

Measures to Enhance Trust in Land Administration Systems and Engender their Proper Use

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Key words: land administration systems, informational efficiency, operational efficiency, good governance

SUMMARY

Land administration systems (LAS) carry out a number of tasks, including land registration, maintaining cadastral records, granting spatial planning consents, real estate taxation, and valuation. These are not ends in themselves but means to an end. The argument put forward in this paper is that, whilst markets are not perfect, they are the most efficient means of allocating resources in most circumstances. LAS are needed because of the imperfections in the land and property markets. These require intervention and regulation, principally, but not exclusively by the state through LAS, though groups could also establish their own LAS. Two principal types of market imperfect in relation to the land and property markets are identified, informational inefficiency and operational or allocative inefficiency. Informational inefficiency means that market participants are not fully informed about market circumstances. Allocative inefficiency occurs because of externalities, so that one person's actions have repercussions for others that go beyond the impact of legitimate competition, common property resources access to which needs to be policed, monopolies that result from unique locations, and public goods like the protection of property rights that if provided for one have to be provided for all. The paper discusses some of the ways in which LAS can respond to inefficiencies in the land and property markets to make the markets more efficient. LAS can only perform the function of ensuring that fair, efficient and orderly land and property markets exist if there is good governance in land administration. This means that LAS must possess the capacity to regulate land and property markets and not be subject to corruption or capture by interested parties. The paper put forward some suggestions as to how good governance in LAS can be achieved.

1. INTRODUCTION

Before one can put forward meaningful measures capable of enhancing Land Administration Systems (LAS), it is necessary to have a clear understanding of why LAS exist, what functions they are required to perform, and who ought to be responsible for them. The argument put forward in this paper is that LAS exist because of the potential for market failure in the land and property markets. Real estate markets lack many of the characteristics needed for the existence of an efficient market. Consequently the primary function of LAS is to overcome these imperfections so that real estate markets are able to function in a fair, orderly and efficient manner. Activities such as the recording of information about tenure,

land use and land value, controlling the use of land, and taxing land are means to this end and not the end in itself.

The term “land administration system” is something of a misnomer. Land administration systems are not exclusively concerned with land or its physical management. Rather one of their primary focuses is real property rights. This is particularly the case in countries in which there is private ownership of these rights. Here a land administration system does not act as an estate manager directly managing publicly owned property land but facilitates and influences the exercise of privately owned rights. These real property rights include rights that are exercisable in relation to land itself, but also a wide range of other real property rights relating to buildings and natural resources, including rights which are contingent on events taking place and reversionary interests are exercisable at a future date. Rights are four dimensional constructs which include time as a dimension. Some of the rights involve the physical separation of the bundle of rights that make up freehold into their component parts, such as water rights, mineral and sub-surface rights, air rights, hunting rights, timber rights, grazing rights, development rights, and access rights. Others involve the temporal separation of rights into those that can be exercised for a period of time, such as leases and sub-leases of different durations, and those that may be exercised in the future, such as a reversionary interest, or are contingent on a particular event occurring, for example, the breach of a covenant or the default of a leaseholder. The rights include those created as a result of the way in which the acquisition of real estate is financed or how equity in real estate is released for other purposes through mortgages and other secured lending. There are also markets in assets derived from property rights, such as shares in property companies, and ones based upon the financial performance of real estate where no tangible assets exist, such as derivatives. All of these rights potentially are capable of being traded. Thus, a physical space with defined geo-coordinates may have a number of rights over it, which exercised at any one time simultaneously by different parties.

The primary function of LAS is to ensure that a fair, efficient and orderly market exists in which property rights are protected and can be traded so that assets pass to those able to make best use of them. De Soto (2000) pointed to the importance of the ability to create fungible capital. This is not just about the creation of mortgages and debt secured against real estate property rights and the consequential freeing up of the capital contained in these assets. It is also about the creation of rights of constrained access to resources through leases and licenses. These enable those with limited financial resources to gain access to assets without having to purchase them. Buying assets involves large up-front costs whereas one can lease them through the payment of rents, which can be generated out of revenues earned from exploiting these assets. The owner of the rights can enjoy an income from these without having to sell them and without having directly to manage or exploit them. They can shift the risks of doing so on to others.

The core function of LAS is therefore to provide an orderly market in which real property rights are protected and can be traded efficiently. Behind this assertion lie two important assumptions:

- That markets are an efficient means of allocating resources; and

- That real estate markets have characteristics that have the potential to be inefficient and prone to market failures, requiring the intervention of a regulatory body.

This is a very different answer than would have been given 30 years ago by many commentators. At that time LAS were seen as being essential tools by which governments could plan and direct economic and social activities. For example, the Vancouver Declaration and Plan on Human Settlements (1976) argued that as the condition of human settlements largely determines quality of life, and that these are unacceptable for vast numbers of people, societies should adopt effective human settlement policies and spatial planning strategies. As human settlement policies cannot be divorced from economic development, population movements, and social activities, these must be an integral part of any economic and social development policy. Governments, it argued, have the responsibility to prepare spatial plans as an essential component of an overall development strategy. The limited supply of land was seen as the reason for its use and tenure being subject to public control and why increases in its value as a result of public decisions and investment should be captured for the benefit of society as a whole. The private ownership of land was seen as an instrument for the concentration of wealth and a contributor to social injustice. The public control of land use was argued to be indispensable for the protection of land as an asset and to achieve long-term objectives of human settlement policies and strategies. The function of LAS was seen to be to administer land on behalf of society in order to achieve development objectives.

By contrast the language in the Habitat Agenda Goals and Global Plan of Action (1996), although having similar objectives to the Vancouver Declaration, is much more supportive of the functioning of markets and the involvement of the private sector in the achievement of development goals. Markets were seen as being the primary mechanism through which services like housing are delivered. The Istanbul Declaration supported a reduced commitment to state planning and the public ownership of land, but an enhanced role for governments to act as facilitators. However, markets were not viewed as things to be left to their own devices, but as needing regulation and government intervention to enable them to work effectively. The means by which this could be done were seen as including land registration systems, cadastres, property valuation systems, and taxation, in other words core activities of LAS.

Between the dates of the Vancouver and Istanbul Declarations, most of the world's central planned systems collapsed. The ending of Communist rule in Central and Eastern Europe and the decision by the Chinese government to permit market-orientated development have contributed towards a change in attitude about the role of the state in resource allocation and the extent to which this should be left to market forces. The critics of central planning (eg Nove, 1968; Dyker, 1992) had drawn attention to a number of inherent weaknesses in it, such as the dependence of the centre on data from the periphery, the lack of power of those in possession of up-to-date data to respond to change, bureaucratic wrangling, the failure to penalise waste, the imprecision of targets, and the difficulties of including technical change in plans. By contrast market economies appear to have strengths in the form of decentralised decision making by those who have an incentive to minimise costs and maximise income and profits, the penalty of bankruptcy for those who fail to produce what consumers demand or

manage their resources efficiency, and the price mechanism as a means of conveying information about what resources are scarce and what outputs are valued.

The move towards the use of market forces has had an impact on the way in which public services are delivered, including the services of LAS. The New Public Management creates a quasi-market situation for public services by devolving responsibility for budgets and the achievement of defined performance targets to front-line staff, the partial or full privatisation of services and the use of public-private partnerships, and the introduction of contestability into what had been public monopolies (Hood, 1991; Glor, 2001; Kaganova & McKellar, 2006; Chapman & Duncan, 2007; Grover, 2008). These trends have had an impact on LAS. In the UK, for example, to the official mapping body (the Ordnance Survey) and the land registry operate on a semi-autonomous agency basis, generating the revenues to finance the services they deliver and with front-line staff having to achieve key performance indicators set by central government, with incentives for their achievement and penalties for failure (see NAO, 2003). The New Public Management can be regarded as a tacit admission by the public sector that central planning and state provision of public goods and services may neither be essential nor may be desirable in many cases. However, the move to more market-orientated systems of resource allocation depends upon markets working efficiently. Since all activities ultimately depend upon the land market as all use natural resources and require locations from which to operate, how well it operates is an important determinant of the efficiency of the whole economy.

