



Regional Study on Land Administration, Land Markets, and Collateralized Lending

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Table of Contents

Executive Summary	i
Chapter 1: Linking Land Interventions with Strategies for Poverty Reduction and Economic Growth in East Asia	1
The Rural Sector	1
The Urban Sector.....	2
Fiscal Reform.....	2
The Financial Sector	2
Recommendations	2
Chapter 2: Land Administration: In Search of Security and Service.....	9
Evaluating the Effectiveness of Land Administration.....	9
Missing the Urban Poor	12
Issues in the Legal Framework for Land Administration.....	13
Preventing and Resolving Conflict.....	16
What the Bank Is Doing.....	17
Institutional Development.....	17
Land Titling and Registration: Can Tenure Security Be Extended More Rapidly and at Lower Cost?	19
Service Delivery.....	20
Taxes and Fees.....	21
Land Valuation.....	22
Conclusions	23
Chapter 3: Land Markets: In Search of Efficiency, Equity, and Financial Stability	24
Meeting the Challenges of Market Allocation of Land in Support of Agricultural Intensification, Urban Development, and Financial Deepening ..	24
Inefficient and Inequitable Agricultural Land Markets	26
Urban and Peri-Urban Land Markets: Rebounding from Crisis and Preparing for Demographic Explosion	28
Avoiding Overheating Financial and Property Markets	29
Conclusions	30
Chapter 4: Land and Social Justice: Land Reform, Customary and Indigenous Land Rights, Women's Land Rights, and Land in Postconflict Reconciliation	32
Land Distribution.....	32
Country Approaches to Land Reform.....	33
Customary and Indigenous Rights	37
Women's Rights to Land in East Asia	40
Postconflict Reconciliation.....	42
Bibliography.....	44

List of Tables, Figures, and Boxes

Table 2-1	Registration of Land Parcels in Selected East Asian Countries
Table 2-2	Unregistered Land Transactions in Selected East Asian Countries
Table 2-3	Informal Settlements in Selected East Asian Cities
Table 2-4	Legal Framework Governing Land Ownership in Selected East Asian Countries
Table 2-5	Problems Associated with State Land Allocation in Selected East Asian Countries
Table 2-6	Forest Domain Legal Issues in Selected East Asian Countries
Table 2-7	World Bank Policy and Legal Activities in Selected East Asian Countries
Table 2-8	Institutional Characteristics of Land Administration in Selected East Asian Countries
Table 2-9	Institutional Development Activities in World Bank Land Projects in Selected East Asian Countries
Table 2-10	Average Time Required to Transfer a Property in Selected East Asian Countries
Table 3-1	Mechanisms for Leasing or Buying Agricultural Land in Selected East Asian Countries
Table 4-1	Gini Coefficients for Distribution of Land Ownership in Selected Countries in Asia and Latin America
Table 4-2	Documents Issued under the Thai Land Reform Program
Figure 1-1	Country Groupings of Land Systems
Box 4-1	Resolving Postconflict Land Conflicts in Cambodia

Acronyms and Abbreviations

ARC	Agrarian Reform Community
CARP	Comprehensive Agrarian Reform Program
IMF	International Monetary Fund
IPRA	Indigenous Peoples Rights Act
NGO	nongovernmental organization
PREM	Poverty Reduction and Economic Management
PRSC	Poverty Reduction Support Credit
PSIA	Poverty and Social Impact Analysis

Executive Summary

1. This study has four main objectives. It analyzes land policy, land administration, and land markets in the East Asia and Pacific Region; assesses what World Bank support to the land sector has achieved in the region; defines the remaining agenda to guide a medium-term regional strategy that will set the direction for the next generation of land and related projects; and identifies linkages between land administration and management and other sectors.
2. The study is based primarily on examination of 20 years of Bank experience in land projects in Cambodia, Indonesia, Lao PDR, the Philippines, and Thailand and Bank research, technical assistance, and policy support to the land sector in China and Vietnam. The Bank-supported projects form two clearly distinguishable generations of projects. The first generation of projects included the three phases of the Thailand Land Titling Project (1984–2002), the Indonesia Land Administration Project (1995–2001), and the first Lao Land Titling Project (1996–2004). The second generation of projects includes the Cambodia Land Management and Administration Project (2002–2007), the second Lao Land Titling Project (2003–08), the Philippines Land Administration and Management Project (2002–08), and the Indonesia Land Management and Policy Development Project (2003–08). Recently, Bank support to the land sector was extended to include Poverty Reduction Support Credits (PRSCs) (Vietnam) and Poverty and Social Impact Analyses (PSIAs) (Cambodia PSIA on the Social Land Concessions).
3. While evidence shows that land titling has increased access to credit, no formal linkages were established between Bank support to financial sector reform or rural credit and support to land administration projects. Attempts to link the land sector with the forest sector were recently made in the Vietnam Forest Sector Development Project, which will issue land use certificates to project beneficiaries. Consistent development of policy frameworks across land and forest sectors remains a challenge for the region, however. Linkage to urban development is also uneven. Several projects in the region cover land titling in urban areas, but few linkages exist between land initiatives and housing development, urban and peri-urban management, and development control.

The Importance of Property Rights for Poverty Reduction and Growth

4. The land system has both direct and indirect linkages to propoor growth. The first direct linkage is through increased agricultural efficiency. Secure property rights increase agricultural productivity, through incentive and investment effects. Systematic land titling stimulates these effects and tends to favor poor households that would not otherwise be likely to document their land rights. Well-functioning land markets can enable transfers of land to more productive households or firms and the distribution of underutilized land to efficient users, although the dynamics in agricultural land markets depend critically on the operation of input and output markets. In urban and peri-urban areas, land management also has direct links to growth by facilitating the expansion of serviced areas and the upgrading of existing ones. It is also a fundamental element for establishing efficient and effective housing finance schemes.
5. Indirectly, land administration promotes propoor growth by expanding credit based on the use of land documents to collateralize loans. Land and attached buildings represent 45–75 percent of the total value of assets in most economies. The potential equity available from their collateralization is thus enormous—and largely unused in the region. Much of this value is in residential, primarily urban, properties.

6. A second indirect linkage is through property taxation, an essential element for fiscal decentralization. Property taxation also discourages underutilization of land prevent land speculations.
7. Finally, land administration is a fundamental element of natural resource management. Land tenure arrangements are critical for forest management, soil conservation, and coastal zone and wetland protection. Cadastral mapping is also used as a base map for land use planning and development control. Strengthening these linkages to propoor, ecologically friendly growth are the main justifications for projects in land administration and management. Taking advantages of these linkages throughout the region would allow land resources to be used more effectively to reduce poverty.
8. The Bank-supported Land Titling Program in Thailand (1984–2002) demonstrated the positive impact of land titling on agricultural investment, productivity, and credit provision. It formed the basis for the design of other first-generation projects in the region, such as the first Indonesian Land Titling Project and the first Lao Land Titling Project. Like the project in Thailand, these projects emphasized providing titles.
9. The second generation of land projects recognized that increasing the poverty reduction impact of interventions in the land sector in countries that do not share Thailand’s longstanding legal traditions and relatively high institutional capacity in the land sector require much greater emphasis on policy development, institutional development, conflict resolution, and anticorruption measures. This expansion of emphasis is what distinguishes the second generation of projects from the first.

The Three Stages of Reform: Ensuring Property Rights, Developing Markets, and Increasing Access to Credit

10. This study views achievement of these direct and indirect linkages as stages in a process. The first stage—achieving direct linkages to agricultural and urban investment—involves the definition of property rights in a coherent legal framework and the provision of administrative mechanisms to provide security of tenure for these property rights. Security of tenure requires that property rights be protected under national law, that efficient institutions exist that are able to register these rights (land titles) within a reasonable time and at a reasonable cost, and that the judicial system enforce the rights.

Achieving propoor and ecological benefits at this stage also requires extending tenure security to women and socially vulnerable groups. It requires that particular attention be paid to special categories of land, such as occupied forest and areas held under customary rules. Inconsistency between land and forest law poses major challenges in the region. Projects in Cambodia and Lao PDR focus on this stage, as do elements of the projects in Indonesia and the Philippines. These interventions focus not only on traditional activities in mapping, titling, and registration but also on defining propoor land policy frameworks, strengthening the legal framework around land rights, building land administration institutions, and developing and implementing anticorruption measures to ensure that elites do not preempt benefits intended for the poor.

11. The second stage of this progression involves the emergence of formalized land markets in which land can easily be leased, purchased and sold, and gifted to achieve more efficient and higher-value use of the resource. Getting land markets to work in a propoor manner, however, critically depends on policy distortions of land markets, agriculture trade policies, and the access

of the poor to credit and output markets. An initially inegalitarian distribution of land can also undermine the propoor growth potential of land markets and may thus call for one-time state intervention in the allocation of land to achieve greater equity (as in the Philippines). Parts of Indonesia and the Philippines are at this stage of land market facilitation, and Thailand has essentially completed it. It is important to note, however, that in the absence of stronger formal markets, informal and semiformal land markets are highly active across the region. China and Vietnam in particular are experiencing highly active informal and semiformal urban land markets, which need more responsive and service-oriented formal administration to facilitate propoor, ecologically friendly urban growth.

12. The third stage in this progression is the use of land and real property as collateral for transactions. From the land system, this stage requires security of tenure and security of transactions, a valuation system to establish loan amounts, a legal system to enforce contracts, and land markets to dispose of foreclosed land. From the financial system, it requires sources of credit for lending and, ultimately, a secondary mortgage market to replenish credit institutions' liquidity and distribute risk widely. Only Thailand has progressed to this stage. Nowhere in the region are projects working on establishing this linkage. The weak linkage between land administration and financial systems represents a significant unused potential for financial deepening across the region.

Impact and Risks of Land Titling Programs

13. The socioeconomic impact assessment of the land titling program in Thailand and the base line survey of the land titling programs in Lao PDR show that land titling has increased access to formal credit and reduced the cost of borrowing. It has also increased the size of loans, investment in agriculture land and agriculture productivity, land values, and property tax collection. Other indications suggest that land titling has facilitated land use planning and development control. There is no evidence that land titling alone has increased land markets activities. This is expected, since other factors, such as the state of the economy, policy distortions, and access to credit, also affect land markets.

The risks of land titling include the concentration of land and increased landlessness due to distress sales that occur after the marketability of land increases but before safety nets are strengthened and the incomes of the poor improve. The socioeconomic impact assessment of the program in Thailand revealed neither an increase in land concentration nor an increase in landlessness in project areas. This may not be the case in countries where credit markets are less efficient. Because of this risk, the socioeconomic impact assessment of the other projects needs to include indicators that measure land concentration and distress sales and to formulate measures to mitigate them.

The Remaining Agenda

14. The progress of the two successive generations of land projects in the region and the lessons from these experiences position the developing countries of East Asia to consolidate their land systems for propoor, sustainable growth and to establish linkages between land markets and the financial sector. The remaining agenda focuses on improving the private benefits of landholding for the poor by delivering more fully on the promise of tenure security and land market access, by reaching out to poor populations who have been marginalized in areas such as degraded forests and urban fringe settlements, and by realizing the potential for financial sector deepening from collateralization of land and buildings.

15. The report outlines two aspects in the remaining agenda: elements that could be addressed directly by future land administration and titling projects and elements that need to be addressed by complementary interventions, through parallel projects in other sectors, Poverty Reduction Support Credits (PRSCs), or analytical and advisory activities.

The Remaining Agenda for Land Administration and Titling

16. The second generation of land projects expanded the agenda to policy formulation and institutional development, placing more emphasis on social aspects, including gender equity, dispute settlement, and development of policies on indigenous land rights. To increase the contribution to poverty reduction and growth, future land administration and titling projects could focus on the following:

- 1) Continue expanding the issuance of land titles through systematic titling of high-value properties, including properties in urban and peri-urban areas and high-value rural areas.
- 2) Increase the pace of improving land tenure security in rural areas, consider using rapid titling techniques in lower-value areas based on simplified survey standards (which could be upgraded through subsequent surveys if desired). Lower-level certificates could be issued at the local level, in accordance with national standards.
- 3) Expand the development of land policy to a broad constituency through public consultations; develop national land policy papers, to serve as the basis for any revisions in the laws; and conduct consultations with all stakeholders, including government, civil society, nongovernmental organizations (NGOs), and donors. At a minimum, land policy frameworks should define policy on ownership and occupancy of forests, environmentally sensitive areas, areas of customary and traditional rights, and positions on land reform, if relevant.
- 4) Reform land registration institutions to focus more on service and on the sustainability of the land administration function by promoting self-financing.
- 5) Promote transparency and accountability and reduce the cost of land titling and registration and the incidence of informal payments by setting and monitoring clear service and professional standards in land offices. An anticorruption agenda is a central theme of several Country Assistance Strategies, including those for Cambodia and Indonesia, where land agencies are among the most corrupt state institutions.
- 6) Encourage the development of noncourt dispute settlement mechanisms as part of the much larger task of changing attitudes about the rule of law, eliminating corruption, and making judicial systems functional. Land disputes are common in several countries in the region. These disputes not only affect many poor communities, reduce security of tenure, and discourage long-term investment, they also congest the court system and affect the entire legal system.
- 7) Achieve gender neutrality in land projects. Land titling programs may have a significant impact on social dynamics within families; if not considered carefully, they may have deleterious effects on women. More attention needs to be paid to gender issues on land programs, and gender mainstreaming needs to be incorporated in all aspects of the project cycle, including implementation.
- 8) Support the protection of indigenous people's land rights. As pressure on land continues in East Asia, the land rights of indigenous people will be endangered. New generations of projects need to promote the development of policies and regulatory framework to recognize and record indigenous people's land rights.
- 9) Promote the development of information technology to support and enhance service

- delivery, improve the sharing of land-related information to clients and with other important sectors (such as the supply of cadastral maps needed by many public and private sector institutions), and support improved modalities for transparency and accountability.
- 10) Place more emphasis on establishing property valuation functions. None of the countries in the region except Thailand has national guidelines for property valuation or the human resources needed to undertake efficient property valuation for tax assessments or appraisal for lending purposes.

The Remaining Agenda for Establishing Linkages with Other Sectors

If successful, land administration programs will generate the benefits associated with improved land tenure security. Improving land markets and access to credit will require other parallel interventions.

