine if governments are committed to doing the right things. A recurrent theme in the papers at the seminar was that governments do not always behave well. Indeed at the heart of many of the problems in managing public lands is governance. Those in control of state lands – and they may be people unconnected with government who have usurped rights over public lands – may not acknowledge that public lands should be used for the benefit of citizens. Rather they may view public assets as ones to be used for private benefit, for example, for the personal enrichment of an elite or to ensure that those in government can preserve their hold on power. For them the state is not seen as being a duty bearer, nor are its citizens seen as being right holders whose human rights should be protected. At issue is to make governments accountable to their citizens and to be responsive to their needs. Government need to be transparent, consistent and impartial, and to behave with integrity. The land

policies pursued should be equitable and the public should be able to participate in their formulation. However, the management of public lands is unlikely to be the only area of government in which poor governance is experienced in countries whose governance is weak. The importance of public lands to the poor means that it is a critical aspect of governance. Where governance is weak, change can be difficult to achieve as public lands and their control is an area in which social conflicts between different groups about access to resources and power are played out.

5 List of papers and presentations

Session 1: Welcome

- 1.1 Stig Enemark *Land Governance: Focus on State and Public sector Land Management*

Session 2: FAO

- 2.1 Mika Törhönen, Paul Munro-Faure & David Palmer *FAO work on good governance and in state and public land management*
- 2.2 Willi Zimmermann, *Effective and transparent management public land: Experiences, guiding principles and tools for implementation*
- 2.3 Richard Grover, *State and Public Land Management: The Drivers of Change*
- 2.4 Jennifer Franco, *A Framework for Analyzing the Question of Pro-Poor Policy Reforms and Governance in State/Public Lands: A Critical Civil Society Perspective*

Session 3: Italian Experiences

- 3.1 Enrico Rispoli, *Land management in relation to the European agreement about the landscape: Social needs, economic activities and the environment*
- 3.2 Carlo Cannafogli, *The Italian Cadastre: Institution of support to real estate taxation and sustaining land management and the environment*
- 3.3 Daniela Sandroni, *Landscape planning in Italy: From conflict to Co-operation*
- 3.4 Francesco Marangon & Tiziano Tempesta, *Economic aspects of correct land management*

Session 4: African and European Experiences

- 4.1 W Odame Larbi, *Compulsory land acquisition and compensation in Ghana: Searching for alternative policies and strategies*
- 4.2 Muhammad Bashar Nuhu, *Public land policy - New Trends: Challenges in Nigerian institution frameworks for state and public sector land management*
- 4.3 Håvard Steinsholt, *Setting capitalisation rate right: Discussions and decisions of Norwegian Expropriation Courts*
- 4.4 Katja Dells, *Management and privatisation of state-owned agricultural land – Case studies from Eastern Germany and Ukraine*

Session 5: Asian Experiences

- 5.1 Youngho Lee, *Process management for effective disposition of state land in Korea*
- 5.2 Elshad Khanalibayli, *Management and privatisation of state and public land in Azerbaijan*
- 5.3 Sareth Boramy, *State land management in Cambodia: Visions versus practice*
- 5.4 Babu Ram Acharya, *Government and Public Land Management in Nepal*

Session 6: Transitional Experiences

- 6.1 Radoslaw Cellmer & Jan Kuryl, *The effect of large property owners on the real estate market and local development*
- 6.2 Fülöp Benedek, *The National Land Fund and its role in land policy*
- 6.3 Kiril Georgievski & Simon Keith, *Support for preparation of proposal on state land management in rural areas of Macedonia*
- 6.4 Sabina Žróbek, *The influence of local real estate management policy on community budgets*

Session 7: North America, Pacific & Australasian Experiences

- 7.1 Daniel Roberge
- 7.2 Trevor Knowles, *State and Public Sector Land Management in New Zealand: Outline of the background and administration process*
- 7.3 Mele Rakai, *State and Public Land Management – a Pacific Perspective*

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