2. THE INFORMATIONAL EFFICIENCY OF THE LAND AND PROPERTY MARKETS

The term efficiency in markets is often associated with the concept of informational efficiency. A market can be said to be efficient if the price fully reflects all that is known about a commodity. The price results from the interaction of the contingent plans of buyers and sellers, which reflect what they know about the commodity, including demand for it and its scarcity and their estimations of the probabilities of particular outcomes. As they act upon their information by buying and selling the commodity, so the price comes to embody this knowledge. The price will change if new information comes into the possession of traders, including revisions of their past estimates of the probabilities of particular outcomes. Since what this information contains is unknowable in advance, it cannot be reflected in the price. Therefore new information has a random impact on the price. There is no means of knowing in advance whether the news will be good and cause the price to rise or be bad. Traders therefore cannot predict whether prices will rise or fall in the future or the amount by which they will do so and thereby consistently earn abnormal gains. If the property market is efficient, prices will reflect the risk class to which the assets belong and it will be difficult for investors identify mispriced assets (see Brown & Matysiak, 2000, chapter 13).

Fama (1970) argued that markets could be classified into different types according to what sort of information was fully reflected in the price. The price in a market that is weak form efficient will fully reflect all historic information, including past prices. The implication is

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that there is no information content in past prices whose analysis would enable traders to predict the direction or extent of future price changes. A market is said to be semi-strong efficient if prices fully reflect publicly available information. Strong form efficiency occurs when no investor can consistently earn excess returns using public *or* private information. In other words even insider traders are unable to earn excess returns by exploiting inside information.

The Efficient Market Hypothesis was developed to examine the behaviour of stock markets. Real estate is not traded in a central market place and is subject to greater transactions and search costs than occur with stocks and bonds. In addition, much of the information about market prices is not the result of actual transactions but from valuations commissioned to identify the open market value. For example, many leases contain rent review clauses that result in the rent being changed at specified intervals from that negotiated between the landlord and tenant to the then current market rent. There is no transaction in such cases as the lease continues as before with neither party having the right to withdraw. Instead the market rent is determined by competent valuers using evidence from comparable properties for which transaction or valuation evidence is available. Similarly, revaluations of investment portfolios and of properties for balance sheets are based upon valuations and do not involve actual purchases or sales.

Valuers therefore play an important part in the communication of price information but this raises the question of how reliable the valuations are. Pioneering work on the accuracy of valuations was done in the UK by Brown (1985) and others. Tests of the accuracy of valuations by comparing them with subsequent sale prices are undertaken annually by IPD for the Royal Institution of Chartered Surveyors (RICS) and have been extended to include France, Germany and the Netherlands as well as the UK (RICS, 2008). This is an essential part of ensuring the standard of valuations, alongside checks on the work of individual valuers. In 2007 the weighted average valuation price difference varied between 4.9% in the UK and 12.7% in France and the unweighted difference between 4.6% in UK and 8.9% in the Netherlands, indicating that valuations are a reasonably good proxy for actual prices. There are those who argue that the level of valuation accuracy is inadequate in a significant proportion of cases and the evidence may reflect a false consensus in which market participants share the same wrong information (Keogh & Darcy, 1999, p2405).

In principle it would be surprising if in a mature market, participants and their advisors and financiers were unaware of historic or public information. Therefore weak and semi-strong efficiency is plausible. Most mass appraisal and automated valuation systems are predicated on the assumption that the housing market is semi-strong form efficient in which prices reflect publicly available information in the form of the physical characteristics and facilities of the properties. There are a number of pieces of research that have been undertaken into the efficiency of the property market that support the Efficient Market Hypothesis. For example, Brown (1991) found that although there were serial correlations between prices in different time periods in the British commercial property market, these correlations were not statistically significant. The results imply that the market was weak form efficient, particularly once transaction costs were deducted from any abnormal returns. Gau (1985)

looked at the housing market in Vancouver to examine the results of changes public policy in the form of changes in tax shelters and rent control policies. He found that there was an absence of significant abnormal returns or the ability of investors to utilise information about policy changes to earn abnormal returns, which suggested that the market was semi-strong efficient. However, the issue of informational efficiency in real estate markets remains an area of debate with critics including new institutional economists (eg Keogh & Darcy, 1999) and those arguing that the behaviour of asset markets fails to conform in key respects to the propositions in the Efficient Market Hypothesis (eg Case & Shiller, 1989; Case & Shiller 1990; Shiller, 2003). The Efficient Market Hypothesis continues to have many supporters (eg Malkiel, 2003). However, even if its basis turns out not to be entirely satisfactory, there is still a strong case for LAS working to enhance informational efficiency since this should improve the efficiency with which real property assets are allocated, ensure greater equity between market participants, and enhance the welfare of society.

There is evidence that property markets in different countries vary significantly in terms of informational efficiency. One way of measuring this is by using the Real Estate Transparency Index produced by Jones Lang LaSalle (2006) uses five attributes of real estate transparency: the availability of investment performance indexes, the availability of market fundamentals data, listed vehicle disclosure and governance, regulatory and legal factors, and professional ethical standards. Transparency is defined as being an “open and clearly organized real estate market operating in a legal and regulatory framework that is characterized by a consistent approach to the enforcement of rules and regulations and that respects property rights” and in which advisors, agents and brokers follow ethical and professional standards. It is based upon a survey using 15 questions with the answers being moderated by local staff. The composite scores vary between 1.0 (the highest level of transparency) and 5.0 (total opacity). The 2006 Index examined 56 countries with scores varying from 1.15 for Australia and USA, 1.20 for New Zealand, 1.21 for Canada, and 1.25 for the UK to 4.30 for Egypt, 4.43 for Venezuela, and 4.69 in Vietnam.

Informational efficiency in real estate markets is not a given and there is a great deal that LAS can do to improve the quantity and quality of information available and to increase market transparency. They can also encourage a climate of market transparency by through creating an enabling environment. This involves respecting and implementing fundamental human rights. The Universal Declaration of Human Rights (1948) affirms that everyone has the right to seek, receive and impart information and ideas (article 19) and the right of peaceful assembly and association (article 20) and these rights are reaffirmed by the International Covenant on Civil and Political Rights (1966, articles 19 and 22). FAO (2005) argues that states should improve the functioning of their markets by legislation and policies to ensure non-discriminatory access to markets and to prevent uncompetitive practices (Guideline 4).

LAS have significant amounts of data about the property market in their possession that they could make generally available. Their coverage of information about what is happening in the market is likely to be greater than that available to any individual investor or valuer. They can encourage an environment of transparency by publishing such data. Examples from the UK of data being made available to the market by public bodies include the following.

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Washington D.C., USA, 9-10 March 2009

- *The publication of property price data by land registration bodies.* Scotland has long had an open register that has enabled interested parties to identify the price paid by purchasers. In England and Wales HM Land Registry has had an open register since 1990 and since 2000 the information available has included the price declared to have been paid by the current owner. The data is available to anyone with access to an internet connection and a credit card with which to pay the £3 fee. The same data is available free from the leading internet estate agents.
- *The publication of evidence of market prices by the Valuation Office Agency (VOA) (the government's valuers).* As valuations in areas like taxation, privatisation and compulsory purchase are at market prices, the VOA has to research and maintain a database of comparable values. Every six months it publishes a report containing the evidence it has on a wide range of property types and locations, such as rents per square metre of different types of offices in the main towns and the all risk yield investors can obtain from retail properties in each main town (VAO 2008).
- *The production of house price indexes.* HM Land Registry produces a house price index using the house price data from the land register. As its database covers all transactions, it is able to compile this index using a repeat sales regression approach as it is able to draw on approximately 100,000 transactions per month and more than 3 million repeat sales since it started to collect price data.