17. Land Markets Granting land tenure security and issuing land titles will increase formal market activities. But there are significant distortions in the land markets of many countries in the region. To help correct these distortions, policymakers could consider the following interventions:

- i) Remove or significantly relax restrictions on land sales and lease markets, such as those in the Philippines and Vietnam.
- ii) Avoid land ceilings, while addressing other factor market distortions to discourage large, uneconomic holdings.
- iii) Develop credit markets to enable poor farmers and urban dwellers to access credit and lease or purchase land.
- iv) Develop more broad-based, consultative land use planning and conversion policies to ensure a more adequate supply of land for urban needs while conserving key ecosystem services. This requires greater attention to processes of forest to agriculture and agriculture to urban land use conversions.
- v) Delink planning classifications from ownership rights.
- vi) Use land tax policy to discourage holding of unused land, especially in high-value locations.

Most of these reform agenda items are in the policy area. Analytical and advisory activities, PRSCs, and adjustment lending are therefore the best ways of addressing these distortions.

18. Credit Markets Except in Thailand, the role of land and real property in guaranteeing loans is still undeveloped in the region. There is a potential for financial deepening in residential areas and high-value agricultural properties, but collateralization of loans using land will need to be supplemented in rural areas with other types of collateral. It is possible that the region's rapidly developing land registries can also become repositories for the registration of nonland assets.

Collateralization of land will likely fall within the scope of financial sector interventions or macroeconomic policy and legislation. Land projects can be expected to provide financial institutions with transparent and accessible land records and ease the registration of mortgages and pledges to make collateralization practical.

There is a need, however, for parallel projects undertaken by Poverty Reduction and Economic Management (PREM) or Rural Development to build on land titling programs that target increased access to credit in the areas covered by land titling. Such parallel projects have been

successful in the Europe and Central Asia Region, for example, where rural finance projects have complemented land titling projects in providing credit to the beneficiaries of land titles programs using land titles as collateral.

19. The Forest Sector Land titling in the region has focused on providing land titles to private and state holdings. The only linkage with the forest sector has involved demarcating the forest boundary to ensure that land titles are not issued in forest areas. This means that people who live in degraded forest do not enjoy the security of land tenure. In Indonesia, the Philippines, and Thailand, about a third of legal forests are already degraded, and in many cases the conversion of these areas to agricultural and residential use is complete. There is a strong case for titling these occupied areas. In other cases, where forestry, agricultural, and residential uses overlap, a system of use rights and management plans for the area is more appropriate. Agroforestry and community management of the remaining forest endowment may be called for in some areas.

In each case, action is needed to resolve the legal limbo and precarious status of the occupants. This tenure insecurity creates a high degree of vulnerability and prevents occupants from full involvement in managing and developing these areas. Resolving the artificial divisions between exclusive forestry domain and land administration systems for these degraded forest areas is called for in every country in the region. The region needs to develop a clear strategy for addressing land tenure security, both at the policy and institutional levels, in areas that were previously forest. The first step is to conduct a study that analyzes the technical and legal recognition of occupation in degraded areas and associated social and environmental safeguards.

20. Land Use Planning and Development Control Efficient and transparent land use planning and development control is essential to manage urban expansion in a socially and environmental responsible manner. It also affects the performance of land markets. The large number of mega-cities in East Asia, the millions of people who live in informal settlements, and the sky rocketing of property values in some urban centers in recent years are all signs of failure in land use planning and of development control policies and institutions in the region. While land administration programs expanded rapidly in the region in late 1990s, the support provided to land use planning has dropped. The issue is too important to ignore. The region needs to consider the various options for supporting land use planning and development control to complement the work being done on land administration. The World Bank's Urban team should take the lead on this agenda.

The agenda for land management in peri-urban areas is closely related to that for land use planning and development control. Recognizing the importance of peri-urban areas in the rural-urban link and the need to better manage urban expansion, most land titling programs in the region have placed higher priority on titling peri-urban areas. Peri-urban areas are needed both to expand serviced areas for affordable housing and commercial development and to protect key ecosystem endowments, such as prime cropland and water supplies. Managing these tradeoffs calls for more informed, transparent, and participatory urban planning; stronger articulation of the powers of local governments; and the use of tools such as land banking, eminent domain, and land adjustment. The Bank recognizes that there is a need to develop clear strategies on how to help client countries in this area and is financing a regional study on peri-urban areas, managed by the Environment and Social Development (EASES) and Urban teams. It is essential that the study include members of the Land team to ensure close coordination with the activities of land titling programs.

21. Property Valuation Property valuation is necessary for a number of public and private functions in the land sector, including state disposal of land, compensation for state

acquisition, equitable land taxation, and determination of the value of collateral assets. The determination of collateral asset value is critical to the health of the financial sector, because overvaluations can create large, hidden exposures in loan portfolios. Except in Thailand, property valuation using international valuation standards and the profession itself are extremely weak, and the function does not exist in several middle-income countries in the region. The land titling projects in Lao PDR, the Philippines, and Thailand have supported the development of property valuation, mainly for taxation purposes. Experiences in these projects have not been positive, because of lack of commitment to enacting proper property valuation laws. The weakness of this function and the lack of expertise in the region weakens the capacity for property taxation and increases vulnerability in terms of banks' due diligence, as revealed in Thailand during the financial crisis.

22. Property Taxation Property tax structures in many countries in the region are neither adequate nor efficient. High tax rate on land transfer in most countries in the region discourage registration. They therefore push land and property markets to informality and reduce taxes collected, because most transactions are not registered. Several countries do not have annual property taxes. Where property taxes do exist, they are not optimally collected or administered, and in most countries, including countries that have implemented decentralization, annual property taxation has not been transferred to local governments. While land taxes are beyond the scope of land administration programs, PREM, in consultation with the IMF, needs to study the tax structure on properties. Without addressing this issue, efforts to make land markets work in a propoor direction and to change from informality to formality may not succeed.

The Way Forward

Land issues are complex, sensitive, and interrelated with issues in other sectors. While good progress has been made on the land administration agenda in recent years, the Bank's engagement in the sector is expected to continue for the next 5–10 years. The focus will continue to be on land administration, with possible expansion into land distribution, land use planning and development control, financial sector and credit markets, property valuation, and taxation.

To enable the region to meet the challenges of this engagement, the following steps are proposed:

- a) Establish a regional land coordinator position in the East Asia and Pacific Region to work across countries, engaging country teams and policymakers to foster intersectoral cooperation.
- b) Adopt broader frameworks for country programs, such as PRSCs or adjustment lending, to increase the impact on strategic land issues, such as policy issues on land markets distortions or collateralization of assets.
- c) Increase intersectoral coordination in the Bank, and align skills in the region to promote the land agenda, especially in the areas of urban/rural land interface, forest/rural land interface, and collateralization of assets.
- d) Have the Rural team prepare a discussion note, by December 31, 2004, outlining the issues and options for dealing with land tenure issues in degraded forest.
- e) Have the Urban team develop a strategy, by December 31, 2004, to expand support to land use planning and development control, either through stand-alone projects or as part of urban upgrading projects.
- f) Have PREM prepare a discussion note, by December 31, 2004, on the options to expand access to credit in areas covered by land titling projects.
- g) Ensure that the Bank works closely with the IMF on several policy issues, including

property valuation and taxation. PREM would take the lead on this, preparing a discussion note on the proposed approach by December 31, 2004.

Chapter 1: Linking Land Interventions with Strategies for Poverty Reduction and Economic Growth in East Asia

Four important trends are putting pressure on the human-land relationship in the developing economies of East Asia: population growth and increasing urbanization; rapid but fragile economic growth; persistent poverty and inequality, particularly in rural areas; and environmental degradation risks due to inadequate natural resource management. Each of these trends needs to be carefully managed to facilitate pro-poor growth. The land system—comprising the legal framework for land rights and transactions, the distribution and use of land and real property assets, and the restrictions of spatial planning and development control—plays an important role in how societies respond to these four trends by creating opportunities, incentives, and constraints that influence economic and social decisions at the household and aggregate levels. Through the aggregate impact of these decisions, the land system can contribute to or inhibit pro-poor growth.

This study examines the performance of the region's land systems and proposes measures that could help increase the impact of these systems on pro-poor, sustainable growth. The key message is simple: in both agricultural and urban settings in the region, there is a large, untapped potential for using land resources more effectively to reduce poverty.

The Rural Sector

The first locus of attention is the rural sector, where the majority of the region's population—and most of its poverty—are found. Continuous poverty-reducing growth requires that in the initial stage of industrialization, the productivity of labor and particularly the productivity of land increase in rural sectors. This increase in productivity raises rural wages while absorbing population increases into land-intensive agriculture until the time when urban employment increases fast enough to reduce overall agricultural employment. During the 1970–85 period, expansion of irrigation and green revolution technology increased productivity in much of East Asia, but the pace then slowed. China and Vietnam achieved similar gains in the early 1980s after decollectivization, but both countries experienced slowdowns in the growth of agricultural productivity in the 1990s (Lipton 2002).

The existing distribution of agricultural land endowments in the region largely reflects allocations based on noneconomic logic (colonial legacies or decollectivization). The productivity of land and labor in agriculture can be increased through transfers in which producers adjust their landholding to sizes that are optimal given the available labor and technology. Land markets are thus an important allocative mechanism for achieving productivity gains and poverty reduction in the region. In labor-abundant, capital-scarce rural East Asia, the chief land market for poorer households is the lease market, which can be used to expand or contract smallholder production.

Market imperfections—poorly defined property rights, insufficient liquidity for land lease or purchase, restricted land supplies, administrative restrictions on transactions—tend to reduce the productivity of labor and land in agriculture, slowing or potentially reversing gains in poverty reduction. Timing is important. Increasing land productivity during this decade is crucial to maintain rising incomes and savings before the coming demographic transition (around 2010–15), when the number of workers in the region will decline relative to the number of dependents, making it much more difficult for rural households to save.

The Urban Sector

The second locus of land management in the region's poverty reduction agenda is urban. Land availability, housing and site affordability, and transportation costs are key determinants of the cost of doing business in a given location—and therefore of the competitiveness of a city in global markets. New investment is particularly sensitive to competitiveness conditions. Because of the value of land and buildings in the total asset endowment of the economy and in the asset endowment of households, the urban land sector also plays a key role in financial deepening and as a source of employment, through residential construction, especially during rapid industrialization. Overheated real estate markets played major roles in the bank failures in Indonesia and Thailand during the 1997–98 crisis, calling attention to the role of urban land market dynamics, real estate development trends, and valuation systems in the health of the region's financial sectors. The prevalence of informal occupancy and transfers in urban land and property poses a problem of tenure insecurity for the poor.

Fiscal Reform

The third locus of land management for poverty reduction is fiscal reform. Land taxation is a potentially effective source of public revenue, particularly at the local level. Land taxation is also a powerful policy tool for utilizing land effectively and for channeling land market transactions toward social goals. Although most of the countries in the region collect some form of land tax, it often bears little relationship to the real or potential value of the land. Reliance on taxation of transfers is not optimal from an incentive standpoint. As governments in the region increasingly decentralize functions, attention on local land taxation needs to increase. Local land taxation can potentially play a major role in financing decentralization.

The Financial Sector

The fourth locus of land management for poverty reduction is through the financial sector. Worldwide, 45–75 percent of countries' assets are held in the form of land or real estate. For the poor, these assets often cannot be turned into liquid capital, because they cannot use them as collateral. For financial institutions, an important source of assets to back new lending cannot be used. Practical problems in foreclosure and the disposal of real property mean that land as collateral is not a panacea for the financing problems of the poor. Nevertheless, a great deal more financial intermediation based on these assets could be achieved. Deepening these linkages is an important and unexploited area of overlap between financial development and land administration.

Recommendations

The time is right for taking stock and reviewing land administration, management, and markets in the region and for renewing attention to targeted policies for poverty reduction, such as land reform and the granting of land rights to indigenous people and women. Eleven key findings of this report help connect the land agenda more strongly to poverty reduction goals across the region:

1. Land tenure security is weak: most households in the region do not have legally secure rights to their land. In rural areas, tenure insecurity is associated with lower levels of on-farm investment, credit access, and land values. Increasing tenure security empowers the poor economically and socially, and it allows land markets to work more efficiently. Threats to tenure insecurity in the region usually come from state actors using or abusing discretionary powers over land rights in some form. Changing this situation involves

- strengthening policy and legal frameworks regarding the basis for land rights and dismantling separate regimes of land administration for different types of lands, devolving work on documenting and spatially locating land parcels to local jurisdictions and relying on appropriate standards of spatial accuracy for parcels for which highly accurate boundaries are not critical so that routine land administration can be quick, affordable and accountable, and making land administration in government a service function, not a function of administrative control. These actions require linking land administration and revenue generation with decentralization and public sector reform to achieve right-sized staff and fees, develop accountability, and create appropriate staff incentives to deliver service and decrease corruption.
2. Using land to strengthen rural and urban credit access is not a panacea, and it needs to be complemented with expansion of nonland collateral in rural areas. Nevertheless, increasing the use of land as collateral could increase access to credit by the poor. Making farm land acceptable as collateral in rural areas requires establishing mechanisms for spreading default risk among borrowing communities and intermediaries, such as farm associations, because small holdings are difficult for banks to foreclose on. Use of farm land as collateral needs to be one element in a larger rural finance strategy that blends different credit products and makes use of various forms of collateral. For farmland to even be considered as collateral by formal financial intermediaries, ownership rights need to be documented and transferable.
 3. Better operation of land markets in rural areas can improve efficiency and equity in agriculture, particularly through leasing, but land markets require well-coordinated sectoral strategies in associated input and output markets to provide these benefits. Land markets in rural areas are constrained by well-intentioned but ineffective administrative controls, tenure insecurity, liquidity constraints, and in some cases price distortions. There is a risk, however, of increasing asset inequality through land market operations, particularly through distress sales, if credit market imperfections and the absence of insurance markets are not addressed.
 4. Urban land tenure is largely informal for many of the poor in the region. Providing more secure urban tenure would increase residential development among low-income groups, facilitate financial deepening, and increase employment among lower- and middle-income groups by increasing construction activity, much of it of the self-help variety. Urban upgrading and land administration programs should be linked, under a phased approach that seeks full title as a part of the upgrading processes, not necessarily a condition or first step. Urbanization specialists argue that land titling requirements set an impossibly high standard in land administration projects, which thwarts upgrading efforts. This is a sequencing issue, not a fundamental difference of strategy.
 5. The periphery of Asian cities is a critical zone for both economic growth and environmental management. Master planning and zoning regimes in the region are not working well to channel urbanization, leading to housing shortages, loss of farmland and wetlands, transport congestion, and social conflict. More attention to growth planning and land value taxation as cross-cutting tools for land management, urbanization, and environmental activity is called for, with greater public involvement to manage tradeoffs for land conversion and resource protection, manage resettlement, and plan transportation for long-term competitiveness.

