The Management of State and Public Sector Land

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Key words: state land, management, ownership, leasing, compulsory purchase, restitution

SUMMARY

This paper presents the summary of research undertaken by Commission 7 into the management of state and public sector land. A detailed questionnaire was circulated amongst members and friends of the Commission, who were invited to report on a number of aspects of the management of state land in their country. The paper is based upon the responses from 19 countries, mainly from Europe. The respondents include an interesting mix of market-orientated countries noted for their radical reforms of public management and transitional economies. In three of the countries the state owns all of the land. In the others the state is one of a number of owners. State land includes land owned by any part of the public sector and any tier of government and also land that is rented or otherwise controlled by the state or public sector. It includes land used for operational purposes, as well as that used to generate revenue for the budget and land for which the state is custodian because, for example, of its cultural, historic or environmental significance. The paper examines the institutional framework for state land management including policies, the institutions for managing state land, registration, cadastral and other records, accounting policies, and outsourcing. It looks at the relationship between the state and others with an interest in the land, including letting policies, the state as a tenant of private land, public private partnerships, customary and communal rights over state land, compulsory purchase, and restitution. Whereas before 1990 there was a gulf between centrally planned and market economies over the role of the state in the allocation of land and the management of state land, this distinction is nowadays less clear with many former centrally planned economies having gone through a transition to market economies and a convergence of management practices.

ΠΕΡΙΛΗΨΗ (SUMMARY IN GREEK)

Η εργασία αυτή παρουσιάζει τη σύνοψη των ερευνών που διεξάγει η Επιτροπή 7, σχετικά με τη διαχείριση της κρατικής γης. Στο πλαίσιο της εργασίας απεστάλη ένα λεπτομερές ερωτηματολόγιο στα μέλη και φίλους της Επιτροπής, οι οποίοι κλήθηκαν να εκθέσουν τις απόψεις τους σε ορισμένες πτυχές της διαχείρισης της κρατικής γης στη χώρα τους. Το άρθρο βασίζεται στις απαντήσεις από 19 χώρες, κυρίως από την Ευρώπη. Οι απαντήσεις συνιστούν ένα ενδιαφέρον μείγμα χωρών με ανοικτές οικονομίες, χωρών που σημειώθηκαν ριζικές μεταρρυθμίσεις στη δημόσια διοίκηση και οικονομίες που είναι σε μεταβατικό στάδιο. Σε τρεις από τις χώρες, το κράτος είναι και ο ιδιοκτήτης του συνόλου της γης. Στις υπόλοιπες, το κράτος αποτελεί ένα από τους υπόλοιπους ιδιοκτήτες. Η κρατική γη περιλαμβάνει τη γη που ανήκει σε οποιοδήποτε μέρος του δημόσιου τομέα, καθώς και κάθε κυβερνητική βαθμίδα και επίσης γη που ενοικιάζεται ή που ελέγχεται με άλλο τρόπο από το δημόσιο τομέα. Περιλαμβάνει εκτάσεις που χρησιμοποιούνται για λειτουργικούς σκοπούς, ή για τη δημιουργία κρατικών εσόδων και γη της οποίας διαχειριστής είναι το κράτος επειδή παρουσιάζει, για παράδειγμα, πολιτιστική, ιστορική ή περιβαλλοντική αξία. Το άρθρο εξετάζει το θεσμικό πλαίσιο για τη διαχείριση της κρατικής γης, συμπεριλαμβανομένων των πολιτικών, των φορέων διαχείρισης της κρατικής γης, την εγγραφή, του κτηματολογίου και άλλων αρχείων, πολιτικών κοστολόγησης/εκτίμησης και εξωτερικών υπηρεσιών. Εξετάζει τη σχέση μεταξύ του κράτους και άλλων που έχουν συμφέροντα στη γη, όπως τις πολιτικές διάθεσης, την ενοικίαση ιδιωτικής γης από το κράτος, κρατικούς-ιδιωτικούς συνεταιρισμούς, εθιμικά και κοινοτικά δικαιώματα σε κρατική γη, την απαλλοτρίωση, καθώς και την αποκατάσταση. Ενώ πριν από το 1990 υπήρχε ένα χάσμα μεταξύ συγκεντρωτικών και ανοικτών οικονομιών σε σχέση με το ρόλο του κράτους στην κατανομή της γης και τη διαχείριση της κρατικής γης, η διάκριση αυτή είναι σήμερα λιγότερο σαφής, με πολλές πρώην συγκεντρωτικές οικονομίες να έχουν διέλθει μέσω ενός μεταβατικού σταδίου σε ανοικτές οικονομίες και σε σύγκλιση των πρακτικών διαχείρισης.

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1. INTRODUCTION

In most countries significant parts of the land are owned or under the control of the state or a public sector body. In some countries all land is owned by the state with occupiers having use rights, which can provide varying degrees of security of tenure. What the state does with the land it controls is likely to have significant consequences for the welfare of a society. The state does not have to own land to have power over it. For example, it can rent land from others. Control over land can be exercised in a number of different ways. The state may own land that it uses for public services. It can also control land by letting it to others for their use. The focus of our attention is on land over which the state exercises some degree of management control as distinct from the control it exercises over private land through town planning and building control powers or land registration or where certain relatively limited rights over land are vested with public bodies, such as overflying rights or over the exploitation mineral deposits. The focus of the paper is on the management of state land irrespective of the nature of the rights the state has over this land or the degree of security of tenure it enjoys.

Each country has its own institutions of government. In this paper we have used the term "state" as shorthand for all the institutions of government in a country. These include federal and national governments and regional and local government, as well as state and local government bodies, agencies, public corporations, nationalised industries, and similar bodies. Those countries which have adopted Whole of Government Accounting provide a list of those bodies which are deemed to be state or public sector ones but in many countries whether a body is a state one or not may not be entirely clear. State bodies in this context are defined as being ones that exercise the powers associated with public governments. These can be distinguished, in theory at any rate, from those bodies which are collective organisations representing groups of co-owners, such as tribal boards. In reality the distinction may be quite difficult to make if community or tribal bodies take on responsibilities associated with public governments, such as education, health care and social welfare.