LAS can be transparent in areas such as tax valuations and compulsory purchase. In the UK property tax assessments are publicly available so that taxpayers can compare their assessments with those on others and the manuals setting out the methods used are published on the VOA website. The level of detail in the valuations does vary. Areas and values per square metre are shown for properties where the comparable method of valuation is used (mainly retail, industrial and office properties), but not where the receipts and expenditure or depreciated replacement cost has been used. Taxpayers and private owners affected by tax valuations or compulsory purchase are able to challenge the government's valuations through appeal and independent quasi-judicial review processes so that the quality of the government's valuation methods and the data behind them can be tested.

The Universal Declaration of Human Rights states that all persons are entitled to equal protection of the law (article 7) and that everyone has the right to an effective remedy by the courts for acts violating his or her fundamental rights (article 8). It also affirms that there is a right to own property and that no-one shall be arbitrarily deprived of his or her property (article 17). The determination of rights and obligations should, according to the Universal Declaration of Human Rights (article 10) and the International Covenant on Civil and Political Rights (article 17), be through a fair hearing in public before a competent, independent and impartial tribunal. Fairness requires the disclosure of relevant information and the ability to interrogate it. Transparency should also extend to public decisions, including laws and regulations, which should be published and freely available in languages property owners and occupiers can understand. Those affected by compulsory purchase, new town plans, major developments, and appeals over town planning decisions should be entitled to public inquiries conducted in judicial form in which the evidence of other parties is subject

to cross examination. Applications for development and town planning consents should be open documents. Any interested party should be able to object to them. The Universal Declaration of Human Rights provides for freedom of thought (article 18), freedom of opinion and expression (article 19), and freedom of peaceful assembly and association (article 21). It is difficult to see how markets can be efficient unless there is respect for fundamental human rights.

Informational efficiency is not just dependent upon state initiatives. There is considerable scope for contributions by professional bodies and stock exchanges, as well as market participants such as mortgage banks, estate agents and institutional investors, particularly if they are given the right encouragement by LAS. For example, governments are rightly concerned that stock exchanges organise fair and orderly markets, without the suppression of market sensitive information or insider trading, and that professional bodies regulate the behaviour of their members rather than acting as a cartel or merely to promote their members' services. In some cases this may be done to secure commercial advantage, such as marketing and brand awareness. For example, the two leading house price indexes in the UK are produced by mortgage banks – the Nationwide Building Society and the Halifax (part of the Lloyds Group). This tends to secure them prime time television and radio broadcasting on the BBC news programmes, space which they could not buy as the BBC does not take advertising. An internet consortium of estate agents, Rightmove, also produces an index based upon mortgage valuations and sales recorded by estate agents, which produces data approximately three to six months before it is available from land registry. This helps to attract potential buyers to its website and buyers for its proprietary automated valuation model.

Information may also be made available through what is really a “club” good in which a group recognises it has a common interest in providing collectively something that no individual alone could produce. In the UK, Investors Property Databank (IPD) was founded by a group of valuation companies and property investors in 1985 to be a neutral body that would collect data about commercial properties in a consistent and confidential way from the leading market participants and make it available to the market as a whole. The information is taken directly from the management systems of investors and occupiers using strict quality control and standardised definitions to ensure comparability of the information and confidentiality. To avoid conflicts of interest, IPD does not offer either investment advice or engage in property investment. It has a constitution that ensures that it operates independently of its owners and contributors. Its products are available on subscription and enable private valuation data to reach the market as a whole. It now operates in a number of countries and in different areas of the property market

Informational efficiency is vital to the functioning of any market and the land and property markets are no exception. Land and property markets are not structured in ways that make informational efficiency easy to achieve. They tend to be spatially scattered rather than trading taking place in a central market place. The trading does not take place under the watchful eye of a market authority like a stock exchange. There tends to be a culture of secrecy and confidentiality about transactions, which serves to reinforce the position of market insiders. LAS can do a great deal to improve informational efficiency though the

publication of the market data available to it as well as laws, regulations, policies and decisions in areas such as taxation, compulsory purchase, zoning decisions, and development applications. A culture of transparency in markets can be encouraged by LAS so that private bodies can also be encouraged or obliged to make their information available to market participants. Governments determine the boundary between what can legitimately be regarded as private and confidential information and when failure to disclose information should be regarded as malpractice.

3. ALLOCATIVE AND OPERATIONAL EFFICIENCY IN THE LAND AND PROPERTY MARKETS

3.1 Externalities

Critics of the Efficient Market Hypothesis, particularly institutional economists, argue that the evidence as to whether the land and property markets have informational efficiency is questionable, but also its relevance to whether the property market is operationally efficient (Keogh & Darcy, 1999). There are a number of features of the property market that suggest that it is likely to be inefficient in the allocation of resources. If the property market is to function efficiently from an operational perspective, there are tasks for LAS in countering these tendencies.

An assumption behind the theory of perfect markets is that each trader determines his own welfare. By each person acting out of self-interest in buying and selling, the efficient allocation of resources will emerge. Those who are willing to pay the highest prices must be those in greatest need of the resource and able to make best use of it. They are able to out bid others because of the revenues they are able to earn from its exploitation. This in turn occurs because they are the most efficient in their use of the resource. They use it to supply those goods and services that are in greatest demand and thereby generate the greatest revenue. It is assumed that the pursuit of self interest has no direct impact upon others, each trader's welfare being determined by his own actions alone.

However, in the real world of the land and property markets things are very different. This is because of the existence of externalities. Externalities are the effects on a third party of a legitimate activity. They can impose costs on third parties, for example, the adverse impact on the value of a residential property from being located in close proximity to a large generator of vehicular traffic and noisy (and sometimes drunken) pedestrian flows, such as a university. They may also be beneficial in their impact. The concept of prime pitch in retailing is the area in a town where smaller retailers can benefit most from the pedestrian flows, and passing trade, generated by larger stores. The existence of externalities means that the actions of one market participant has an impact on the welfare of others that goes beyond undercutting the price at which rivals are willing to sell or outbidding them. It means that no market participants are fully in control of the actions that impact upon their welfare.

It would enhance welfare if it were possible to limit the negative externalities in the market and encourage the production of the beneficial ones. In some cases internalisation can achieve these aims. For example, anchor tenants in retail developments are able to secure lower rents or, sometimes, significant property rights, such as the ability to construct their own freehold store in the middle of a shopping centre, to recoup the benefits of the passing trade they generate for other tenants. The landlord can charge enhanced rents to the other tenants who benefit from the higher footfall (and turnover) resulting from the presence of the anchor tenants. An efficient outcome occurs in situations like these because the transactions costs in the negotiations are relatively low, there are no free riders amongst the smaller retailers as they are all represented, in effect, by the developer, all parties are well informed, there are no differences between what one party would pay to secure an advantage and what they would expect in compensation to give it up, and there are no equity issues. In effect, the smaller retailers compensate the anchor tenant for the benefits it generates for them and bribe it to locate in proximity to them rather than elsewhere.

No LAS was needed to achieve this outcome though one could argue that the developers of shopping centres function as private LAS over their limited jurisdictions. However, the particular circumstances of the negotiation are normally to be found elsewhere. Often externalities cause harm to third parties, resulting in pressure on the government to resolve the situation. The role of LAS is to limit the harmful externalities and promote beneficial ones resulting from the operation of the property market. This is particularly the case in situations in which there are so many interested parties affected so that transactions costs are high and free riders likely, where information is imperfect, such as the inability to prove cause and effect to the satisfaction of the courts, or where there are equity issues so that whether the originator of a negative externality pays compensation to those affected or whether the victims bribe the perpetrator to cease its activities is a significant issue. In other words LAS perform important functions in a world in which property rights are either not sufficiently developed to enable externalities to be internalised or there are significant differences in outcome between what Demsetz (1967) has described as “buy-him-in” and “let-him-buy-his-way-out” systems. Where there are such differences, the various elements of society may have conflicting views as to which are preferable, so that resolving this may be a significant governance issue.

