

Whose land? The political economy of land titling in transitional economies

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Abstract

During processes of economic reform and transition, decision-makers are facing questions with potential far-reaching consequences, such as what institutions should be established, how to determine the relationship between state and market, and in what time frame and order. Against this background, this special issue has brought together four articles that analyze the type of institutional arrangements that emerge over time in relation to one of the basic means of production: land. The various contributions pay particular attention to an often-contested institutional development, the registration of land holdings. By proceeding with land titling under conditions of low socio-economic development, the state risks creating what is here termed as an “empty institution” rather than a “credible institution.” In other words, the new institution remains nothing more than a paper agreement or a hollow shell with little or even a negative effect on the actions of social actors. It is what might be called the “collective trust” in the system. As land becomes increasingly marketized and commodified, the state should ensure that the emerging land market does not result in a rapid concentration of land in the hands of a mighty few. This implies the control of market forces through the restriction or prohibition of land sales or land rental. In this context, effecting institutional change through land titling should be done with the utmost care.

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Introduction

The reform of socialist economies Central and Eastern Europe (CEE) following the fall of the Berlin Wall in 1989, and in the former Soviet Union (FSU) after its collapse in 1991, belong to the largest projects of social engineering ever undertaken. Policy-makers were suddenly confronted with fundamental questions such as whether to dismantle the core institutions of the communist state, what new institutions to create, how to articulate anew the relationship between state (before embodied in the ‘plan’) and market, and in what time frame and sequence. The dilemma in reforming centrally planned economies to market economies boiled down to “shock therapy” versus guided (or “gradualist”) reform strategies. It became the

ultimate “politician’s dilemma”: must politics create new institutions to propel reform, or is reform—once the spirit is released from the bottle—an autonomous process that drives institutional change?¹

In the view of neo-liberal economics, privatization is a condition sine qua non for a well-functioning market economy. This premise, enshrined in the “Washington Consensus” became the guiding principle for many social engineering programs financed by the World Bank and the International Monetary Fund in the FSU and other Eastern-bloc countries (Amsden, 1997; Cornia and Popov, 2001). Armed with this notion, Ministries or State Committees of Privatization were set up that redistributed and/or privatized state and collective assets to the public,

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¹The term institution is here broadly construed as pertaining to “the rules of the game in a society or, more formally, [...] the humanly devised constraints that shape human interaction”, as defined by Nobel Prize winner Douglass North (see, North, 1990).

to workers and collective members, and to former owners whose property had been expropriated in the early stages of the socialist era. In hindsight, one bitter lesson learnt is that society and societal change are less pliable and malleable than social engineering and neo-liberal economics suggest. Not least because of the disastrous results of rapid enterprise privatization in Russia, we have been taught modesty and the realization that there is no single blueprint for economic reform. Private property protected by law, the focus on “getting prices right”, and the emergence of effectively functioning markets are the outcome of a given society’s historical development and institutional fabric. In other words, the successful creation of new institutions hinges in part on choice and timing in relation to the particular constellation of societal, economic, political and cultural parameters (see Spoor, 2003; Wyplosz, 2000; Swinnen, 2003).

This critical theme is the backdrop against which the contributions of this special issue that deals with land reform, titling and institutions in transition economies have been written. Studying institutional change, regardless of whether it is focused on transition or developing economies, may prove most fruitful when focused on its structuring of the means of production—land, labor and capital. For this purpose, this issue takes land as an object of study and situates it in the context of transition and reform. Land is one of the most important resources of humankind, although in modern, industrial society this is often overlooked.

Indeed, occasionally, newspaper articles on the forced evictions of indigenous people in Brazil or the expropriation of white farmers in Zimbabwe, put the land question right in the center of public attention (see, for example, van Royen, 2001). They also reveal how politicized the land question can become and suggest its profound social and economic consequences. In general, however, land reform, land titling and institutional change has not been in the public attention for very long, and only recently—when the issue was rediscovered as it were—the emphasis has been strongly focused on the advantages of market-led agrarian reform (contrary to the more tradition state-led agrarian reform).²

