



Land: Changing Contexts, Changing Relationships, Changing Rights

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CONTENTS

Executive Summary	3
1. Introduction	7
2. Land Policy and Administration – Thinking and Practice	7
2.1 Historical Overview	8
Colonial beginnings	8
Post-colonial developments	9
2.2 The Property Rights Approach to Land	10
The rise of neo-liberalism	12
State control	13
2.3 Challenges to the Property Rights Approach	13
New thinking	14
2.4 Old Thinking Reinvigorated?	15
3. A Pro-Poor Approach to Land	17
3.1 The vulnerability/poverty/wealth continuum	17
3.2 Land-Related Factors	20
The structure of land rights	20
The national land policy arena	21
Decentralisation.....	23
Pro-poor policy	23
3.3 Economic Factors: The Changing Role of Land in Livelihoods	24
Rapid rural-urban change	24
De-agrarianisation	24
Migration options and remittances.....	25
Poverty.....	25
The complex relationships between land, livelihoods and poverty	27
Pro-poor entry-points around land and livelihoods.....	28
3.4 Local Social and Political Relations	30
Local government.....	31
Local elites.....	32
Capacity of land administration systems	33
Decentralisation of land administration systems	33
The ‘customary’ as panacea	34
Administrative tools and technologies	35
3.5 Supporting Land Rights	37
Social legitimacy.....	37
Supporting civil society.....	38
Donor ways of working.....	40
Lessons from Uganda	41
Applying the lessons	42
Challenges for DFID.....	43
4. Conclusions	45
References	47
Annex 1 People consulted	58

Executive Summary

This 'think-piece' has been commissioned to explore changing contexts, changing relationships and changing rights to land in a joined-up non-sectoral way that reaches across the rural-urban divide to address broader issues about land, poverty and power. We draw attention to the effects of land policy for the poor, arguing that land rights (by which we mean especially access to and control of land and land use, rather than necessarily land ownership) can be, and often are, instruments in local politics and power relations. We highlight local processes of differentiation and examine how relationships between land, livelihoods and poverty are changing in the current context of rapid rural-urban change and 'de-agrarianisation'. We ask what entry-points there are for pro-poor change in and through land policy and administration.

Although we live in a period of rapid change, past policies and practices (including those of the colonial era) continue to have profound effects on the current conditions of poor people's access to and use of land. Hence, we situate land policy historically and in the wider development context, as a basis for understanding the current context within which DFID engages with land. We then set out a way of approaching contemporary land issues from a pro-poor perspective. We focus on two key areas of current policy interest, namely land registration and titling and decentralisation of land administration systems, and make some practical recommendations with respect to DFID's continuing involvement with processes of land policy formulation and implementation in developing countries. The paper is wide-ranging and comparative but contextualised with a focus on Sub-Saharan Africa and South and South-east Asia. The audience is internal to DFID advisers.

The historical context

Over the decades there have often been shifts in the approaches of both developing country governments and donor organisations to land policy and administration, with both internal and external pressures usually always playing a role. At the same time, approaches to land policy and administration have been marked by a high degree of historical continuity, with certain fundamental assumptions about the nature of property and hence property rights continuing to frame debates about land. These assumptions derive from two very different positions: the 'Western-legal' view, which sees land rights as the rules of holding physical things (de-emphasising attendant social and political relationships), and the 'anthropological view', which sees land rights as social contracts (focusing on the links between land rights, social processes and structures and political and economic organisation). There are proponents of both views who support (and encourage) the development of land market transactions (and broader land commoditisation) as a means to poverty reduction and economic development. However, the dominance of the 'western-legal' view in both donor and developing country policy and practice lies behind land administration systems that all too often favour the marketisation and individualisation of land rights in a way that pays insufficient attention to the wider social and political relationships around land.

This dominance has long been reflected in the World Bank's programmes of support to land-related initiatives, it being the most substantive and influential donor in Sub-Saharan Africa and South and South-east Asia. World Bank programmes rest on the 'property rights' approach to land, which assumes secure land rights are necessary

to agricultural development and poverty reduction. In particular, registration and titling of (individualised) land rights has been widely promoted in the belief that only formal legal (and usually freehold) rights are secure enough to build agricultural growth and enable poor people to access credit. It is believed that local (informal) land rights are evolving into individualised systems of private property under inexorable pressures of commoditisation (including the progressive commercialisation of agriculture). However, government intervention through the formalisation of land rights and establishment of effective registration systems has been considered necessary to support and speed up this evolutionary process, bringing efficiency gains to agricultural development (and hence poverty reduction) sooner.

Change but no change

The 1980s and 1990s saw much critical research-based evidence on the effects of past land policies for the poor emerging from the experiences of land registration and titling programmes in both Sub-Saharan Africa and South-east Asia. This evidence increasingly challenged the underlying Western-legal assumptions about land:

- formal registration and titling programmes have consistently failed to deliver on agricultural development – that is, to increase tenure security, credit and land consolidation and to boost agricultural investment, output and productivity;
- informal local (so-called ‘customary’) tenure has not necessarily been a constraint to agricultural production, it does not necessarily preclude the development of locally legitimate land markets, and nor is informal tenure always viewed as insecure by local people;
- formal registration and titling programmes have been accompanied by high costs, increasing land disputes and litigation, increasing land sales, landlessness and inequality, and have had particularly negative effects for the poor and for women;
- general (and strengthening) processes of land commoditisation are meanwhile increasingly leading to land reconcentration and rising inequality across Sub-Saharan Africa and South and South-east Asia.

This evidence has led to the change in thinking demonstrated by the World Bank’s recent land policy research report ‘*Land Policies for Growth and Poverty Reduction*’, which favours decentralisation of land administration systems and a greater role for local (‘customary’) land tenure practices and laws. However, it has had a less clear impact on operational outcomes. Issues of social differentiation and inequality are still given little attention by the World Bank, while Hernando de Soto’s ideas have recently revived interest in the property rights approach within donor organisations and developing country governments, particularly as a route to tenure security, economic development and poverty reduction in urban and peri-urban areas. Both de Soto and the World Bank appear to ignore (or at least de-emphasise) the highly differentiated effects of changes in land policy and administration.

A pro-poor approach to land

The need to address this ‘blind-spot’ on differentiation requires specific (and often more difficult) questions to be asked about the social and political relations around

land, particularly with reference to inequality. In view of this we set out a way of approaching contemporary land issues from a pro-poor perspective, based on the 'anthropological' view of property and land. Underlying our approach is a conceptualisation of poverty that assumes 1) that there is a continuum of vulnerability, poverty and wealth along which different people move at different points in time and life-cycle, and 2) that local social and political relations are important in access to land, although their importance varies according to the local reach and extent of processes of commoditisation.

There are four steps in the approach, which between them address the various factors that mediate poor people's capacity to pursue land claims and gain access to and make effective use of land. These factors will combine in different ways and have different effects according to where a person is on the poverty/vulnerability continuum and according to the specific country-context. The first three steps call for understanding of:

- **land-related factors** (the national land policy arena and the structure of land rights);
- **economic factors – the changing role of land in livelihoods** (mediated by commoditisation, rapid rural-urban change, 'de-agrarianisation' and the macro-economic policy environment, and influenced by a range of factors including vulnerability/poverty, physical location and environment, rural-urban links and migration and non-agricultural livelihood options, health and education, the availability, type, quality and price of land, and the availability and price of agricultural inputs and services);
- **local social and political relations** (recognising that poor people's capacity to pursue land claims and gain access to and make effective use of land is mediated by the nature and structure of government and the capacity of local land administration systems, and influenced by a range of basic factors including gender relations (and marital status), age, caste, ethnicity and religion, patron-client links, membership of local groups or political parties and *uenyeji* (localness));

The fourth and final step addresses the issue of **supporting land rights**. This calls for understanding of the perceived social legitimacy (or not) of proposed changes in land policy and administration, understanding of the potential role of civil society in supporting poor people's capacity to pursue land claims and gain access to and make effective use of land, and understanding of the potentially key role of donors in getting pro-poor policies in place and supporting their implementation (over the longer term) in a pro-poor way.

Entry-points and conclusions

Our pro-poor approach to land highlights a number of possible entry-points for DFID, set out and discussed throughout the second part of the paper. For example, DFID should support work around the issue of access to justice and, in considering the changing role of land in livelihoods, DFID should consider both direct support to land through such measures as environmental/infrastructure services and improved access to affordable agricultural inputs and services, and support for rental market regulations and more flexible tenure arrangements (the latter being of particular

importance in urban areas), as well as indirect support to land through measures around health-care and the encouragement of non-land-based livelihood opportunities.

Several key issues and conclusions emerge with respect to DFID's continuing involvement with processes of land policy formulation and implementation in developing countries:

- Donors can be important catalysts of change on land issues, particularly where the presence of powerful vested interests hinders pro-poor change;
- Donor efforts will be more effective if they are joined-up and non-sectoral, and if they are targeted at middle ('meso') and local levels of government as well as at the national level;
- Land policy-making and especially policy implementation are long-term processes that require credible relationships and alliances to be developed (including among civil society) so as to build a pro-poor consensus and be able to seize 'moments of opportunity' to push for change;
- Implementation requires particular support through building the capacity of land administration systems;
- Decentralisation of land administration systems must be engaged with cautiously and balanced by support to central governments as the provider of policy that protects the rights of the poor; reforms that give new powers over land to 'customary' institutions must be engaged with even more cautiously;
- New administrative tools and technologies offer interesting pro-poor possibilities, but again must be engaged with cautiously and particularly in a joined-up non-sectoral way;
- Donors require an array of aid instruments and flexibility of financing to be able to engage in the way that is necessary to effect pro-poor change around land. Budgetary support alone does not permit the necessary level of engagement with the issues and practices (and with all branches and levels of government and with civil and political society);
- Any engagement with land must be based on a thorough, detailed and historically-informed understanding of the various factors set out in our pro-poor approach (based on a differentiated understanding of vulnerability, poverty and wealth) within the specific country-contexts that DFID operates;
- Any engagement with land must also be built on an understanding of the spatial, social, economic and political interconnectedness of the lives and livelihoods of rural, urban and peri-urban poor which recognises that, while land is a central factor in development, support to land-related initiatives will not by itself solve the problem of poverty.

In sum, the fundamentally political nature of any transformation of land rights means that engaging with processes of land policy formulation and implementation in developing countries must also be a political process. It must therefore also be part of broader thinking about how to engage with issues of poverty and power.

1. Introduction

Land has long been and still is considered to be one of the central factors in development, as these recent World Bank and Oxfam policy statements both show:

“...researchers and development practitioners have long recognized that providing poor people with access to land and improving their ability to make effective use of the land they occupy is central to reducing poverty and empowering poor people and communities” (Deininger 2003:xx).

“...secure access to land is an essential prerequisite for diverse land-based livelihoods, for sustainable agriculture, for economic growth, poverty elimination, and for achieving power in markets” (Palmer 2005:1).

Typically land is analysed with a sectoral focus on land for agricultural production in rural areas, land for shelter or high-value commercial use in urban areas, or land-grabbing at the peri-urban interface. While these are important issues, the historical and political significance of land is much broader. Land issues are politically sensitive in many developing countries, complicated by the presence of powerful vested interests and sometimes accompanied by conflict; the ability to control land is linked specifically to issues of power. In this paper we draw attention to the effects of changes in land policy and administration for the poor, arguing that land rights (by which we mean especially access to and control of land and land use, rather than necessarily land ownership) can be, and often are, instruments in local politics and power relations. We highlight local processes of differentiation and examine how relationships between land, livelihoods and poverty are changing in the current context of rapid rural-urban change and ‘de-agrarianisation’. We ask what entry-points there are for pro-poor change in and through land policy and administration.

The audience for this paper is internal to DFID advisers. We seek to reach across the rural-urban divide, arguing that support to land-related initiatives must be built on an understanding of the spatial, social, economic and political interconnectedness of the lives and livelihoods of rural, urban and peri-urban poor. The paper is wide-ranging and comparative but contextualised with a focus on Sub-Saharan Africa and South and South-east Asia. We situate land policy historically and in the wider development context, as a basis for understanding the current context within which DFID engages with land. We then set out a way of approaching contemporary land issues from a pro-poor perspective. We focus on two key areas of current policy interest, namely land registration and titling and decentralisation of land administration systems, and make some practical recommendations with respect to DFID’s continuing involvement with processes of land policy formulation and implementation in developing countries. Given time and space constraints we are unable to address all aspects of land policy and administration; in particular we say little on the issue of redistribution, which was recently addressed elsewhere in DFID (DFID & Adams 2004).

2. Land Policy and Administration – Thinking and Practice

Over the decades there have often been shifts in the approaches of both developing country governments and donor organisations to land policy and administration, with both internal and external pressures usually always playing a role. In some countries

policy changes have followed major social, economic and political events or transitions (e.g. Taiwan after World War Two, South Africa post-apartheid); in others changing ideas have been important (e.g. Tanzania under 'African socialism'). Past land policies are important because they often continue to affect the conditions of poor people's access to and use of land today.

2.1 Historical Overview

Approaches to land policy and administration have been marked by a high degree of historical continuity, with certain fundamental assumptions about the nature of property and hence property rights continuing to frame debates about land. Broadly speaking we can discern two very different sets of views. On one hand there is a view that land rights are rights to territorial parcels of land, precisely measurable and definable, with property rights in general (of which land rights are a subset) regarded as being primarily about the possession (or ownership) of physical things (Bohannon 1963:101-3; e.g. Demsetz 1967). On the other hand, there is a view that land (and property) rights are primarily social relations or social contracts – that is, relations between people. This view is thus distinct from the view of land (and property) rights as relations between people and things (Bohannon 1963:102; e.g. Whitehead 1984:176; Bromley & Cernea 1989:21; Whitehead & Tsikata 2003:76-7).

The first view we call the 'Western-legal' view, in which land tenure refers to the rules of holding specific pieces of land (Bohannon 1963:101-3); this view has often led to a focus on the issue of land ownership. The second view we call the 'anthropological' view, which emphasises the "relations between people and groups...in terms of their mutual rights and obligations with regard to land" (Middleton 1988:ix). The anthropological view has tended to pay more attention to the links between land rights, social processes and structures and political and economic organisation, leading to more of a focus on issues of access to and control of land and land use (Meek 1946; Gluckman 1944, 1965:Ch. 3 & 5; Hailey 1946:xi; Biebuyck 1963:53-5). There are proponents of both views who support (and encourage) the development of land market transactions (and broader land commoditisation) as a means to poverty reduction and economic development: this is often misunderstood by those who assume that the anthropological view is necessarily 'anti-market'. However, the Western-legal view has tended to dominate donor (and developing country) thinking about land policy and practice, and it lies behind land administration systems that all too often favour the marketisation and individualisation of land rights in a way that pays insufficient attention to the wider social and political relationships around land.