Land is a significant resource, and in many societies the major resource supporting the livelihoods of their populations. Who controls its use, and to what ends, is likely to have an

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important bearing upon standards of living and well-being. Many of the public services the state provides, such as defence, transport infrastructure, environmental protection, health care and education, are major users of land. Without access to real estate assets, the services themselves could not be provided, to the detriment of the population. State land is not just used for operational purposes. Commonly land is used to generate revenue for the state, for example, from rents and other charges on users. This is an alternative to raising revenue through taxes. How these charges are imposed has implications for the welfare of those paying them or who need to gain access to the land for their livelihoods. Land may also be vested in the state to exercise stewardship over it on behalf of society as a whole or a particular group.

The importance of the management of state land is because the way this land is managed can enhance the welfare and well-being of the population but is also capable of undermining it. This could be because state land is managed inefficiently, so that resources that could be used to enhance living standards are wasted, or because the population suffers from the consequences of poor decision-making. In other cases this may be because the resources of the state have been appropriated by individuals or groups for their own ends rather than being used in the interests of society as a whole. Where individuals or groups are able to capture and harness the powers of the state for their own ends, this opens the potential for these to be used to abuse human rights. State land does not exist in isolation. There may be neighbouring owners or users of land. Others may have rights over state land or the state may have rights over their land. Such situations can give rise to conflict as well as the potential for encroachment on state land or for the state to try to extend its powers over land controlled by other groups. This may be particularly significant where property rights are poorly defined or where there are customary rights over land that is vested in the state. The state often needs to take possession over land that is used or owned by private interests in the public interest, for example, for the construction of infrastructure. How this is done can be a source of conflict. State land ought to be a means through which the welfare of the population is enhanced. However, it is a source of potential conflict and, as such, can also be a means by which well-being is diminished and human rights abused.

Over the past two decades there have been some important changes in the management of state land. Since the opening of the Berlin Wall and the break-up of the Soviet Union many centrally planned states, in which land could only be owned by the state, have gone through a transition into market economies with plurality in landownership. In many of the mature market economies there have been changes in the philosophy of public services associated with the introduction of accruals accounting in the public sector and the new public management with its emphasis on devolving power to front-line staff in public services (Grover, 2009; Kaganova & McKeller, 2006). These changes are attempts to improve the efficiency of public services. The developments over the last two decades make a review of how state land is managed timely. In particular, a review that looks at a range of countries with different backgrounds and recent histories so that the extent to which there is a convergence of practice on the management of state land or whether there is a divergence between countries according to their traditions, philosophy and ideology. There is a growing literature that seeks to identify good practice in public sector management, which includes

discussions of the management of state land. It would be desirable if proposals for improving public sector management could be placed in context and their effectiveness assessed in a range of different situations in order to establish the efficacy of what has been proposed.

2. METHODOLOGY

The data on state and public sector land management was collected by means of a questionnaire circulated amongst members, friends and associates of Commission 7.The sampling was a snowball one in which an approach was made to a possible respondent, who might pass on the request to others. The approach was modelled on that used for a study of cadastres developed and carried out by Daniel Steudler (Steudler et al, 2003) and supported by Commission 7 (http://www.cadastraltemplate.org). The responses were mainly produced in 2010. Respondents were invited to complete a detailed questionnaire about the management of state land in their countries and also the context in which this takes place.

The questionnaire consisted of a series of open-ended questions, with guidance as to how they should be completed. It was organised into four parts: about the country itself; the institutional framework of state land management; the relationship between the state and private interests in land; and the main issues affecting state land management and examples of good practice. In order to set the material on state land management in context, the questionnaire asked respondents about the geographic context, including the country's population and population density and geographical features; the political and administrative structures, including the tiers of government and the services each is responsible for; recent historic events that have influenced state land management; and the legal context, including the relationship between state ownership of land and the ownership and occupancy of land by private households and businesses and whether private ownership of land is possible.

The sample was self-selecting rather than being assembled in a controlled fashion. It depended upon volunteers being willing to give of their time. The respondents in each case can be regarded as experts whose views on state land management in their countries carry authority. There is an inevitable element of subjectivity in the responses since each respondent or group of respondents for a country had to assimilate and interpret a wide range of material. Even with guidance there are elements of inconsistency. Reliance on volunteers enables a wider range of responses that would otherwise be possible but does limit the degree of quality control that can be exercised.

The depth of answers sought meant that it was never expected that the questionnaire would result in a mass of responses. The subject matter was considered not to lend itself to large number of responses each producing a small amount of data. Rather what was sought was a limited number of representative responses that tackled the issues in depth. The survey has attracted 19 useable responses to date that have addressed all the issues raised. The countries represented were Belgium, Bulgaria, Canada (Québéc), China, Cyprus, Czech Republic, FYR Macedonia, Hong Kong Special Administrative Region, Lithuania, Nepal, Netherlands, New Zealand, Nigeria (Delta State), Norway, Poland, Russian Federation, Slovenia, Sweden, and the United Kingdom. Incomplete responses have not been used in this paper. Federations

present a particular problem since land policies and the management of state land can be the responsibility of the regional or provincial government rather than a federal responsibility. This can mean that there are different policies within the federation.