Whose land? Pitfalls of cadastral development

One of the most telling and far-reaching measures to effect institutional change concerns the establishment of rights to land through titling. In the reform efforts towards privatization in the former socialist economies, land titling or registration has played a critical role. Land registration is generally one of the final stages of land reform. In its most politicized form, land reform equals revolution and is the ultimate means available to revolutionary movements or a nation-state in winning over the populace or destroy-

ing vested elites. Examples of this abound in history ranging from ancient Greece to 20th century Mexico, Brazil and China (see, Tuma, 1965). In the developmental context, however, land reform is generally equated with economic restructuring and is a complex mix of political and economic objectives. Land reform or “land-to-the-tiller” programs commonly feature state actions to transfer use and ownership rights to land; the change of social relations and class structure; and the improvement of the agricultural sector’s economic performance (Lippit, 1974; de Janvry, 1981). In short, land reform aims at the transformation of rural society as well as profoundly impacting rural–urban and state–society relations. Or as Raup stated, land reform programs “combine redistribution of rights in land and the supporting measures that are necessary to achieve three objectives: social justice, political health, and agricultural output expansion” (Raup, 1967, p. 270). The ultimate consolidation of redistributed land holdings is effected by defining and recording the various rights to a given plot of land.

Land registration or titling generally boils down to answering the following basic questions: whose land; how much land; and where is it located? In thinking about land registration one generally does not escape from such notions as modernization and economic progress. As societies evolve from predominantly traditional, agrarian economies to industrialized, highly capital and technology-intensive economies, one might discern clear-cut stages of institutional development that appear or can even be brought about under specific social, economic and political conditions.

At a certain point of time, any national government that has embarked on the path of economic development is confronted with the question of what position informal institutions, such as customary and informal land use arrangements, should be accorded relative to the formal, statutory institutional framework. In land registration the question is whether to disregard or recognize land claims that predate the statutory legal system. Due to its unwritten and fluid features, customary tenure is generally seen as irreconcilable with a modernized economy that needs registered plots with clearly established ownership for efficient land market transactions.³ Economists of the

²See Borras (2004) and his critique on the widely revered publication prepared by Klaus Deiniger (World Bank, 2003).

³Sjaastad and Bromley counter this argument by noting that “the conventional propositions that indigenous tenure provides insufficient investment incentives, and at the same time leads to rent dissipation, are contradictory. Each may have some merit on its own, but both cannot hold at the same time. The very act of rent-dissipating capture is largely analogous to over-investment—in the extreme case, an investment which yields no direct returns but only more secure rights to land. (...) The key to understanding this is to see that many of the activities related to farming have a dual function—one that is productive and one that is tenurial. If the general investment climate of a rural community is overly cautious—because of market failure, risk aversion, or for other reasons—it is possible that indigenous tenures may provide investment incentives that are superior to freehold, as well as a path towards tenure security more efficient than state intervention in the form of imposed titling programs.” See Sjaastad and Bromley (1997).

so-called property rights school will bring the argument to bear that the flexibility and fluidity of customary land tenure arrangements is tantamount to tenure insecurity and will lead to market inefficiencies (see, for example, [Dorner, 1972](#); [World Bank, 1974](#); [Johnson, 1973](#)). The principles of the property rights school can be traced back to the writings of Gordon on the over-exploitation of resources held under open-access,⁴ and Coase on the relation between property rights assignments and Pareto-optimal outcomes ([Coase, 1960](#); [Gordon, 1954](#)). In their reasoning, a clear assignment of property rights is a precondition for economically efficient resource allocation and eventually, environmental sustainability. The writings of the property rights school provided the legitimization for privatized property of particularly land, as the sole most efficient and secure institutional arrangement. Thus in the restructuring of markets, secure private property should be among the ultimate objectives of development. The wish of national governments to establish private and secure property rights justified many large-scale land-titling projects undertaken by multilateral and bilateral aid agencies over the world. Although the ascendancy of the principle of private and secure property rights has never been as complete as its critics or proponents might want us to believe, the arguments of the property rights school have remained influential to date. In a recent article, Miceli et al. confidently maintain:

One of the least controversial principles in the economics of land markets is the notion that the more clearly defined the property rights, the greater the land market efficiency. (...) Registration may be the preferred choice for developing countries that are in transition to market economies and private-property systems ([Miceli et al., 2000](#)).