Colonial beginnings

The Western-legal view emerged in land policy-making in the former African colonies from their very beginnings. British and French colonial governments seeking to maintain the political authority of chiefs "concocted...land-controlling power" for them in excess of their prior role in land allocation (Bassett 1993:6). There was also an "official search for the owners of all land", with land awarded to communities (i.e. their chiefs) when no individuals could be found (Colson 1971:197). European concepts of proprietary ownership were thus transposed into the African colonies (and the contested notion of 'communal' tenure 'invented'), while at the same time rights to alienate land were monopolised by African colonial states. Moreover, in specially demarcated urban areas local land rights were often completely

extinguished and formally replaced by the state-controlled allocation of registered plots, while 'informal' African settlement areas developed alongside (Bassett 1993:5-18; Berry 1993:Ch. 5; Colson 1971; cf. Ranger 1983; etc.). The legacy of these policies can be seen in the continuing (and problematic) co-existence of 'dual' and 'multiple' systems of land tenure in most African countries today (Bruce 1988:39).

In the British colonies of South and South-east Asia, policy focused on the settlement of land rights (the creation of freeholding landlords with rent-paying tenants) and, in cases such as access to forest resources, the transfer of use rights into temporary privileges, revocable at will by the state; these were particularly features of British India. The overall aim was to secure the revenue base through land taxation and to identify and secure lands to be used for state forestry or plantation agriculture, often for export production to international markets (Baden-Powell 1874; Anon 1891:305; Guha 1983; Gadgil & Guha 1992; Hobley 1996). One result of these policies is that in Indonesia today, for example, following land expropriation by the Dutch colonial authorities (consolidated under Suharto), the only land remaining available for agricultural expansion is legally classified as forests (accounting for up to 60% of the country's total land area); this has led to high levels of contestation and conflict over land (Wrangham 2002:3). Meanwhile, land rights across the European colonies in both Asia and Africa were also generally vested in and transferred to men (Boserup 1989:60-1).

Post-colonial developments

The period after the end of the Second World War gradually brought independence from colonial rule to many developing countries. Power relations shifted and in some places land redistribution was seen as part and parcel of the broader post-colonial redistribution of power (Borras 2005:93). In Sub-Saharan Africa this mostly involved the redistribution of land formerly alienated to colonial settlers, as still ongoing in Zimbabwe today (cf. Palmer 1998). In parts of Asia, however, such as West Bengal and Kerala in India, land reform redistributed land ownership and use rights to poor landless agricultural workers (albeit not usually the poorest), enabling them to gain "social security and political advantages" within an overt process of agrarian structural transformation (El-Ghonemy 2003:35; Gazdar & Quan 2004:13-7).

The onset of 'stages of growth' thinking in the 1960s saw donor aid to developing countries increasingly take the form of large infrastructural packages and support for both industrialisation and modernised agricultural development schemes, in the expectation that benefits would 'trickle-down' to the rural and urban poor (Eisenstadt 1966; Rostow 1971). With the international economic crises of the 1970s, rural and urban poverty and the sustenance of 'basic needs' then became the new focus of development policy (Streeten & Bucki 1978:3; Ghai et al. 1979:9). It was argued that modernisation policies had contributed to increasing poverty and inequality in many developing countries (e.g. Frank 1969); work by the 'dependency' theorists directed attention to securing the economic advancement of rural populations, as did that of the 'populists' with their claims of 'urban bias' (e.g. Lipton 1982). This thinking coincided with a wave of integrated rural development projects (cf. House of Commons International Development Committee 2004:Para. 7), in which land management was heavily state-controlled while land ownership was often individualised. Such projects brought together two key elements:

“One was the centrality of the state as guardian and manager of ‘national’ development...the other was that the eradication of poverty now became a principle of legitimation in the rhetoric of development strategy” (Bernstein 2002:442).

We also see here continuities with colonial thinking about land, as in the Gambia, where longstanding attempts at mechanised, irrigated rice production took on a new lease of life from the mid-1960s (Watts 1993:171-8). The Gambian experience is particularly well-known for the resistance it generated from women whose land rights were eroded, as Box 1 explains, and it is thus a useful example of the profound effects land-related initiatives can have.

Box 1: Rice-farming and land in the Gambia

Rice had been largely a female-produced food crop in the Gambia from the mid-nineteenth century. However, during a series of large-scale rice-farming projects (funded first by the CDC (1947-52), then by the Taiwanese (1966-74), the World Bank (1973-6), the Chinese (1975-9) and IFAD (1984-7)), men claimed land ownership rights over all newly-irrigated plots and reclaimed swamplands, subsequently designating them as ‘household’ lands in order to draw on family labour obligations. Women gained neither income nor land, but instead resisted their husbands’ claims on their labour by increasingly hiring themselves out to other (male) rice-farmers. This resulted in a major renegotiation of local ‘conjugal contracts’.

Source: Dey 1981:118-20; Watts 1993.

Many countries across Sub-Saharan Africa enacted new land legislation during the 1960s and 1970s while maintaining considerable continuity with the past: colonial land laws were often retained or revised and made the basis of post-colonial land administration systems, and local (or so-called ‘customary’) land tenure was viewed as a hindrance to agricultural productivity and economic growth in both capitalist and socialist-oriented African states (Bassett 1993:11; Mamdani 1996). Similarly, colonial systems of land administration based around provincial land revenue bureaucracies were maintained in post-colonial India, Pakistan and Bangladesh; this was in part to allow local variations in agrarian economies and politics to take their own course (Gazdar & Quan 2004:13-7). Approaches to land policy and administration among donor organisations at this time also reflected colonial thinking about land (Bassett 1993:5). In their 1975 *‘Land Reform Policy Paper’*, for example, the World Bank advocated land market promotion and land redistribution as well as formal land titling to owner-operated family farms and the individualisation of holdings (usually to the male household heads) and abandonment of ‘communal’ tenure (Deininger & Binswanger 1999; Quan 2000:38); some of these policies had been promoted in colonial Kenya (Swynnerton 1954; EARC 1955).

2.2 The Property Rights Approach to Land

The World Bank’s thinking about land plays a crucial role in the direction of change in the developing countries it supports, not least because it has long been and still is a major financier of land-related initiatives, spending some US\$ 1 billion on land-related projects in FY04 alone.¹ The Bank’s policy position has always hinged on the basic assumption that secure property rights are both necessary and critical to economic growth, which in practice means formal legal (and normally individual)

¹ <http://lnweb18.worldbank.org/ESSD/ardext.nsf/11ByDocName/TopicsLandPolicyandAdministration>

rights to own (or long-term occupy), use and transfer land. The position is often referred to as the 'property rights' approach to land (and sometimes the 'evolutionary theory of land tenure'), and it emerged within thinking about 'rural land' and agricultural development. The logic runs broadly as follows:

- Agriculture (whether food farming for own consumption or production for markets) is central to (or at least an important element in) the livelihoods of the vast majority of poor people in rural, urban and peri-urban areas of developing countries;
- Secure, transferable land rights are the key to agricultural development, because they 1) encourage transfers from less efficient to more efficient farmers (leading to consolidation of landholdings and development of land markets), 2) provide security for making optimal investments in agriculture, and 3) provide collateral for loans (leading to development of credit markets);
- Secure, transferable land rights will therefore contribute to poverty reduction and economic growth.

Registration and titling of (individualised) land rights is then needed because only formal legal (usually freehold) rights are assumed to be secure enough to have these effects and to enable poor people to access credit. Local (informal) land rights are assumed to be evolving into individualised systems of private property under inexorable pressures of commoditisation (including the progressive commercialisation of agriculture). However, it is also assumed that government intervention through the formalisation of land rights and establishment of effective registration systems is needed to support and speed up this evolutionary process, bringing efficiency gains to agricultural development (and hence poverty reduction) sooner (Hailey 1946; Swynnerton 1954; EARC 1955; Feder & Noronha 1987; World Bank 1989:104; Feder & Feeny 1991; Migot-Adholla et al. 1991; Platteau 1992, 1996, 2000; Bassett 1993; Deininger & Binswanger 1999; Economist 2001; Deininger 2003).

This thinking – firmly grounded in the Western-legal view of property and land – lies behind the longstanding promotion by the World Bank (and other donor organisations) of individualised land registration and titling (IRT) programmes, as both they and developing country governments have pushed land policy and administration along this evolutionary path. The most famous IRT programme in Sub-Saharan Africa was introduced by the British colonial government across Kenya during the 1950s, where titling and freehold have remained central to land policy ever since (Swynnerton 1954; Okoth-Ogendo 1976:162-7; Coldham 1978:91-2; DFID Kenya 2004). Within Asia, the flagship case of IRT is that of Thailand. Standardised land rights documentation procedures were introduced by the Thai government in 1892, followed by a cadastral survey in 1896 and a formal system of land titling in 1901; further legislation in 1954 resulted in a compromise land administration system providing for differing levels of land rights documentation (Feder & Feeny 1991:138-9). A four-phase World Bank, AusAID and FAO-funded Thailand Land Titling Program (1984-2004) then set out to build on this foundation by accelerating titling and improving land administration capacity and efficiency (Williams 2003).

The rise of neo-liberalism

The start of the Thailand Land Titling Program coincided neatly with a major international shift in development policies: during the 1980s the World Bank's structural adjustment programmes and liberalisation policies (and the IMF's stabilisation policies) linked beliefs about the importance to economic growth of privatising and individualising land rights with the broad pro-market tenets of 'neo-liberalism'. This shift was also reflected in the World Bank's 1993 housing policy paper, '*Housing: Enabling Markets to Work*', which was heavily influenced by Hernando de Soto's work on urban informal settlements in Peru: urban land tenure had "received scant attention as a subject in its own right until the 1980s" but by the early 1990s de Soto's ideas were making a major impact within thinking about 'urban land' (Payne 2002:6). In these circumstances, the influence of the property rights approach in donor (and developing country) thinking on land policy and administration appeared to have become hegemonic.

The assumptions and policies of the Western-legal view of property and land have a strong hold in developing countries, but they are not necessarily helpful (or even appropriate) to poverty reduction, as the case set out in Box 2 suggests.

Box 2: Why assumptions matter

Western-legal views are firmly embedded in the thinking of local land officials in Mufindi District, rural Tanzania, where by 1999 the District Land Office was surveying Mafinga town at a rate of 400 new plots a year:

"We allocate plots to the current occupant and people are not evicted, but the costs of the survey have to be met so the occupant has to pay a contribution...Of course we have no way to enforce this if they refuse to pay, we just try to persuade people of the advantages and benefits of paying the contribution...**we tell them that registration will enable them to get loans at MUCOBA** [a non-government community bank]...some people refuse to register their plots as they don't want to pay and others can't afford it." (Urban and Rural Planning Officer, 25/11/99)

"The benefit of having a **title deed** is that it **can help people to get a mortgage, the deed can be used as security on a loan.**" (Valuation Officer, 2/12/99)

In practice, however, registration was neither necessary to, nor a guarantee of, access to credit in Mufindi:

"Until now **we have not really used land as collateral.**" (MUCOBA Manager, 28/2/00)

Source: Daley 2004 (Fieldwork Data)

The link between individual ownership and tenure security in the property rights approach has also been shown to be theoretically flawed; for example, group ownership can generate tenure security too, depending on the make-up and management rules of the group (Bromley & Cernea 1989; Platteau 1998; Daley 2004:36-40). In addition, where there are multiple rights to a piece of land, the tenure **security** conferred on one person by formal individual ownership creates corresponding **insecurity** and loss of rights for others, while multiple rights to land do not preclude tenure **certainty** on the part of the owner(s) and all land users insofar as they all understand the duration and extent of their rights (Lund 2000:15-8). For example, individual owners of farms may allow the post-harvest stubble on

their land to be used by neighbours for grazing their livestock for a fixed time-period each year; rights to access water on an individual's land may also be shared with other people. Tenure certainty thus helps enable informed choices to be made about how to most effectively use whatever land is available within an overall livelihood strategy. Meanwhile, individual land ownership can generate **uncertainty** if a 'secure' title deed is neither enforceable nor recognised locally as being socially legitimate: without legitimacy property is thus not property because it lacks the basic requirement of property that it be recognised by others (Bromley & Cernea 1989; Platteau 1996:46).

State control

Despite the increasing dominance of market principles during the 1980s and 1990s, land remained a key area from which states did not withdraw. In Sub-Saharan Africa, use rights may have been privatised but many states continued to retain radical title (ultimate ownership) and control of land use and administration; this has been central to the maintenance of their political and economic interests (e.g. Shivji 1998:81-2 on Tanzania). In South and South-east Asia, longstanding state control of land use through land classification remained similarly strong, sometimes justified on the grounds of land's environmental functions, although this has been contested through squatting and illegal resource extraction, with a growing recognition by regional governments that they can not control such boundary incursions (Land Equity 2003:17; Biot pers. comm. 2005).

2.3 Challenges to the Property Rights Approach

The 1980s and 1990s also saw the emergence of much critical research-based evidence on the effects of past land policies for the poor. For example, the Thai experience of IRT is widely viewed as successful in terms of the stated programme objectives of increasing titling and land administration efficiency (Williams 2003:5); it is also deemed to have met the expected economic goals regarding increased credit and land markets (Feder & Feeny 1991:145). However, concerns have been voiced within Thai civil society about the negative effects of IRT for the land rights of such marginal groups as forest dwellers; mass registration and titling has also led to widespread land sales and landlessness on the part of former smallholder landowners in Thailand (Williams 2003:6-7).

The experiences of individualised land registration and titling programmes in Sub-Saharan Africa have been much more unequivocally criticised, on both social and economic grounds, with the evidence increasingly challenging the underlying Western-legal assumptions about land. Some critics note the failure of IRT programmes to deliver on agricultural development – that is, to increase tenure security, credit and land consolidation and to boost agricultural investment, output and productivity (e.g. Atwood 1990; Barrows & Roth 1990; Roth 1993); others retain concerns about informal local tenure but note that it does not always constrain agricultural productivity and may efficiently evolve towards individualisation without the imposition of IRT (e.g. Migot-Adholla et al. 1991; Bruce 1993; Pinckney & Kimuyu 1994; Place & Otsuka 2001, 2002). Yet others, drawing particularly on evidence from Kenya, comment on the high costs of registration, on related land disputes and litigation, on increases in land sales, landlessness and inequality that often follow IRT and, finally, on the effects of IRT for women's land rights and those

of pastoralist and hunter-gatherer groups; women, for example, frequently have rights to land accessed through men which become insecure when titles to 'household' land are registered in men's names (e.g. Okoth-Ogendo 1976; Coldham 1978; Haugerud 1983, 1989; Davison 1987; Bruce 1988; Shipton 1988; Mackenzie 1990; Yngstrom 2002; and see Platteau 1996 for a comprehensive review of the literature). There are also concerns that general (and strengthening) processes of land commoditisation are increasingly leading to land reconcentration and rising inequality across Sub-Saharan Africa (e.g. Bruce 1988; Peters 2004), and that land registration and titling are similarly leading to land accumulation by small numbers of (national and local) elites across Asia, with negative effects for the poor (von Benda-Beckmann 2003:189; e.g. Shanks et al. 2004 on Vietnam).