LAS have a number of tools by which they can influence externalities, both to curb the impact of adverse ones and to promote the generation of beneficial ones. A common device to limit the impact of adverse externalities resulting from development is to require property owners to obtain planning consent before material change can take place. The LAS can weigh the balance of advantages and disadvantages to the developer and those affected by externalities. They can impose conditions on the development to minimise the externalities, for example, the number of parking places to limit the traffic congestion generated by a development. In systems like that of the UK, LAS is able to extract planning gain from the developer, such as a financial contribution to infrastructure, so that externalities are internalised. For example, a university seeking planning consent to increase its lecture halls, so as to be able to recruit additional students, may have to build additional halls of residence in order to minimise the

impact of additional students pushing up residential rents and house prices in the locality, so that housing is not made less affordable for low paid workers.

LAS can also promote the generation of beneficial externalities. Rothenberg (1967) demonstrated that with property ownership being divided between many individuals, schemes to generate beneficial externalities were likely to flounder in a “prisoners’ dilemma” situation in which no individual can rely upon others to undertake their share of the project. LAS can, for example, subsidise property owners to improve their properties, in effect bearing the costs of the beneficial externalities each generates for other owners so that an area is regenerated rather than becoming a slum. They may also be able exercise powers of compulsory purchase to assemble sites or to enable beneficial development schemes to take place. For example in the UK, local authorities can make use of compulsory purchase powers for projects that promote or improve the economic, social or environmental well-being of their area.

3.2 Common property resources

Where resources are in private ownership, their owners are entitled to bar access to those who wish to exploit them but refuse to pay a fee or to abide by the conditions set by the owner for their use. Leases impose covenants designed to ensure that the reversionary interests of the owner are not diminished by the actions of the tenant during their term, for example, insuring the property against damage or destruction, maintaining it, using it only for a stated purpose, not sub-letting it without consent, and not altering it without consent. The owner has a clear incentive to protect his interests. By contrast no-one has any incentive to protect common property resources from damage or excessive exploitation nor is anyone in a position to deny access to such resources to others. Moreover, since none can collect rent for their exploitation, the signal sent to the market is that such resources are free, abundant and not valued by anyone. Excess consumption in such situations is both likely and encouraged by market forces.

Demsetz (1967) showed how in the Labrador Peninsular private property rights by families over hunting land developed as a result of over-exploitation for the fur trade of natural resources held in common. The establishment of rights and boundaries meant that those with ownership rights had an incentive to limit their exploitation of the wildlife resources and to undertake conservation measures. A low population density of subsistence hunter-gathers has no need of either property rights or LAS to protect common property. They become necessary with increasing population density and the exploitation of resources at a rate at which they cannot regenerate naturally. Common property resources come in many different forms including the atmosphere, sea, water resources, and wildlife as well as man-made systems such as road networks and other infrastructure for which there is no direct charge. Where the consumption of common property resources is non-rival so that one person’s consumption does not diminish that of others, for example, with public service television broadcasts, there is no need for regulation. However, where consuming the resource has the effect of diminishing other’s welfare LAS is required to regulate access.

The need for regulation can be illustrated by reference to the growth of cities. Agglomeration economies available to those locating in proximity to other households and firms attract migrants hoping to benefit from these external economies of scale. If one postulates a fixed land resource to which migrant households are attracted, one would expect there to be a point where the marginal benefit from each migrant diminishes. Migrants however will continue to be attracted until their marginal private benefit from relocation is equal to their marginal private cost. For landless rural dwellers the marginal benefit may have to fall to a very low level before this happens. The result is likely to be that the benefits for existing city dwellers may become severely depressed before migration ceases. In this case the LAS may intervene by limiting migration through devices such as zoning policies preventing agricultural land from being used for housing or internal passports and residence permits. LAS have a variety of tools that can be used to control access to common property resources. For example, a road pricing system enables motorists to rent congested road space. The externality of congestion is internalised as the motorist can determine whether the access charge is worth paying in order to achieve the desired objectives. Similarly, an emissions trading scheme grants companies the right to a certain level of discharges but, if they wish to consume more of the common property resource, they must buy the rights in the open market from companies who do not wish to take up their full entitlement. The price is determined by the scarcity of permits. Firms must decide whether it is more profitable to buy additional dumping rights or to invest in reducing emissions.

Whilst the existence of common property resources is likely to give rise to the existence of LAS, it should not be assumed that this is necessarily something that is undertaken by the public sector. It is possible for LAS to be “club” goods managing common property resources on behalf of a group with a defined membership. An example of this is the management of the New Forest in Southern England¹. In modern times the monarch’s lands have become state property and the management of this area is on a statutory basis but, essentially, the management is intended to benefit a limited group of individuals, including their relationship with other stakeholders. The area was a royal hunting ground designated by the Norman kings. In order to preserve the habitats of deer, farmers were prevented from fencing in more than a small area around their dwellings. The area was unaffected by the enclosure movement in the eighteenth and nineteenth centuries that transformed large areas of commons and collectively farmed land into private ownership and occupancy. Commoners occupy properties to which certain rights of common over the Forest are attached. These include rights of pasture to graze cattle, ponies, sheep and pigs (to remove acorns that are poisonous for ponies). Other rights such as those to collect peat and wood for fuel have lapsed. There are currently about five hundred commoners turning animals out into the collective grazing of the Forest and in 2007 the livestock included nearly 4,500 ponies and 2,500 cattle. The common area covers 17,350 hectares. This requires a system of management. For example, to ensure that only healthy animals are permitted to graze the common areas, that stallions only graze certain areas at certain times and that these meeting minimum fitness stallions, that unlawful enclosure does not take place, and to maintain the register of which properties have rights of

¹ The information in this paragraph is taken from documents that can be found on the website of the Verderers of the New Forest at www.verderers.org.uk

common. There are also other users of the Forest, such as other residents, tourists, and the Forestry Commission that manages the woodland areas. The area is also a major wildlife sanctuary being home to all six species of British native reptiles and with a large population of deer to be managed in the absence of indigenous predators. Management is undertaken by verderers, five elected by the commoners and five appointed by various interested bodies, under the chairmanship of the Official Verderer appointed by the Queen. Although the modern court at which the business of managing the Forest is undertaken has the status of a magistrates court and the power to make and enforce byelaws, it effectively operates as manorial courts did before 1925. Agisters are employed by the verderers to manage the commoners' livestock. Their duties include collecting marking fees for each animal commoners wish to graze in the Forest, organising the drifts (roundups) of the livestock, the marking of animals, checking that animals meet minimum health standards, and dealing with animals killed or injured in accidents on the unenclosed roads.

3.3 Monopoly

Each location is unique. The implication is that goods and services produced from different locations are not perfect substitutes and that location can be used as a means of product differentiation. This enables high cost producers to survive competition from more efficient firms by exploiting transport costs as a barrier to entry in their local markets. For example, small local shops can survive competition from supermarket chains by offering services that are close to consumers and convenient. Whilst this does not prevent markets from being competitive, it does open up the possibility that location can be used to give a firm a degree of monopoly power.

The classical indictment of monopoly is that it results in higher prices and a lower quantities being produced compared with a competitive market. Whilst the competitive advantages that come from the possession of certain locations is unlikely to result in a national monopoly, local monopolies are possible. These may be reinforced by the inadvertent actions LAS. The operation of spatial planning policies can make it difficult for competing firm to acquire development consent for competing locations. Licenses, such as those for the sale of alcohol or dispensing pharmaceuticals, can also create local monopolies. Limitations on the extent to which infrastructure can be constructed may also have the same effect by preventing the entry of rival infrastructure operators (Competition Commission, 2008b). A firm can strengthen its local monopoly by acquiring properties from which competing activities could operate. These could be held in a land bank to prevent rivals from acquiring them, sold with restrictive covenants preventing competitors from acquiring them in the future, let to another non-competitive business, or, when leasing, reaching restrictive agreements with landowners so that they do not let land to rivals (Competition Commission, 2008a, pp 140-42). LAS therefore are likely to have a role to play in competition policy. Spatial planning decisions may have to pay regard to competition factors in determining whether a particular applicant should be granted change of use or development consent. The competition authorities may have to develop local market models to determine whether when approving mergers which outlets firms should be required to divest themselves of and which competitors can be approved as purchasers of these.