Figure 1 Location of respondents

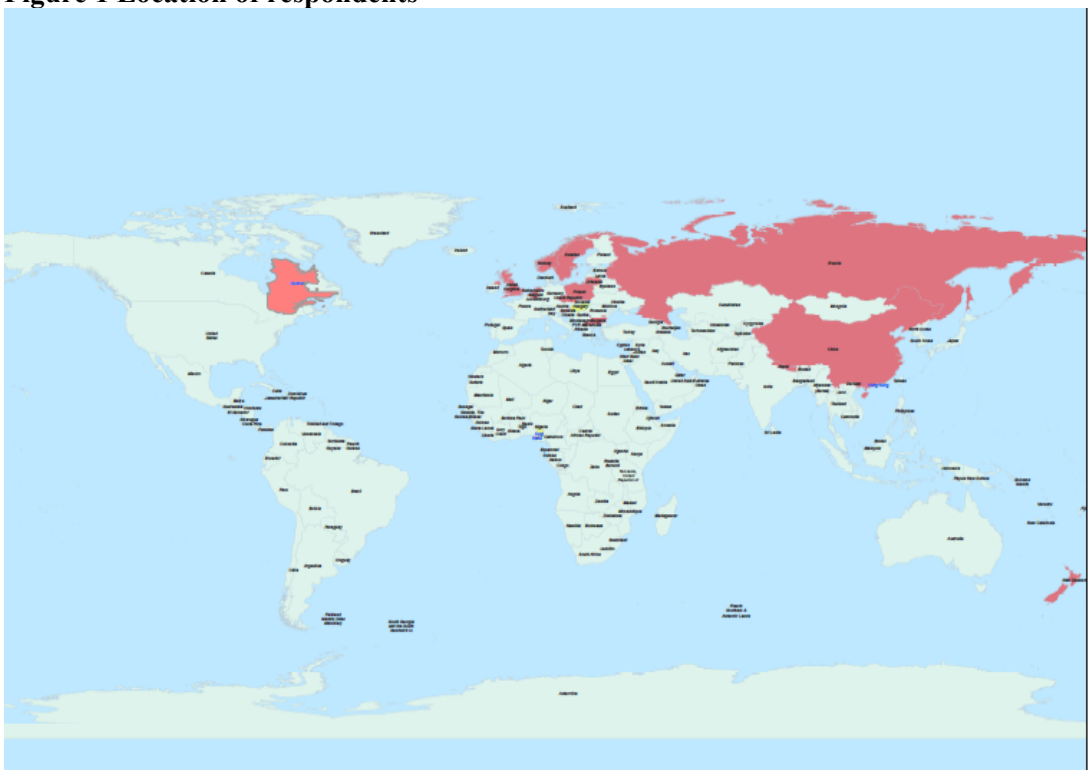


Figure 1 shows the countries from which there have been responses. This shows that in terms of the land mass covered, wealth and populations of the countries, the responses could be viewed as reasonably representative. The countries for which responses were received have about 27% of the world's population. The responses were predominantly from Europe, with 13 of the 19 responses (68%) and only one each from Africa and the Americas. The responses come mainly from the northern hemisphere. There is fair representation of high income economies. There is also good representation of the transitional economies which have been changing from centrally planned to more market orientated economies. Representation of the emerging economies and of low income countries is much more limited. There were responses from countries where the state owns all the land, including ones which have both Communist and capitalist heritages, as well as countries in which there is large scale private ownership of land and relatively limited role for the state. Of the 13 responses from Europe, 10 come from the European Union (11 from the European Economic Area) but they include seven transitional countries and six of the EU countries have joined it since 2004. The responses can be argued to provide good comparisons between the richer countries, which have been engaged in reforms of public sector management over the past two decades, and the transitional economies, which have gone through the dismantling of centrally planned economies and in which the powers of the state are now more constrained.