Other research has begun to suggest that direct investments in land can be and are themselves specifically used to build locally recognised tenure rights (e.g. Place & Otsuka 2001, 2002). Although the logic of formalising local land rights is that they are assumed to be fundamentally insecure, this may therefore not actually be the case. Research in Lesotho, for example, suggests that local people do not generally consider themselves to have insecure tenure under their 'customary' practices; rather, the instances of insecurity that exist are caused by abuses of chiefly power, while people blame their failures to develop agriculturally on poverty and the lack of capital to obtain resources such as tractors (Pule & Thabane 2004). In the capital, Maseru, the only official building not torched during the 1998 riots was that housing records of the chiefs' land allocations, demonstrating the broad social legitimacy of those 'customary' allocations (Payne pers. comm. 2005). In rural Burkina Faso, people also do not generally experience their local tenure as insecure: land borrowing is a common and accepted practice of accessing land on the part of those who do not have enough land to meet their food needs, and it does not preclude investment by the borrower (Sawadogo & Stamm 2000).

New thinking

In the early 1990s the World Bank itself funded and/or undertook several empirical studies on the link between freehold tenure and agricultural productivity, which also found that titling made no difference to levels of agricultural investment and productivity (Whitehead & Tsikata 2003:82). The Bank's recent land policy research report, '*Land Policies for Growth and Poverty Reduction*' (Deininger 2003), does not specifically refer to these studies but they (and many of the studies cited above) nevertheless fed into the shift in World Bank thinking that has emerged in this recent report, in whose preparation DFID has also played a role and which is due to be rolled-out across World Bank country offices with DFID's assistance (various pers. comms. 2005). The Bank now downplays land redistribution and acknowledges that its past focus on mass titling programmes was "inappropriate", as was its past focus on land sale markets; instead, the report addresses land rental markets in some detail (observing that rental markets also contribute to the "more egalitarian operational distribution" of land). Furthermore, the Bank acknowledges the importance of social legitimacy to the effectiveness of land policy and administration, as a result of which it now firmly favours decentralisation of land administration systems and a much greater role for local ('customary') land tenure practices and laws (Deininger 2003:xxxv, xlv, *et passim*; Deininger & Binswanger 1999; Quan 2003:7). In contrast, however, the accumulating evidence from urban areas had a somewhat more limited effect on the World Bank's 2000 urban strategy paper, '*Cities*

in Transition' (World Bank 2000; Payne 2002:10). Furthermore, issues of social differentiation and inequality are still given little operational attention by the World Bank (although it is to be hoped that the roll-out of the land policy research report will help here); a prior internal assessment of the evolution of its land policy argued that the key policy question now is "to identify the most important impediments to better development of land markets and to sequence their removal **in a way that does not jeopardize the poor**" (Deininger & Binswanger 1999:265, our emphasis). This is clearly not the same as being **pro-poor**, and in our view it is important in addressing land issues to be clear and open about what the broader policy objectives are.

Within DFID, the 'sustainable livelihoods' approach to development emerged in the late 1990s, highlighting the importance of land rights to poor people's livelihoods (Carney 1998; Moser 1998; Scoones 1998; Ellis 2000). This approach unfortunately did not focus on the power relationships that maintain inequalities in the possession of those rights, nor on the processes of social, economic and political transformation that might enable poor people to generate more benefits from land. At the same time, however, an emerging 'rights-based' approach was focusing on issues of power, and shifting attention from more technical to more political understandings of development (Moser & Norton 2001). DFID's draft Land Policy then made an attempt to bring these two approaches together, although it retains a sectoral focus (DFID 2003; Quan 2003:3, pers. comm. 2005). Currently, the 'growth-led' approach to development, with its central role for agriculture, requires DFID's continuing engagement with land. As DFID moves forward with its new agricultural strategy (DFID 2005b), it is therefore important for it to be clear about its commitment to an actively **pro-poor** policy (or not) – in other words, about its broader policy objectives – in order to then be clear about why and how to approach land. In this paper we advocate the anthropological approach, which does not reject land markets and land titling and registration per se but instead seeks to develop and implement them in a more thoughtful and **pro-poor** way, drawing on the many lessons of experience.

2.4 Old Thinking Reinvigorated?

Despite all the varied criticisms of past land registration and titling programmes, some recent attempts to methodologically separate out different aspects of land tenure security and their effects for poverty reduction suggest that registration and, in particular, full formal documentation (whether in the form of long-term leases or freehold titles) can have a positive impact on land investment and agricultural productivity (e.g. Smith 2004 on Zambia). The jury is therefore still out, leaving the main case for land registration and titling in place for now. At the same time, de Soto's ideas have been reinvigorating interest in the property rights approach within donor organisations, particularly as a route to economic development and poverty reduction in urban and peri-urban areas. Yet the launch of a new '*High Level Commission on the Legal Empowerment of the Poor*', to be co-chaired by de Soto and Madeleine Albright, is also attracting considerable attention and concern among donor organisation staff, NGOs and academics alike, over the potential for an uncritical world-wide roll-out of de Soto's ideas (various pers. comms. 2005). DFID is now providing some funding and a staff member to the Commission and some developing country governments appear to be equally enamoured: in the Philippines, for example, President Arroyo has recently launched an ambitious programme to

integrate “formal and informal settlements into one legal system as the framework of Philippine urban asset reform” (Cabacungan Jr. 2004).

De Soto's main argument is that property held by the poor is 'dead capital' and only becomes useful when it is recognised by a formal legal system; the argument is also reflected in the World Bank's land policy research report (Deininger 2003; de Soto 2003:181; Home 2003; Payne 2002:10-2). However, despite this reinvigoration of the property rights approach (in this its latest manifestation), there is yet more evidence available with which to specifically contest de Soto's ideas. For example, a DFID-funded study of land titling in peri-urban areas of Botswana, Zambia and Trinidad suggests that vibrant land and housing markets in poor urban and peri-urban areas exist “in spite of, and perhaps because of, the lack of legally recognized title” (Home 2003; cf. Durand-Lasserve et al. 2002:3). At issue here are people's perceptions of security and also their ability to invest in land and housing improvements and to buy and sell their rights to land, all of which are affected by their experiences of the (past and present) implementation of government policies (Payne 2002:13; cf. Moser 1998:11). In particular, access to secure tenure through government allocation of individual titles may be neither efficient nor equitable for the urban poor (Durand-Lasserve et al. 2002:3); this then stimulates vibrant extra-legal land and housing markets. Many such urban and peri-urban markets are already emerging within broader processes of land commoditisation (e.g. Antwi 2002; Benjaminsen & Sjaastad 2003; Daley 2004, 2005a, 2005b; Rakodi 2005; Ubink 2005). In Accra, Ghana, for example:

“the market appears to respond remarkably well to fundamental demand and supply conditions. Suppliers are conditioned to charge market clearing prices for their lands as their price fixing decision processes are bounded by purchasers' willingness to pay. Purchasers perceive price paid to be fair and determined solely by economic factors. Bureaucratically supplied attributes of land transactions are completely irrelevant to this market. Thus land title documentation and registration, the planning regime and policies on time limits on tradable interests – prohibition of freeholds – all show no statistically significant impact on prices...Formal documentation and registration of interests in land, as they operate in Accra, are having no impact on the market” (Antwi 2002:21).

Other critics of de Soto emphasise his apparent “blind spot” on differentiation among the poor: the identification of the poor as those who inhabit the extra-legal sector fails to capture huge differences of “wealth, exploitation and discrimination” that exist between, for example, entrepreneurs and the destitute (von Benda-Beckmann 2003:188). De Soto also promises simple solutions to complex problems: for example, a housing improvement loan may not be forthcoming even with title if the existing house is of such poor quality that it is deemed insufficient as collateral (Payne pers. comm. 2005). Importantly, and as a result of their Western-legal view of land, both de Soto and the World Bank also appear to assume that the primary function of property is the generation of capital and credit; they are thus in danger of ignoring or de-emphasising land's widely-acknowledged and important role as a safety net for the food insecure in rural, urban and peri-urban areas, as well as its social, symbolic, religious and/or ritual meanings and significance for many people across the developing world (e.g. Colson 1971:199-201; Saul 1993:79-80, 86). For some poor people, aspects of their land relations embed them within wider social, economic and political relationships (providing a 'sense of being' and 'roots' (and often urban-rural links)) and may be non-commoditised and thus effectively non-

marketable (Berry 1993 (on Sub-Saharan Africa); Biot pers. comm. 2005 (on South-east Asia)).

Nevertheless, it has recently been argued that debates over land, particularly in Sub-Saharan Africa, have got stuck on this notion of land being socially embedded and thus peculiarly unaffected by processes of commoditisation (Peters 2004; Daley 2005b). There is instead a need to ask specific (and often more difficult) questions about the “type of social and political relations in which land is situated, particularly with reference to relations of inequality – of class, ethnicity, gender and age” (Peters 2004:278). This offers a way of better understanding local processes of social, economic and political differentiation so as to consider the implications for land-related initiatives (whether in rural, urban or peri-urban areas), and for DFID’s continuing involvement with processes of land policy formulation and implementation in developing countries, from a truly pro-poor perspective.

3. A Pro-Poor Approach to Land

The remainder of this paper is structured around a way of approaching contemporary land issues from a pro-poor perspective. The approach is grounded in the ‘anthropological’ view of property and land and, inspired by Sen, is based on a more differentiated view of poverty (and wealth):

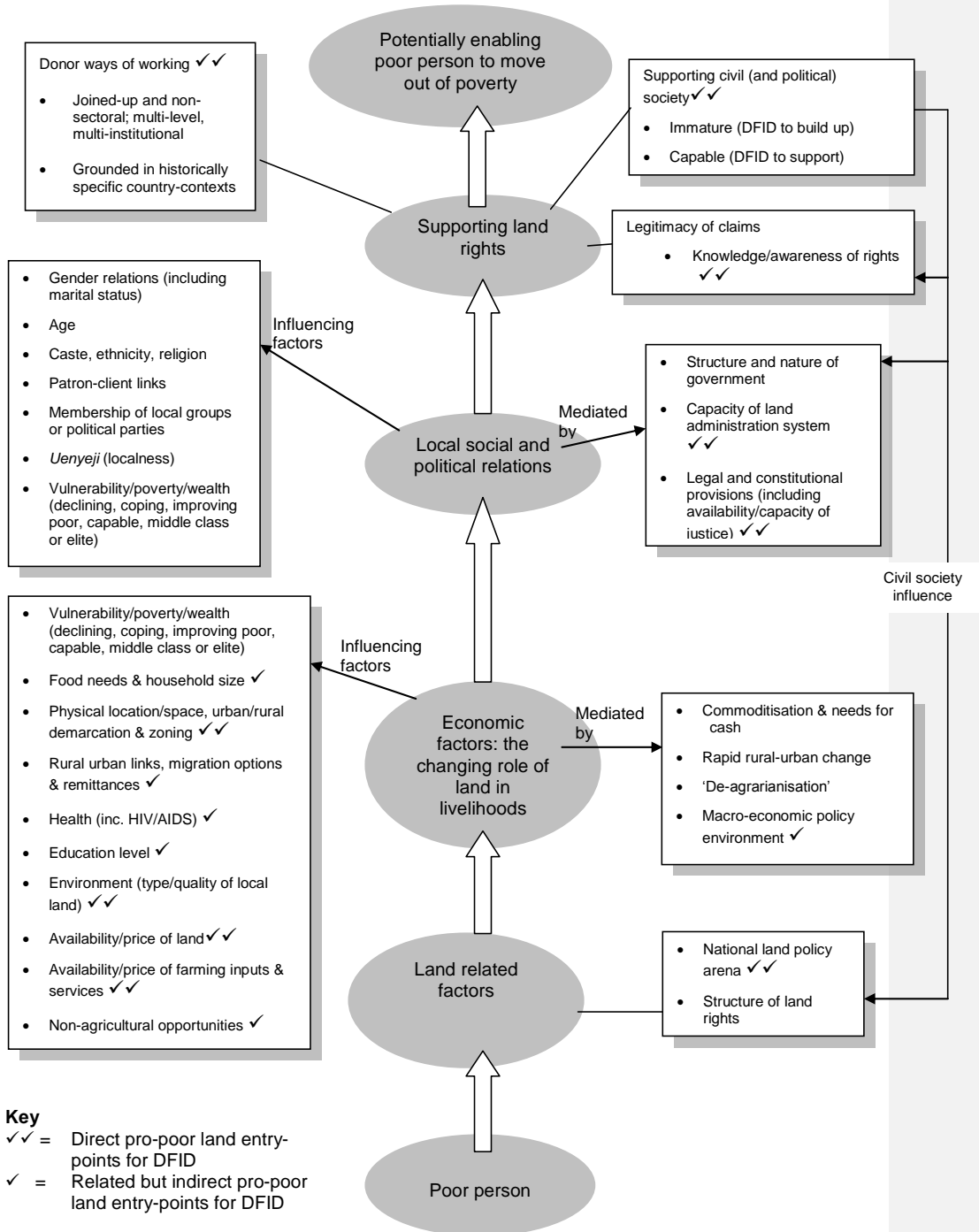
“A small peasant and a landless labourer may both be poor, but their fortunes are not tied together...we have to view them not as members of the huge army of ‘the poor’, but as members of particular classes, belonging to particular occupational groups, having different endowments, being governed by rather different entitlement relations” (Sen 1981:21).

We hope our approach may be helpful to DFID advisers engaging with land in specific social, economic and political country-contexts. It is intended only as a tool to assist in developing understandings of local processes of differentiation and of the local effects (or potential effects) of changes in land policy and administration for the poor, as part of the process of identifying entry-points for pro-poor change in and through land policy and administration. It is not exhaustive and suggested entry-points will by no means be applicable in all contexts. The approach is sketched out in Diagram 1.

3.1 The vulnerability/poverty/wealth continuum

Underlying our approach is a conceptualisation of poverty that has been developed within DFID India (Loughhead et al. 2000) and further elaborated by Brocklesby (2004) and Hobley (2005). This conceptualisation assumes 1) that there is a continuum of vulnerability, poverty and wealth along which different people move at different points in time and life-cycle, and 2) that local social and political relations are important in access to land (albeit that their importance varies according to the local reach and extent of processes of commoditisation (Peters 2004; Daley 2005b)), and that these relations are influenced by people’s capabilities for social action (as related to their position on the vulnerability/poverty/wealth continuum).