6. Inadequate land valuation systems and a focus on high-income development expose financial systems to high levels of loan default risk in fast-growing urban markets and crowd out financing of lower- and middle-income development. Improving valuation systems throughout the region would create additional safeguards for banks, enhance public revenue in sales, and increase the fairness of public acquisition. Expansion of land rights among lower- and middle-income neighborhoods and mixed-income developments on the urban fringe, in combination with better-targeted tax policies, would help channel real estate finance into a broader sector, with less risk of overleveraged bubbles, an expansion of borrowing clientele, and the possibility of establishing mortgage-backed securities.
7. Performance of land taxation systems in the region varies widely, and the systems are poorly developed as a policy tool for land market regulation and growth planning. Increased linkage of land administration and land taxation within the context of public administration reform (including decentralization) could enhance government revenue while encouraging more efficient use of land. Heavy reliance on transfer fees instead of annual taxation pushes land transactions into the informal market, limiting tenure security, reducing government revenue, and inhibiting financial sector involvement in land markets.
8. Land reform through distribution of state land, redistribution of inefficient private holdings, or aggressive tax policies makes economic and social sense in Cambodia, Indonesia, and the Philippines, where landlessness and inequality in landholding are major contributors to rural poverty. Cambodia has all the conditions for a successful land distribution program if it is linked with adequately funded community and agricultural development programs for beneficiaries. Indonesia is undertaking a major consultative process about land policy that will help determine the direction of land reform. The program in the Philippines is advanced and needs to be consolidated and completed.
9. Customary and indigenous land rights are an important feature of the landholding systems of most countries in the region, but they are often in conflict with forest rights and other claims. Protection of customary and indigenous tenure land rights can be strengthened by expanding national legislation to recognize the customary land rights of traditional or indigenous communities within the overall national framework of land legislation and by resolving contradictions between sectoral laws (forestry and mining) and land law.
10. Land issues play a significant roles in creating conditions for social reconciliation in conflict or postconflict situations, such as those in Cambodia, East Timor, Mindanao, and parts of Indonesia. Managing these issues calls for a package of measures that involves stakeholders in land policy deliberations, accelerates land reform in conflict areas, supports alternative dispute resolution processes, provides financing to resolve restitution and compensation issues, provides ex-combatants with access to land, removes land mines, and returns land areas under military control to civilian authority.

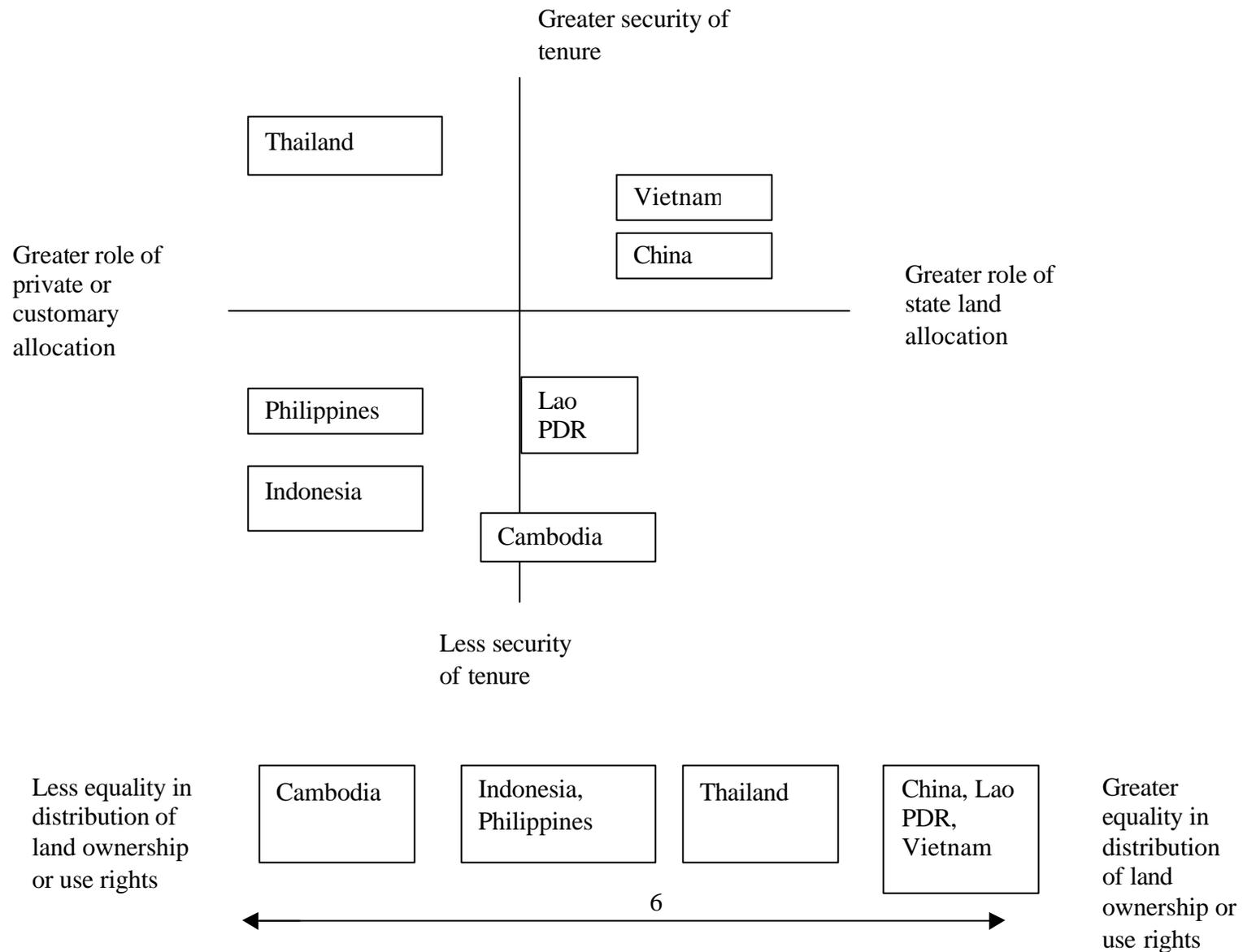
The value and economic potential of land assets in East Asia is very high, but land is suboptimally used for broad-based growth and is often used for rent-seeking by administrators and elite groups. More efficient use of land could boost agricultural productivity growth, deepen access to financial markets, and improve urbanization, public administration, and environmental management.

World Bank activity in the region is addressing these issues. Land administration projects are active in Cambodia, Lao PDR, and the Philippines. Indonesia completed one project, and preparation of a follow-on project is being completed. China and Vietnam have drawn on extensive research and technical support from the World Bank in land legislation reform. Thailand completed a long-term program of land administration modernization and land titling supported by the World Bank in three phases from 1986 to 2002 under the Thai Land Titling Project. It now displays some of the best performance indicators in the world for land administration services.

With Bank support, the region's land systems were a highly active area of policy and administrative reform during the 1980s and 1990s, with many legal and institutional reforms adopted since 1997. The results of this activity have been positive for growth and poverty reduction, but they have by no means solved the problems or fully managed to keep pace with social and economic imperatives, in particular the need for continual growth in agricultural productivity, management of urban expansion, and development of the financial sector.

The countries of the region can be divided into four groups based on a relative measure of security of tenure and the relative importance of state allocation and customary allocation (Figure 1-1). Adding the equality of distribution in ownership as a third dimension yields similar groupings.

Figure 1-1. Grouping of Land Systems by Security of Tenure, Allocation Rules, and Equality of Distribution



These country groupings point the way to a regional agenda that entails broadening traditional concerns about land and agricultural productivity and devoting more attention to linkages between land administration and management on the one hand and governance strategies, forest management, financial sector development, urbanization, and conflict prevention on the other.

For China and Vietnam, where rights are documented and distribution relatively egalitarian, the pathway is toward greater land market development and sophistication through efficiency-enhancing transfers and channeling of explosive growth in real estate to support broad-based urban growth.

In Indonesia and the Philippines, where land rights are distributed unequally and are largely undocumented, the immediate agenda calls for improving distribution and creating tenure protection for vulnerable groups, including masses of informal settlers in Jakarta, Manila, and other cities.

For Cambodia and Lao PDR, which defining basic land rights and disentangling state and private domains, creating sound land administration institutions and clarifying rights in laws and policies are first priorities. Thailand is unique; its remaining agenda targets specific marginalized groups.

Generalizing these challenges, the regional land agenda for poverty reduction includes the following imperatives:

1. Extend the protections of statutory land rights equitably across the whole population, regardless of income, gender, or status, and include land held in customary forms of tenure and in degraded forest areas. This calls for creating simpler titling procedures and tighter linkages to local governance structures to make land administration affordable and accountable, overcoming policy inconsistencies between land and forest domains, and accommodating customary tenure arrangements. The main gains to be achieved in this area are increased investment, deeper credit, a reduction in the number of disputes, and improved tax collection.
2. Promote transactions between willing sellers and buyers of farm and urban land in accordance with the desires of individual households and businesses. This calls for relaxing land market restrictions on leasing land and improving rural financial and technical services to help the “poor but efficient” compete. These measures should accompany expansion of rural infrastructure, technology transfer, and rural finance.
3. Facilitate the use of land and buildings as collateral for credit access. This calls for extending title coverage, improving valuation capacity, simplifying foreclosure procedures, and helping financial enterprises in rural areas manage default risk through intermediaries who can manage the income stream from properties in default. These measures should be accompanied by the establishment of secondary mortgage markets.
4. Expand the supply of serviced land for the orderly expansion of cities to provide space for residential and commercial development while protecting key natural resources. This calls for a modified approach to spatial planning that is simple and accountable, with an emphasis on integrated planning of transport corridors and identification of sites where development is prohibited. Development and building controls should be delinked from land ownership issues and based on more flexible standards that recognize how low-income groups build and

work. These measures should be unified with long-term environmental and transportation planning.

5. Generate revenue for government and improve incentives for socially desirable land uses through value-based taxation. These measures should accompany public sector reform and decentralization
6. Establish broad social agreement about land rights to prevent disputes and reduce conflict, especially in areas with a history of social conflict. This calls for inclusive dialogue about land policy; devolution of management control on state and indigenous lands, where appropriate; vigorous land reform programs, where appropriate; and expansion of noncourt dispute resolution mechanisms. Occupied forest areas or areas previously forested are an important locus for clarifying tenure status and dispute resolution.

Accomplishing this agenda is a complicated task that calls for a concerted, long-term effort at all levels of society. Much of this agenda is closely linked to the development of local government capacity, but it also requires national policymaking and legislation. It ultimately implies changes in the way governments interact with citizens around land issues, with greater reliance on local actors and increased accountability. For donors it requires taking a more holistic view of the interaction between the land system and the productive and financial sectors, viewing land systems as an important element of governance, and planning projects from that perspective.

The rest of the report describes this agenda in detail. Chapter 2 deals with land administration systems. Chapter 3 examines land markets. Chapter 4 examines land reform, indigenous and customary rights, and women's rights.

Chapter 2: Land Administration: In Search of Security and Service

International institutions are trying to standardize indicators of land administration performance (Land Equity 2003). Within this framework, real property rights are assessed based on the adequacy of the legal framework, the level of land tenure security, and the level of security of land transactions. The legal framework is assessed based on whether property rights are fully protected under the law and whether the law provides freedom of transactions. The security of tenure is assessed based on the percentage of land for which full titles and lower level certificates are issued, the efficiency of registry, the level of corruption in registration, the number of land disputes, and the efficiency of dispute settlement. The security of transactions is assessed in terms of the efficiency with which contracts are registered and enforced in cases of dispute. Efficiency in this sense refers to both the speed and accuracy of the transaction and to the cost of delivery.

Evaluating the Effectiveness of Land Administration

Based on these criteria, much progress has been made during the past several years: each country's system has many effective features, and land administration systems are steadily improving in the region. But most systems still manifest serious inadequacies in their ability to meet the needs of poor rural and urban populations for land tenure security, transferability, and dispute resolution. The region's land administration systems are also inadequate to support the development of broad-based commercial real estate markets, which depend on secure transactions and long-term finance. These inadequacies represent structural brakes on economic growth and poverty reduction in the region.

The obstacles to improvement are primarily governance and public administration issues rather than technical issues of measurement, documentation, and information management. Indeed, land administration systems in much of the region are often singled out as focal points for misgovernance and the abuse of authority.

Current World Bank-financed projects in land administration are addressing many of these issues, but they would benefit from more direct links with governance programs, rural finance initiatives, urban upgrading projects, and forestry reform efforts. For land administration investments to contribute fully to the growth and poverty reduction agenda in the region, the systems need to become more locally accountable for services performed, more accessible, and cheaper to use for the poor, whose land rights are the most vulnerable. From the standpoint of investors and financial institutions, the systems need to become more efficient and more predictable in delivering accurate ownership data and rapidly registering transfers and encumbrances. Most of these issues cannot be solved without significant attention to legal and institutional reforms.

The following key actions could help achieve these improvements:

Rapidly extend coverage of formally recognized rights to the large areas and groups of people who do not have them, including households in areas held under customary tenure and the large numbers of people living in lands officially classified as forests, informal urban settlers, and public lands under threat of encroachment. Methodologies for extending formal land rights can be made cheaper and faster by using community-driven approaches, relying less on precise surveys and more on general boundaries, issuing community titles, and using orthophoto and satellite imagery for spatial descriptions. People living in forest use areas for a long time could be given

use rights in exchange for managing the forest responsibly, and they could protect the forests against new encroachment.

Reorient land administration functions so that they focus on service delivery and greater local accountability. Service standards for performance; financial reform (sliding scales, fee retention, and limited self-financing); openness of records to the public; and accountability to local government are needed to create the incentives for land administrators to reorient the way they operate.

Bring the large set of informal transactions into the formal system by rationalizing fees and taxes based on how much the local population can afford and by providing service that is fast, predictable, and local.

Place more emphasis on providing documented land rights to the urban poor and people living in informal settlements. This may work best by beginning upgrading with intermediate forms of tenure security, but it should culminate in registered title.

Clarify the legal framework regarding the role of the state as a landowner. The state's own land ownership, acquisition, and divestiture rights and responsibilities must be clarified and clear limits defined about where and when the state can intervene in the private sphere of land rights. Decentralization of state land management under clear national legislation and enforcement is preferred.

Resolve problems in the legal framework concerning uncertain jurisdictions between forest and land domains. Forestry should be considered as a land use. It should be demarcated on the basis of realistic forest management plans for conservation, production, and regeneration and registered as such in the name of an owner (state, community, private, or joint). A single law should govern land ownership, with different legislation regulating land uses.