3.4 Public goods

Public goods are ones that no individual can provide for himself. If they are provided for one, then they are provided for all as there is no means of excluding anyone from benefiting from them. The consumption of these goods by one individual does not diminish the satisfaction of others. The inability to exclude non-payers means that they tend to be provided by the state, which is able to recoup their costs through taxation rather than by collecting access fees. Private companies are unable to provide public goods because of the problem of free riders. Classic examples of public goods include the provision of law and order and defence. One important function of LAS is to provide a public good in the form of the protection of property rights.

Property rights can be protected privately, for example, the wealthy can employ guards to protect their interests and those living in informal settlements can ensure that a family member stays in their homes at all times to protect them. In the USA, an important role in the protection of property rights is played by title insurance companies. In return for a fee, compensation may be paid for injury suffered as a result of defective title. In the UK the notion that the protection of property rights is a public good to be provided by LAS is a relatively recent one. Only since 1990 has there been compulsory land registration for the whole country. As registration is triggered by an event such as the transfer of ownership or a mortgage, only 59% of the land (though probably 85% of titles) are currently registered (HM Land Registry 2007). Compulsory registration replaced a deeds system. Rather than a government-backed guarantee of accuracy as happens under the compulsory registration system, the deeds system placed the emphasis on the buyer conducting due diligence before purchase. *Caveat emptor* – buyer beware – was the motto, particularly since in a common law system there is no absolute proof of ownership, just a claim to possession that is better than that of any current challenger. Before 1926 those with a copyhold title to property, historically derived from medieval villeinage (serfdom), had protection of their rights through their registration in private manorial courts.

The replacement of the private protection of property rights by their public protection through land registration is because of the greater efficiency and certainty this provides. The costs of due diligence are reduced and potentially so is the cost of title transfer and of raising loans secured against the property. Torrens-style registers can offer an absolute guarantee of accuracy and certainty, including against trespass and adverse possession claims. The fees charged by LAS for searches and registering titles and mortgages can be much lower than the costs of protecting property rights in the absence of land registration. Greater security enables markets to develop in asset-backed loans and securities. As the lender has the security of being able to take possession of the asset in the event of default, borrowing costs should be reduced. Greater security of property rights ought to encourage investment and enhanced returns from the assets.

The classic real estate valuation model values an asset through the capitalisation of the market rent or income that can be achieved from it. The greater security that comes from LAS

providing protection of property rights should mean that the income generated by an asset is higher, because investment in it that is encouraged. Moreover the discount rate used in capitalisation should be lower to reflect the reduced risk and the period of time over which the income can be capitalised increased to reflect the lower risk of being deprived of the asset. Thus, asset values should be higher and higher absolute loans can be supported without increasing the leverage of the borrower because of the increase in asset values. There is some evidence to support these contentions though some caution should be exercised in interpreting the evidence as in some cases it is capable of other explanations. For example, does increased tenure security encourage investment or does investment increase tenure security? Benefits from LAS providing security of property rights include not only higher real estate values and improved tenure security, but also better access to credit, greater investment, and improvements in labour productivity (Jimenez, 1984; Besley, 1995; Place & Migot-Adholla, 1998; Galal & Razzaz, 2001; Baharoglu, 2002; Field, 2002; Deininger & Chamorro, 2002; Deininger, 2003; Deininger et al 2003; Burns & Dalrymple, 2006).

4. ENHANCING TRUST IN LAND ADMINISTRATION SYSTEMS

4.1 Governance in land administration

LAS can only perform their function of ensuring that a fair, efficient and orderly land and property market exists if there is good governance in land administration². Weak governance can stem from a lack of capacity or be the result of corruption. Either way means failure to formulate policy effectively or to deliver services efficiently. The LAS is unresponsive to what citizens want and need. Those in power lack legitimacy. The LAS behaves unpredictably and fails to follow discernable rules, with there being no redress against its actions. It acts unfairly and is partial in its dealings and there are no effective checks on it. Rather than being a source of stability and order, it is a source of insecurity and instability.

A lack of technical capacity means that the LAS does not have the resources – human, capital, financial or administrative – to enable it to fulfil its functions. In such situations governance is weak because of incompetence or lack of means rather than because it is being subverted for private gain. Governance may function poorly because those involved in LAS lack the qualifications or experience to provide good governance, or because the officials involved are inept, uninterested in the quality of governance, or just want a quiet life without the demands of accountability and transparency. The heart of the problem may be poorly motivated staff rather than corrupt ones. This can happen in democracies with low levels of corruption which have strong records on the rule of law and human rights. The avoidance of corruption does not necessarily solve the governance problem. Problems may also be caused by the absence of a legal framework that is supportive of good governance with complex or obsolete laws that are inconsistent and overlapping. The re-orientation of governance bodies, like LAS, towards being client-focussed rather than producer-focussed is also necessary.

² This section draws upon Grover et al (2007)

The typical features of poor governance in a regime that is lacking in capability rather than being inherently corrupt are likely to include the following.

- *Lack of capacity.* Governance is poor because there is a lack of technical or human resources to ensure good governance. For example, town planning can be ineffective because of a lack of vehicles to enable planning officers to visit sites, base maps being unavailable, or inadequate office accommodation. A backlog of cases may build up because there is insufficient capacity to deal with them.
- *Lack of capability.* Those responsible for achieving good governance may lack the qualifications, skills, or experience necessary to achieve this. For example, insufficient qualified staff may be available or, indeed, the bodies charged with land administration may not have any technically qualified staff at all.
- *Incompetence.* Problems occur in governance as those responsible either lack the ability or will to behave competently. For example, officers may lack knowledge of laws and policies, or may not speak local languages or the language in which laws are written.
- *Negligence.* Behaviour takes place that is outside of the normal range of competence so that there is a lack of care or attention. Negligence can be either through what has been done or what has failed to be done. For example, notices may not be sent to the right people or in due time.
- *Maladministration and mismanagement.* Failings in administration are not acknowledged or rectified. Poor decisions are not overturned and put right. There is an absence of a functioning appeals mechanism.

In the case of corruption poor governance occurs because it is in someone's financial interest, with the motivation being self-enrichment or self-aggrandisement. The World Bank (2000) makes use of a classification system that divides corruption into two types, state capture and administrative corruption. State capture is where the state is taken over by an interest group and its apparatus is put to work on behalf that group rather than society as a whole. Administrative corruption is about the abuse of office by individual officials, who use their power for financial gain rather than to undertake the tasks for which they were appointed.

Administrative corruption is where individuals in the governance process seek to enrich themselves by distorting rules, regulations, and procedures. Chaotic administration and unclear procedures help officials secure bribes. Additional payments are required to do things that citizens ought to expect as of right as officials engage in rent seeking behaviour. Mwanga (2004), for example, discusses how corrupt practices take place in Zambia aided by public reluctance to pay the survey fees required to register changes of ownership or the extension of leases. There is no complaints system. There are no public reception areas so that the public enters what it thinks is an official reception area where they are met by persons masquerading as land surveyors, who can "arrange" things. Officers may personalise records so as to deny others access and charge a rent for their use. In Kenya the Ministry of Lands and Settlements is one of the areas of government in which there is a high frequency of corruption (Transparency International, 2006) and land administration is one of the greatest areas of corruption in the Indian sub-continent (Burns & Dalrymple, 2006, p80). LAS have a

monopoly over certain activities, such as title registration. Ordinary citizens do not have a choice as to whether to consume the service or not or from which supplier to purchase it. This places the officials in LAS in a unique position to extract rents.

A number of different aspects of this behaviour can be identified, including the following.