Diagram 1 A Pro-Poor Approach to Land



Donor ways of working ✓✓

- Joined-up and non-sectoral; multi-level, multi-institutional
- Grounded in historically specific country-contexts

Potentially enabling poor person to move out of poverty

Supporting civil (and political) society ✓✓

- Immature (DFID to build up)
- Capable (DFID to support)

Supporting land rights

Legitimacy of claims

- Knowledge/awareness of rights ✓✓

Influencing factors

- Gender relations (including marital status)
- Age
- Caste, ethnicity, religion
- Patron-client links
- Membership of local groups or political parties
- *Uenyaji* (localness)
- Vulnerability/poverty/wealth (declining, coping, improving poor, capable, middle class or elite)

Local social and political relations

Mediated by

- Structure and nature of government
- Capacity of land administration system ✓✓
- Legal and constitutional provisions (including availability/capacity of justice) ✓✓

Influencing factors

- Vulnerability/poverty/wealth (declining, coping, improving poor, capable, middle class or elite)
- Food needs & household size ✓
- Physical location/space, urban/rural demarcation & zoning ✓✓
- Rural urban links, migration options & remittances ✓
- Health (inc. HIV/AIDS) ✓
- Education level ✓
- Environment (type/quality of local land) ✓✓
- Availability/price of land ✓✓
- Availability/price of farming inputs & services ✓✓
- Non-agricultural opportunities ✓

Economic factors: the changing role of land in livelihoods

Mediated by

- Commoditisation & needs for cash
- Rapid rural-urban change
- 'De-agrarianisation'
- Macro-economic policy environment ✓

Land related factors

Mediated by

- National land policy arena ✓✓
- Structure of land rights

Poor person

Civil society influence

At one end of the vulnerability/poverty/wealth continuum are the chronically poor, among whom we might find the elderly, orphans (perhaps only transitory), widows in patrilineal societies, people with disability, and people with long term illness and morbidity. In the absence of other help, these people have to rely on responsible and accountable governments, yet they are not well placed to bring about such responsibility in government and have to rely on the agency of others, who are more capable of social action, to this end (Wood & Salway 2000). The chronically poor are thus clearly distinct from other poor people with greater social and political connections, greater opportunities and abilities to earn cash incomes (and perhaps also greater assets), and therefore with greater overall ability to pursue land claims and gain access to the land needed for their livelihoods. In view of this, we identify three broad 'types' of poor people in this paper (c.f. Loughhead et al. 2000; Brocklesby 2004; Hobley 2005):

- **Declining Poor** – people who experience multiple vulnerabilities simultaneously (e.g. poor health, homelessness, very limited cash incomes (often reliant on charity), indebtedness, social exclusion (often exacerbated by breakdowns in family, kinship or community-based support systems)). Beset by high levels of insecurity and with very limited capacity to pursue land claims and gain access to and make effective use of land.
- **Coping Poor** – people who are just about able to meet their basic needs but whose livelihoods are in a precariously-balanced equilibrium. Seasonal fluctuations regularly experienced (e.g. temporary food shortages); absence of buffers also a source of vulnerability (e.g. accessible markets, good crop storage facilities, safe housing, affordable services (financial, health-care etc.)). Usually insecure and risk-averse, often reliant (especially in the Asian context) on powerful patrons for support. Limited capacity to pursue land claims and gain access to and make effective use of land.
- **Improving Poor** – people with greater social and political connections, and greater skills, education levels and assets, enabling them to pursue economic opportunities, access and benefit from development services and take positive actions to improve their situation (e.g. invest in preventative health-care, educate their children). More secure and less risk-averse, sometimes reliant on patrons (in the Asian context) but with wider networks to draw on too. Greater capacity to pursue land claims and gain access to and make effective use of land.

In addition there will in most contexts be people who are more **capable**: with sufficient assets to protect themselves against risk they are highly unlikely to fall into poverty (except in cases of major catastrophe such as the recent Asian tsunami). Moving upwards in terms of wealth there will then be people who are part of emergent **middle classes** and people who can be described as (varying types of) **elites**. This sort of typology is of course very crude, but if applied in specific social, economic and political country-contexts we believe it may contribute to a more nuanced pro-poor approach to engaging with land. We illustrate this here with just one generic example relating to urban poverty:

"For the very [but coping] poor [tenure] is primarily a matter of being able to access any space where they can obtain a basic livelihood, such as street trading, without fear of eviction. Location is therefore more critical than the form of housing they occupy and long-term security

of tenure may be less important than the ability to move when livelihood opportunities change” (Payne 2002:300).

In contrast, longer-term forms of tenure become increasingly important to the improving poor, who may be identified in urban areas as those with enough disposable income to invest in better-quality housing (Payne 2002:301). Box 3 (drawing on a DFID-funded 16 country study) sets these priorities out more clearly for all our ‘types’ of poor people.

Box 3: The vulnerability/poverty/wealth continuum and urban tenure

Declining and coping poor: prioritise easy access to places where they can obtain a livelihood; these are frequently inner city locations where land prices are highest, thus generally forced to accept informal and insecure accommodation as price of such access.

Coping and improving poor: low but less uncertain cash incomes permit acceptance of slightly longer travel times/distances to work; can afford more secure tenure though probably not at full market rates.

Improving poor and capable: higher residential mobility as distances to work are less critical than need for longer-term and more secure tenure.

Source: Durand-Lasserve et al. 2002:5

While freehold titles may be appropriate to the last group of urban poor described in Box 3, they may be counter-productive to the first two, especially if only offered in peripheral locations. Instead, intermediate tenure arrangements, including those that can be upgraded to full titles over time, may be far more appropriate to the first two groups. Examples of such arrangements have included low-cost temporary occupation licences in Kenya and temporary land rental in Thailand. The latter, for example, provides landowners with income prior to land development while enabling groups of poorer people to occupy land near work opportunities for short periods of time; they receive services from local authorities during the rental period and obtain tenure certainty, with enough notice given to allow time to subsequently negotiate new arrangements elsewhere (Durand-Lasserve et al. 2002:7; Mohit 2002; Yahya 2002:247-52; Payne pers. comm. 2005).

3.2 Land-Related Factors

The first step in our pro-poor approach to land calls for an understanding of the background (and historical) country-context of land policy and administration. This covers two main areas – the structure of land rights and the national land policy arena – although in practice the two are of course closely connected. We make only a few general observations about the structure of land rights in Sub-Saharan Africa and South and South-east Asia before addressing current land policy and administration issues, building on our previous discussion of continuities in donor organisation and developing country government thinking and practice about land.

The structure of land rights

The structure of land rights in most African and Asian countries today is in large part a result of the colonial histories we have already outlined. In South and South-east Asia land rights were generally recognised in all non-forest areas; however, the

rights of indigenous peoples who have long cultivated forest lands remain generally unrecognised. This has resulted in increasingly widespread problems over the alienation of land used by indigenous or tribal groups (Gazdar & Quan 2004:24; e.g. NGO Forum on Cambodia 2004). Increasing pressures for the recognition of collective indigenous/tribal rights (and, in India, for the rights of scheduled castes) are contested by entrenched landlord classes, who also oppose the continued emphasis placed on mass land registration and titling by conservative and centralised land administration bureaucracies. Landlords are usually enmeshed in land-based patron-client relationships with large numbers of tenant farmers and share-croppers, for whom channels of access to land are often relatively rigid. Meanwhile, newer elites with good political connections and growing economic power are increasingly exerting control over access to land and natural resources across South and South-east Asia (Putzel 1992; Borras 2005; Gazdar & Quan 2004).

Channels of access to land across Sub-Saharan Africa are generally less rigid than in Asia. Most African countries retain the complex systems of 'dual' or 'multiple' tenure established during the colonial period: local ('customary') systems of land tenure (whether owned and managed 'communally', individually or within the whole range of possibilities between the two) tend to govern access to large areas of land (often ultimately owned by the state), while urban land, land designated as forest or game reserves, and large farms all tend to be governed by formal legal systems based on European concepts of proprietary ownership (Colson 1971:196; McAuslan 2000:76-7). Private landlords and hence Asian-style land-based patron-client relationships are generally less common in Africa. Instead, the existence of multiple tenure systems offers a variety of means of access to land, and a variety of "legal spheres" within which to pursue land claims and resolve land-related disputes, although this too is a source of continuing tensions as land registries are usually not kept up to date (Merry 1982:71; Mackenzie 1989, 1990, 1993; Palmer pers. comm. 2005).

The national land policy arena

Land has been the subject of great debate across Sub-Saharan Africa for well over a decade now, and many African countries are at present undertaking long-term processes of land policy formulation and implementation. DFID is currently engaging with these processes in Kenya, Rwanda and Ghana, for example, and has previously engaged with similar processes in South Africa, Tanzania and Uganda; in the latter work on dispute resolution is continuing (Adams, Dyer, Lambert & Palmer pers. comms. 2005; Adoko 2005). DFID has also engaged with land redistribution in South Africa and Zimbabwe, while limited allocation, expropriation and (re)distribution of underutilised land is an element of current land policy in Rwanda (DFID & Adams 2004; Dillon, Dyer & Scott pers. comms. 2005). Land redistribution remains a very difficult issue for DFID to engage with in Africa, given the historical context and its overtly political nature. However, land administration is the main focus of land policy in most African countries today, with widespread attempts being made to resolve the problems generated by the continuing co-existence of multiple tenure systems; it is also our focus in this paper.

In contrast with Africa, and despite continuing inequalities in land rights and landholdings, land is arguably not as major a policy issue in much of rural South and

South-east Asia (Biot, Farrington & Jones pers. comms. 2005). In South Asia, for example, there is political resistance to further redistributive land reforms from landowning elites, while earlier land reforms have anyway reduced their political appeal (Gazdar & Quan 2004:17). Nevertheless, land administration remains important across South and South-east Asia, with issues such as the efficiency of rental markets (including share-cropping) a concern. In particular, South Asian post-independence pro-tenant 'land to the tiller' legislation needs to be repealed to allow rental markets to function more effectively, while there have also been various attempts in South-east Asia to replicate the Thai model of mass registration and titling in recent years which are likely to continue (Williams 2003:8-10; Land Equity 2003; Farrington pers. comm. 2005). Moreover, there are pressing land issues in Asian urban areas, especially around service delivery and tenure in slums; these will become more important to address as they are pushed higher up the political agenda by civil society organisations (see Box 11 later).

One common theme of land issues in both Africa and Asia surrounds the role of governments, and it arises in the broader context of democratisation. For example, donor pressures for democratisation (linked to aid conditionalities) had by the 1990s begun in some Sub-Saharan African countries to create spaces for newly-emerging 'civil society' organisations to criticise widespread bureaucratic maladministration and corrupt practices, both in general terms and within land administration systems (e.g. Palmer 1996; pers. comm. 1998; National Land Forum 1997; Shivji 1998). Such maladministration included rampant land-grabbing on the part of well-connected (often urban-based) elites, a phenomenon that increased in many African countries with the rise of neo-liberalism in the 1980s. The scale of abuse, and the full extent of official involvement at all levels of government, has sometimes been quite astonishing (e.g. Southall 2005, and see Box 8 later).

Civil society debates about land have also centred on opposition to land privatisation, and particularly to land allocations to foreign investors. Where states hold radical title to land (whether in whole countries, as in much of Africa, or in areas classified as state-owned lands, as in much of Asia), rights may be notionally allocated for the wider public good through the granting of leases or concessions to foreign investors or transnational corporations (for mining, logging, tourism etc.), yet questions frequently arise about who actually benefits from these arrangements (Peters 2004:286; Hardin 2002; Dudley 2002; NGO Forum on Cambodia 2004). In Indonesia, for example, much current debate on land is thus about the democratic and legitimate control of resources (or not), as the example in Box 4 illustrates.

Similarly, in failed or "fragile" states (DFID 2005a), land and land-based resources are frequently embroiled in conflict and struggles for power; in Eastern Congo (DRC), for example, forests have been destroyed by local warlords fighting for control of coltan mining, jeopardising endangered animal species and the livelihoods of people dependent on the forest resources, including many refugees and internally displaced people (Dian Fossey Gorilla Fund pers. comm. 2000; Hardin 2002).

Box 4: Resource Control and Poverty in Papua, Indonesia

Papua's natural resources generate important revenues for Indonesia: oil and mineral exploration and extraction are continuing and new investments are anticipated in large-scale timber plantations to meet demand from the international wood-processing industry. However, Papuans do not have secure rights to land and have seen few of the benefits from natural resource exploitation; they stand to be made worse off through lack of the information and legal certainty needed to hold both government and extractive industries to account.

To help prevent this, a DFID-funded project has been supporting provincial forest authorities and local communities in mapping and agreeing customary land areas. However, the Indonesian military and local police run a highly-organised trade in illegal logs and it is difficult for people to protect their boundaries against such 'state-organised' activities. In one recently publicised case, local communities and provincial forest authorities suffered retribution by the Indonesian government, rather than the organisers of the illegal logging.

Source: Hoble private comms. 2005; EIA/Telapak 2005.

Decentralisation

A common theme of current thinking about land policy and administration in both Asia and Africa is the new emphasis on decentralised land administration systems. This is part of a much broader shift in favour of political and bureaucratic decentralisation, seen in donor circles as a means both to improve the allocative efficiency of developing country governments and to build politically engaged citizenries (Manor 2002). At its best decentralisation of land administration systems allows scope for the acknowledgement of, and gradual formalisation of, locally-evolving practices of informally documenting and recording land transactions and transfers of ownership and use rights. Such practices are increasingly being reported across Sub-Saharan Africa, for example, and are generally more locally socially legitimate and also much cheaper than formal means of registering land and recording transfers (Lawry 1993; Platteau 2000:64; Benjaminsen & Lund 2003:6-9; Lavigne Delville 2003; Daley 2005b; etc.). Furthermore, decentralised approaches to dispute settlement offer the possibility of cheaper, more accessible and more speedy resolution of land claims in more locally socially legitimate ways. However, current thinking about decentralisation in land policy and administration also reflects an apparent unquestioning belief in the 'customary' as a panacea to many of the problems that have followed from the application of the assumptions and policies of the Western-legal view of property and land in the very different socio-cultural and historical contexts of developing countries. We return to this issue below.

Pro-poor policy

The first entry-point for DFID in our pro-poor approach to land is simply to maintain continuing involvement with processes of land policy formulation and implementation in developing countries, so as to get pro-poor policies in place (Lambert pers. comm. 2005). Such policies will of course be specific to the different social, economic and political country-contexts within which DFID engages with land, although some ideas of what they might look like will gradually emerge as we progress through the next steps of our approach. Importantly, however, we will argue that newer and apparently pro-poor policies such as decentralisation (and newer administrative tools and technologies such as computerised land information systems and GPS) need to be engaged with cautiously.

3.3 Economic Factors: The Changing Role of Land in Livelihoods

The second step in our pro-poor approach to land calls for an understanding of the changing role of land in livelihoods. While this must be separately assessed in each different social, economic and political country-context, some broader processes of change can nevertheless be identified here. Commoditisation, liberalisation and globalisation, for example, all form part of the shifting background against which people negotiate and renegotiate their relations both with each other and with land. Globalisation and liberalisation affect the nature of people's relationships around resources; as we have noted, there is now growing evidence of land-based inequalities arising from such changes. Commoditisation pressures bring increased needs for cash, although the effects of this for poor people must be assessed within specific contexts of rapid rural-urban change and 'de-agrarianisation'.