3. THE INSTITUTIONAL FRAMEWORK FOR STATE LAND MANAGEMENT

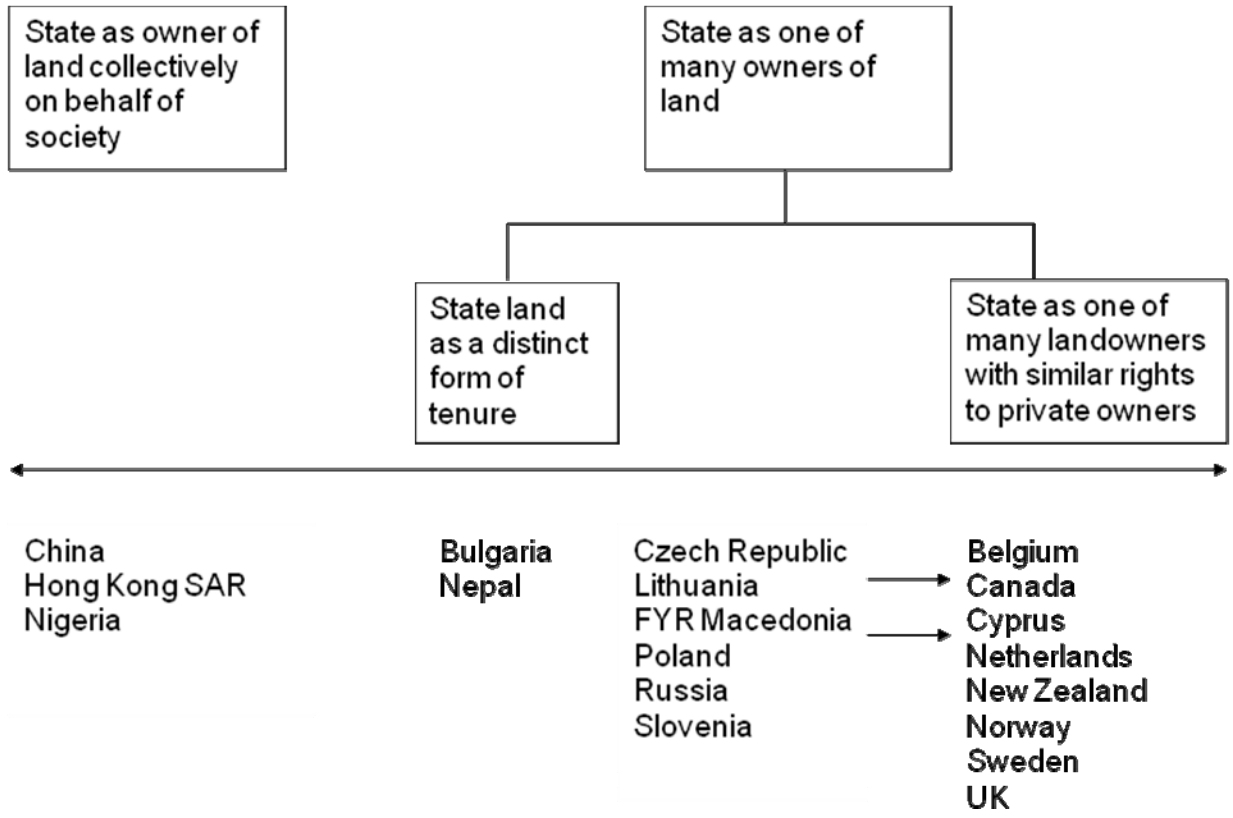
3.1 Legal context for state land

An important issue for any country is what the ultimate source of land rights is. In other words, from whom did the original grant come from? Do land rights ultimately come from the state or is the state one of a number of owners who enjoy similar rights over their own land? If the state is the ultimate owner from whom all land rights derived, are private bodies restricted to usufruct rights or do they enjoy security of tenure? If the state is one of a number of owners with similar rights, it is logical for the state also to register its land and to have this land recorded in a cadastre. It was also be logical for the state to pay taxes on its land in the same way as any other owner or occupier. The state as an institution of governance may have powers over all landowners, such as the ability to prevent development without its consent, compulsory purchase, the levying of taxes, and the taking away rights over their land like overflying or telecommunications, but the state as an owner or occupier of land may not have any rights that private bodies or individuals do not also have.

Figure 2 seeks to place the countries in the study on a continuum of state land rights. On the left hand side are the three countries in which only the state can own land. However the rights of occupiers in these three countries vary considerably. In Hong Kong SAR occupiers have secure long leases that enable them to trade their land rights and to redevelop the sites. These rights are strongly protected in law and Hong Kong as an active and efficient property market. In Nigeria those with certificates of occupancy enjoy a degree of security of tenure but those without these are in the position of being tenants at will on state land. None of the countries in which the state owns the land can be regarded as a genuine centrally planned economy, a marked contrast from the situation before 1990. Where the state owns the land it has the role of allocating it to different uses. In a centrally planned economy, this is done through directive planning. This is in marked contrast to an economy like Hong Kong SAR, where allocation tends to be through tenders and auctions in which the state makes the market.

Two of the countries in the study, Bulgaria and Nepal, have state land as a separate form of tenure. In Bulgaria state land can be public or private land. The former is for a public purpose and is inalienable, whilst the latter can be disposed of. In Nepal public land cannot be alienated. The transitional economies have developed full market economies in land to a varying degree. Residual features of their period as centrally planned economies include state land funds and restitution policies in which those who had land expropriated during the Communist period can claim compensation or the recovery of the property. Even in established market economies, the state tends to have significant land resources. Some of these are for operational purposes, such as schools, hospitals and military training areas. In other cases the state may hold land that is culturally or environmentally important, safeguarding for the nation. Revenues from land are an important part of the budgets of all tiers of government. These include royalties and other charges for the exploitation of mineral rights and from the seabed and coastal areas.

Figure 2 Continuum of State land rights



3.2 Policies and institutions for the management of state land

The literature suggests that it is good practice in land management to adopt formal policies setting out the aims and objectives, the purposes to be achieved, and what are the acceptable means by which the policies may be carried out. Without such a formal policy it is impossible to assess the effectiveness of the management as the targets against which the management can be judged should be derived from the policy. The issues that a formal policy on state land ownership should address might be expected to include the circumstances under which land may or may not be owned and the type of land that may or may not be owned. Some countries have such policies. For example, Australia has set out the circumstances in which land should be owned and, by implication, when land will not normally be owned by the state.

> In addressing the government's objectives (how the project meets the strategic aims and stated outputs of government) a case for ownership or divestment must be made on the basis of one or more of the following criteria:
> – ownership is necessary because of national symbolic status;
> – ownership is necessary because of national heritage status;
> – ownership is necessary to meet environmental requirements;
> – ownership is necessary because of the highly specialised nature of property;
> – ownership is necessary to comply with stated national security requirements;
> – ownership is necessary to meet other strategic interests of the government; or

– ownership is appropriate because it delivers best value for money for the Australian Government on a whole-of-life basis when compared to leasing and taking into account the particular characteristics and long term risks of property ownership.
(Australian Government Ownership Framework, 2005)

However, the policy applies only to departments of state, agencies and general government authorities under the control of the federal government, but not to government business enterprises or to bodies controlled by the states or to local authorities.

Amongst the 19 countries in the survey, just three, had formal policies about the state and public sector ownership of land covering the whole state sector rather than individual state organisations. In two of these, China and Hong Kong SAR, there is public ownership of all the land. In China land in the cities is owned by the state and land in rural and suburban areas mainly by collectives, who also own house sites and privately farmed plots. No organisation or individual is permitted to appropriate, buy, sell or otherwise transfer land, though the right to use land may be transferred. Land in Hong Kong SAR belongs to the government with lessees leasing the right to develop, use, transfer, inherit and benefit from the land. In both of these cases formal policies are needed to regulate the relationship between the state and those who actually use the land and develop its potential. In Nigeria, which also has state ownership of the land, a process of land reform is currently being undertaken which means that policies remain to be clarified. The only other country with formal policies was Slovenia, which in 2009 adopted a *Strategy for Management of Publicly-owned Real Estate in Slovenia*.