- *Bribery*, where payment is extracted to perform a service to which the payer is entitled, to prevent the enforcement of regulations, to secure a favourable decision, or to speed up a process. Examples include the soliciting of bribes to achieve land registration, not to enforce building regulations, and to secure favourable town planning decisions. Violations of regulations and laws go unpunished if payments are made to officials. Queues can be by-passed on payment of “grease” money or to “smooth” administrative procedures.
- *Employment of fixers*. In order to overcome frictions in the system, fixers are employed to make things happen. Fixers extract a fee from their clients. They may also offer inducements to officials to help their clients. They act as bagmen, using cash and other inducements to lubricate the machinery of governance.
- *Embezzlement*. The property of the governance bodies is diverted into private use. This can be achieved through devices like the placing of contracts to supply government so that excess profits are made to be split between the contractors and officials. Companies controlled by family members of officials can benefit from contracts or favourable development decisions or sales of government property when these would not be justified on merit.
- *Theft*. The property of governance bodies is stolen and sold for private advantage. This can include gifts such as monetary or physical aid from charities or foreign governments.
- *Fraud*. False claims for payments are made, including for work which has not been done or supplies which have not been delivered. Valuations of real estate are understated to minimise the tax payments due. Salaries may be claimed for non-existent subordinates.
- *Extortion*. Money may be extracted from the public through intimidation. If payment is not made unfavourable treatment may follow, such as the enforcement of capricious or inconsistent regulations or tax demands. The official is paid to “protect” the public from such demands, it being certain that the demands will be made if the protection money is not paid.
- *Nepotism, favouritism and clientism*. Officials use their influence in favour of families, supporters, and friends in decision making, the award of contracts and tenders, and in employment. Official posts can be obtained through purchase or influence rather than through open and competitive recruitment. They may be awarded to political supporters rather than be awarded on merit.
- *Misconduct in public office*. Officials misuse their position for private gain. Confidential information obtained as a result of the office the individual occupies is used for private gain through the buying or selling of shares or real estate. Public officials use inside information for private transactions before it is made publicly

available for private gain. Facilities provided for use in employment, such as official cars and support staff, are used for private purposes.

Where the state is captured by a particular interest group, tribe, family, or clan, the apparatus of the state is put to work in their interests (Ganev, 2007). This can include undermining the interests of rival groups, for example, through discriminatory tax assessments (Johnston, 2005, chapter 6). Discrimination can take place against outsiders. As well as rival groups, these can include other ethnic groups, or groups designated by gender, region, religion, or political persuasion. By contrast, those viewed as clients may enjoy the benefits of favouritism.

State capture is likely to result in actions such as:

- Powerful groups taking the land of the less powerful.
- The use of compulsory purchase by state bodies to acquire the land of individuals and groups at “official” valuations rather than higher open market values with this land subsequently being redeveloped for private gain.
- The rezoning of land obtained by the powerful so that it can be used for higher value activities without regard to proper spatial planning principles.
- The vesting of state land in the hands of private individuals for nominal payment.
- The allocation of mining or logging rights to private interests without regard to existing communal or customary land rights or the impact of these activities on other property rights or the environment.
- The forced eviction, often using state officials or the police, of those who occupy land the elite wishes to use for another purpose without going through due process of law.
- Agencies being set up by the elite for the purposes of exploiting the state’s power for their own private ends that are indistinguishable from those of the government itself other than how they operate, who controls them, and the beneficiaries. For example, taxes that fall upon particular groups, which do not enjoy the favour of the elite, but with the income being diverted to those in power.
- The courts giving decisions in litigation and land conflicts that favour the elite and their clients irrespective of the merits of the case.

These actions are undertaken by the elite with impunity as there is no-one to hold the decision-makers to account for their activities or to punish them for their crimes. The ordinary organs of the state that do this, such as the police and judiciary, serve the interests of the group that has captured the state. Thus, the elite have the physical power to enforce their will.

4.2 Improving the performance of land administration systems

There are a number of techniques that can be used to bring about change in LAS so that there is improvement in the governance of land administration. However, it should be recognised that the proper functioning of LAS is not likely to happen in a dysfunctional society, though improvements in LAS may be one of the ways in which transformation comes about. Land administrators can use their powerful technical skills to tackle economic, social, and

environmental problems and work to put right injustices. They can not only be the managers of land and natural resources and the producers of spatial data, but also act as guardians of property rights, stabilisers of public order, and providers of the preconditions of a flourishing economy. Corrupt elites require the technical assistance of land administrators in areas like the surveying of boundaries and registering of titles. LAS are uniquely placed to become aware of some of the illicit activities of corrupt elites and to thwart them.

4.2.1 Setting service standards

Poor governance can thrive in an environment in which service standards are unclear or in which officials have wide scope for exercising discretion. Gross inefficiency can develop unchecked. Procedures can be made deliberately complex to provide greater opportunities for officials to obtain informal payments to solve them. The setting of standards reduces the scope for variability. The quality of inputs and outputs can be improved by standardisation and clearer specifications. The introduction of service standards is part of shifting land administration from having a producer focus to having a customer orientated one. Describing as customers members of the public who are seeking to register property, obtain town planning consents, or check tax valuations accords them an important status as it implies that they – and not the officials - are the persons who have to be satisfied. The official is there to provide them with the service and not for any other purpose. Setting service standards has to be accompanied by training programmes designed to create and reinforce positive service attitudes in officials. Service standards include targets, such as the maximum time that can be taken for an action, its cost to the customer, and the accuracy with which a task must be carried out. These need not be static but can be used to secure improvements over time. They remove discretion from officials and apply to everyone.

If standards are to be credible, they need to be made public, monitored, and enforced. The credibility of the standards and public confidence in their effectiveness can be enhanced by transparent systems in which the achievement of the standards is verified independently and the results are published. The achievement of standards can be linked to staff remuneration and bonuses. Customer dissatisfaction with the service should be monitored and acted upon. Staff are more likely to report service problems if an environment is created in which individuals are not blamed for defects but, rather, all are encouraged to work together to improve systems. Performance standards can be compared with other organisations. Benchmarking of performance can be a powerful tool in identifying an organisation's strengths and weaknesses. The analysis of the achievement of standards can be used to make improvements in performance.

4.2.2 Improving systems and processes

The achievement of standards does not happen by chance but has to be planned and systems put in place for their achievement. As the Quality Management standard ISO 9001 puts it, an organisation can only function effectively by identifying and managing numerous linked activities. Important to the efficient functioning of processes is the acceptance of responsibility by management and their commitment to improving quality. Analysis of the chain of processes enables identification of which ones work well and which do not. Simplification of the chain enables costs to be reduced and efficiency to be improved. An

LAS may not be a single agency but one agency might provide an input to another. Every transaction has the potential to diminish efficiency. Reducing the number of processes may require consolidation of agencies. This should lead to the creation of one-stop shops so that those using land administration services can meet their needs in one place. Data is produced to a common standard and used within the one agency rather than having to be shared between different organisations with different protocols. If processes are to be simplified and consolidated, this may require significant retraining of personnel so that they become multi-skilled, for example, so that they can handle both maps and legal documents. Clear separation between public and private areas in which front- and back-offices and their staff are kept separate reduces opportunities for corruption.

4.2.3 Building capacity

Capacity means having adequate resources to deliver the services. These resources are both human and technical. This means having sufficient people available who have the correct skills and competences and who are provided with adequate training and at all levels in the organisation, and not merely for those working in a technical or professional capacity. For example, telephonists must have the customer care skills to respond to callers appropriately and meet their needs. Pay needs to be adequate so that officials do not feel they have to supplement their earnings with informal payments to survive or neglect their work in favour of “part-time” jobs with other organisations that actually pay them. As well as the human resources, land administration requires adequate technical resources, which must function effectively. This means that the right equipment must be in place, be properly installed and commissioned, and be adequately maintained, serviced and calibrated, all of which requires that investment takes place on an on-going basis. Premises must also be fit for the purpose. For example, they should be secure so that there is protection for staff, systems and records and for the public when they have occasion to visit land administration offices.