Rapid rural-urban change

Following the DFID Urban Rural Change Team (2004), we first recognise the importance of understanding the spatial, social, economic and political connectivity of urban and rural areas; change works on a continuum along which it is not always easy to allocate people to 'rural', 'urban' or 'peri-urban' categories (Jones 2004). At one spatial extreme are remote rural areas, at the other extreme are mega-cities, with their own peripheral (and often marginalised) areas (Moser & Rodgers 2004:5). Rural-urban connections include the flow of labour and goods, as well as the social and political relationships and alliances that can allow privileged access to land and livelihood opportunities for some but not for others. Livelihood opportunities themselves are influenced by overall economic dynamism, with differing effects for the poor: in 'booming' areas increasing competition and rising land prices may exclude the very poor from access to land, whereas in 'stagnating' areas they may lack the resources and markets needed to make effective use of land (Woodhouse 2002:7). Land can clearly have different roles to play in people's livelihoods; whether and how land is obtained and used by poor people is, however, still shaped historically by the local structure of land rights and the national land policy arena.

De-agrarianisation

There is currently much evidence emerging of processes of 'de-agrarianisation' in Sub-Saharan Africa (e.g. Barrett et al. 2001; Bryceson 2002a, 2002b; also (on Tanzania) Ponte 2000, 2001; Ellis & Mdoe 2003), and of wealthier households in South-east Asia increasingly choosing to move out of land-based livelihood activities (e.g. Rigg 2005; also (on Vietnam) ADB 2004). 'De-agrarianisation' encapsulates both 'entrepreneurial' and 'survival' drives to livelihood diversification: it includes moves out of farming by those able to respond positively to economic change, as well as the (probably more numerous) moves out of farming by those squeezed by land pressures and economic uncertainty (Daley 2005b). It is in contexts such as this that the case for land redistribution to small owner-operated family farms must therefore be assessed. In heavily urbanised South Africa, for example, land is now seen by some as "a place to stay" rather than "a place to farm" (Bernstein 2005); others contend that "for many rural people a land-based livelihood offers their best chance to move above the poverty line (even if only just above)" (Cousins 2005). In smaller countries such as Rwanda, where land pressures are intense, 'de-agrarianisation' is probably inevitable but the necessary alternative livelihood opportunities have not yet emerged, land remains the country's only significant

productive asset and access to land is the only safety net for many (Dyer pers. comm. 2005). Moreover, it should not be assumed that 'de-agrarianisation' is necessarily a negative phenomenon, or that, given the choice, poor people would necessarily want to farm: one recent government survey in India reported in the Hindu newspaper (1/8/2005) found that 40 per cent of farmers would quit if they could; 27 per cent said they did not like farming because it was not profitable, while 8 per cent said it was a "risky proposition" (Farrington pers. comm.. 2005).

Migration options and remittances

The growing importance of both internal and international migration also challenges some past assumptions about the important role of land in livelihoods and in driving change for the rural, urban and peri-urban poor (Ellis 2003; Ellis & Harris 2004:15; Rigg 2005:10). Remittances are becoming more important to cash incomes than agriculture in parts of India, for example (Deshingkar & Grimm 2004). In Bangladesh remittances have been used to expand cultivated areas and increase land available for tenancy, thereby improving rural labour markets; urban-based families have become absentee landowners in rural areas, providing tenancies to land-poor families to whom they are generally related (Afsar 2003; cf. Torfique & Turton 2002). In Nepal "human capital...has shown a...high degree of mobility and adaptability" in the context of two decades of relative agricultural stagnation. As younger men migrate for work we see an "increasing feminisation of rural life" (Blaikie et al. 2002:1268). In some cases, however, remittances may be insufficient for the women left behind to purchase replacement farm labour (Deshingkar & Grimm 2004:27).

A recent West African study illustrates other connections between migration, remittances and land: it found 30-50 per cent of active Senegalese men to be absent from their villages, with international remittances estimated to account for 30-70 per cent of their household budgets (Eurostat 2001, cited in Cotula & Toulmin 2004:33). In Senegal remittances were sometimes used by urban elites to gain control over rural land; when sent back to family members in rural areas they were also used to invest directly in agricultural production, enabling wage labourers to be hired and investments to be made in water (Ouedraogo 2003, cited in Cotula & Toulmin 2004:48). In Tanzania urban-based cash incomes and wealth became increasingly important to economic differentiation in rural and peri-urban areas with the rise of neo-liberalism in the 1980s (e.g. Wily 1988:193, 217-21; Sender & Smith 1990:31-5, 43-5). Young people now show less interest in farming, but farming and hence land nevertheless remain central to livelihoods in old age (Jambiya 1998; Mung'ong'o 1998; Mwamfupe 1998; Daley 2005b).

Poverty

Poverty is clearly experienced differently in different locations. Urban informal settlements or slums, for example, are often characterised by high levels of personal, physical and economic insecurity (Wood & Salway 2000:670; Gordon et al. 2000:9). Slum-dwellers' physical location reflects their broader social marginalisation; they often occupy precarious lands such as rubbish dumps, embankments, wayleaves under electricity lines, areas prone to flooding and areas with high risks of eviction. Short-term tenure security may be based on relationships with intermediaries who broker deals to prevent evictions, and who may mediate access to labour markets and to decision-makers in government. Such relationships thus have a big influence on slum-dwellers' livelihoods, making efforts to raise awareness of land rights and

support people in pursuing their land claims potentially problematic, especially among the declining and coping poor (Gordon et al. 2000; Wood & Salway 2000). Furthermore, some of the very poorest people in urban areas are pavement-dwellers who lack access even to poor-quality housing in slums. Land, through housing, is thus central to an understanding of core urban poverty in a very different way from core rural poverty, having a greater role in health and education in an urban slum than in a remote rural area, for example (Hobson pers. comm.. 2005).

This is because in urban areas – though of course not only urban areas – adequate shelter is a key asset in people's livelihoods:

"it enables sharing and pooling of household resources and incomes. It facilitates human capital investment if it is sufficiently conducive for study. It can also function as a productive asset through home-based business, sub-letting and paying guests. Its security depends on the overall real tenure conditions of the site" (Wood & Salway 2000:678).

For this reason, Millennium Development Goal 7, Target 11, aims to significantly improve the lives of at least 100 million slum dwellers by the year 2020, albeit a modest goal (Payne 2005:135-6). This will require "innovative approaches to security of tenure that are not based on land titling only" (Tibaijuka 2005:2), some examples of which we have already seen. To this end, UN-HABITAT have launched a Global Campaign for Secure Tenure, based on developing processes of negotiation as an alternative to forced evictions. UN-HABITAT is also building a cross-cutting network of land and housing professionals, academics, bureaucrats and NGOs, to highlight and share innovations (such as that set out in Box 5) so as to scale-up and change attitudes and behaviours within governments; this includes attempting to cross sectoral boundaries, for example through work with an international surveyors' association on pro-poor appropriate technologies that are about to be piloted in Kenya (Augustinus pers. comm. 2005; UN-HABITAT 2005).

Box 5: Urban 'best practice'

The Baan Mankong secure housing programme in Thailand seeks to help 300,000 households in 2,000 poor communities in 200 Thai cities over five years. This programme provides government funds (infrastructure subsidies and housing loans) to poor communities to plan and carry out improvements to their housing and basic services, and offers a diverse range of mechanisms by which people currently living in illegal settlements can obtain land legally. A key feature of this programme, critical to its success, is that it is city-wide: horizontal linkages are strengthened by engaging all urban poor communities collectively in processes of city-wide planning.

Source: Hasan et al. 2005:10-14.

Poverty is connected across rural, urban and peri-urban areas in multiple ways. For example, following the 1998 financial crisis in Indonesia urban-based poor people without connections to rural-based families and land were far more vulnerable to decline than those who could retreat to rural areas and use land as an economic safety net (Biot pers. comm. 2005). Urban-based poor people are often highly dependent on food remittances from families in rural areas, particularly declining and coping poor with insufficient cash incomes to cover their nutritional needs, while urban agriculture is a feature in the livelihoods of many urban poor (Gordon et al. 2000:16). However, good-quality farm land on which to grow food crops for sale to

local markets (particularly “fast crops” such as fruit and vegetables (Ponte 2000)) is often scarce in urban areas, fetching higher prices and thus being out of reach to declining and coping poor. In one Tanzanian village, for example, fertile riverine land lying between the village and local town was generally the most expensive; the aspiration to own a small piece (even a quarter of an acre or less) was shared by 91 per cent of all those wanting more land, yet it was more likely to be owned by capable people and local middle classes and elites (including those based in the town), and sometimes rented from them by improving poor (Daley 2005b).

The complex relationships between land, livelihoods and poverty

In the current context of rapid rural-urban change and ‘de-agrarianisation’, land has an increasingly complex relationship with livelihoods and poverty. In India, for example, where landlessness has long been associated with extreme poverty, changing economic contexts are now altering this ‘traditional’ relationship (Gazdar & Quan 2004:19-21; Farrington et al. 2005; cf. Rafique & Rogaly 2003). Across developing countries the links between poverty and wealth are adjusting dynamically to changing conditions, yet they nevertheless frequently remain land-based, as the examples in Boxes 6 and 7 now show. Box 6 draws on fieldwork in a peri-urban area of ‘rural’ Tanzania exhibiting highly dynamic relationships between land ownership, poverty and wealth (Daley 2004). Here, former landowning elites have increasingly moved down the vulnerability/poverty/wealth continuum to become (often barely) coping poor, facing pressures to sell their land to newcomers to the rapidly urbanising area who have much greater cash incomes. These same newcomers form two sub-sets of wealthy people: the land-poor and the land-rich.

Box 6: Land, poverty and wealth in peri-urban Tanzania

New elites:

- Wealthy newcomers, mostly in permanent salaried employment or business. Medium to large landholdings. Buying up land as fast as cash incomes allow, partly as provisioning for old age but also to move into commercial farming. Usually men and middle-aged.
- Wealthy newcomers, mostly self-employed skilled workers (artisans, tradesmen, mechanics etc.). Very little land owned or farmed (usually just a house-plot or a small piece of fertile riverine land, often rented rather than owned). Buying up land in slower time as part of overall livelihood portfolio but content with non-agricultural cash incomes. Usually men and younger.

New poor:

- Capable, improving and coping poor (vulnerable to decline). Large landholdings but lack resources to farm all land; lack skills and education to take advantage of new (more lucrative) livelihood opportunities. Pressured to sell. Usually men and older.
- Coping and declining poor (vulnerable to further decline). Large landholdings but reduced to poverty through ill-health, widowhood and lack of resources to farm all land. Pressured to sell. Usually women and older, often raising orphaned grandchildren alone.

Source: Derived from Daley 2005b:Table 3

In contrast, Box 7 presents brief case studies of improving, coping and declining poor in the environmentally-extreme Chars region of Bangladesh, where land can erode overnight, rendering people suddenly homeless and vulnerable to decline. In

this situation land is central to escaping poverty again, using kinship networks and mutual aid to gain access to land and start the climb out of landlessness (Indra & Buchignani 1997).

Box 7: Land, environment and poverty in the Chars region of Bangladesh

Improving poor

Abeda Begum lives in the centre of Hamira Char with her husband, four sons and two daughters. Her husband migrates seasonally to town for work as a rickshaw puller but regularly returns home or sends remittances through his brother. The family sharecrop 5 bighas of land, which the eldest son works as well as undertaking casual wage labour in the local area. The other children attend school. Abeda is a member of a women's group run by a local NGO, which has lent her money to grow vegetables around the house and provides help with medical expenses. She maintains regular contact with her brother and father who live close by on the mainland and with whom the whole family stayed during the 1998 floods.

Coping poor

Saluddin is a casual wage labourer who has been living on Pakora Island Char for seven years with his wife, four daughters and two sons. The family face seasonal chronic hunger and food shortage, and the position of their home on the edge of the eroding char makes them very vulnerable to homelessness during the monsoon. Saluddin and his eldest son work for Abdul Hamid (a large landowner living on the mainland who, as UP Chair, has previously helped them to get food aid). His second son has migrated to Chittagong and has not been in contact for over 2 years. His wife grows vegetables around the house and they own some livestock. His youngest daughters are at school; the older two dropped out to help their mother. When his youngest daughter was ill he borrowed money from the local shopkeeper, but was told he would need to pay it back before the end of that same year.

Declining poor

Abdul Kader was born on Khanar Char to a well-connected family owning 180 bighas of ancestral land. He was the only son and 20 bighas of land were mortgaged to pay his sisters' dowries. 15 years ago his area eroded and he moved with his family and 20 neighbours to another char. In order to secure a home he shared some of his remaining land with neighbours who subsequently registered it in their own name. Five years ago he was forced to move again when the land he was occupying was washed away, and now has to move a further time as the government has marked his current area for road construction. A neighbour has offered to help in return for some of his ancestral land but Abdul has only 2 bighas left. He worked for a large landowner as a casual wage labourer until chronic back pain led him to give up work; his youngest daughter has now been sent to the mainland to work as a housemaid and his one son has temporarily moved to Kurigram for work. The family's savings were recently used up, and a large debt incurred, to pay his oldest daughter's dowry. His wife has taken to begging to meet the family's everyday needs.

Source: Brocklesby (2002:14)

Pro-poor entry-points around land and livelihoods

We have shown here just some of the ways in which the role of land in livelihoods is changing. These then need to be specifically examined in each different social, economic and political country-context. To this end, we identified some key influencing factors in Diagram 1, to which our (by no means exhaustive) discussion here of possible entry-points for DFID in our pro-poor approach to land now refers.

There is, first, an indirect but related entry-point in terms of DFID's engagement with the macro-economic policy environment in developing countries (i.e. beyond just involvement with processes of land policy formulation and implementation). This is particularly relevant to the factors of education and health – the human capital basis

on which the ability to make effective use of land rests. For example, support for the provision of affordable health-care services (including measures around the prevention and treatment of HIV/AIDS) can help declining and coping poor people to maintain their health. This reduces their vulnerability and enables them to make more effective use of whatever land they have access to, either directly by farming food for themselves or running a small business from home, or indirectly by using hired labour on farm land if their own skills enable cash incomes to be generated in other ways. Support for the prevention and treatment of HIV/AIDS can also help to reduce related land conflicts; specific measures to protect and support the land rights of widows and orphans, such as those currently being formulated by the Ministry of Land in Rwanda, may be direct entry-points in themselves (Aliber et al. 2003:xv; Dyer pers. comm. 2005).