The other countries were characterised by an absence of formal state land management policies embracing the whole of the public sector. They had legislation which determined the powers and activities of state and public sector bodies. These set out what is permitted rather than a strategy. One factor is the huge number of state, local government and other public sector bodies in a country answerable to different elements of government, each of which could have their own formal management policies. It is difficult for governments to impose overarching policies where the state is not a monolithic organisation. It is noteworthy that good practice guides aimed at the public sector find it necessary to emphasise the importance of strategy and vision (Jones & White, 2008). A distinction should be drawn between operational policies, which undoubtedly exist, and land management strategies for which the indications are that, if these exist at all, they are to be found at the level of the individual agency or department rather than across the state sector as a whole. Issues such as whether land needs to be owned to fulfil public policies and when and which types of land do not appear to be addressed by strategic policies in most countries in which there is mixed private and public ownership of land. Without such policies, there is likely to be a lack of direction and undue focus on detailed issues, such as what to do with specific properties (DTLGR 2002), rather than on strategy.

Since the 1980s there has been a debate in the private sector as to whether the most effective means of managing real estate assets is to centralise their control, usually in a functional organisation, or whether they should be under the control of the operational units (Avis et al 1993, Avis & Gibson 1995). Where land management is centralised in an organisation, the body can act as an in-house landlord, supplying assets to operational departments. This can

enhance efficiency by obliging the operational departments to pay the market price for the assets they use and also to oblige the in-house landlord to achieve specified standards in the quality of the facilities provided. The logical outcome of this approach is for the real estate assets to be sold and leased back, releasing valuable capital for re-investment in the core business or to be returned to its owners. However, a number of companies that have followed this route have found themselves in difficulties during the recent recession, lacking flexibility in contracts and the ability to control the assets they use. It is an approach though that has been used by the British government for properties used by bodies such as those concerned with tax administration and social security payments, where the development of the internet has called into question whether their services will continue to be supplied through offices (NAO 2004, 2005).

The countries for which the state owns the land have a high degree of centralisation in its management. In China the Ministry of Land and Resources is responsible for land and mineral resource administration, with corresponding organisations in each province, city and county. In some cities these are combined with the department of urban planning. In Hong Kong SAR the Lands, Housing, Planning and Agriculture, Fisheries & Conservation Departments cooperate to manage state land. In Delta State in Nigeria, the Ministry of Lands, Surveys and Urban Development is responsible for land administration. Several of the transitional countries retain substantial state property funds with significant ownership of land. In the Czech Republic the Land Fund manages about 150,000 hectares of farming land, in Slovenia about 28% of the total land area is under the Fund of Agricultural Land and Forests, and in FYR Macedonia the Ministry of Agriculture, Forestry and Water Economics manages over 200,000 hectares of agricultural land, over 500,000 hectares of pasture and over 800,000 of state forests.

Amongst the countries with mixed public and private landownership the institutional pattern of management is more mixed. The state is not a monolithic body but comprises different tiers of government, each of which is responsible for managing its own real estate. These include properties used for operational purposes, but there could be ones used for income generation or held as a custodian. There seems to be a distinction between those countries with relatively small populations where it is feasible for a single body can manage central government land, for example, Patrimonial Services in Belgium and the Department of Lands and Surveys in Cyprus, and those with larger populations where management responsibility is more distributed. In Québéc the low density of population means that the Minister of Natural Resources & Wildlife manages 92% of the territory. In the Netherlands the Real Estate Council seeks to encourage a co-ordinated participation in the property market of all the bodies of central government.

The holding of land records mirrors the management structure for state land. Where there is central management of state land, there tends to be central holding of records. Where the management is diffused between organisations, each tends to hold its own records.

The state does not have to manage its land assets itself but could outsource them. Whilst individual public sector bodies may have outsourced the management of their assets, for

example forestry services in Sweden, four countries, the Netherlands, UK, New Zealand and Hong Kong SAR, have made more extensive use of outsourcing management to the private sector. In Hong Kong SAR public bodies outsource facilities management activities. Since 2007 four private bodies have been responsible for maintaining public properties. Their activities include site management, cleaning and security but also partnering agreements in which the private contractor undertakes to guarantee the provision of the facilities in a given condition. The UK has used sale and leaseback of public sector property to shift the risks of facilities not being available and of their eventual obsolescence on to the private sector. In New Zealand most of the operational work for the acquisition and disposal of government land has been outsourced so that private contractors undertake the negotiations for these. Contractors must be accredited before they can undertake this work, which is subject to standards set and periodic audit by Land Information New Zealand (LINZ).

3.3 Information about state land

It is generally recognised that efficiency in the property market is enhanced through government aiding security of title through the provision of reliable information about properties through land registration and cadastres. State land is potentially vulnerable to loss encroachment, land grabbing and adverse possession which could be protected through land registration. An issue is to what extent state and public sector bodies are required to protect their title through registration. For those countries in which the state owns the land, the issue of land registration and maintenance of cadastres is not one of the state protecting its interests against potential incursion by the private sector since by definition this is impossible. Rather, registration and cadastres are about the maintenance of records of the land rights of users. China found it necessary to re-establish a cadastre after 1986 only after the open-door policy was implemented. Once land use rights are transferable, records need to be maintained of what rights are owned by whom. Similarly the Russian Federation did not develop a cadastre until 2000, although a technical inventorisation system, originally designed to check on investment expenditure under the central planning system, existed.

In countries in which there is a mixture of public and private ownership of land, it is normal for there to be a single land register and a single cadastre in which both state and private land are recorded. Details of practice vary. For example, the UK has no general cadastre but has a fiscal cadastre in which public sector properties appear and are taxed on their market value. It has a sporadic compulsory land registration system, with the result that much public sector property is unregistered as it has not experienced one of the trigger events that make registration mandatory, such as sale or inheritance or the creation of a mortgage. Efficient property markets require comprehensive information on property rights, which need to include those about state property as well as private.