Contrarily, the empirical evidence is less unequivocal and as we will see below, some of the country case-studies in this special issue are a case in point. For one thing, many studies on African countries have demonstrated that land registration has had a negligible or no impact on investment behavior and farm income.⁵ It should be noted that the scholarly and political discussions on secure property rights and socio-economic development are blurred on two accounts.

First, if we define tenure insecurity as the likelihood that the land user might risk losing his land rights (and associated income flows) at a certain point in the future, it should simultaneously be understood that eliminating such threat can be accomplished through formal, as well as informal institutions. In other words, increased tenure security does not necessarily require the issuance of formal

land titles defined and recognized under statutory law. In fact, many scholars have convincingly shown that customary arrangements might under specific conditions actually function with significantly lower transaction costs than formal arrangements.⁶ Second, in contrast to the assumptions of Western economic advisors to national governments in developing and transition countries, secure tenure should not be equated with private property per se.⁷ Efficient resource allocation and greater incentives for resource conservation do not exclude the possibility of vesting tenure security in a community of users because, as Bromley aptly noted, “common property represents private property for the group of co-owners” ([Bromley, 1991](#)).

Regardless of whether customary land claims are formalized through statutory law, if not properly handled by the state these might give rise to violent and protracted land disputes.⁸ There has also been fierce critique on land registration programs, such as in a case-study by Thorpe in Honduras, where the provision of ‘secure’ land titles, in the context of missing markets and institutions, has ‘merely modernized insecurity’ ([Thorpe, 1997, p.55](#)). Where there is a clash between traditional and modern institutions with overlapping competencies, yet with different norms and clienteles, land-related grievances are easy to surface. In land-scarce regions, where an increasingly marketized and commodified agricultural sector expands its influence into traditional rural society still governed by communal, informal arrangements, small-scale farmers are under threat of indiscriminate eviction from their land. In this respect, the focus of land registration on answering the questions whose land?; how much?; and where? might actually exacerbate (historical) land conflicts and can lead to the domination of land resources by the vested elite. This situation calls into question the role of state governance in guiding institutional change—a critical issue in land registration.

How to strike the right balance between state intervention and market forces? On the one hand, the state is responsible for creating the necessary institutions to stimulate the emergence of a land market or guide its development. Land features two characteristics that set it apart from most other goods—immobility and a virtual indestructibility, although increased land degradation might well undermine this specificity—which makes it an ideal collateral in market transactions. To realize this potential it is necessary that land be endowed with secure, clearly defined and easily transferable property rights. It is at this point that, according to neo-liberal economists the

⁴In fact, quite similar to Garrett Hardin’s argument on pastoral resources 14 years later. See [Hardin \(1968\)](#).

⁵See for example, [Atwood \(1990\)](#), [Pinckney and Kimuyu \(1994\)](#) and [World Bank \(2003\)](#) these are also referred to, although the Deiniger-study (as we can call it) generally parts from a neo-classical (market-based) position.

⁶This is illustrated by the case of peri-urban Ecuador, where informal property rights developed by communities over time had to some extent come to substitute formal property rights. It implies that titling must be done with extreme caution in communities where informal rules exist. See [Lanjouw and Levy \(1998\)](#).

⁷See the large body of literature on common property. Some influential writings are: [Ostrom \(1990\)](#), [Wade \(1987\)](#) and [Bromley \(1992\)](#).

⁸The Nicaraguan and Rwandan experiences are a case in point. See [Everingham \(2001\)](#) and [Andre and Platteau \(1998\)](#).

role of the state should come in to establish cadastral systems that ensure broad access to information for individuals and entrepreneurs to enable an informed use of their rights. Recent studies in Thailand and Honduras have indeed pointed to the need for titling to improve credit supply, because of the necessary collateral, although this conclusion is also contested in terms of the possible positive correlation between land titles and credit access (Feder and Nishio, 1999; Lopez, 1997; Lopez and Valdez, 2000; the contesting view on the Honduras case has been presented by Thorpe, 1997, pp. 43–56). On the other hand, however, the state should also regulate land markets in line with its overall social objectives, which include protection of weaker social groups such as poor farmers, women and ethnic minorities. These two aims of land policy are sometimes difficult to reconcile:

There may be many circumstances where formal titles will not have an effect on access to credit. (...) At low levels of income and in the absence of other mechanisms for social security, land serves as a social safety net. Foreclosing on the land of households who have defaulted on credit would deprive them of the basic means of livelihood and may not be socially desirable which is essentially the reason for customary systems restricting the marketability of land. Even where formal law decrees that land should be fully tradable, such legislation may be impossible to implement (World Bank, 2003).