Other indirect entry-points may emerge in relation to rural-urban links, migration options and remittances, whether, for example, supporting the land rights of circulatory migrants in their permanent home areas or their temporary work locations, or more broadly supporting the creation of a national political and macro-economic environment that enables people to make positive choices about migration options (Ellis & Harris 2004:10). Given rapid rural-urban change and 'deagrarianisation', there are also likely to be indirect entry-points around supporting non-land-based livelihood opportunities, although we recognise that this is a longer-term issue: in many places land is still the key (if not sole) asset that some poor people have (Dyer pers. comm. 2005). Nevertheless, agricultural development can be supported alongside policies that "allow people to make what might be termed "good exits" from farming" (House of Commons International Development Committee 2004:Para 18; Scott pers. comm. 2005).

Direct entry-points on this front might include support for rental market regulations that protect the very poor and vulnerable but which enable improving poor to more easily lease out their land (in the short or long term), thereby retaining it for future security but freeing them up now to invest the rental income in developing non-land-based activities. This would be particularly important in easing the transition away from land-based livelihoods in countries with intense land pressures, such as Rwanda (Dyer pers. comm. 2005). Well-functioning rental markets could reduce distress sales while simultaneously offering the possibility of access to land for those who have previously sold land, including those who have subsequently accumulated enough capital through non-land-based activities to return to agriculture on a more profitable basis. There is also scope for DFID to support innovative local banks in rural, urban and peri-urban areas, such as MUCOBA (Box 2 above), who lend money to promising enterprises without requiring title deeds as collateral; 'informal' documents such as letters signed by local administrators are instead accepted as evidence of land ownership, while loans are sometimes made to those without any land at all (Daley 2004 (Fieldwork Data)).

There are clearly also direct entry-points for DFID around the availability and price of farming inputs and services; efforts here can directly help poor people to make more effective use of the farm land they do have. Furthermore, the role of land in livelihoods is influenced by the availability and price of land and by the local environment (the type and quality of land); in addition to the previously-noted support for rental market regulations and the intermediate tenure arrangements discussed

above, there may be further direct entry-points for DFID in supporting environmental or infrastructural improvements or services (including new technologies), particularly in urban areas, to again enable land to be more effectively used. We have already discussed the relationship of physical location and space to the experience of poverty. Zoning and rural-urban demarcation are two specific factors which influence both the type of land that is available in the pursuit of a livelihood and the use that can then be made of that land. We would thus expect to see possible direct entry-points for DFID in supporting work with district and municipal governments on issues of land use and planning from a pro-poor perspective; areas of good-quality land might be turned into small allotments, for example, and made available (and affordable) to urban slum-dwellers with unmet nutritional needs. This latter point also suggests scope for indirect entry-points around food needs and household size. In addition, regulatory audits provide a relatively inexpensive way of identifying changes that can at least improve tenure security for the urban poor in the short to medium term (Payne 2005:143; Payne & Majale 2004).

As all these examples suggest, there are many possible entry-points for DFID (direct and indirect) within a contextualised pro-poor approach to land that takes into account the changing role of land in livelihoods in developing countries today.

3.4 Local Social and Political Relations

At the start of this paper we made a distinction between 'Western-legal' and 'anthropological' views about property and land. We have cited research-based evidence in suggesting that the dominant Western-legal view fails to address issues of differentiation and power, with negative effects for the poor. We have stressed the importance of continuities in thinking about (and the practice of) land policy and administration, and of understanding history. In line with the anthropological view (which has tended, as we have noted, to pay more attention to the links between land rights, social processes and structures and political and economic organisation), the third step in our pro-poor approach to land therefore calls for an understanding of the local social and political relations that mediate poor people's capacity to pursue land claims and gain access to and make effective use of land.

In the first instance land rights are influenced by basic factors such as gender relations (including marital status), age, caste, ethnicity and religion, which are often a given. Patron-client links (which may be quite rigid) and membership of local groups or political parties also have an influence. In Sub-Saharan Africa "*uenyeji*" is a key influencing factor: roughly meaning 'localness', *uenyeji* is a complex characteristic shaped by a person's arrival time in the location, length of residence therein, local kinship ties and general level of involvement in local social and political relations (Daley 2004, 2005a, 2005b). As a result, *uenyeji*, like vulnerability/poverty/wealth, is more fluid than many of these other basic factors.

There are likely to be relatively few entry-points for DFID (direct or indirect) around these basic influencing factors, although they are of course relevant to many of the entry-points we are suggesting, for example where protection for women's rights can be built into policy. Poor people's capacity to pursue land claims and gain access to and make effective use of land is, however, also crucially mediated by the nature and structure of governments and land administration systems. Entry-points will

emerge here through DFID's continuing involvement with processes of land policy formulation and implementation in developing countries; in practice the specific local and national context will determine precisely how DFID is able to engage. Here we make only a few general observations before raising some critical questions about decentralisation of land administration systems and about the use of administrative tools and technologies.

Local government

Attempts have variously been made to characterise types of governments as a way of understanding how to engage with them (e.g. Manor 1999; DFID 2005a), although these are inevitably problematic. Our pro-poor approach to land calls instead for 1) a clear historical understanding of the structure of land rights and the national land policy arena in particular country-contexts, and 2) a clear understanding of the nature and structure of local government (district, municipal and village). Understanding local government is important both because this is the level with which poor people normally interact, and because apparently pro-poor national land policies are likely to be subject to local level negotiation in their implementation. This can result in perverse outcomes, as the examples in Box 8 suggest, not least because land rights (especially access to and control of land and land use) can be, and often are, instruments in local politics and power relations (see also Brown 2005 on Zambia).

Box 8: Local government and land – some anti-poor outcomes

In the Philippines, where landed classes have significant political influence, redistributive land and tenancy reforms have been viewed by bureaucrats as a way to "manage" rural unrest, and "it is a well-known secret within the internal circles of the agencies associated with land reform that **some government officials coach landlords in how to evade land reform**" (Borras 2005:98).

In Kenya, local committees charged with allocating lands to smallholders "have been almost wholly unaccountable. The result has been predictable, with the interests of the landless having been ignored in favour of those of 'District officials, their relatives, members of parliament, councillors and prominent politicians from the area, Ministry of Lands and Settlement officials, other civil servants and...so called 'politically correct' individuals'...The Commission concludes that there has been systematic and widespread abuse of public trust by public officials, to the extent that **many officials now fail to see anything morally wrong with their allocating land illegally**...the lead in public plunder has consistently been given from the top" (Southall 2005, from the Report of the Kenyan 'Ndungu' Commission of Inquiry on Illegal/Irregular Allocation of Public Land 2004:127, 182-3, Annex 41-9).

As Box 8 suggests, local governments (and the officials within them) are not neutral actors in the development process, and for this reason it is important for DFID to engage with land issues at both middle ('meso') and local levels of government in developing countries as well as at the national level, an approach advocated in a wider context elsewhere in DFID (Brocklesby et al. 2005). It is important to understand formal and informal local social and political relations, and particularly to grasp the complexity (and specificity) of local power relations, because these affect the capacity of poor people to pursue land claims and gain access to and make effective use of land; they also affect the capacity of some people to constrain others' claims. Direct entry-points thus arise for DFID in supporting local government abilities to respond to people's claims, especially those of the very poor, through the

provision of appropriate and affordable services including access to justice (the development of more pro-poor mechanisms of dispute resolution). As the EU Land Policy Guidelines correctly puts it:

“Securing land rights is thus largely a question of having effective institutions and enforcement of rules for the management of land rights, and not merely a question of the formal legal nature of the rights themselves” (EU Land Policy Guidelines 2004:5).

A long-term approach is required to effect this kind of institutional change.

Local elites

Local government officials are, however, part of broader local elites. These local elites play a critical role in mediating access to land through their connections both with poor people and with others (including officials) who have influence and/or control over access to land, as the anecdote in Box 9 illustrates.

Box 9: Local elites and access to land in a Tanzanian village

The local MP brought an outsider (a university professor) to the then chair of the village's land allocation committee and asked him to help “find” 100 acres that the outsider could be given for free; the outsider received his land, including 10 acres given directly by the committee chair. At around the same time the committee chair received training in the use of a donkey-drawn plough at the professor's university and a gift of two donkeys and a plough from his new “friend”. Later, he declined to stand for re-election as he had become unpopular with other villagers: one claimed that “when he gave land to this one he took it again and gave the same piece of land to another”.

Source: Daley 2004 (Fieldwork notes).

Local elites sometimes also act as an intermediary layer between poor people and national and international elites in facilitating access to forest or mineral resources (Peters 2004:295). They seek to retain their positions using all such links with outsiders or officials, as well as through ‘muscle’ which can be used to intimidate and control access to land (e.g. (on Bangladesh) Baqee 1998; Devine 2002; Bode 2002; Hobley 2003); ‘traditional’ offices accompanied by power or influence over land allocation and management and/or a role in dispute settlement (in controlling or influencing access to justice and decision-making) are also very useful to local elites.

When considering how to build the voices of those who have few land rights and are excluded from land-related decision-making, it is thus important to examine carefully in specific local contexts the existing and “highly complex local political positioning and processes” (Daley 2005b), and to consider to what extent there is scope for changing the rules to facilitate greater land rights for the poor and greater involvement by them in decision-making (e.g. (on some of the problems of accountability here) Tran 2002:10). Again this emphasises the need to engage with local governments in trying to instil a culture of pro-poor change, while some of the basic factors that influence poor people's capacity to pursue land claims and gain access to and make effective use of land (gender, age, etc.) may also be more easily and indirectly approached in this way.

Capacity of land administration systems

Once pro-poor land policies are in place at the national level it becomes important to address implementation issues; these are “inherently of *longue durée*” (Palmer 2005:3). In Tanzania, for example, new land laws were passed in 1999 and came into effect in 2001, but are far from being fully operationalised:

“In terms of capacity building, a number of activities have been carried out, including: distribution of the Acts and all relevant forms to all Regions, some Districts and Villages as well as to MPs; training of 72,000 VEOs and 2,408 WEOs in the Acts; and training of 98 District Land Officers...While a lot has been achieved, much remains to be done. The principal constraint is shortage of resources of all kinds. The cost of full implementation nationwide is staggering” (DCI 2005:1-2; Palmer 2000:280-1; Alden-Wily 2003:13; McAuslan 1998:548-50).

Implementation is a highly complex issue. In Cambodia, for example, the World Bank is currently funding a Land Management and Administration Project that has supported the development of new legislation that makes provision for women to be registered as joint-owners with their husbands of their family farms; this has been described as a “startling success” by Oxfam, who had been closely involved in the land policy formulation process in Cambodia, and it provides the potential for up to one million Cambodian women to acquire legal title (Palmer 2005:9; Palmer pers. comm. 2005). However, the roll-out of individual titling is already proving to be very slow and difficult, with large numbers of disputes unable to be resolved through the formal courts and a new decentralised dispute system not yet functioning properly (Farrington pers. comm. 2005).

There are two direct entry-points for DFID in terms of land policy implementation that can help to speed up implementation, improve internal (within country) mechanisms of accountability and generate a broad pro-poor culture in relation to land. The first is around building the capacity of land administration systems (particularly at the local level), the second is around working with non-government actors and organisations (‘civil society’). The latter we discuss below; the former requires us to raise some critical questions about decentralisation of land administration systems and about the use of administrative tools and technologies.

Decentralisation of land administration systems

The new emphasis on decentralised land administration systems is, as we have observed, part of a much broader shift in development thinking and practice; there is therefore much experience of general processes of government decentralisation on which to draw in assessing the potential of decentralisation in a pro-poor approach to land. For example, one recent study found that decentralisation had negative effects for poverty reduction in two-thirds of the 19 countries studied (Jütting et al. 2004). This is an important finding when it is considered that (as well as the cost-savings that are expected to follow) decentralisation of land administration systems is in vogue precisely because it is expected to have more pro-poor outcomes than centralised land administration (e.g. Toulmin & Quan 2000; Deininger 2003).

Interestingly, the study also found a correlation between the level of political development and the effectiveness of decentralisation for poverty reduction (Jütting et al. 2004). Where there is a lack of local government implementation capacity (skills, systems, incentives etc.) and a lack of national government capacity (and sometimes willingness) to lead and monitor, the expected pro-poor outcomes must

therefore be questioned, especially when combined with strongly-entrenched local power relations and elites who are able to capture decentralised assets or services (a combination of particular relevance in many countries emerging from conflict or crisis) (Peters 2004:289; Tajima 2004:66 (on Indonesia)). In addition, more general evidence suggests that local and community level institutions are as likely or more likely to exploit and manipulate the chronic poor as are more centralised institutions (Bird et al. 2002).

Even where bureaucracies do not lack capacity and function well, it must also be remembered that the transformation of local land rights, through any form of land reform, land policy and administration change or land-related development initiative, is itself likely to be subject to contestation (e.g. Feierman 1990; Peters 1994; Maack 1996; Mackenzie 1998; etc. and Box 1 above). This is particularly the case when national land policies require changes to local (informal or 'customary') land tenure practices through land registration or formalisation of land rights, which as we have noted, often results in the loss of rights held, for example, by women, strangers and marginalised groups.

The 'customary' as panacea

We must therefore express concern about one key element of decentralisation that has emerged in current thinking about land policy and administration. There is now a dominant, widely-held view that the ambiguity and fluidity of many 'customary' land tenure practices are positive features that enable continuing land access for the poor and do not necessarily produce insecurity or increase inequality. This view is in danger of positing the 'customary' as a panacea to many of the problems that have followed from the application of the assumptions and policies of the Western-legal view of property and land in the very different socio-cultural and historical contexts of developing countries. It sees decentralisation as a "state-facilitated" way of allowing 'customary' land tenure practices to be formalised gradually and in varying ways, leading to a more flexible evolution of local land tenure which it is then hoped will avoid many of the problems that have followed (in particular) past land registration and titling (IRT) programmes (Bruce 1993:51; Platteau 1996:74-7; Toulmin & Quan 2000; Toulmin 2005).

This view is reflected in the World Bank's recent land policy paper (as we noted above) and has been associated with the IIED and Oxfam (Whitehead and Tsikata 2003:85-90; cf. Woodhouse 2003:1705-6; Woodhouse 2002:19; Peters 2004:276). It was part of the logic in Tanzania, for example, of devolving responsibility for land management to village governments, the existing structures of local government, and for making registration of the 'customary rights of occupancy' held by most Tanzanians only voluntary (URT 1994; Shivji 1998; Palmer 2000:281; Manji 2001:334; Alden-Wily 2003). Yet the "democratic substance of village governments in Tanzania is often unclear", while there is still scope for better informed and more powerful local elites (and outsiders) to register land as 'granted rights of occupancy' with the national government (Daley 2005b).

As we argued earlier in this paper, ambiguity of 'customary' land rights is not necessarily a source of insecurity. However, neither is the 'customary' a panacea. Simply ignoring or downplaying processes of differentiation and local politics and power relations does not make them go away:

"When competition for land intensifies, the inclusive flexibility offered by customary rights can quickly become an uncharted terrain on which the least powerful are vulnerable to exclusion as a result of the manipulation of ambiguity by the powerful" (Woodhouse 2003:1715).