Use noncourt dispute resolution techniques and institutions to resolve land disputes as much as possible, within the larger framework of changing attitudes about the rule of law, eliminating corruption, and making the courts work.

In conceptual design and implementation, link land administration with programming around governance, especially decentralization and fiscal reform, forest policy reform, and urban infrastructural upgrading.

There are an estimated 530 million parcels of land in the seven countries under consideration (Cambodia, China, Indonesia, Lao PDR, the Philippines, Thailand, and Vietnam) (table 2-1). About half of these parcels are protected by some legal document, although the nature of rights and legal protections associated with these documents varies widely. In some countries (Cambodia, Lao PDR), problems with land administration are related to issues of reconstruction after conflict and transition. Elsewhere they reflect an accretion of historical problems (Indonesia, the Philippines) or systems that were organized to facilitate state management of land and that are now adapting to market-oriented conditions (China and Vietnam). Even Thailand's exemplary system has left out some of the most vulnerable groups in society.

Table 2-1. Registration of Land Parcels in Selected East Asian Countries

Country	Number of parcels (millions)	Number of parcels registered (millions)	Percentage of parcels registered or certified	Type of documentation
Cambodia	4	0.5	13	Title
China	300 (estimated)	—	—	Land use allocation, land grant, land use contract (rural)
Indonesia	80	17	23	Title
Lao PDR	1.6	0.8 ^a	50	Title
Philippines	25	>10	30	Deed or title
Thailand	30	19	63	Title
Vietnam	105	90 million	86 (90% of rural, 15% of urban)	Land use certificate

— Not available. a. Includes 200,000 titles and 600,000 temporary land use certificates.

Systems throughout the region, moreover, provide inadequate support of transactions after initial registration (table 2-2). Informal transactions avoid transfer fees and taxes and are concluded quickly, but they generally provide insufficient security from third-party claims, leaving buyers vulnerable to fraud and discouraging would-be investors and financial institutions from getting involved in informally transacted properties.

The strong popular preference for informal transactions represents a devastating critique of the official land administration systems by local landholders. The fact that except in Thailand, large groups of the population believe that the benefits of formal protection of rights on transfer are apparently not worth the costs suggests that formal systems must become cheaper, faster, and easier to access before their benefits will be relevant to much of the region's population. It also suggests that the financial sector is largely disconnected from the asset base of land and buildings in the region.

Table 2-2. Unregistered Land Transactions in Selected East Asian Countries

Country	Estimated percentage of unregistered transactions	Source
Cambodia	90	Social assessment
China	—	
Indonesia	70	Policy studies
Lao PDR	90	Social assessment
Philippines	85	Global land administration study
Thailand	10	Land titling project documents
Vietnam	95	AusAid

Not available.

Note: These estimates refer to the overall number of transactions, not only transactions of previously registered land.

Missing the Urban Poor

Millions of people live in informal settlements in East Asia, where they represent a significant segment of the population (table 2-3). These poor urban populations often do not benefit from land titling and registration, particularly in informal settlements. Regularizing and formalizing these settlements are critical to providing their inhabitants with access to basic services, such as clean water and sewerage. Formalizing their status is a politically and economically sensitive issue, however, because urban developers are often interested in developing the land for business and commercial use.

Table 2-3. Informal Settlements in Selected East Asian Cities

City	Population in informal settlements (millions)	Percentage of urban population	Source
Bangkok	1.2 (1993)	23	Mohit 2002
Manila	2.5 (1998)	35	World Bank 2003
Jakarta	7 (2002)	60	Megacities Project

There is a debate within the World Bank urban land management units about the value of traditional land titling and registration as tools for improving the conditions of the urban poor (Baharoglu 2002; Payne 2002). Critics of titling argue that land titling cannot be substituted as a political expedient by governments unwilling to spend money on upgrading efforts and that informal settlements exist along a continuum of legal recognition that can be advantageous for settlers. Supporters of titling note that titling and registration lead to higher land values and encourage tenancy. Bank projects in the region have found strong demand for tenure upgrading leading to title. In many informal settlements, however, the occupied area is titled to absentee landowners. The issue in these settlements is purchasing, leasing, or sharing the land of the absentee landowner by the settlers, not land titling.

In areas where existing land rights are not documented, both sides of this debate are essentially right. The important consideration is sequencing. Upgrading strategies to reach poor urban areas

with infrastructure and alternative forms of land tenure security may be preferable to land titling in initial periods of development, before all of the legal, political, and physical conditions are in place to grant land titles, because they provide immediate protection from eviction and can be provided cheaply and quickly. The informality of transactions and of urban settlements requires that land administration systems in the region take flexible, pragmatic approaches that reach the poorest groups in society.

Ultimately, however, rights need to be clarified and permanent housing and infrastructure solutions created. Formal title is part of that solution, although it may be more feasible to provide for it in later stages of an upgrading process rather than at the beginning. It is also important to recognize that individual title may not always be the most appropriate form of recognition in these settlements. Community titles may also play a role.

Issues in the Legal Framework for Land Administration

In the standardized framework, legal frameworks for land administration are measured by their ability to fully protect property rights under the law and provide freedom of transactions. The region's land administration systems have been characterized as overregulated and underenforced (Land Equity 2003).

Legal protection of property rights varies in the region. In general, the ability of landholders to engage in transactions is high. This ability is occasionally curtailed by administrative involvement in state-led systems (China, Vietnam) or by complicated planning and classification regimes that require site-specific planning clearances (Indonesia, the Philippines, Vietnam).

Three problems in the legal frameworks for land administration, found throughout the region, weaken the protection of property rights most:

- (i) Weak legal protection of land rights of individuals and an unclear legal description of the domain and powers of the state in relation to its own; landholding and in relation to the landholding of individuals and enterprises
- (ii) The separate legal regime for land classified as forests, which includes many areas that are residential, agricultural, or both;
- (iii) The heavy reliance on court-based mechanisms for resolving disputes and enforcing land laws and inadequate judicial and administrative competencies;

Table 2-4 presents basic indicators of the protections and freedoms offered by land legislation in the region.

Table 2-4. Legal Framework Governing Land Ownership in Selected East Asian Countries

Country	Law	Type of rights for households and firms	Restrictions	Land rights for foreigners	State guarantee	Mortgage legally protected
China	Land Administration Law 1998	Long-term use rights through contracts; administrative adjustments	Thirty-year rural; administrative readjustments possible in rural areas. Permanent or 50 year in urban areas.	Lease only	No	Urban only; rural mortgages prohibited
Vietnam	Land Law 1993, revised 1998 and 2001	Long-term use rights	Rural land size ceilings; administrative approval for sales	Lease only; can be transferred and mortgaged	No	Yes, but only for urban land with certificate
Indonesia	Basic Agrarian Law 1960 and multiple laws	Multiple types of use rights	Multiple	Use rights	No	Yes
Philippines	Multiple laws	Ownership	Land reform size ceilings (five hectares)	Yes	If title registered	Yes, but not for all types of title
Lao PDR	Law on Land 1997	Long-term use rights	Size ceilings	Lease only	No	Yes
Cambodia	Land Law 2001	Ownership	No	Lease only	Yes, but ambiguous	Yes
Thailand	Land Code 1954	Ownership, use rights	No	Yes	Yes	Yes

Finding the Appropriate Role for the State

States are major landholders in the region and play active roles in modifying landholding arrangements to meet national or subnational development goals. But land management roles and duties are badly specified and monitored, opening the way to widespread lack of transparency in state land sales and allocations, mismanagement and degradation of state land assets, and weakening of the property rights security afforded to individuals and organizations (Table 2-5).

Table 2-5. Problems Associated with State Land Allocation in Selected East Asian Countries

<i>Country</i>	<i>Issue</i>
Cambodia	Allocation of state land to insiders, nontransparent state land concession system, unclear demarcation of state land
China	Land readjustments, nontransparent sales of use rights on state land, unplanned conversion of agricultural land, unclear application of eminent domain
Indonesia	State seizure of customary lands, forest classification of lands not in forest use
Lao PDR	Unclear demarcation and allocation of state land, nontransparent state land concession system
Philippines	Nontransparent sales of state land
Thailand	Lack of recognition of people dwelling in forest areas (policy now changing)
Vietnam	Land allocation readjustments, nontransparent sales of use rights to state land, forest demarcation and use rights unclear

Clarifying Land Rights in Forests

The second key problematic feature of East Asian land administration is that large amounts of land classified as “forest” also host human populations engaged in settled or shifting agriculture who may also use the land for residential and commercial purposes. Because land classified as forest is managed by forestry departments under frameworks established for timber exploitation, populations settled in these areas typically have very precarious land rights.

Separate legal regimes based on forestry laws exist for using forest land in Cambodia, China, Indonesia, Lao PDR, Philippines, Thailand, and Vietnam. The problem is most severe in areas where trees have not covered the land for decades, having long ago been replaced by settled agriculture and human settlements. But the problem is also serious where shifting cultivators, often indigenous groups, dwell in forested lands. This state of affairs has both a legal and an institutional dimension. Legally, the typical arrangement is a land code that specifies that the forest domain is under separate administrative arrangements, spelled out in a forestry law or code. These laws are not harmonized in any of the countries studied. Every country in the region suffers from this problem, with detrimental effects for both the affected populations and the forestry sectors (Table 2-6).

Table 2-6. Forest Domain Legal Issues in Selected East Asian Countries

Country	Percentage of land area under forest and forest legal provisions	Legal issue for land administration
Cambodia	56	Existing occupation, new occupation, indigenous rights
China	14	—
Indonesia	70	Customary rights, existing occupation, new occupation
Lao PDR	54	Indigenous rights, rights of shifting cultivators
Philippines	50	Indigenous rights, overlapping claims, existing occupation, new occupation
Thailand	23	Existing occupation, indigenous rights
Vietnam	28	Customary rights, rights of shifting cultivators

— Not available.

A more nuanced and flexible regime of rights—including use rights with management responsibilities, traditional rights with forest management plans, and ownership rights with first option to buy by forest administration or ownership of small plots with forest use rights—is called for to address the reality of land use and land occupation. Any attempt to reform this situation will have to confront the significant governance and management problems associated with forest administrations in the region. These issues deserve much closer collaboration between land and forest sector managers. Until these issues are resolved, it will continue to be difficult to extend property rights protection to some of the most vulnerable groups in society.

Preventing and Resolving Conflict

Legal frameworks in East Asia make it difficult to resolve land disputes outside of judicial proceedings, except in China, Lao PDR, and Vietnam, where local administrators typically resolve disputes. In the Philippines judicial proceedings are required for almost every type of problem, including routine administrative issues, such as name changes. In Indonesia land cases are the biggest item on the schedule of the administrative courts. Cambodia’s courts are jammed with cases: 200,000 Cambodians are estimated to be involved with court cases entailing disputes over land (Cooper 2002). Turning around this situation will require noncourt resolutions by administrative means, dedicated land dispute tribunals (such as Cambodia has created), and the granting of authority to land administrators to resolve routine administrative disputes as the first line of legal enforcement.

Countries undertaking systematic land titling activities—Cambodia, Indonesia, Lao PDR, and Thailand—have built dispute resolution into the adjudication stage of titling. But parties to disputes arising outside of the systematic titling exercise do not have recourse to a noncourt mediation or arbitration setting. International practice (in the Europe and Central Asia Region, for example) is increasingly relying on noncourt arbitration and mediation for most private land disputes. Governmental actors, however, are not generally able to join mediation proceedings because of sovereign immunity. Legal aid centers for land issues and nongovernmental advocates for poor households in land disputes are also an increasingly visible phenomenon in the Europe and Central Asia and Latin America and the Caribbean Regions. Improving access to noncourt

dispute resolution facilities and legal aid are immediate steps that can be implemented, but ultimately conflict prevention and resolution hinges on changing attitudes about the rule of law, eliminating corruption, and making the courts work.

What the Bank Is Doing

The World Bank is supporting land policy or land law reforms in five countries in the region (Table 2-7).

Table 2-7. World Bank Policy and Legal Activities in Selected East Asian Countries

Country	Type of activity	Timeframe
Cambodia	Subdecrees and implementation of Land Law of 2001	2002–05
China	Policy research (through IDF 1 and 2)	Ongoing
Indonesia	Support for policy reforms	2003–08
Lao PDR	Amendments to land law Support of policy reforms	2003 2003–08
Philippines	Incremental changes in various laws	2003–08
Vietnam	Revision of land law (IDF)	2003

Institutional Development

Institutions for land administration in the region vary by location within the governance structure, budget, staffing, and revenue (Table 2-8). Variations in staffing intensity are notable.

Expenditures on land administration vary less, although Indonesia appears to underspend the entire region and Thailand spends much more than the other countries. Thailand also collects revenues that are an order of magnitude higher than any other country, attesting to the fiscal benefit governments can obtain when they provide efficient, trustworthy land administration service as a norm.

Table 2-8. Institutional Characteristics of Land Administration in Selected East Asian Countries

Country	Ministerial home	Centralization	Annual budget (millions)	Budget per capita	Revenue (millions)	Staffing	Staffing per capita
Cambodia	Land Management	Partially decentralized	\$4.2	\$0.38	\$1.3	2,400	1 per 4,600
Indonesia	National Land Agency (BPN)	Centralized	\$19 (1999)	\$0.10	-	25,000	1 per 8,000
Lao PDR	Finance	Partially decentralized	\$2.5	\$0.50	\$2.5	200	1 per 25,000
Philippines	Natural Resources and Justice	Dual agencies: Department of Environment and Natural Resources (DENR) decentralized and Land Registration Authority (LRA) Centralized	\$22.3 (2002)	\$0.31	\$22.9	2,408	1 per 32,000
Thailand	Interior	Deconcentrated	\$69.8 (2001)	\$1.14	\$349.6	8,500	1 per 8,100
Vietnam	Natural Resources	Partially decentralized	\$30	\$0.39	n.a.	17,350	1 per 4,400

— Not available.

A lesson learned from land administration projects in the region in the 1990s was that institutional capacity often creates obstacles to achieving titling, registration, and good work flow in land administration systems. Bank land administration projects are thus placing strong emphasis on development of human and organizational capacities in land administration agencies in the region, including increasing the focus on developing land administration curricula in domestic educational institutions (Table 2-9).