An important aspect of information about state land is accounting information. The notion that public bodies draw up annual accounts is well established, though in China and Nepal the development of accounting and auditing practices is still underway. The division is between what might be termed a traditional model of public sector accountability, with annual audited accounts, and the adoption of models based on the international financial reporting standards

for public limited companies and ones with stock exchange listings. These require annual balance sheets, which show the market values of real estate assets and any impairment costs from their use. In order to achieve this, there must be accurate records of properties, financial reporting standards for the public sector, valuation standards and the regular revaluation of assets. Whilst in several countries, including the Netherlands and Sweden, this was the norm for the more business orientated aspects of government, only three countries, Hong Kong SAR, New Zealand and the UK, had adopted accruals accounting in government in which expenditure is matched against the revenue earned in a period rather than income and expenditure being recorded when paid. The UK adopted Whole of Government Accounts in 2006 in which the whole public sector is treated as if it were a single consolidated body with each public sector organisation being treated as a subsidiary. In the balance sheet is a liability to the taxpayer for the capital used. Public sector bodies are expected to earn a target return on their capital, including that tied up in land and real estate. The countries which have established balance sheets that include their real estate assets have gone far beyond maintaining a list of properties but assess the cost of state land, including depreciation and impairment charges and the opportunity cost of the capital tied up in it. This approach cannot be undertaken without the capacity for carrying out valuations, including both the human resources and infrastructure such as training and standards.

4. THE RELATIONSHIP BETWEEN STATE AND PRIVATE INTERESTS IN LAND

4.1 The letting out of state land

The role of the state as a landlord differs markedly according to whether the state is the sole owner of the land or one of a number of owners. Where the state owns all the land, it has the role of allocating land to different uses. The disappearance of most centrally planned economies during the last two decades mean that this role has changed significantly. The function of the state is no longer one of allocating land between different state enterprises. Rather the primary role is to allocate land to private bodies and persons through leases and use rights. This is usually done through auctions and tenders rather than by central planning allocations. Whereas in a centrally planned economy the state received the surpluses of state enterprises, it now receives the rents and charges paid by users. The users have some degree of security of tenure depending on the strength of the rule of law in protecting contracts and property rights since the state is no longer involved in reallocating the land it owns between one enterprise that it owns and another as the users are often private businesses. Whilst sales of land are not possible where the state owns the land, leases and use rights can be traded.

Some of the countries where the state does not own all the land, such as the Netherlands and the UK, have a presumption in favour of the state disposing of its assets unless there are good reasons for their retention. Legally the state may not be able to dispose of its land. For example in Nepal government land can only be let out for public related activities such as schools and hospitals. There may be legal constraints on the nature of the contracts that the state can enter into. In Lithuania there are limits on the lengths of leases at 99 years for non-agricultural land, 25 years for agricultural land, and three years for temporary buildings.

Generally the lease length is to be for a sufficient period of time to enable pay back to the user for the maintenance or construction of the facility.

A common motive for the letting out of state land is to raise revenue to support the budget. For example in the UK local authorities generate 12% of their revenue from charges and rents and 17% from taxes on housing, whilst the Crown Estates (the government's commercial property portfolio) generates over £300 million per annum. Revenue can also be generated from secondary activities on state land, such as the renting out of land used for military exercises for agriculture. State land for coastal states includes the seabed offshore. For countries like Norway and the UK, this can be a significant source of revenue from the granting of exploration licenses for minerals and hydrocarbons, royalties from the extraction of these, and leasing out the seabed for off-shore wind farms.

The letting out of state land can be used to fulfil other functions, including site assembly for urban regeneration, providing access to land for the landless, to provide social housing for rent by those who would otherwise be homeless, and to help small farms become more viable. For example, in Slovenia the Land Fund promotes land consolidation through sales and leases of land and buying fragmented land.

A particular issue can arise with the state ownership of customary or communal lands. If the state is the owner then those with customary rights may find themselves with the status of tenants at will (Wily, 2006). If customary rights are not protected, the occupiers can find themselves ejected from their historic lands with minimal compensation. There are pressures on land with customary rights from activities such as large scale agricultural investment (Cotula et al 2009). The vesting of such lands in the state has often followed legislation that nationalised all land. If the customary rights were not recognised by statute or registered, then the process of nationalisation is likely to lead to the dispossession of these rights. This can be a source of conflict, impoverishment, and undermining of human rights. Conflict can be made worse by corruption or state capture.

Not all countries have land with customary or communal rights; for example, Lithuania, the Netherlands, and Nepal are reported as not having these. In many cases customary or communal land is either in private ownership, or is owned by the community, as is the case in Cyprus and FYR Macedonia, or by a municipality, as in Poland. There are also examples of where the state owns some or all customary or communal land, as for example is the case in Norway, Sweden and the UK. In the UK although much of the land with communal rights over it is in private ownership, customary rights are also a feature of former royal hunting land. Their management is now on a statutory basis but is still in the hands of manorial courts representing the commoners and the state. In Norway and Sweden there are wilderness areas grazed seasonally by reindeer belonging to the Sami people. In Sweden the Sami's land use rights are protected by law. In Norway their rights are defined by a mixture of statute and case law and the land is owned by a trust, the Finnmarkseiendommen, on which county authorities and the Sami are represented. Approximately 90% of the New Territories in Hong Kong SAR are customary or communal lands. These were leased to the UK for 90 years in 1898 and were subject to statute law during the period of British rule. The Basic Law, which governs the

return of Hong Kong to China, states that the lawful traditional rights of the indigenous inhabitants shall be protected by the government. The rights include permission for a villager to erect a small house for himself and the potential for the courts to enforce Chinese inheritance customs in the event of intestacy.

China and Mozambique offer alternative approaches to communal land in states where all land is the property of the state. In China collectivisation resulted in rural land around villages being owned by collective economic organisations, which distribute land to their members. This land cannot be used for commercial development unless it is converted into state land. In Mozambique following the 1990 constitution, customary rights have been given full legal status so that members of a community have co-title (Tanner & Baleira (2006). The process of participatory development enables local communities to veto development on what is technically state land or to negotiate compensation to it for access by outside investors.