4.2.4 Secure finances

Capacity building requires stable finances. Money is needed for investment in equipment and premises and to train staff. Funding is also required to meet day-to-day operating expenses, like paper and stationary, electricity, water and utilities, and, above all, to pay staff. Staff moral requires staff to be paid on time and at a rate of pay that reflects the market wage. Professional staff should be paid salaries that are appropriate for their qualifications and experience. There will always be greedy and dishonest officials who need to be controlled through the criminal law and employment contracts. If, however, the average official has difficulty in feeding his family and providing them with housing, medical care, and education because of low or irregular pay, then there is a deep-seated problem that only changes in employment conditions can begin to solve. Officials in financial difficulties offer a tempting target for the unscrupulous. If public finances are in a mess, it is unlikely that land administration will be properly funded and are likely to be of lower priority for government than, say, defence, law and order, education, or health care. However, investment in land administration can improve public finances by enabling the government to raise more revenue from land taxes. Some aspects of LAS can be financed by charges on the users.

4.2.5 Develop a human resources policy

A human resources policy embraces all aspects of employing people in land administration. Good governance is not achievable unless land administration is delivered by people who have the right skills and attitudes and are motivated to deliver the services in a proper manner. Human resources policies begin with determining who is to be employed and the skills and competences required. Employment should be on the basis of merit and free of favouritism, nepotism, and discrimination. Similar considerations should also apply to promotions and to the remuneration of staff. The terms and conditions of employment should support the efficient delivery of services. By implication, there needs to be transparent and objective systems of workload planning, staff appraisal, performance review, and personal development. Conditions of work include how employees are able to contribute to policy making within their organisation. LAS regularly need to retrain staff to update and refresh skills and competences, as well as providing opportunities for personal development. Training is not just about skills and knowledge, but is also about the values of an organisation and should be designed to reinforce ethical principles.

Staff rotation between posts or offices has a number of beneficial effects. It can help enhance skills by increasing the experience of staff, who may thereby undertake similar roles in different conditions. It makes bad practice by staff more difficult to conceal as someone new will be doing the job at a future date. An important aspect of a human resources policy is the ability to discipline those who break employment rules through fair, transparent, and impartial processes. Successful action against an employee is likely to require the keeping of good records in areas such as instructions given and performance. The disciplining of employees can be prevented if there is favouritism in land administration with protection being given by politicians or senior managers to certain officials.

4.2.6 Establish independent auditing

The function of an auditor is to review the accounts of an organisation to establish whether these can be regarded as providing *a true and fair view* of the organisation. Audit is not just about the checking of accounts but also the testing of systems of financial management and control. Company audit standards can be adapted for use in other corporate bodies, including charities, co-operatives, savings banks, municipalities, government agencies, and tribal land boards. Accounting standards can only be applied to bodies that use accruals accounting. Therefore, an important cultural change is to introduce accruals accounting in LAS. Independent auditing plays an important part in helping improve governance by making finances transparent and governments accountable. The challenge in the public sector is how to create genuinely independent auditing. A higher authority has to be found to whom reports of problems can be addressed, for example, the legislature. Evidence of wrongdoing is often brought to the attention of auditors and those they report to by whistleblowers. It is vital that whistleblowers are encouraged and protected. Auditors can use their knowledge to benchmark organisations and check on Key Performance Indicators (KPIs), which measure performance against the standards that the organisation is working to. They can also audit standards of corporate governance but others must provide effective means of censure and action. Behind all of this is needed a culture of public service rather than seeing public office as a means of personal enrichment.

4.2.7 Make more effective use of Information Technology and Communications (ITC)

Improved ITC can make a significant difference to the efficiency of land administration. It enables huge amounts of data to be stored safely. It can facilitate productivity increases, improvements in the accuracy of work, and reduce costs. Information can be accessed remotely by the public rather than through offices, for example, via public terminals placed in libraries or shops. Improved accessibility enables individuals to check whether the data recorded about them and their property is correct. The replacement of a manual filing system by one that uses ITC means that files cannot become the “personal” property of particular officials as they can be accessed by anyone who has the requisite security clearance. Officials can no longer collect a rent for access, a major source of informal payments. Devices like open property registers enable the press and public to check on the personal interests of politicians and officials. They can help reduce corruption and state capture. An ITC system maintains automatic audit trails – who accessed what information, who did what to which files, what information was deleted, and so on. Data that has been deleted can be recovered. The activities are made more transparent and the auditing of systems and the activities of officials is made easier. Opportunities for corruption are not eliminated, for example, trojans can be installed that can enable corrupt officials to collect confidential data like passwords for private bank accounts. However ITC does provide improved opportunities for audit and makes it more difficult to conceal evidence of where corrupt individuals have been in a system and what they have done.

4.2.8 Support professional bodies

Professional bodies working in the area of land administration can support a code of ethics for their members and help to curb both bad practice and poor behaviour. They can set positive standards for the conduct of professional life. LAS can encourage or require land administrators to join appropriate professional bodies that have codes of practice that comply with those produced by bodies such as the International Federation of Surveyors (FIG, 1998) or the International Valuation Standards Committee (IVSC, 2005). If such bodies do not exist, governments can encourage their formation. LAS can support professional bodies, for example, by employing members of appropriate professional bodies and dismissing land administrators who are expelled from their professional body for technical incompetence or breaching the code of behaviour. They can also promote the use of members of appropriate professional bodies in areas that they regulate, for example, encouraging banks to use valuers from appropriate professional bodies in mortgage valuations to enhance the stability of the banking system. Professional bodies should be subject to monopoly regulation. This may include professional bodies separating their role in promoting the services of their members from their regulatory functions. The latter must be independent and transparent.

4.2.9 Democratise customary institutions

Customary land tenure is particularly important to the welfare of the poor. It often plays an important role in accommodating pressures in society, such as the growth of urban populations in situations in which urban governance is weak. There are important questions that need to be asked of the governance of customary institutions. Like formal government institutions, good governance requires that customary institutions are efficient, effective and

competent. They should also be responsive, transparent, accountable, equitable, and predictable. At the heart of this is a potential clash between institutions that owe their authority to traditional values and the deference that is owed to these and a modern culture that supports individual freedom to exploit resources and individual self-expression. Whereas in the past the contribution of customary institutions may have been overridden in the name of “progress” and “modernity” values, such as sustainability in the exploitation of land and natural resources and the need to respect the welfare of the group and not just the interests of the individual, have come to be recognised as important. However, there remains an issue of how to ensure that customary institutions provide good governance. This means ensuring that they have the capacity for land administration and are not corrupt or captured by particular interests. The problem is that customary institutions may not be democratic and may lack the checks and balances that can ensure that governance is transparent, accountable, responsive, and equitable. This raises the question of whether customary institutions can be made accountable without losing their essential character or the values that they contribute to land tenure. A possible solution is to separate those elements in customary institutions that support its values and those which undertake the management of assets and services³. Those who perform the first function could continue to be chosen using traditional means, including the hereditary principle or rebirth. For the latter, some countries, such as Canada, have introduced self-governing tribal bodies that are democratically elected and satisfy principles of good governance. They are subject to the rule of law. These manage assets and services and are responsible for finances. Land codes that embody the principles of good governance are an important element of such bodies. These ensure that customary institutions are both efficient and responsive to their members whilst leaving undisturbed traditional value systems and the cultural aspects of community life and its governance.

5. CONCLUSIONS

It is not the primary function of LAS to administer or manage land other than that required by the state for specific public functions. For most uses this is best left to market forces. The land and property markets have certain inherent features that make them prone to inefficiency. Information may not be available to all market participants. There are factors that make land and property markets prone to allocative or operational inefficiency, such as externalities, common property resources, public goods, and the monopoly powers that can come from specific locations. LAS have a unique role to play in regulating land and property markets so that their tendencies to imperfection are controlled. However LAS can only do this if there is good governance in land administration. This not just about preventing corruption by individual officials, but also ensuring that the LAS is not captured by sectional interests and that it has the capacity to undertake its allotted tasks.