Table 2-9. Institutional Development Activities in World Bank Land Projects in Selected East Asian Countries

Country	Project	Activity
Cambodia	Land Management and Administration Project (2002–07)	Strengthening provincial offices, organization and staffing of ministry, skills training, creation of degree program in land management
China	No land administration projects	Technical assistance
Indonesia (1)	Indonesia Land Administration Project (1996–2001)	Degree training, consumer services, technological capacity, regional office development
Indonesia (2)	Land Management and Policy Development Project (2003–08)	Decentralization of land management; rationalization of National Land Agency (BPN) functions, service delivery emphasis
Lao PDR	Lao Titling Project (1997–2003)	Skills training, degree training, creation of high diploma in land administration at polytechnic
Lao PDR	Lao Titling Project II (2003–08)	Rationalization of agency functions, training
Philippines	Land Administration and Management Project (2001–08)	Rationalization of overlapping mandates, development of service standards
Thailand	Thai Land Titling Project (1986–2002)	Network of decentralized offices, training, advanced training
Vietnam	No land administration projects	Technical assistance

Land Titling and Registration: Can Tenure Security Be Extended More Rapidly and at Lower Cost?

Bank projects in the region are using the model of systematic registration, largely following procedures developed in the Thai Land Titling Project. While these techniques are being refined in places such as Cambodia through such technical advances as global positioning systems, soft copy photogrammetry, and electronic production of title certificates, they remain relatively slow and expensive, with average costs per title of \$20–\$30 and maximum coverage of less than 1

million parcels a year. In contrast, China and Vietnam use local allocation and documentation, which provide a relatively high degree of security of tenure in rural areas using procedures that are completed in less than three years without significant public investment. At least 150 million parcels have been registered in China, and 11 million land-use certificates (each documenting multiple parcels) have been issued in Vietnam. Agricultural productivity increased dramatically in both countries following land rights reform, indicating that tenure security was sufficient to create incentives to intensification of labor effort and land use. The Chinese and Vietnamese experiences represent a faster, cheaper paradigm of land rights allocation and documentation than the systematic adjudication and registration techniques that emphasize highly accurate mapping and survey.

The Chinese and Vietnamese systems do not easily support subsequent transactions, however. The temporary land use rights being issued in rural Lao PDR suffer from the same problem. For the region as whole, the best system could be one in which the advantages of locally based land rights documentation are combined with the advantages of registration systems that support transactions, to lead to systems that are locally accountable, inexpensive to operate, and provide a high degree of tenure security.

Aspects of the faster, cheaper approaches adopted in China, Lao PDR, and Vietnam may be relevant for rapidly increasing tenure security in Cambodia, Indonesia, and the Philippines. In most of the region, tenure insecurity does not come from disputes or competing claims within a community but from fraudulent or predatory actions by elites (government, military, commercial), often working in concert with land administration officials to assert control over land that has been peacefully occupied for a long time without documentation.

Advances in processing aerial photography and high-resolution satellite imagery now make it possible to support rapid, inexpensive land rights documentation with spatial data that are accurate and easily viewed by nonspecialists. The availability of geo-referenced remotely sensed images makes it very easy to create land administration tools that do not rely entirely on accurately surveyed parcels to function. A variety of spatial identifiers can be used, including general boundaries, community titles, and orthophotos.

Using an expanded range of spatial identification methods could also facilitate integrating land administration of private land with state lands, demarcating real forest boundaries, and locating indigenous land claims. A more flexible approach to individual parcel boundaries would also help provide security of tenure in urban informal settlements where only the outer boundary of the settlement is likely to remain fixed and the inner boundaries may be relatively meaningless.

Service Delivery

Except in Thailand, delivery of land administration services in the region is slow and allegations of informal fees are the norm. Because of different legal requirements, exact comparisons of service delivery are impossible. It is nevertheless possible to make some basic comparisons of the time required to transfer a property from one owner to another (Table 2-10).

Table 2-10. Average Time Required to Transfer a Property in Selected East Asian Countries

Country	Average number of days required
Cambodia	30
Indonesia	14
Lao PDR	15
Philippines	14–800 ^a
Thailand	<1 (generally 2 hours)
Vietnam	60

a. For judicial titling

Thailand is far more efficient than the other countries studied. It has a legally mandated performance standard that requires that all transactions be completed the same day. The performance standard, the completeness of the supporting documentation, and the culture of the organization have increased service efficiency. Because time delays are the main lever through which informal fees are extracted from the public, a rapid performance standard also helps eliminate petty corruption in routine interactions between the public and the registry. Enforcing tight processing requirements may be the most effective way of limiting corruption, which requires delays.

Taxes and Fees

Taxes and fees on land transfers are of great concern in the region, because they discourage the public from using the formal institutions of land administration, which could represent a key source of revenue for creating sustainable land administration systems. Every country in the region except China charges a transfer tax and fees for registering transactions (Table 2-11).

Table 2-11. Taxes and Fees on Land Transfers in Selected East Asian Countries

Country	Annual tax	Tax on transfer	Fees
Cambodia	Unutilized land tax: 4% (rarely collected)	4% of value	\$10–\$25
China	Land use contract specifies contribution to collective	Variable fees on initial transfer from state to individual	None
Indonesia	Land tax: 0.5% of value	Tax on first time registration if value exceeds 30,000,000 rupiahs (about US\$4000)	Under review
Lao PDR	Land tax	Variable rate	0.5%–4% of value
Philippines	Real property tax: 1% of value	Capital gains tax: 6% of transfer value estate tax (inheritance only); documentary stamp	0.23%–0.52% of value

		tax: 1.5%	
Thailand	Land tax	Income tax (similar to capital gains)	Transfer fee, stamp duty, surcharge on land held more than five years
Vietnam	Agricultural land tax	1% of transfer value; levy on initial registration	\$4.50 plus 1% of value

As Table 2-11 shows, although rates vary, most of the countries under consideration have similar approaches to taxation and fees. The country with the highest rate of formally registered transactions, Thailand, does not charge substantially lower fees than countries in which avoidance of formal transactions is widespread. The difference in Thailand may reflect the high proportion of titled parcels, the efficiency of service delivery, or a more intangible “registration culture” that takes into account both factors as well as a social expectation that registration is the norm.

The Thai experience indicates that registration taxes and fees per se do not completely discourage formal registration of transactions. Perhaps a more relevant question is whether government revenue and efficient land use are maximized by the mix of rates between very low annual taxes and somewhat substantially higher transfer taxes. The data in Table 2-11 do not show informal fees, which have been reported to run \$200–\$1,100 per transaction in Cambodia and anywhere from a few dollars to several hundred dollars in the Philippines.

The issues of fee collection and paying for use of the registry system after initial registration are important because the sustainability of the registry system depends on them. The Bank’s projects in the region are demonstrating that it is possible to make these systems sustainable. These projects are now seeking to find ways to ensure that they channel revenues generated directly into support of land administration. Compared with other regions, such as Sub-Saharan Africa, where many donor-supported systems collapsed after donor support ended, the East Asia and the Pacific Region appears to have made remarkable progress toward sustainability. The need to provide incentives for the voluntary registration of transactions (rapid transfer times, affordable fees) is still clear, however.

Land Valuation

Property valuation is necessary for a number of public and private functions in the land sector, including state disposal of land, compensation for state acquisition, taxation of land, and determination of the value of collateral assets. Determination of the value of collateral assets is critical to the health of the financial sector, because overvaluation can create large, hidden exposures in loan portfolios.

China and Vietnam are in the early stages of developing valuation systems for the divestment of state properties. They are basing valuations on observed prices in urban markets and on auction results. In neither country is valuation sufficiently developed to provide accurate information for a commercial real estate market, so financial intermediaries use highly discounted, partial values as security. The lack of robust valuation standards opens the way for corruption in state land divestiture.

The Philippines uses local government assessors for land tax valuation and national-level appraisers for various functions such as property taxation and compensation for land acquired for public investment and the Comprehensive Agrarian Reform Program. There is no standardized methodology. Valuations in the Philippines are widely criticized as influenced by local politics, which keep valuations 80–100 percent below market value.

Indonesia has a fairly effective local land valuation system, probably because it relies on an annual property tax. Thailand experienced some difficulty establishing a land valuation authority. Lao PDR has had good success with a pilot land valuation office within the Ministry of Finance focused on urban land for tax purposes. Cambodia's land valuation capacity is very limited.

Conclusions

National land administration regimes will be better able to support poverty reduction frameworks if they are made to work at as local a level as possible to provide tenure security based on local agreement about rights. Reorienting administrative approaches from paternalistic control to service delivery will reduce transactions costs and mobilize capital by formalizing land rights, serving the needs of the poor for security of tenure by reducing vulnerability and increasing opportunity. Greater local participation and official accountability within pro-poor policy and legal frameworks that limit the influence of unaccountable officials (in planning, forestry, agricultural, and other agencies) is the key. Technology has a role to play, but its cost-effectiveness and efficiency follow from well-designed systems and procedures, not the other way around.

Land administration in the region works best when it is a deconcentrated function (and therefore locally accessible and responsive) and accountable to both local constituencies and a central agency (and therefore able to support standards and implement policy). To ensure budgetary sustainability and qualified staff, fees have to be set at reasonable levels, which may involve a sliding scale based on the value of the property, and land administration agencies must be given the ability to recover some part of fees they generate. Evidence from Thailand suggests that with secure titles and efficient service, the willingness of the population to pay for land administration increases drastically. The threshold for transfer taxes may need to be increased to exempt the poor, and better valuation capacity needs to be introduced to monitor and tax the transfer of high-value properties.

A decentralized land administration function that is low cost and inclusive provides a solid foundation for strengthening valuation and instituting value-based land taxation at the local level. Such taxation is likely to play an increasingly important part in the finance of local government functions in the coming decade.

Chapter 3: Land Markets: In Search of Efficiency, Equity, and Financial Stability

Meeting the Challenges of Market Allocation of Land in Support of Agricultural Intensification, Urban Development, and Financial Deepening

This chapter examines land markets in the region from three perspectives, each corresponding to a thrust of development strategy in the region. The first is the relationship between land markets and rural development/agricultural intensification. The second is the role of land markets in urbanization and the competitiveness of cities. The third is the role of land markets in financial deepening and macroeconomic stability. In each area, the region's land markets are far from efficient or equitable, spatial planning and development control processes are falling short of meeting objectives, and financial sectors are not well integrated with property markets. While the state has important roles to play in regulating land markets and intervening to compensate for their imperfections, a number of shortcomings in state involvement are apparent.

Based on the analysis of the chapter, the following key recommendations are made:

1. Encourage agricultural land lease and sales markets by easing restrictions, improving tenure security, providing rural finance and agricultural services, and expanding nonfarm employment opportunities.
2. Mitigate distress sales of agricultural land by providing rural finance and expanding mortgage lending and disaster prevention.
3. Expand financial support for low-income residential development by regularizing settlement under a variety of tenure status designations, adopting community mortgage lending schemes, and providing tax incentives.
4. Encourage investment in low- and middle-income residential markets through more flexible and "upgradable" construction standards, land readjustments, and innovations such as land sharing.
5. Use value-based land taxation to bring underutilized land into the market in both agricultural and urban use areas.
6. Adopt integrated growth planning frameworks that transparently signal immediate and long-term plans for transportation siting and other infrastructure, establish permanent environmental protection zones, and simplify zoning and permitting requirements. Encourage widespread participation in and public information about the planning process to help ensure inclusion of poor and middle-income groups. End practices that keep spatial plans secret, and delink land ownership from planning compliance.

Making agricultural land markets more efficient can increase productivity and reduce rural poverty. Estimates from Chinese data suggest that greater reliance on land leasing instead of land readjustments could increase output 12 percent (Deininger 2002). The kind of agricultural land market transactions that enhance both efficiency and equity follow from related factor market improvements in credit, insurance, and labor markets and occur first in lease markets (as they are in China and Vietnam).

Agricultural land markets are more problematic for poverty reduction, because they require larger initial investments and favor wealthier market participants. Furthermore, distress sales caused by climatic or health shocks are a serious problem that is increasing poverty and land concentration in the region. Liberalization of land markets needs to be accompanied by increased efforts to

mitigate or insure risks. Further examination of mortgage funds to deepen access to finance for poor rural landholders and prevent distress sales is warranted. Thailand, for example, is currently developing “clearinghouses” for rural credit in which local intermediaries such as farmer associations absorb some of the default risk.

Factors preventing land markets from operating efficiently and equitably in rural areas include the weaknesses of land administration (described in chapter 2), limited operating capital and long-term credit for producers, technological and infrastructural limitations, the absence of crop and disaster insurance, and the lack of off-farm employment opportunities. These conditions make it more difficult for poor but efficient rural households to access additional land, even through fixed lease contracts, and they make (less efficient) sharecropping a widespread form of land lease in the region. Sharecropping is a valuable channel of land access in credit-scarce, high-risk environments, but it provides less efficient incentives than fixed lease or land ownership. Lease markets are expanding and increasing efficiency in China and Vietnam but at levels far below potential, in part because of a preference in some jurisdictions for administrative readjustments and in part because of restrictions on labor mobility (Deininger 2002, 2003; Yao 2002).

Urban and peri-urban land markets are highly active throughout the region, helping to accommodate the world’s largest urbanization experience in history. But these markets are not contributing to growth or poverty alleviation as well as they could be—indeed, during the Asian crisis, they played a destructive role. Their failure to help reduce poverty reflects the limited financing for low- and middle-income residential development; inadequate taxation systems, which permit speculation and underutilization of land limiting supply; undeveloped valuation systems; and unrealistic and nontransparent planning and development control regulations, which limit the supply of serviced land while failing to meet environmental conservation goals. Millions of informal residents are excluded from the financial and legal benefits of formal participation in these markets.

As urban population growth is the central demographic feature of the region (rural populations are also growing in absolute terms, but urban populations are growing faster), the availability and affordability of urban land has important consequences for employment opportunities, transportation, and ultimately the competitiveness of East Asian cities.

Land conversion from agricultural to urban use is a particular concern. Affordability and accessibility of new land for residential and commercial development must be balanced against needs for environmental protection, including farmland protection. Urban expansion and conservation of the environment and farmland can be managed by identifying critical environmental features and areas for conservation; clarifying long-term capacity for food production across the national landscape, including innovative opportunities for urban agriculture (such as those in Ho Chi Minh City); and integrating planning of expansion of transportation networks. Management of urban areas and protection of farmland is preferable to the current situation, in which highly restrictive land conversion policies are widely subverted by short-term imperatives, often failing to meet efficiency, equity, and environmental goals. An expanded and more participatory approach to spatial planning that integrates environmental protection, transportation networks, and economic development makes sense.

The links between the financial sector and the real estate sector are weakened by these underlying distortions. Real estate lending has tended to skew toward the high-end segments of the market, crowding out lending to the much larger middle-class and poor segments of the population. In the past three years this tendency has been moderated somewhat in Indonesia and Thailand, but it remains a concern in China, the Philippines, and Vietnam.