4.2 The state as tenant or occupier

There is no reason why the state should not rent many of the facilities that it uses. In some Pacific Island countries, such as Nauru, Papua New Guinea, Vanuatu and the Marshall Islands, where most of the land is customary land, the state has no alternative but to rent the land it needs to provide public services. Where the state uses non-specialised facilities, such as offices, these can be rented from a commercial landlord on market conditions, though the state as a tenant of exceptionally good covenant ought to be able to secure more favourable terms than a typical private tenant. Whilst the view in China is that the state cannot be a tenant as it owns the land and can provide its own facilities, for a number of the other countries, including Hong Kong SAR, where the state also owns the land, Cyprus, Norway, and the UK, the renting of offices by the state is a normal activity, although in Belgium renting by the state is a rare activity. The state rents the facility rather than just the land, which enables it to gain access to locations it would otherwise not be able to such as commercial centres and facilities without having to construct them itself. The risk of obsolescence, both physical and functional if the pattern of public services changes, is passed on to the private landlord. As has been noted earlier, this is an explicit motive behind the renting of offices for certain functions in the UK. Renting by the state can also be for social reasons. In Sweden the state rents private forests for ecological reasons and in Poland municipalities rent flats from housing associations. The state, as a tenant of good covenant, is in the position to rent on good terms from landlords in order to sub-let to tenants of weaker covenant that landlords would be reluctant to let directly to. This need not be confined to residential property but could also apply to commercial tenants such as small businesses or cooperatives.

Many of the facilities used by the state are specialised ones. As commercial tenants cannot be found for these, it is not rational for landlords to construct these on a speculative basis as the state is really the only likely tenant, unless the state agrees to be the tenant. This is the principle behind Public Private Partnerships. A private body raises the finance, constructs the facility and leases it to the public sector, sometimes operating on behalf of the public body as well. The state pays rent for the use of the facility. Contract terms can vary so that the facility may revert to public ownership at the end of the lease or not. As well as shifting the financing

of the project on to the private sector, the risks of constructing and maintaining it can also be shifted on to the private provider. Whilst some of the countries, such as Bulgaria, FYR Macedonia and Nepal, have had little use of such arrangement, many of the other countries have made use of public private partnerships, particularly for the provision of infrastructure such as roads (Norway), airports (Cyprus), railways (Sweden), and water supply (Poland). Hong Kong SAR and the UK have made extensive use of public private partnerships. In the UK they have been used for schools, hospitals, prisons, social housing, the housing of military personnel, and university halls of residence. Since 2000 China has developed regulations for franchised facilities and public private partnerships. Public private partnerships make explicit the annual costs, including interest charges, which are often hidden in conventional procurement of public facilities. A variance of public private partnerships is public works concessions. Under these the private contractor builds a public facility such as a road or bridge and is permitted to charge users for its use for a period of time.

4.3 The acquisition and disposal of state land

Land is acquired by the state in a variety of ways, including purchase, expropriation, donation, and confiscation. Sometimes state land was acquired so long time ago that the original purpose for its acquisition is no longer relevant, or even remembered. The state, like any landowner, should reappraise its portfolio from time to time and decide what should be retained, what new acquisitions need to be made, and what might be redeveloped or disposed of. In particular, land no longer required for operational purposes should either be disposed of or developed for another purpose.

It is generally recognised, even in countries in which there is a private land market, that there are occasions when the state needs to exercise rights of pre-emptive purchase of land in the public interest. Under these circumstances, the state or a public sector body has the right to compulsorily purchase land for public benefit. Typically this occurs when the state needs to build a facility that has to be located on private land and infrastructure projects, which could otherwise be frustrated by a minority of opponents or those seeking a monopoly price for their assets. The occasions on which compulsory purchase is justified in the public interest can be drawn in very broad terms. For example in the UK local authorities can use compulsory purchase to improve the economic, social or environmental well-being of their areas, and this includes using these powers for site assembly in urban regeneration. The general principle is that owners should receive fair compensation for their losses, including the market value of their land. In both New Zealand and the UK the privatisation of utilities means that some private companies acting as public undertakings can make use of compulsory purchase powers, but these are strictly regulated so that they cannot be used for commercial purposes.

But what of the countries in which the state owns the land? Should users be compensated for the loss of their use rights and, if so, on what basis? This lies at the heart of what rights users actually have and how secure these are. In Hong Kong SAR the government has the right to resume land for public purposes with compensation being paid on the value of the land and buildings lost, and any other incidental losses incurred. With secure long leases, the market value of these will approach the freehold value. In China the compensation includes that for

land based on the average output, resettlement fees, and compensation for attachments to the land and growing crops. Rates of compensation can be determined by local administrations. In Nigeria the status of those occupying state land, if they do not have a certificate of occupancy, can be little more than tenants at will entitled to very limited compensation (Kakulu 2007).

Disposals are not confined to countries in which private ownership of land is not possible. Both China and Hong Kong SAR sell land grants or leases. In China the maximum grants are 70 years for residential purposes, 50 years for industrial, educational or health care, and 40 years for commercial and tourism purposes. There are restrictions on assignments to prevent speculation, including that a given level of investment agreed to in the grant has taken place. The Russian Federation nominally has a private land market. However during the privatisations after 1990, businesses were privatised but not the land on which they stand. In Moscow the city authorities have limited disposals to 49 year leases.

The disposal of surplus assets is a way in which the state can generate revenue. The UK has financial targets and incentives for public bodies for sell surplus assets. Governments also dispose of land for social purposes, such as providing access to land for the landless, for social housing, to support private persons permanently living in forest areas (Sweden), and to resettle internally displaced persons after invasion (Cyprus).