Moreover, allocating decision-making power to customary systems and authorities has particularly serious implications for women's land rights and those of the poor: precisely the same groups who have lost out from older approaches to land tenure reform (e.g. Tsikata 2003 on Tanzania; Whitehead & Tsikata 2003 on Sub-Saharan Africa; Guggenheim n.d on Indonesia). This is because customary systems of land allocation and dispute settlement tend to be dominated by elites, and usually men (e.g. Tsikata 2003; Whitehead & Tsikata 2003:79, 98); the recent allocation of land registration powers to chiefs in Ghana, for example, is thus not expected to deliver favourable outcomes for the poor (Toulmin pers. comm. 2005). To a certain degree there is increasing recognition of the need to avoid treating the 'customary' as a panacea: for example, Oxfam's Global Land Policy Adviser acknowledges the need to engage with 'customary' tenure with open eyes, while IIED is currently undertaking research in Ethiopia which tries to address some of the problems inherent in depending on 'customary' structures and institutions for land administration and registration (Kanji, Palmer & Toulmin pers. comms. 2005).

However, feminists and women lawyers have taken the lead in making a case for the role of central (national) governments in maintaining and protecting the rights of women and the chronically poor through constitutional and legal provisions that proscribe discrimination, and particularly discrimination that takes place under 'customary' law; it is thus argued that there is an important role for central governments as providers of policy that protects the rights of the poor (Tsikata 2003; Whitehead & Tsikata 2003; cf. Tendler 1997:145; Bracking 2003:28; Woodhouse 2003:1718). This is essential to effecting registration and titling in a pro-poor way, addressing some of the basic influencing factors noted above. Meanwhile, where 'customary' tenure practices and dispute settlement rules are already being formalised into registration-based Western-legal practices, there is also a case to be made for exercising caution so that these processes do not replicate the very problematic colonial "creation" and ossification "of a 'traditional land tenure system' by means of codification of some of its principles". What is needed instead are "legal provisions providing a framework for their further evolution" (Sawadogo & Stamm 2000:292; cf. Chanock 1982; Ranger 1983 etc.).

Administrative tools and technologies

The current drive towards decentralised land administration systems is also accompanied by an emphasis on the use of new tools and technologies such as computerised land registries, comprehensive land information systems and GPS. There is, perhaps as ever with new technologies, a feeling in some developing countries that such tools will "solve all our problems" (Rwandan land official quoted by Palmer pers. comm. 2005). Similarly, in Indian land bureaucracies with low levels of technical skills there is a belief that technology will solve land administration problems on its own (Land Equity 2003:18). Yet technology does have an important role to play in a pro-poor approach to land, and can be an important entry point for donors. In Madagascar, for example:

"The land registry has a backlog of 200,000 claims, which it processes at the rate of 1,000 a year. All records are on paper, stored in mounds on shelves. Both office's manual typewriters

have broken “R” keys – the most common first letter of Malagasy surnames” (Economist 2005).

The Millennium Challenge Corporation’s efforts to modernise and computerise the Madagascan land administration system are arguably much needed, and the broader possibilities offered by new technologies are welcome (Economist 2005; Palmer pers. comms. 2005). Computerisation, for example, is already believed to be reducing the scope for corruption and bribery on the part of land officials (Augustinus pers. comm. 2005; Deininger pers. comm. 2005), while new innovations are proceeding apace: in Somaliland, a UNDP cadastral survey project is defining “farm plots with precision” and providing “laminated deeds with full details of ownership, including a photo of the owner” (Marongwe & Palmer 2004:17). Nevertheless, “the old Kenyan problem” is likely to remain, whereby newly computerised land registries may not be updated by poor people if the costs of doing so are too high, or if transfers are not recorded because the newly-registered rights do not wipe out existing ‘customary’ rights (a particular problem on inheritance); technology cannot address the fundamental social and cultural issues that surround any transformation of land rights and it must therefore be engaged with cautiously (Palmer pers. comms. 2005; cf. Coldham 1978; Guyer 1987:2-8; Okoth-Ogendo 2000:128).

As we have argued, local social and political relations have a bearing on the outcomes of apparently equitable and neutral bureaucratic processes: new tools and technologies can thus become additional instruments in local politics and power relations, especially if only controlled (or understood) by educated and literate elites. Due to their relative newness in land administration systems, there is little evidence yet to show the effects of computerised land registries or GPS for the poor. However, the Gyandoot project in India’s Madhya Pradesh, does give some indication of the likely impact of computerising local government administration. This project was intended to provide for easy on-line access to a range of government records and certificates and to enable on-line complaints to be made about the quality of government services (Jafri et al. 2002). Land was excluded because of large numbers of boundary disputes; the idea that people might be able to get a printout of their land record to use as evidence of collateral for a loan was thus dropped (Farrington pers. comm. 2005). On one hand the Gyandoot project had positive and galvanising effects on local government responsiveness: the “mere fact officials were aware that complaints could be made through Gyandoot has had a powerful effect on improving their performance” (Jafri et al. 2002:vii). On the other hand, the main users of the service were young to middle-aged males from higher social and economic groups. It is fear of this sort of effect that causes some to caution that: “land rights for the poor are better secured through investing in systems for dispute resolution and access to justice, rather than by technical procedures to register land rights” (Quan and Toulmin 2004:10). Moreover, in post-conflict countries, such as Rwanda, access to land justice will be a priority issue that any introduction of new administrative tools and technologies cannot afford to ignore (Dyer pers. comm. 2005).

Nonetheless, we remain optimistic that there is scope for new administrative tools and technologies to contribute to pro-poor reforms of land administration systems, particularly where these are designed appropriately through collaboration between policy-makers and technical specialists, as with the earlier example of UN-HABITAT and the surveyors. Pro-poor entry points around land administration systems thus

include both direct capacity building efforts (including technology upgrading) and broader support for local governments through the development of pro-poor (and gender-sensitive) channels of access to justice that are supported by national government protection; the latter must be part of getting an overall pro-poor land policy in place.

3.5 Supporting Land Rights

The fourth and final step in our pro-poor approach to land deals specifically with the issue of supporting poor people in pursuing their land claims, once pro-poor policies are in place and implementation issues have been addressed. There is a key issue here over the perceived legitimacy of poor people's land claims: if claims are not perceived as being socially legitimate then people's capacity to access land and use it effectively to move out of poverty (if that is appropriate to their livelihood strategies) will be hindered.

Social legitimacy

It is important "to distinguish between the *legal* recognition of a claim and its *social* recognition, and between recognition and enforcement" (Agarwal 1994:19, 58-60, original emphasis). Nominal legal land rights may thus be heavily contested if they clash with firmly entrenched local perceptions of what is socially legitimate, as the case in Box 10 shows.

Box 10: Clashes over legitimacy in Lampung, Indonesia

Under a previous policy of 'transmigration', transmigrants in Indonesia were given land and services as inducements to move from areas of high population density and land pressures into areas of much lower population density; they have since become targets of retribution by local populations and have organised their own militias to fight back. At root is a fundamental clash of views: transmigrants in Lampung claim their land rights as state-issued land rights, while indigenous Lampungese claim the primacy of their indigenous rights that were overruled by the previous regime. These differences are being contested within the power vacuum that has arisen since the fall of the Suharto regime, with both groups "vying for power and influence over resources and the social life of Lampung" (Tajima 2004:66).

Source: Hobley (2005: 23)

Alternatively, however, such a clash might create the possibility of change not only in the prevailing allocation of resources and related rights, but also in the fundamental ideology and social meanings tied up therein. Establishing the social legitimacy of new claims to resources then requires contestation, although not all cases will be accepted as socially legitimate ones for contestation in the first place (Agarwal 1994:58, 67; cf. Daley 2004:61-3). Drawing on the work of Fraser (1989), Agarwal thus identifies three key struggles: those to "establish the legitimacy of a need, those to interpret how that need should be satisfied, and those to secure satisfaction of the need" (Agarwal 1994:466).

It is in this context that poor people need support in pursuing their land claims, especially if their claims are not considered locally as socially legitimate. There is a role here for 'civil society', as we discuss next. However, there is also a role for donor organisations to use appropriate tactics to help open up the space (within

country) for new claims to be legitimately contested. This might be through making tactical decisions to fund research on which to build policy evidence and dialogue, as well as through seizing opportunities to work with governments on their preferred programmes (Deininger pers. comm. 2005). A good example of the latter is the World Bank's support to the Government of Karnataka, India, in computerising its land registration system; this provides an operational entry-point into discussion of the policy issues (such as the effects of the new technology for the poor) that inevitably follow (Deininger pers. comm. 2005; Land Equity 2005). However, there are limits as to how effective such an approach can be, if, as in Ghana:

"some problems and possible solutions are not even open for public discussion...[for example] a team of foreign consultants was carefully briefed by officials of the Ministry of Lands and Forestry, mainly with regard to their critical attitude towards traditional authorities, before they were allowed to start with their consultancy work" (Ubink 2005:17).

Similarly, in Uganda, where women's groups had been very effective in the late 1990s in arguing for changes to a new Land Bill to enhance women's land rights, an amendment dealing with land ownership rights between spouses was proposed and published for parliamentary debate, yet it did not appear in the published Land Act. It has since become known as the 'lost amendment': the speaker ruled that the amendment had never been passed and argument continues over what happened in the final stages of parliamentary debate; what seems likely is that the claims of women for rights to own land were not yet accepted as socially legitimate claims in Uganda (McAuslan 2003:10; Whitehead & Tsikata 2003:102). On the other hand, it has recently been argued that these claims can be built over time, particularly with the help of NGOs or civil society (Adoko 2005).

Supporting civil society

The effectiveness of civil society in assisting poor people to pursue their land claims and gain access to and make effective use of land is mediated by the broader political environment in different country-contexts, as also is the space for DFID engagement and support. Ethiopia, for example, provides very limited political space for civil society contestation of land rights; there are still serf-like minority groups in Ethiopia with no land or dwelling rights who are vulnerable to expulsion from their living areas at any time (Vaughan & Tronvoll 2002:48, 64). Where there is such limited political space, social mobilisation around land is likely to result in either absorption or a coercive response (e.g. Harriss 2002). On the other hand, where there is a more permissive environment there is scope for a more active role for civil society. Thus India has many effective federations of poor people advocating around land and contributing to changing urban land policies as part of Shack/Slum Dwellers International, described in Box 11. What makes this organisation particularly interesting is that the locus of power and authority is kept in communities themselves rather than in intermediary NGOs at national or international levels (d'Cruz and Mitlin 2005).

As this case suggests (and there are many others), civil society actors can be effective at the policy level. They can also have an important role in implementation: in Mozambique, for example, a broad-based civil society campaign was central to the widespread dissemination of information about new land legislation and to raising awareness about new rights (DFID Kenya 2004:28-9). Civil society groups (including NGOs) can also play a more direct role in service provision, for example as

intermediaries leasing land to the poor or by helping groups of landless women to jointly manage (and make productive use of) village wastelands and lease land directly in groups for joint cultivation (Agarwal 1994:488, 2003:206-16; Gazdar 2004:23; Gazdar & Quan 2004:32). In India, the alliances around land advocacy include a movement within the bureaucracy (centred on the institute responsible for training senior career bureaucrats) to sensitise staff and build a research base around land that will have the credibility to inform national-level policy debates (Srivastava 2004:41); CBOs and NGOs are also useful in working from the local-level to raise awareness of land issues, as in Tanzania where the Women Advancement Trust has organised seminars for regional and district land officers on women's rights to land (Daley 2004 (Fieldwork Notes)).

Box 11: Mobilisation and 'bottom-up contestation'

Since 1990, a movement of slum and shack dwellers in Asia, South Africa and elsewhere (known as Shack/Slum Dwellers International) have formed their own federations aimed at transforming the lives of urban poor populations. The movement now includes over 650,000 people in 11 countries and has influence with international development organisations.

The federations implement their own low-cost housing and infrastructure projects that are higher quality than government projects; using these as precedents they negotiate policy changes, drawing on their legitimacy as representative mass membership groups controlled by and accountable to members at the grassroots (based around savings groups of low-income women), who engage in community-to-community exchanges and mutual support, nationally and internationally, helping to establish new federations.

Source: Moser (2004:45); d'Cruz and Mitlin (2005)

Nevertheless, and as these various examples anyway suggest, civil society is itself composed of many elements which may have competing interests and constituents (White 1991); supporting civil society is therefore not a neutral process and may lead to the emergence of new actors and organisations that merely adapt to existing, deep-rooted (and not pro-poor) social institutions and values (Palmer 1999 (on land alliances); Wood 2003). In Bangladesh, for example, one NGO-supported process of *Khas* land allocation (intended for the poor) led to the exclusion of poor households that were not members of the NGO as local patrons were replaced by the NGO in new and uncertain patron-client relations (Devine 2002). It is therefore important that:

"Civil society should not be considered as an autonomous sphere which should be strengthened to put pressure on the state, but as a collection of interest groups that are themselves reliant on having effective state institutions in place, and which form and reform in response to state action – and inaction. In turn, the ability to aggregate interests and to channel them through representative institutions is an essential ingredient in creating state capacity to respond" (Centre for the Future State 2005:46).

In terms of entry-points for DFID's engagement with civil society around land, this points the way to facilitating debate and research, and to supporting within-country policy dialogues that can respond to negotiation around potentially common interests. This requires investment in multiple sets of relationships involving a wide range of different actors, so as to help build an environment in which the highly political issue of land can become part of a negotiated state-civil society agenda. In some countries direct support to civil society may be less effective in supporting land

rights for the poor than providing support to land administration system capacity-building, so as to improve government responsiveness to diverse voices. Similarly, supporting effective research-based local policy analysis and providing a platform to local and national politicians can be part of supporting a more pro-poor political society and a more rounded debate about land and its role within poverty alleviation. In other countries, different elements of civil society can be directly supported to take on these roles themselves.

Donor ways of working

In supporting land rights it is also important for donors to consider themselves as actors, and to consider the implications of this. Our historical outline of donor organisation and developing country government thinking and practice about land in the first part of this paper showed clearly that donors have an important role to play in supporting land policy-making and its subsequent implementation, and that many donor-supported policies have had negative effects for poor people in the past. One key problem that may have contributed to this (and could yet do so again) is the continuing donor tendency to support a set of 'silos' within the land sector, ranging from the organisational separation of 'urban' and 'rural' land to the separation of social scientists from their more technical colleagues (surveyors, GIS experts, etc.). There is thus a persuasive case that:

"...[I]t is not possible to change land administration systems by working optimally within each silo...instead we have to work out optimal solutions across the whole land sector within the socio-political context...The future lies with a conceptual approach which treats land firstly as a national function and then secondly in terms of urban or rural" (Augustinus 2004:4).