Financial sectors have tended both to underuse the land market (by failing to use the real value of much of the regions' land assets as collateral) and to overuse it (by promoting speculative bubbles based on unrealistic land values). Vietnam appears to be experiencing a land market bubble, but because the banking sector is less developed and less exposed than in other countries, the burst of the bubble is unlikely to hurt the financial sector as much it did in Thailand. China's urban real estate market is also in danger of overheating, and its banking sector is exposed to a real estate downturn. Continued improvements in the legal and administrative infrastructure for land (see chapter 2), better valuation capacity, and improved early warnings of bubbles are practical measures that could help address the problems.

Inefficient and Inequitable Agricultural Land Markets

Land sales markets function badly for poor groups in several countries in the region. They need to be accompanied by more rapid reform of associated markets for credit and insurance; the provision of public goods (credit, insurance, technical knowledge, market information); and improved nonfarm employment opportunities for both poor but efficient small producers and commercial operators in need of land. The positive gains to society and economy from better-functioning land markets are significant, but the risks of inequitable land markets are also great, because they can lock in rural poverty. In Cambodia, Indonesia, and the Philippines, the evidence suggests that the landholding size of poor households is so small, and state land assets so large, that some degree of redistribution must accompany market promotion to lead to the desired poverty reduction and growth results. Table 3-1 highlights key issues in the way agricultural land markets are working for different groups in the East Asian countries under consideration.

Table 3-1. Mechanisms for Leasing or Buying Agricultural Land in Selected East Asian Countries

Country	Lease market	Sales and transfer market
Cambodia	Sharecropping and cash leasing widespread	Speculative land sales along roads and near towns
China	Lease market permitted but not widely used, due to administrative controls and input constraints (Yang 2002). Potential high productivity gains from encouraging leasing (Deininger 2002).	Technically not permitted (transfers of leases only). Major conversion of agricultural land at urban fringe. Official net loss of 1.32 percent of national arable land in 2002 (including natural loss).
Indonesia	About 60 percent of households in sharecropping arrangements	Sales of state land and IBRA assets. Poor constrained from competing in land sales markets
Lao PDR	Widespread sharecropping in Vientiane and Mekong plains	Expansion of commercial agriculture through land sales in plains; agricultural land conversion near Vientiane
Philippines	Leasing prohibited by the Comprehensive Agrarian Reform Program (CARP)	Agricultural land sales prohibited by CARP; agricultural land conversion subject to CARP approval
Thailand	About 30 percent of households in sharecropping arrangements	Expansion of commercial agriculture through sales markets in central plains and Chao Phraya basin
Vietnam	About 15.3 percent of land leased out, 5.9 percent leased in in 1998. Households that lease their land from owners are more efficient farmers (Deininger 2002).	About 9.8 percent of households sold land, 2.5 percent bought land in 1998. Land-size ceilings in effect, with some exemptions. Limitations on conversion of agricultural land. Distress sales reportedly increasing landlessness. in Mekong Delta.

The land lease market is key to providing access to land for the rural poor and facilitating transfers to overcome parcel fragmentation. Most of the restrictions on land lease markets have been lifted in China, Lao PDR, and Vietnam. Sharecropping is widespread in the region and provides a channel of land access for the poor. Its extent suggests, however, that access to working capital is constrained and that poor farmers have few options for hedging risks.

For land lease markets to operate with increased efficiency and equity outcomes, imperfections in labor and credit markets and technological transfer to low-income farmers may need more attention. The Philippines has pursued a necessary sequencing of land reform before land market “reliberalization,” but the process has dragged on, creating pent-up demand for rental, sales, and mortgages. Indonesia’s small farmers are so land constrained on Java that the scope for beneficial transfers in land markets is limited, implying that land reform and intensification of employment in the industrial agricultural sector may have more impact on poverty reduction than land market stimulation per se.

Land purchase markets are less valuable for poverty reduction, because they are harder to enter initially. Furthermore, throughout the region distress sales that reflect failures in credit and insurance markets are contributing to rural poverty and threaten to lock in greater inequality of ownership. Reducing distress sales by improving credit provision, disaster prevention, and health services is called for. Land banks or mortgage funds could be created to provide poor borrowers with liquidity. Such funds would likely require intermediation by organizations such as NGOs or farm associations, which could use the land in case of default.

The conversion of agricultural land to urban uses is accelerating throughout the region. Blanket controls on land conversion are unlikely to be successful, and they raise housing prices and encourage corruption. A more promising pathway is integrated growth planning that permanently protects key environmental resources, integrates urban agriculture, and seeks to locate transportation networks for future growth appropriately. Making such planning frameworks publicly accessible and debated makes them more accountable and gives greater “ownership” to local communities. Incentives such as tax breaks to developers, tradable development rights, government purchase, or direct payments to owners to maintain land in agricultural usage may be required to compensate landholders for withholding development.

Urban and Peri-Urban Land Markets: Rebounding from Crisis and Preparing for Demographic Explosion

Urban and peri-urban land markets are rebounding from the Asian crisis and growing rapidly. During the next 20 years, the region’s urban population is expected to grow by about 60 percent to about 800 million people. The increase represents the largest, fastest episode of urbanization in human history. To cope with this expansion, the supply of serviced land for housing and investment needs to increase (through intensification and extension) and the use of land in urban areas must be made more efficient and ecologically sustainable to allow larger cities to function competitively.

Urban real estate markets have great potential to serve as a mechanism for increasing savings (through housing development and mortgage markets), facilitating foreign direct investment, and improving the living standards of the poor (through improved access to employment, water, health, and education). But bad policy choices with respect to the regulation and guidance of urban and peri-urban land markets could lead to environmental deterioration, housing crises, breakdowns in health and sanitation services, and intolerable levels of transportation congestion. Efforts to make land markets work for the urban poor need to increase the supply of land for new housing, recognize the legitimate rights of poor urban dwellers in informal settlements, create transparent and fair mechanisms of public acquisition for land adjustment or resettlement in cases where it is a clear public priority, and support innovative schemes (such as land sharing in Thailand, in which landlords share parts of development property with settlers in exchange for payments and agreement about future development).

The dynamics of urban land markets are structured by economic fundamentals, but they are heavily influenced by the spatial planning and development control regime, which determines transportation corridors and building restrictions. Spatial planning and development control have important roles to play in channeling growth and supplying public goods that markets will not supply (open space, environmental amenities, protection from natural hazards).

In the East Asia and Pacific Region, however, spatial planning and development control regimes are often dysfunctional, serving more as mechanisms of administrative control and collusion than as protectors of the public interest. In Indonesia, for example, spatial plans are kept secret, and the *izin prinsip/izin lokasi* (location permit) system gives developers de facto control of immense areas at the urban fringe without requiring them to build. The Philippine system of permitting a subdivision requires 160 requirements and 41 permits, inviting corruption (Ballasteros 2002). China and Vietnam restrict access to planning information, even though it is the basis for all property development, and require individual approval of each development project, whether or not it conforms with the master plan. China reported 549,000 land abuse cases related to officials between 1999 and 2002 (China Daily, February 23, 2003).

Making land markets work for the poor requires simplifying spatial planning and development control and eliminating corruption. A simplified growth planning framework would take into account the protection of key environmental resources and transportation networks. Simple zoning schemes would anticipate immediate needs for residential and industrial development and locate public investment in those areas, while identifying longer-term needs for future investments. This type of growth planning would have the following characteristics:

1. *Easy to understand*: The public and government staff at all levels should be able to understand the general principles and proposals. If they do not, the principles cannot be adopted, monitored, evaluated, or amended over time.
2. *Transparent*: All plans must be widely available to the public in a form that allows no scope for “interpretation.”
3. *Supportable*: Plans should evolve during working group meetings and intense discussions with officials. They must represent a consensus of views.
4. *Realistic*: Decisionmaking systems and administrative procedures evolve slowly over time. A highly regulated but efficient planning environment is not likely—or even desirable—in the short term.
5. *Financially viable*: Plans must reflect the public resources available to support them; grandiose proposals without the necessary finances are worthless. Proposals that call for more funds than are available must be shelved or alternative means of financing sought (Indonesia Development Planning Report ILAP Part C 1998).

Development control needs to adopt pragmatic standards that allow the poor to acquire land and create low-cost shelter that can be legalized and upgraded over time. Making ownership dependent on compliance with development control, as in urban Vietnam, creates a situation in which low-income landholders may find it impossible to become legally recognized.

Avoiding Overheating Financial and Property Markets

There are good macroeconomic reasons to foster broadly accessible urban property markets with an emphasis on middle-class residential development. The rapid growth in land and real estate prices threatens to marginalize the poor, inhibit urban upgrading efforts aimed at the poor, and shift the focus of financial institutions toward speculative investments in real estate. One of the

key lessons from the 1997 financial crisis in the region was that overleveraged real estate investment can contribute to a banking crisis. As Renaud points out :

International experience shows that the real estate industry is inherently cyclical, especially commercial real estate. Unfortunately, the amplitude of the Thai real estate boom that was initially built on sound growth fundamentals until about 1992–1993 was magnified and distorted by outdated banking practices and weak credit risk management in a financial sector that was also experiencing extremely rapid growth. Currently, structural flaws in both sectors have been starkly revealed, and both sectors are under great stress. The real estate boom that was overextended into 1995 is now followed by oversupply and a very severe asset deflation.... That nonperforming real estate loans, overvalued real estate collateral, and business loans improperly deflected into real estate investments have contributed directly to banking failures is a familiar story in quite a few countries. From an international perspective, the magnitude of the current overbuilding in the Bangkok metropolitan region is among the highest recorded, possibly the highest. (Renaud, et. Al. 1998)

The key factors that contributed to the real estate crisis in Thailand had to do with both the dynamics and regulation of the property market and with the relationship between banks and real property assets. In the property market, the underdevelopment of rental markets, inadequate condominium laws, and the lack of strata sales made it difficult for supply to respond incrementally to changing demand. Instead, the sector overbuilt large units. Weak execution of urban planning failed to set limits based on a realistic assessment of the need for office space and housing.

The banking sector lent on the basis of expectations of asset appreciation instead of the cash flow from completed projects, causing it to overestimate the value of projects. The property valuation system was also flawed. The lack of independent valuation capacity or professional norms allowed banks to accept highly overstated valuations, which were amplified as developers leveraged new loans with overvalued properties. Capital markets for property-backed securities were thin in Thailand, forcing developers to rely on a small number of highly exposed institutions. Mortgage securitization and a secondary housing market can both contribute to deepening and diversifying the capital market for property development.

Although the overheated urban property markets in Indonesia, the Philippines, and Thailand have cooled, there are signs that these markets may be overheating in China and Vietnam. Vietnam's property market is based largely on household savings, so it poses little risk for the country's financial institutions (although it is exacerbating the shortage of affordable housing). China's situation is more similar to that of the Southeast Asian countries before the crisis, raising concerns about financial exposure. The level of forced evictions in China's urban markets is also high, raising equity concerns.

Conclusions

The remaining agenda needs to encourage land markets to work for all groups in society. The increases in productivity, equity, and labor mobility that agricultural land markets can provide can reduce poverty, but they need to be accompanied by measures outside the land sector that make it easier to compete and reduce risk for poor agricultural landholders. Rental contracts will be the first choice of low-income households for efficiency- and equity-enhancing transfers.

Land markets in urban areas are a source of dynamism for the economies of the region. This dynamism can include the poor if the policy environment is well designed to protect legitimate

occupation and development controls are realistic. The remaining agenda should focus on these policy distortions and link land market policy improvements closely with service upgrading interventions that target the poor. At the urban fringe, the regionwide challenge is to move land markets away from planning regimes in which land conversion has become a locus of insider dealings toward processes in which market actors make key decisions within more transparent and environment-friendly growth planning frameworks. Doing so is possible politically only when planners and state land managers are made accountable to inhabitants for their decisions and the process of growth planning includes broad public participation and monitoring.

The postcrash emphasis on middle-income residential markets is a welcome development that cycles household savings into the construction industry and should contribute to financial deepening. But throughout the region the poor are still largely excluded from financial intermediation in housing. Upgrading with cooperative housing finance and innovative schemes such as land sharing can help end this exclusion.

Chapter 4: Land and Social Justice: Land Reform, Customary and Indigenous Land Rights, Women’s Land Rights, and Land in Postconflict Reconciliation

Social justice issues related to land form an integral part of the poverty reduction agenda in the region. Land distribution has both social and economic dimensions. Not only does it directly target some of the poorest and most vulnerable groups in society, world experience shows that creating an equitable distribution of rural landholders is usually a precondition for growth because of productivity and multiplier effects originating in the rural sectors. Policies dealing with women’s land rights and protection of customary and indigenous land rights are important to protect vulnerable populations from social and economic displacement.

Land Distribution

Land distribution in East Asia is not as unequal at the aggregate level as it is in other regions, such as Latin America (table 4-1). The distribution of land is relatively equitable in China, Lao PDR, Thailand, and Vietnam. It is less equitable in Cambodia, Indonesia, and the Philippines, and nationwide figures mask more severe inequality and landlessness in certain regions. Cambodia, Indonesia, and the Philippines have enacted land reform legislation, and all three countries are carrying out programs to redress imbalances or inequities in land tenure (although only the program in the Philippines can be considered active and significant). Thailand is continuing a land reform program that focuses largely on upgrading the tenure status of informal settlers in areas officially under forest classification. China, Cambodia, and Vietnam undertook large-scale decollectivizations of agriculture in the 1980s and 1990s, which have occasionally been referred to as land reform. But because these efforts did not address imbalances or inequalities in landholding (and indeed were very egalitarian), they are not addressed here.

Table 4-1. Gini Coefficients for Distribution of Land Ownership in Selected Countries in Asia and Latin America

Country	Gini coefficient (1=complete inequality,0=complete equality)
Vietnam	0.35
China	0.40
Thailand	0.45
Indonesia	0.56
Cambodia	0.66
India	0.61
Brazil	0.84
Peru	0.91

Source: Lipton 2002.

This section reviews the land reform experiences in Cambodia, Indonesia, the Philippines, and Thailand. It shows that land reform continues to occupy an important place in the poverty reduction framework in the region and remains a high-profile issue of great popular concern.

The review makes the following findings and recommendations :

Thailand's upgrading program for holders of Sor Por Kor 4-01 documents represents an important step toward regularizing a marginalized group of landholders, but it has not yet clarified how existing debt overhangs will be worked out or how financial intermediation will be handled. *Recommendation:* Establish financial intermediaries in land reform areas to restructure existing debt and help absorb the default risk of households borrowing against land value.