For some countries, such as Nepal, state land is regarded as inalienable so sales cannot take placed, though land grants may be made for public charitable purposes. In others countries in which some state land is regarded as inalienable public land, the state is only able to dispose of its private land and not that which is used for a public purpose. The disposal of state land is often controversial, for example, the sale of surplus defence land in Norway. The normal methods of disposal are through tenders and auctions, with reserve prices set after valuations so that the best price is realised, though sales by agreement are also used. Open bidding arrangements help to ensure that state land is not disposed of for less than its market value and are an important protection against corruption in the disposal process. In some cases certain buyers have pre-emptive rights of purchase, for example, tenants of municipal flats in Poland. There can also be restrictions on purchasers. For example in Lithuania the maximum amount of agricultural land that can be acquired from the state is 300 hectares and for non-agricultural land 150 hectares. In Sweden land sales by the National Property Board to private persons can only take place under specific conditions in order to protect the interests of the Sami people.

A trend in the transitional economies since the 1990s has been for the state to return land that had been expropriated in the past without fair compensation to the past owners or their heirs. Sometimes there has been specific recovery of the actual land taken and in others the payment of compensation. The precise rules vary between countries, for example, the choice of date for recognising claims and who is entitled to make a claim. Bulgaria, the Czech Republic, Lithuania, FYR Macedonia, and Slovenia are amongst the countries with restitution policies. Poland is unique amongst the countries in Central and Eastern Europe in not introducing a specific restitution law. Its situation is different from the other countries in the region in that it does not occupy approximately the same borders as it did before 1939. Its restitution law is primarily aimed at those who lost property in areas that are no longer part of Poland. There

are no significant restitution policies in China and Russia. In both countries the peasantry did not own significant amounts of land before their Communist revolutions, so the dispossession was of landlords with the land being collectivised. Political pressure for the return of land to its previous owners is lacking in these countries, unlike in Central and Eastern Europe.

New Zealand, in common with a number of countries that experienced European settlement in the eighteenth and nineteenth centuries on land belonging to indigenous peoples, such as Australia and Canada, also has a restitution process. Following British victory in the wars of the 1860s and 1870s, large portions of the North Island were confiscated from Māori tribes and distributed to settlers. During the 1970s and early 1980s there were Māori land marches and occupations of Crown-owned land as well as concerns by farmers about land acquired for major public works projects never used for that purpose. As a result, the Public Works Act 1981 introduced a new requirement for land to be returned to former-owners. From the 1990s successive governments have undertaken a process of settling Māori land claims, known as the Treaty of Waitangi claim settlement. A number of settlements have been reached, including one relating to most of the South Island, and the intention is to reach agreement on all remaining settlements by 2014. Under the Treaty settlement process the Crown and a Māori claimant group agree to settle all historical claims against the Crown on a fair and final settlement basis, with both parties accepting that it is not possible to fully compensate the claimant group for their grievances. Redress is in the form of recognition of the historical grievances, restoring the relationship between the claimant group and the Crown, and contributions to a claimant group's economic development. This can include certain Crown-owned properties being returned to the claimant group, including ones of commercial value as well as sites of cultural significance and a right of first refusal to purchase certain Crown-owned properties over a specific period of time.

5. CONCLUSIONS

Centrally planned economies, in which the state owns all the land and allocates it using directive planning, have largely disappeared since 1990. Many transitional economies have privatised state land or restored it to its previous owners. Where the state remains the owner of all the land, it does not command and direct land use but its allocation processes can look as though it is conducting a market. By contrast, even market-orientated governments acquire and allocate land for social purposes. The great divide between centrally planned economies, in which the state owned the land and directed land use, and market economies, in which the state was just one of a number of owners, albeit an owner with special powers, has been replaced by a continuum. Countries in which the state is the sole owner of land are likely to allocate a significant proportion using market mechanisms whilst in market economies the state is likely to own significant amounts of land for social purposes as well to generate revenue and for operational purposes.

State and public sector land includes that is owned by the state but also land that the state rents, manages or is the custodian for. Sometimes the management of state land is outsourced. State land is not exclusive space just occupied by the state. Commonly it is space that is shared with others because it is rented from the private sector or is occupied by private bodies

and households. Sometimes it is land over which others have customary rights. How the state behaves towards the others with which it shares space plays a critical part in determining their security of tenure and the welfare of society. Poor governance, corruption or state capture are likely to have severe adverse consequences as they impact on the relationship between the state and the others with which it shares space.

Only a small number of countries have formal policies about the state and public sector ownership of land covering the whole state sector rather than individual state organisations. Most of the countries have legislation which determined the powers and activities of state and public sector bodies, but they are characterised by an absence of formal state land management policies embracing the whole of the public sector.

The letting out of state land is used for various purposes, including the raise of revenue to support the budget, site assembly for urban regeneration, providing access to land for the landless, to provide social housing for rent by those who would otherwise be homeless, and to help agriculture and other private sector's activities become more viable. In a number of countries the government rents land for its own offices and for other social/ecological reasons. Land is acquired by the state in a variety of ways, including purchase, expropriation, donation, and confiscation. It is generally recognised, even in countries in which there is a private land market, that there are occasions when the state needs to exercise rights of pre-emptive purchase of land in the public interest. Under these circumstances, the state or a public sector body has the right to compulsorily purchase land for public benefit. The disposal of surplus assets is a way in which the state can generate revenue. Governments also dispose land for social purposes. Disposals are not confined to countries in which private ownership of land is not possible.

In many countries, state/public bodies have the requirement for annual balance sheet of their assets. Among those countries, only a few ones have adopted accruals accounting in government, in which expenditure is matched against the revenue earned in a period rather than income and expenditure being recorded when paid.

Public Private Partnerships, where a private body raises the finance, constructs the facility and leases it to the public sector, sometimes operating on behalf of the public body as well, are increasing in many countries. Whilst a few of the countries, have had little use of such arrangement, many of the other countries have made use of public private partnerships, for the provision of infrastructure such as roads, airports, railways, water supply, as well as for schools, hospitals, prisons, social housing, the housing of military personnel, and university halls of residence.

This paper is not the end of the research undertaken by Commission 7. Rather, the objective is to generate data that can be used in the production of material to aid good practice.

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