³ The argument here is similar to that put forward by Bagehot (1867) in relation to the contemporary British constitution, distinguishing between the efficient parts which actually make government work, for Bagehot the elected House of Commons, and the decorative parts, the monarchy, which are important to securing loyalty to the state.

REFERENCES

- Bagehot W (1867) *The English Constitution*, reprinted Cambridge University Press, Cambridge, 2001
- Baharoglu D (2002) *World Bank Experience in Land Management ad the debate on tenure security*, The World Bank, Washington DC
- Besley T (1995) Property Rights and Investment Incentives: Theory and Evidence from Ghana, *Journal of Political Economy*, 103, pp 903-37
- Brown G R (1985) The information content of property valuations, *Journal of Valuation*, 3 (4), pp 350-62
- Brown G R (1985) Property investment and performance measurement: a reply, *Journal of Valuation*, 4 (1), pp 33-44
- Brown G R (1991) *Property Investment and the Capital Markets*, Chapman & Hall, London
- Brown G R & Matysiak G A (2000) *Real Estate Investment: A Capital Market Approach*, Financial Times Prentice Hall, London
- Burns T & Dalrymple K (eds) (2006) *Land Administration: Indicators of Success, Future Challenges*, Land Equity International, Wollongong, New South Wales
- Case K E & Shiller R J (1989) The Efficiency of the Market for Single-Family Homes, *American Economic Review*, 79, pp 125-137
- Case K E & Shiller R J (1990) Forecasting Prices and Excess Returns in the Housing Market, *Journal of the American Real Estate and Urban Economics Association*, 18, pp 253-273
- Chapman J & Duncan G (2007) Is there now a New 'New Zealand Model'? *Public Management Review*, 9 (1), pp 1-25
- Competition Commission (2008a) *Market investigation into the supply of groceries in the UK*, Competition Commission, final report, 30 April 2008
- Competition Commission (2008b) *BAA Airports Market Investigation: Provisional Findings Report*, Competition Commission, 20 August 2008
- Deininger K & Chamorro J S (2002) *Investment and Income Effects of Land Regularization: The Case of Nicaragua*, Policy Research Working Paper 2752, The World Bank, Washington DC
- Deininger K (2003) *Land Policies for Growth and Poverty Reduction*, Policy Research Report, The World Bank and Oxford University Press, Washington DC
- Deininger K, Jin S, Adenew B, Gebre-Selassie & Nega B (2003) *Tenure Security and Land-Related Investment: Evidence from Ethiopia*, Policy Research Working Paper 2991, The World Bank, Washington DC
- Demsetz H (1967) Toward a theory of property rights, *American Economic Review*, 57 (2), pp 347-359
- De Soto H (2000) *The Mystery of Capital: Why capitalism triumphs in the West and fails everywhere else*, Bantam Press, London
- Dyker DA (1992) *Restructuring the Soviet Economy*, Routledge, London
- Fama E F (1970) Efficient capital markets: A review of theory and empirical work, *Journal of Finance*, 25 (2), pp 383-417
- FAO (2005) *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*, Adopted by the 127th Session of the FAO Council November 2004, Food and Agriculture Organization of the United Nations, Rome

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- Field E (2002) *Entitled to Work: Urban Property Rights and Labor Supply in Peru*, Princeton Law and Public Affairs Working Paper No 02-001, Princeton, New Jersey
- Galal A & Razzaz O (2001) *Reforming Land and Real Estate Markets*, World Bank Policy Research Working Paper 2616, The World Bank, Washington DC
- Ganev V I (2007) *Preying on the State: The Transformation of Bulgaria after 1989*, Cronell University Press, Ithaca, New York
- Gau G W (1985) Public Information and Abnormal Returns in Real Estate Investment, *Journal of the American Real Estate and Urban Economics Association*, 13 (1), pp 15-31
- Glor E D (2001) Has Canada adopted the New Public Management? *Public Management Review*, 3 (1), pp 121-130
- Grover R J , Törhönen M-P, Palmer D & Munro-Faure P (2007) *Good Governance in Land Tenure and Administration*, FAO Land Tenure Studies 9, Food and Agriculture Organization of the United Nations, Rome
- Grover R J (2008) *State and Public Land Management: The Drivers of Change*, paper presented at Joint Seminar on State and Public Land Management, FAO Land Tenure and Management Unit, FIG Commissions 7 & 9 and Consiglio Nazionale Geometri, Verona, Italy, September 9-10, 2008
- Habitat (1976) *The Vancouver Declaration on Human Settlements*, United Nations Conference on Human Settlements, Vancouver, 31 May – 11 June 1976
- Habitat (1996a) *The Habitat Agenda: Istanbul Declaration on Human Settlements*
- Habitat (1996b) *The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action*
- HM Land Registry (2007) *Land Registry Annual Report and Accounts 2006/7*, House of Commons HC 764, 18 July 2007, The Stationery Office, London
- Hood C (1991) A Public Management for all Seasons, *Public Administration*, 69, pp 3-19
- International Federation of Surveyors (FIG) (1998) *Statement of Ethical Principles and Model Code of Professional Conduct*, Publication No 17, London
- International Valuation Standards Committee (2005) *Code of Conduct*, International Valuation Standards 7th edition, London
- Johnston M (2005) *Syndromes of Corruption: Wealth, Power, and Democracy*, Cambridge University Press, Cambridge
- Jones Lang LaSalle (2006) *Real Estate Transparency Index*, Jones Lang LaSalle, Chicago
- Jimenez E (1984) Tenure Security and Urban Squatting, *Review of Economics and Statistics*, 66 (4), pp 556-67
- Kaganova O & McKellar J (2006) (eds) *Managing Government Property Assets: International Experiences*, The Urban Institute Press, Washington DC, pp 1-23
- Keogh G & D'Arcy É (1999) Property Market Efficiency: An Institutional Economics Perspective, *Urban Studies*, 36 (13), pp 2401-2414
- Malkiel B G (2003) The Efficient Market Hypothesis and its Critics, *Journal of Economic Perspectives*, 17 (1), pp 59-82
- Mwanza A R (2004) White Collar Malpractices in Cadastral Surveying and their Effects on Secure Land Tenure and Sustainable Development, FIG Working Week 2004, Athens
- NAO (2003) *Improving Service Delivery: The Role of Executive Agencies*, UK National Audit Office, Report by the Comptroller and Auditor General, House of Commons HC 525, Session 2002-2003, 28 March 2003

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Measures to Enhance Trust in Land Administration Systems and Engender their Proper Use

FIG – World Bank Conference

Land Governance in Support of the Millennium Development Goals – Responding to New Challenges
Washington D.C., USA, 9-10 March 2009

- Nove A (1968) *The Soviet Economy*, 3rd edition, George Allen & Unwin, London
- Place F & Migot-Adholla S (1998) The Economic Effects of Land Registration for Smallholder Farms in Kenya: Evidence from Nyeri and Kakamega Districts, *Land Economics*, 74 (3), pp 360-73
- RICS (2008) *Valuation and Sale Price Report 2008*, Royal Institution of Chartered Surveyors Research and IPD, London
- Rothenberg J G (1967) *Economic evaluation of urban renewal: conceptual foundation of cost-benefit analysis*, Brookings Institution, Washington DC
- Shiller R J (2003) From Efficient Market Theory to Behavioural Finance, *Journal of Economic Perspectives*, 17 (1), pp 83-104
- Transparency International (2006) *The Kenya Bribery Index 2006*, Transparency International Kenya, Nairobi
- United Nations (1948) *Universal Declaration of Human Rights*, adopted and proclaimed by General Assembly resolution 217 A (III), 10 December 1948
- United Nations (1966) *International Covenant on Civil and Political Rights*, ratified by the General Assembly of United Nations, resolution 2200A (XXI), 16 December 1966
- Valuation Office Agency (2008) *Property Market Report July 2008*, available from www.voa.gov.uk/publications/property_market/pmr-Jul-08/index.htm
- World Bank (2000) *Anticorruption in Transition: A Contribution to the Policy Debate*, The World Bank, Washington DC

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