Indonesia does not have fully prepared models of land reform ready to implement but is in the early stages of national dialogue on land policy reforms. Reforms being considered include changes to the land reform laws, which could put in place the conditions for a number of equity-enhancing changes in land tenure. Political support for these reforms is still in question. *Recommendation:* Continue with policy reform consultations and develop alternative models of land reform that . Models would be programs that make agricultural laborers shareholders on plantations, support plantation development based on contracted production by reform beneficiaries, or grant small household plots to help improve livelihoods.

The Comprehensive Agrarian Reform Program (CARP) in the Philippines has been successful, but it has slowed during the crucial stage of private land acquisition. A more proactive tax policy might encourage landowners to sell. CARP contains restrictions on land market activity in agricultural land that are having negative consequences for low-income households and CARP beneficiaries as the program ages. Land reform and land markets are not incompatible for achieving poverty reduction and growth in the Philippines. Both are needed as complementary aspects of a propoor land policy framework if accompanied by supporting reforms in related areas. *Recommendation:* Accelerate achievement of CARP goals while relaxing prohibitions on agricultural land rental and mortgage. Continue support for CARP communities.

Cambodia's incipient program appears straightforward because it involves only state lands and is politically supported, but it will require continued demonstration of commitment by sectoral and region officials and significant investments in physical and social infrastructure to become an effective poverty reduction program. *Recommendation:* Identify areas available for distribution, establish priority groups of beneficiaries, and begin to develop costed implementation plans.

Country Approaches to Land Reform

Cambodia

Cambodia's Land Law of 2001 creates the potential for a land distribution program based solely on the distribution of available state land. The law does not obligate the state to distribute land, but it creates an enabling form of transfer for social purposes called *social concessions* for agricultural production and housing. In 2003 the government approved a subdecree permitting implementation of social concessions; piloting of the approach began in May 2003.

The Cambodian approach creates great opportunities for directly reducing poverty by transferring land and providing support services. It also faces substantial uncertainty, both in the political economy of state land management and in the availability of the investment capital needed to bring vacant, unirrigated, and often remote land into production. Key factors in identifying and acquiring land for the program will be the willingness of the Ministry of Agriculture, Forests, and Fisheries to make land available from industrial agricultural concessions that are larger than the maximum size of 10,000 hectares and to inventory and classify degraded forests that can be converted to agricultural use.

Investment capital for land reform is unlikely to be made available from budget revenue or private sources and would need to be provided by international donors. Nevertheless, the

potential for social concessions to reduce rural poverty is large. Based on an estimate that 12 percent of the rural population is landless or land poor, about 200,000 families would be affected (CDRI 1999) If each of these families received the normal maximum of 2 hectares, the immediate problem of landlessness could be solved by distributing about 400,000 hectares of land. The quantity of state land in agricultural concessions above the 10,000 hectare limit is estimated to be about 435,000 hectares (ADB 2002). While it is too soon to know how Cambodia's land distribution plans will play out, the approach has the notable advantage of being based entirely on state-owned land that is known to be available if the government can act in a unified and cohesive manner.

Indonesia

Indonesia has two land reform laws on its books, the 1960 Basic Agrarian Law and the 1962 Land Reform Program. Both laws have been superseded by more recent legislation that limits their scope of applicability to a very narrow set of lands (neglected lands) for redistribution. From 1961 to 2001, about a million plots were distributed, with most distribution occurring in the early 1960s and the late 1990s. In the current climate of national reform and decentralization of governance, the decision of the People's Consultative Assembly TAP MPR No IX/MPR/2001 on Agrarian Reform signals a return of agrarian reform to the national agenda, but the Bill on Agrarian Reform and Natural Resources Management, which the decision calls for, has not yet been produced by the National Land Agency (BPN). The delays are no doubt partly associated with the continuing uncertainty about the status of BPN under decentralization but also with the lack of a clear policy direction and coherent models of agrarian reform.

Agrarian reform in the distributive sense is only one aspect of the thorough land policy reform the national planning agency BAPPENAS views as necessary. Different conceptual proposals for what agrarian reform would mean at the current stage have been floated. Some emphasize making small plots available to landless families to increase household food production; others emphasize the return of *adat* (traditional) lands to communities or the return of plantations to local ownership or worker control, on a shareholder or contract farming basis. With World Bank support, Indonesia is embarking on a national land policy consultation process. It is likely that the results of this process will help increase consensus about what agrarian reform is to mean and what will go into the expected bill.

The Philippines

After the fall of the Marcos government, in 1986, the government of the Philippines placed renewed emphasis on land reform. The 1987 Constitution contains language stating that the state "shall promote comprehensive rural development and agrarian reform" (Article II, Sec. 21). The enactment of the Comprehensive Agrarian Reform Law (RA 6657), on June 10, 1988, created the Comprehensive Agrarian Reform Program (CARP). CARP has three major goals: to promote social justice or equity in terms of access to, use of, and control of land; to increase productivity and income; and to transform beneficiaries into self-reliant farmers. Toward these ends, CARP focuses on land tenure transformation, support services to beneficiaries, and agrarian justice.

The program aims to acquire and distribute 8.2 million hectares of agricultural land from both state-owned and privately held lands—about 83 percent of the country's 9.9 million hectares of arable land. Tenants and landless agricultural workers are the target beneficiary groups.

The approach to providing support services is to identify Agrarian Reform Communities (ARCs)—neighborhoods, villages, or clusters in which agrarian reform beneficiaries are concentrated. A set of government agencies responsible for supporting the program provides these communities with agricultural extension services, credit, and infrastructure support. The

government has used two World Bank loans to support ARCs. The target is to establish 1,000 ARCs nationwide. The agrarian justice component of the program focuses on dispute settlement, primarily of landlord-tenant cases and cases dealing with land valuation.

The scope of land to be acquired and distributed under the program includes private lands and state lands in the alienable and disposable category and some in the Integrated Social Forest program. Acquisition and compensation of private land, which is the responsibility of the Department of Agrarian Reform, amounts to 37 percent of the targeted area. State land for distribution, which is under the authority of the Department of Environment and Natural Resources, accounts for the remaining 63 percent of the targeted area.

Results under CARP have been achieved more slowly than originally programmed and planned but nevertheless represent a significant transformation of rural society. As of 1999, 5 million hectares had been distributed to 3 million farmer households, amounting to about 65 percent of the total target. Acquisition of private farms has proceeded more slowly than acquisition of other land: as of 1999 only 10 percent of these lands had been acquired and distributed, while 73 percent of the target for public lands had been distributed.

Land valuation and negotiation of land price with landowners has been one of the chief problems of CARP, and sufficient public funding to finalize the program is an issue. CARP target land cannot be sold, and distributed land cannot be transferred for 10 years. CARP prohibits share contracts and ceilings on leasehold and freehold. With a formal agricultural land market essentially prohibited by CARP, reference prices from comparable sales are not available and estimates of capitalized income streams are uncertain.

The impacts of CARP are a topic of much ongoing research and discussion. Productivity and incomes among CARP beneficiaries appear similar to those of other farmers, but they are rising and moving CARP beneficiary families from below to above the poverty line (Briones 1998). Beneficiaries of agrarian reform have also been able to provide their children with more education and accumulate more assets than nonbeneficiaries. On the negative side, land access opportunities for young households and agricultural workers have probably declined as a result of CARP prohibitions on tenancy and share contracts. Thus CARP may have benefited one group of poor and hurt another. Prohibitions on tenancy, sales, and mortgage of agricultural land may have outlived their usefulness.

There are some indications that CARP has reduced investments and may be contributing to a loss of the collateral value of land (Llanto and Dingcong 1994). The effect of land conversion restrictions mandated by CARP is debated in the urban growth arena, but approved conversions total only 1.4 percent of Department of Agrarian Reform coverage, suggesting that CARP plays little role in restricting agricultural land conversion on the urban fringe (Briones 1998). Considerable attention has been given in recent years to using land taxation to encourage private landholders to sell their land for distribution through CARP. A promising direction that might be politically feasible would involve linking new tax provisions with a lifting of some of the restrictions on land markets (Deininger 1999). CARP therefore presents a mixed picture: it has achieved much, but funding problems and the side-effects of its long-term prohibitions on the land market remain challenges.

Land reform in the Philippines also has an urban side. The Philippine Mortgage Program is an innovative program for dealing with the widespread problem of squatting on private lands. Under the program, accredited NGOs organize communities to negotiate with landowners to sell the property to occupants at a mutually acceptable price. The Community Mortgage Fund provides

loans to the community; individual families are then allocated plots and repay their share of the cost of land acquisition to the Fund through individual mortgages. As in CARP, however, sustainability of public funding is in doubt.

Thailand

Thailand's land reform efforts began with the Agricultural Land Reform Act of 1975, but they were largely ineffectual in the 1970s. In the 1980s, in a change of strategy the government set a new goal of providing title, infrastructure, and credit through cooperatives to informal occupants of "forest" areas. Occupants would be able to transfer the land to their heirs but not sell it. Theoretically, the title could be used for collateral for loans. The program proceeded slowly and was marked by scandal and allegations of fraud and corruption in the granting of documents. The Chuan Leekpai coalition government collapsed in May 1995 in connection with a land reform scandal.

Beginning in 1982 the World Bank provided support to land reform through the Land Reform Areas Project. The project focused on providing rotating credit funds and social infrastructure in the areas affected by land reform. An Operations Evaluation Department report criticized the project for failing to prepare a socioeconomic profile and baseline for measuring impact, failing to grant full titles, targeting land for redistribution from farmers who were themselves small landowners, and attempting too ambitious a program of institutional development. The report also criticized the formation of 89 cooperatives as not being based on farmer initiative, leading to a poor record of loan repayment. Support for the land reform agency was weak and lacked the confidence of the prime minister's office. With the exception of social facilities, infrastructure was not maintained (World Bank 1999).

The land reform program has been heavily criticized for defective records and manipulation of documentation. Many occupants still do not hold full title. Most possess the Sor Por Kor 1-01 document, which is really only a claim certificate. Table 4-2 depicts the types of documentation given to "forest" occupants by the Department of Land and the Royal Forestry Department..

Table 4-2. Documents Issued under the Thai Land Reform Program

Type of document	Thai name	Rights authorized
Claim certificate	Sor Kor	Indicates a claim lodged by a person in possession of a piece of land
Preemptive certificate	Nor Sor 2 or Baichong	Authorizes temporary occupation of land
Certificate of utilization	Nor Sor 3	Proves permanent land use; can be used as loan collateral
Title deed	Nor Sor 4 or Chanode	Establishes full land ownership, with specific land boundaries indicated by official markers
Certificate of right to farm (issued by Royal Forestry Department)	Sor Por Kor 4-01	Nontransferable except to descendants; cannot be sold or used as loan collateral. Subject to program of upgrading by Thai government.

Source: Thailand Land Tilting Project Documents.

In early 2003 the Thai government announced a scheme to convert the certificates to full titles and make them usable for sale, lease, or collateralizing loans in a program managed by a new office called the Asset Capitalization Office, which reports to the prime minister. The upgrading of Sor Por Kor 4-01 land papers into title could affect up to 1.4 million poor farmers. To achieve its potential, the program will need to deal with the accumulated debt of the existing land reform cooperatives. Banks may be unwilling to deal directly in land in land reform areas that have debt overhang, low returns, and transitional legal status of land, so the proposed scheme envisions government agencies and farmer associations acting as intermediaries or clearinghouses for financial transactions. The Agricultural Land Reform Office, the Cooperative Promotion Department, the Land Department, and the Social and Welfare Development Department, which oversee the distribution of land to landless farmers, would each be involved as an intermediary. Some farmer association leaders have criticized the program, asserting that recovery of degraded land for redistribution to landless farmers is urgently needed. The planned scheme was continuing to be refined as of May 2003.

Customary and Indigenous Rights

Customary land rights, including the land rights of indigenous people, represent a controversial issue in the region. Because most indigenous groups live in upland and forest regions, their land rights are in great tension with forestry exploitation and conservation, the management of protected areas, and the influx of migrants from more densely populated areas. Political and security issues also influence policy decisions about land rights of ethnic minorities in Lao PDR, Thailand, and Vietnam. Indigenous people of the region often lack documented land rights and often have conceptions of land tenure that are quite distinct from the legal formulations set out in national land laws, making them vulnerable to dispossession.

Countries of the region vary in their attitude and approach to customary and indigenous land rights. Cambodia has a provision in its new land law for communal land rights for indigenous people, but it has not yet been implemented. China grants standard land rights to its ethnic minorities. Indonesia recognizes customary rights to *adat* land as one of the basic forms of land tenure, but it has been reluctant to demarcate and accord ownership to *adat* holdings and communities. Lao PDR and Vietnam do not regard ethnic minorities as having separate legal identities and do not recognize any distinct land rights for them. Much land claimed as *adat* has also been granted other rights or been designated as forest. The Philippines has the most developed legal concept of indigenous lands, set forth in its Indigenous Peoples Rights Act. Thailand treats the land rights of indigenous people like other occupants of forest areas.

Cambodia

Cambodia has a relatively small population of indigenous people of about 100,000, most of whom live in the northeast and north in upland areas. Logging, migration by lowland majority-group Khmers, and commercial agriculture are transforming the traditional land areas of Cambodia's indigenous people. A strong advocacy network, supported by the United Nations Development Programme and other institutions, has sprung up to protect indigenous land rights. The Land Law of 2001 contains provisions for granting communal titles to indigenous communities, but these provisions have not yet been implemented, largely because of the government's limited human resource capacity. A legal definition of *indigenous community* is still pending in the Ministry of Interior, and the mechanics of issuing communal titles have not been widely discussed with the people involved. A number of indigenous communities are engaged in mapping their traditional claims to support further legal recognition. The Forestry Law refers to the rights of indigenous people to livelihoods, but it does not suggest how competing claims between forestry uses and indigenous rights will be resolved.

Indonesia

Indonesia does not have a specific policy or legislative regulation referring to indigenous people, but several laws recognize traditional communities and landholding within traditional social norms. The 1945 Constitution recognizes the existence of the *adat* community. The 1960 Basic Agrarian Law is based on the concept of *adat* land, and some agrarian legislation requires that customary *adat* lands be recorded in the land register. The 1967 Basic Forestry Law, however, weakened *adat* communities' claims to natural resources by putting all Indonesian forests under state control. Forestry legislation passed in September 1999 restores some recognition of *adat* rights if the government determines that the *adat* community exists as a legally recognizable entity with a definite social organization and clearly defined territory, a body of customary laws is still recognized and enforced, and the people depend on forest products to meet their daily subsistence needs. Even under these conditions, however, *adat* land is still considered state forest.