In South and South-east Asia, for example, the approach to land has tended to be heavily projectised, avoiding high-level political debates and focusing instead on technology development (Augustinus pers. comm. 2005). The problems with this are well illustrated in Cambodia, where separate processes of support to land and forestry have led to a situation where the presumed precedence of the Land Law over the Forestry Law has not been supported by mechanisms to resolve territorial conflicts between ministries with different institutional and organisational power-bases (Independent Forest Sector Review 2004). What is needed instead is a dialogue that focuses on all land and its functions (and its changing role in livelihoods), but this will only succeed if there is willingness to dissolve institutional and organisational boundaries. Similarly, within DFID, land is generally dealt with exclusively by the Livelihood advisory cadre, when many of the issues around land, poverty and power that we have raised in this paper would benefit from broader input, for example from Governance and Social Development advisers. Arguably, access to land is first and foremost a Governance issue (Urban Rural Change Team pers. comm. 2005).

Lessons from Uganda

The problems of 'silo-working' are also well illustrated in Uganda, where a new Land Act was developed in isolation from the technical specialists needed to implement it, resulting in an unrealistic and financially unimplementable law. What was needed instead was for social and technical professionals to work together in considering options and hence building a more socially and technically feasible and pro-poor land law (various pers. comms. 2005). DFID was involved in the implementation of the Ugandan Land Act, and some of the lessons from this experience are therefore set out in Box 12. DFID's Land Act implementation project was caught up in a power struggle between those at the centre who wished to retain control over land allocation and those within government and the donor community who wished to devolve allocatory authority to new institutions (as prescribed by the Land Act). As Box 12 shows, success went to the bureaucratic incumbents more skilled at the game, who effectively emasculated the project. Failures of both project design and implementation led to a re-empowering of the Directorate of Lands and Environment (DLE), who managed to retain their control over land allocation, leaving institutional reform incomplete and leading to DFID's withdrawal from the land sector. Meanwhile, the lack of support to decentralised land institutions has had particularly negative effects in areas of Northern Uganda governed by 'customary' land law, as well as for dispute resolution across the whole country – an issue that, as we noted above, DFID remains engaged with (McAuslan 2003; Adoko 2005; various pers. comms. 2005).

Box 12: Lessons from Uganda

Design issues:

- **Institutional structures not addressed:** project designed to be about poverty alleviation and sustainable development through capacity building of citizens and decentralised land administration bodies without attention to one of the key blockages - the need for capacity building to re-engineer the knowledge and skills of officials at the DLE;
- **Resistance to loss of power through organisational change:** project design left old organisational structures (DLE and Judicial Services Commission) in place while trying to move to new structures, leading to resistance;
- **Irreconcilable differences:** between the DLE view of how land should be managed and what the Land Act, the Constitution and Minister of State for Lands stated should happen.

Implementation issues:

- **Insufficient understanding of the nature of Ugandan bureaucracy by external advisers:** informal networks which were difficult to penetrate were used to get things done instead of memos and formal rules and procedures;
- **DLE adept at use of informal networks:** the DLE with MPs, other ministers, civil servants and the media used these networks to build a case against the project, undermining its intent;
- **Inconsistent support from DFID:** there were different and conflicting views about support to the land sector within DFID, both in Uganda and in the East Africa office in Kenya; DLE exploited these differences in their attempts to undermine the project;
- **DLE take-over of project:** DLE succeeded in bringing the project within its own organisation to control budgets and outcomes and prevent the institutional changes prescribed by the Land Act from happening.

Source: McAuslan 2003; various pers. comms. 2005

We can draw several major lessons here around the role of donors in supporting land rights, which emphasise points we have already raised in this paper:

- There is, first, a need to engage with developing country governments on land at several levels so as to manage transitions from old to new institutions and to manage the broader political environment within which such transitions take place. This includes paying attention to the broader governance and institutional arena within which organisational change is taking place (in Uganda the manoeuvrings by the DLE were influenced by problems within the overall Ministry of Water, Lands and Environment in which it sat);
- Second, there is a need to develop an engaged and informed citizenry in support of land-related change;
- Third, there is a need for long-term and consistent follow-through and commitment on the part of donors engaging with land. GTZ, for example, recently recognised that support is required for at least 20 years (Zimmerman 2001:1).

Applying the lessons

Some of the lessons from DFID's experience in Uganda have already been brought to bear in DFID's approach to supporting the process of land policy formulation and implementation in Kenya (various pers. comms. 2005). In Kenya, as we have already noted, land registration and titling are entrenched aspects of land administration and land-related corruption is rife (Box 8). DFID has been involved in trying to build a more broad-based political environment for pro-poor change and is providing support to a continuing and broadly consultative land policy-making process through a five-year project of support for land reform (DFID Kenya 2004; Lambert pers. comm. 2005). DFID also helped establish the pro-active and effective Kenya Land Alliance (KLA) (along with Oxfam and the Ford Foundation) several years before the political space opened-up for change; it was then well-prepared to seize the "moment of opportunity" (Brocklesby et al. 2005) created when a new government came to power to push for pro-poor change in land policy and administration. In addition, DFID is working with others including UN-HABITAT to build donor consensus and co-ordination around support for the land sector that crosses the rural-urban divide, in particular through a basket-funding mechanism; this kind of joined-up working between donors helps to ensure that support for land is reinforcing, while further co-ordinated support comes through a joint World Bank and DFID programme for financial and legal sector reform that includes a component to reform the land registry (Dillon, Lambert & Palmer pers. comms. 2005). On the other hand, there are some concerns that differences will start to emerge within the otherwise very consensual and representative KLA as the policy-making process proceeds; this was a problem experienced by civil society land alliances during Tanzania's earlier land policy-making process, for example (various pers. comms. 2005). Within-country land pressures are also rising in Kenya (Lambert pers. comm. 2005) and a careful balance will still need to be achieved between delivering change quickly and delivering the right change, for the right people, effectively.

This is also the case in South Africa, now at a crossroads in terms of its land policy: the debate there is between those who want more land redistribution and faster, and with more attention to post-settlement issues (e.g. Hall 2004; Cousins 2005), and those who want to lower expectations of what land redistribution might achieve,

given a current macro-economic policy environment which does not support small-scale agriculture as it did in the past (Bernstein 2005). The latter view recognises the important changes that are taking place in people's livelihoods in South Africa, especially with urbanisation, and advocates a much greater role for the private sector in land reform (see Bernstein 2005:16-7, 26-7 for examples of what the private sector can contribute and has already achieved). South Africa also illustrates the value of a more joined-up approach to land in our current and rapidly-changing times, where processes of commoditisation, rapid rural-urban change and 'de-agrarianisation' are increasingly eroding past differences in the way land has been priced in urban and rural areas (location versus quality for agriculture and livestock production (Payne pers. comm. 2005)).

Like Kenya, Rwanda is also a country where much is being done right by DFID. Donors have been wary of engaging on land issues in Rwanda due to their particularly high political sensitivity: it is clearly a place where donor practices may be critical to the future security of millions of people, given intense land pressures and limited non-agricultural opportunities. DFID, however, has taken the lead in supporting the Rwandan Land Ministry to build implementation capacity, persuading the Ministry to take things slowly in order to get them right: following DFID's support for a Land Policy Adviser (2002-4) and encouragement of a consultative approach (between the Ministry and the LandNet civil society alliance for example), three Technical Advisers are now about to embark on a two year 'road map'/pilot project to plan for the longer term implementation (over 10 years) of the new land policy and land laws. The Ministry is also considering an interim stage of giving title to whole communities before full individualisation; DFID will be working to ensure that 'anti-poor' dynamics do not emerge either in existing local customary institutions or in any new community institutions set up as part of this. Finally, DFID has successfully contributed to securing more safeguards around appropriation to be built into the new organic land law, and is co-ordinating closely with USAID's work under a broad DFID umbrella (DFID Rwanda 2005; Dyer pers. comm. 2005).

These are just a few examples from among many of DFID's continuing engagement on land issues (see Quan (2004) for a record of much of this work). In taking this work forward, as the World Bank's recent land policy research report puts it well:

"...strong local capacity, and open and broadly based policy dialogue, carefully chosen and evaluated pilots, and sharing of experience across countries will be essential, and can also help build capacity for policy formulation" (Deininger 2003:xliv).

Challenges for DFID

As we write, DFID (along with many other donor organisations) has firmly moved its funding mechanisms towards central budgetary support. Yet in this current era of limited aid instruments, with its desire for lower transaction costs and rapid results, there are two broad challenges that DFID must address if it is to effectively engage with and support processes of land policy formulation and implementation in developing countries. First, as this paper has demonstrated, the success of a pro-poor approach to land in part depends both on various factors outside the land sector and on having a long-term process of engagement and change. This requires donors to support a shift towards a depth of analysis and breadth of cross-sectoral integration that in many countries remains elusive. It also requires continuing engagement (and financial commitment) over the longer term, working with different

branches and levels of government and with civil and political society (the latter being particularly important in countries with fundamental governance problems, such as dysfunctional judiciaries, widespread corruption etc., so as to encourage the development of within-country pressures for accountability, transparency and pro-poor change). The question, then, is whether DFID is prepared to make this commitment?

If the answer is yes, then the second broad challenge for DFID is to consider whether the requirements we have set out for a more integrated and pro-poor approach to land are consistent with DFID's focus on central budgetary support. Budgetary support is premised on the assumption that government has got it largely right in terms of the legislation and administrative guidelines and practices that it is currently using or wishes to introduce, and that an injection of donor funds will trigger the acceleration of processes which are either already under way or can easily be brought into practice (Farrington pers. comm. 2005). We have suggested that this is rarely the case, at least as far as land is concerned, and that much detailed local level research, capacity building and support is required (which can in part be done through the piloting of and experimentation with new administrative technologies and tools, and innovations in registration and titling processes). The question here is whether DFID is prepared to develop the array of instruments and flexibility of financing that this requires?

Box 13 presents a few insights from DFID's engagement with land in Mozambique, where efforts are being made to overcome some of the problems caused by the shift away from project and sectoral modes of financing to central budgetary support.

Box 13: Insights from Mozambique

Since 2000, DFID Mozambique has progressively moved away from engaging with land through specific land-related projects, through a period of agriculture sector support, to central budgetary support. During the period of DFID's earlier project-based support to Zambezia province (in the 1990s) there was regular contact with the situation on the ground. After the move away from projects, DFID Mozambique found it more difficult to sustain its own credibility and effectiveness in central dialogue about land issues, in the context of a rapidly-moving national agenda, and decided to contract a locally-based land and natural resources adviser, working closely with the DFID Livelihoods adviser, for support.

While donor projects can be used as a basis for supporting elements within government who want to support the most vulnerable citizens and for opening the space for government-civil society dialogue, options for donors basing their programme around budget support are often more limited. In Mozambique to date there has been relatively little space for dialogue around land issues in the central budgetary support discussions. Instead these have focused mainly on core governance issues of planning and financial management. Furthermore, land issues have not proved very amenable to discussions of 'progress' by large groups of donors debating many other issues at the same time, and who are unfamiliar with the subtleties and conflicts (and the local social and political relations) around land. At the same time, however, DFID Mozambique has taken the lead in setting up a new and independent multi-donor fund to support community land delimitation and rights registration by channelling funds to groups of people to contract either NGOs or private businesses to register their land, arbitrate their disputes, and so on. Although experimental, the new fund has lots of promise.

Source: Julia Compton (ex-DFID Mozambique), with reference to the following links:

<http://www.fao.org/Legal/Prs-OL/lpo26.pdf>,

http://www.policy-powertools.org/Tools/Ensuring/docs/Mozambique_study_MacqueenBila.pdf

http://www.fao.org/documents/show_cdr.asp?url_file=/DOCREP/005/Y3932T/Y3932t05.htm

http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/lrpamoz.rtf

4. Conclusions

In this paper we have situated land policy historically and in the wider development context, as a basis for understanding the current context within which DFID engages with land. We have set out a way of approaching contemporary land issues from a pro-poor perspective, within specific social, economic and political country-contexts. We have also highlighted the assumptions that underlie donor organisation and developing country thinking and practice about land. Recent shifts within the World Bank, in the light of much research-based evidence on the negative effects of past land policies for the poor, now suggest a greater coming together of views. Yet the property rights approach to land remains operationally dominant, and to the detriment, we have argued, of a more nuanced policy process that deals with issues of poverty and power. Our pro-poor approach to land, with its emphasis on understanding the local context, offers scope for DFID to redress this. In particular, while it is important to get pro-poor policies in place, DFID must also work to understand the local conditions that mediate their implementation and thus engage with local processes of change. It is vitally important for DFID to engage effectively with land because the voices of ordinary land-users, especially the poor, are often silent in the policy debates about land (Sawadogo and Stamm 2000).

Our pro-poor approach to land has also highlighted a number of possible entry-points for DFID, as set out and discussed throughout the second part of this paper. For example, DFID should support work around the issue of access to justice and, in considering the changing role of land in livelihoods, DFID should consider both direct support to land through such measures as environmental/infrastructure services and improved access to affordable agricultural inputs and services, support for rental market regulations and more flexible tenure arrangements (the latter being of particular importance in urban areas), as well as indirect support to land through measures around health-care and the encouragement of non-land-based livelihood opportunities. Although we have focused on land registration and titling and decentralisation of land administration systems and said little about land redistribution, this too can be addressed within our approach in countries where it is appropriate.

Several key issues and conclusions have emerged in this paper with respect to DFID's continuing involvement with processes of land policy formulation and implementation in developing countries:

- Donors can be important catalysts of change on land issues, particularly where the presence of powerful vested interests hinders pro-poor change;
- Donor efforts will be more effective if they are joined-up and non-sectoral, and if they are targeted at middle ('meso') and local levels of government as well as at the national level;
- Land policy-making and especially policy implementation are long-term processes that require credible relationships and alliances to be developed (including among civil society) so as to build a pro-poor consensus and be able to seize 'moments of opportunity' to push for change;
- Implementation requires particular support through building the capacity of land administration systems;

- Decentralisation of land administration systems must be engaged with cautiously and balanced by support to central governments as the provider of policy that protects the rights of the poor; reforms that give new powers over land to 'customary' institutions must be engaged with even more cautiously;
- New administrative tools and technologies offer interesting pro-poor possibilities, but again must be engaged with cautiously and particularly in a joined-up non-sectoral way;
- Donors require an array of aid instruments and flexibility of financing to be able to engage in the way that is necessary to effect pro-poor change around land. Budgetary support alone does not permit the necessary level of engagement with the issues and practices (and with all branches and levels of government and with civil and political society);
- Any engagement with land must be based on a thorough, detailed and historically-informed understanding of the various factors set out in our pro-poor approach (based on a differentiated understanding of vulnerability, poverty and wealth) within the specific country-contexts that DFID operates;
- Any engagement with land must also be built on an understanding of the spatial, social, economic and political interconnectedness of the lives and livelihoods of rural, urban and peri-urban poor which recognises that, while land is a central factor in development, support to land-related initiatives will not by itself solve the problem of poverty.

In sum, the fundamentally political nature of any transformation of land rights means that engaging with processes of land policy formulation and implementation in developing countries must also be a political process. It must therefore also be part of broader thinking about how to engage with issues of poverty and power.

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