Human Rights Act 39 of 1999 recognizes and provides protection for the *adat* community and its cultural identity. The right to customary communal land, known as *ulayat*, is recognized as a part of cultural identity. The Local Government Act No. 22 of 1999 provides the opportunity for *adat* communities to use their communal entities and to apply their norms and values and incorporate them within village regulations. A 1999 regulation of the minister of agrarian affairs provides guidance for resolution of *ulayat* claims by *adat* communities. It calls for baseline studies to determine where *ulayat* lands still exist and to record them on land registration maps. Very few *adat* lands have been demarcated; some communities prefer to keep their lands undemarcated and unregistered out of mistrust of government authorities.

Lao PDR

Home to as many as 200 different ethno-linguistic groups, Lao PDR does not recognize any distinctive status of "indigenous," ("We are all indigenous," is how one official put it) and prefers the term *ethnic minority*. The land allocation and land use planning process has attempted to reduce shifting cultivation throughout the forested areas of Lao PDR, thus disrupting many customary land tenure practices. At the same time, highland villagers are systematically being resettled into larger settlements next to main roads, in order to consolidate infrastructure and social services.

The Philippines

About 12 million indigenous people live in the Philippines, constituting roughly 18 percent of the country's total population. Indigenous people from 110 ethno-linguistic groups live in 61 provinces. Their ancestral domains cover at least 2 million hectares, and their communities also cover forest zones, which account for about 15 million hectares. The 1997 Indigenous Peoples Rights Act (IPRA) is a comprehensive law dealing with all dimensions of indigenous people's rights, including land rights. It builds on a trend in Filipino legislation toward greater recognition of indigenous autonomy. Evidence of this trend dates from as far back as 1909, when the U.S. Supreme Court recognized the existence of traditional land rights (Plant 2001).

IPRA regulates rights to ancestral lands and domain, and it ensures the right to self-governance and empowerment, cultural integrity, and social justice and human rights. It creates the National Commission on Indigenous Peoples to implement the legislation and advocate for indigenous populations. IPRA explicitly grants indigenous people rights over their ancestral lands and domains. It also gives indigenous people the right to transfer their lands and property among themselves and to redeem lands acquired from them through fraudulent transactions. Indigenous people are required to maintain ecological balance and to restore denuded areas (Plant 2001).

The issuance of certificates of ancestral domain or land titles (CADTs and CALTs) has been slow: by February 2001 only 9 out of the 181 CADT applications and 347 CALT applications had been approved. Under the Implementing Rules and Regulations for the IPRA, issued in June 1998, indigenous communities have the right to “suspend or stop any project or activity that is shown to have violated the process of securing free and prior informed consent, or have violated the terms and conditions of such previously granted consent.” Subsequently, a National Commission on Indigenous People (NCIP) Administrative Order exempted all leases, licenses, contracts, and other forms of concession within ancestral domains that had existed before the entry into force of the June 1998 IPRA regulations from the provisions on free and informed consent.

Forestry officials challenged IPRA in court, but the Supreme Court upheld the act in a September 1998 decision. The Arroyo administration has subsequently expressed its commitment to the legislation and to a more rapid resolution of claims for ancestral domains. The concept of ancestral domain has been met with mixed opinions by those involved. Some observers believe that titling ancestral domains is a pretext for privatizing land that has been held under customary tenure and leads to disputes and factionalization within communities. Others feel that the concept of ancestral domain limits their land rights, which in many cases may already have taken on a Western character.

Thailand

Thailand does not have a distinct policy for land rights of indigenous people. Indigenous groups—concentrated largely in the northern highlands, in areas classified as forests—often lack documents for land they have traditionally occupied. Disputes between forest officials and indigenous people are common, the subject of much popular protest from organized groups such as the Assembly of the Indigenous and Tribal People of Thailand. A Master Plan proposed in 2002 by the National Security Council, which would have relocated 1,000 hill villages in northern Thailand, has been officially delayed following protests, but complaints from indigenous leaders maintain that forced evictions to make way for pine and eucalyptus plantations or based on allegations of drug trafficking are continuing (Bangkok Post, July 26, 2002).

Vietnam

Vietnam recognizes 54 ethnic groups, among which the majority group, the Kinh, represent about 87 percent. The term *indigenous* is not officially used; instead these groups are referred to as *ethnic minorities* (*dan to thieu* or *dan toc it nguoi*). No specific policies or distinct legal provisions govern the land of ethnic minorities, most of whom live in the central and northern highlands (Plant 2001).

Traditional upland farming techniques involve shifting cultivation in forested areas. During the 1990s the allocation of land and forest areas to state forest enterprises and individual households altered the tenure structure of the forest and mountainous areas traditionally held under communal tenure by ethnic minorities. Households in forest areas are allocated a fixed area for cultivation, with the term of leasehold ownership ranging from 20 to 30 years. In many cases the land allocated for permanent agriculture is insufficient to produce a livelihood using available technology, prompting landholders to continue shifting cultivation illegally, move into wage labor, or reduce consumption.

Since the early 1990s, when the market economy was liberalized in the land-scarce lowlands, migration to the central highlands has been steady, with significant expansion in coffee and fruit growing. Migrants rented or bought land from indigenous people and hired indigenous people to clear the forests. The market for newly cleared land has induced indigenous people to clear much more land than was traditionally used for shifting cultivation. Some ethnic minority farmers, such

as the Tay, the Dzao, the Gia rai, and the M’Nong, have been able to expand their own coffee and fruit crops, but most have been less successful. Disputes and protests about land shortages are common. The government continues to move ahead with the issuance of land use certificates, but a comprehensive solution taking into account land disputes, shortages of farmland, forest management, and crop diversification and intensification is not yet visible on the horizon (Plant 2001).

Summary

Except in the Philippines, the region provides weak protection of the traditional land rights of indigenous people and communities. The situation is transitional in Indonesia, where it implies potentially large redistribution of land rights, and in Cambodia, where the issue is relatively limited in scope. In contrast, China, Lao PDR, Thailand, and Vietnam treat indigenous people like other citizens from a legal point of view. In Lao PDR, Thailand, and Vietnam, indigenous land rights are a source of unresolved social and political tension, and there is evidence that the policy treatment of customary indigenous lands in these countries is leading to increased poverty and dislocation among indigenous people.

Effective indigenous land rights policy ultimately cannot be separated from issues of local governance, forest and mining policy, and environmental management in upland areas. As experiences in Australia and Canada demonstrate, recognition of indigenous land rights requires approaches that recognize the integral nature of these issues and involve representatives of indigenous people in each aspect of policy formulation and implementation.

Women’s Rights to Land in East Asia

All of the countries under review grant property rights in co-ownership between husband and wife. In some circumstances, usually associated with change in family structure—marriage, divorce, and death—women’s rights to their share of undivided property may become vulnerable because of customary practices or inadequate documentation. The gender impacts of land administration projects are the subject of a major study currently being conducted by the World Bank’s Land Policy and Administration Thematic Group and the Gender and Development Group, with funding by GENFUND and the Norwegian/Finnish Trust Fund.

Cambodia

Cambodia’s Land Law (2001) makes provision for undivided ownership, which applies in marital or family property situations (Chapter 9 Articles 168–174). Transfers require the consent of both husband and wife. The systematic land titling procedures being undertaken in the Land Management and Administration Project involve community relations services, with a focus on informing women of their land rights and showing them how to register them. The land title document shows the names of all owners in joint ownership.

China

China’s constitution and laws provide for equal treatment of men and women under law. This principle is not always reflected in implementation, however, and in many rural localities patrilineal practices persist. The use rights to arable land that China grants are made to households, not to individual members. The laws regulating household use rights under collective ownership fall short of specifying that women retain their share of the property when the composition of a household changes. In traditional Chinese practice, when a woman leaves her parents’ household, she loses her share in the household land use rights and is deprived of inheritance rights upon the death of her parents. Upon divorce the woman’s share of the marital household’s land use rights

in the husband's village are usually lost through customary practice. Thus women's property rights are extremely vulnerable upon divorce.

The legal position changed with the enactment of the new Rural Land Contracting Law on August 29, 2002, which entered into effect March 1, 2003. The new law has three key provisions strengthening women's land rights. It provides for equal rights in contracting (Article 6); protects women's land rights upon marriage, divorce, and death of a spouse (Article 30); and creates civil liability if these protections are violated (Article 57). These provisions can potentially provide strong legal protection for women's land rights. (Zongmin Li 2003)

Indonesia

Customary inheritance practice in Java recognizes the marital property of wives. The surviving widow retains ownership of half the property of the marriage, and half is passed on to the descendants. Customary and statutory law are the same in this regard. Land can be registered under a single name or jointly by a couple.

Statistics from systematically titled areas indicate that in 1998, 30 percent of titles were issued to women, 65 percent to men, and 5 percent under multiple names (which could include siblings and children) (Lastarria and others 2002). Information about the option of joint titling was not provided to many communities, partially because land registration officials themselves were not clear about the law and procedures. However, most households interviewed felt that it was not important for both spouses' names to appear on a title, because customary practice strongly recognizes marital property (Lastarria and others 2002).

Lao PDR

Land use rights in Lao PDR can be granted to individuals or families. A concentrated effort is being made to inform women of their rights to land titling under the law (available only in urban and peri-urban areas) and to encourage their participation in land titling. The Lao Land Titling Project works with the Lao Women's Union to provide customer relations and services and gender and development activities to explain to women that they have the right to be registered as co-owners of family lands with their husbands. It is not clear whether similar procedures are systematically followed in the issuance of temporary land use certificates under the Department of Forestry's Land Use Planning/Land Allocation program.

The Philippines

Research in the Philippines has shown that women bring on average about half as much land to a marriage as men do and that sons are favored in bequests of land by parents (daughters, however, are favored in schooling) (Estudillo, Quisumbing, and Otsuka 2001). The Comprehensive Agrarian Reform Law of 1988 guarantees equal rights to land ownership, equal shares of the farm's produce, and representation in advisory or other decisionmaking bodies to qualified women in the agricultural work force. These provisions are not strongly implemented, however. As of 1992, 87 percent of the land redistributed as part of land reform went to men.

Thailand

Thai law protects the joint property rights of women by requiring that transactions cannot be completed without the spouse's approval and signature.

Vietnam

Like China, Vietnam provides land use rights to households. Initially, the land use certificate had space for only one name, which was usually filled in with the husband's name. The limitation and risks associated with having only one name have been evident. Women were unable to use the

certificates with financial institutions in the absence of the husband. Divorced women were left without enforceable land rights, and an estranged husband could transfer property without consulting the ex-wife.

The Vietnamese government addressed these problems legally in October 2001, in Government Decree No. 70, clarifying that land use rights must be in the names of both husband and wife. Implementation and monitoring of these provisions has suffered from a lack of capacity however. With World Bank support, a pilot project in Nghe An Province has demonstrated an effective approach to reissuing land use certificates bearing the names of both spouses. The project is being expanded to other provinces, where land allocation or consolidation initiatives are reissuing certificates (World Bank 2002).

Summary

Increasing attention is being paid to protecting women's land rights in the region, especially within the context of formal titling projects. Nevertheless, women continue to be vulnerable in land rights due to customary practices, official indifference, and a lack of information. Women's land rights are most threatened when the family structure changes, as a result of marriage, divorce, or death.

To address the problem, land legislation must become better integrated with family and probate law to ensure that protections are consistent and can be implemented following such events. Women's undivided ownership of household land use rights in China and women's rights to land under agrarian reform in the Philippines are particular areas of concern, although the most recent legal changes in China indicate that the issue is being addressed at the national level. Continuing attention to establishing these legal norms and protections and to making women and men aware of them during community orientation, as well as within land administration bureaucracies, appears to be the way forward to improve the protection of women's land rights across the region.

Postconflict Reconciliation

Recent empirical analysis has increased recognition that wars, especially civil wars, have more to do with resources than with ancient ethnic conflicts or ideological antagonisms and that the effect of war on development is severe. Moreover, countries that have experienced war have a high likelihood of falling back into conflict, in a vicious cycle (Collier 2003).

East Asia has experienced some of the most severe conflicts of the second half of the twentieth century, and internal conflicts are ongoing in Indonesia (Aceh) and the Philippines (Mindanao). Land plays a role in postconflict reconciliation, both as part of the postconflict social conflict and because of the need to house and provide livelihood to demobilized combatants. Wars obliterate property documents, dislocate populations from their traditional homes, and often involve military control of large tracts of land. These issues make land rights a complicated and potentially contentious issue in postconflict reconciliation.

Box 4-1. Resolving Postconflict Land Conflicts in Cambodia

An estimated 200,000 people in Cambodia are affected by on-going land disputes, most of them having to do with seizures by the military and the government, the issuance of agricultural and forestry concessions in occupied areas, or illegal logging. Most of these disputes stem from the fact that large areas remained under military control during demobilization. An unresolved issue is the provision of land for demobilized government soldiers and former Khmer Rouge fighters, which may form one of the priority groups for land distribution in social concessions.

NGOs such as the Cambodia Defenders Project, Legal Aid of Cambodia, Cambodia Development Resources Institute (CDRI), and Oxfam played an important advocacy role in putting land issues squarely on the government's postconflict agenda. With assistance from the World Bank and the Asian Development Bank, this advocacy helped accelerate passage of the 2001 Land Law, which recognizes possession, strengthens claims of occupants, creates cadastral commissions as a noncourt dispute resolution process, and accelerates the land titling program. State land is beginning to be identified and mapped. Despite these positive changes, many areas remain under de facto control of the military and an estimated 50,000 hectares are suspected mine areas.

In East Timor postconflict land issues include the loss of records following the 1999 conflict and questions about overlapping and conflicting mapping and titling systems that have accrued over time from Portuguese, Indonesian, and indigenous practices (Marquardt and Unruh 2002). Restitution questions arising from dispossession under Indonesian rule are likely to be the most complicated (personal communication, Jose Ramos Horta, Minister of Foreign Affairs, March 16, 2003). Interim efforts under the UN Transitional Administration for East Timor (UNTAET) concentrated on identifying existing government and abandoned properties and issuing temporary-use leases where appropriate. The government is now undertaking a comprehensive study to establish a policy framework and recreate the land administration system.

Postconflict situations create both risks for perpetuating or deepening problems and opportunities for new pathways and new versions of the social contract. They call for an integrated package of inclusive policy dialogue about land policy; provisions for demobilized soldiers who need land (including nonagricultural land, as many may not be interested in farming); and consideration of land reform measures to break down inequitable landholding distributions or make more state assets available. State landholding needs to be clarified and policy on its use established. The financial and political ramifications of restitution call for study and swift resolution. New conflict resolution mechanisms that have local legitimacy need to be created.

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