By proceeding with land titling under conditions of low economic development and a substantive proportion of the rural populace dependent on small-scale farming, the state risks creating what Ho elsewhere has coined as an “empty institution” rather than a “credible institution.”⁹ In such a case, the new institution remains nothing more than a paper agreement or a hollow shell with little or even a negative effect on the actions of social actors. It is indeed related to what one might call the “collective trust” in the system in social, economic and political terms. Students of transition believe this to be the critical question in the institutional change of property rights and have sought ways to assess its driving parameters.¹⁰ If an institution can rally no societal acceptance, a state-driven institution such as a cadastre will remain a mere empty shell; a situation reminiscent of the formal registration of land lease rights in China, where notarized household contracts are often but a “paper agreement” as rural collectives can still appropriate and redistribute leased land whenever deemed necessary.¹¹

⁹For a theoretical discussion of the terms “empty” versus “credible” institutions, see also Ho (2005).

¹⁰For a discussion of the credibility of institutions, see Diermeier et al. (1997). In fact, this question also relates to issues of empowerment, democratic representation, and decentralization. However, as we focus here on market rather than political reform, these questions are left for the following chapters in this volume to address.

¹¹See also Ho (2003a). Similar problems have also been observed by Zweig (see Zweig, 2003).

For this reason, “getting the institutions right” is critical in the state-guidance of transition and development, using a similar terminology as the earlier (and rather naïve) belief in ‘getting the prices right’. At times, economic restructuring unleashes forces in society that require strong state intervention in the market place, and uncontrolled processes of market liberalization have taught us this lesson in ‘transition’. As land resources become increasingly marketized and commodified, the state should ensure that the emerging land market does not result in a rapid concentration of land in the hands of a mighty few. This inevitably implies the control of market forces through the restriction or even prohibition of land sales or certain types of land rental. An emerging land market in a context of prevailing asymmetric information and high transaction costs in input and output markets, land titling (and corresponding sales and leasing operations) might not only contribute to a highly unequal distribution of land and hence widespread landlessness, it can also negatively affect the distribution (and social ownership) of water, which is most often an even more scarce resource.¹² In this context, it is with reason that effecting institutional change through land titling should be done with the utmost care.

Socialist versus private property: transitional successes and failures

From the above we might conclude that the policy-maker dealing with cadastral development is generally confronted with three critical dichotomies: (a) market forces versus state intervention; (b) the balance between formal versus informal institutions—in some ways tantamount to customary versus newly established institutions; and (c) land related grievances and social equity. How do these issues feature in transition economies? In the former ‘Second World’ where communist regimes have become transition economies, land reform programs have been distinct from the ‘Third World’ where newly established nation-states replaced pre-war colonial or semi-colonial administrations. In contrast to developing countries in the South, transition economies share a “socialist property rights structure”.¹³ In the socialist countries, it was considered that class antagonisms and capitalist exploitation are to be avoided by socializing the means of production by putting them under common ownership, where they are at the disposition of the whole people organized as a state or a collective.¹⁴ For this reason, rural

¹²In most former Soviet Central Asian states (such as Turkmenistan and Uzbekistan) it is considered that ‘land without water is no land’, and a privatization of land, through the issuing of private land titles and the operation of land markets, and a corresponding construction and liberalization of ‘water markets’ might even bring about the emergence of ‘water lords’ (rather than only land lords).

¹³This is not to say that there were no wide regional differences in the degree of collectivization between the socialist states.

¹⁴For more information on the features of the socialist legal structure and ownership, see Zweigert and Kötz (1993).

cooperatives were established which pooled tools and machinery, agricultural infrastructure, livestock, and land resources. Furthermore, these units were based on the fallacy of ‘economics of scale’, while politically they were performing an important social role (in redistribution of income and provisioning of public goods and services). Against this background, the restructuring of the socialist economies towards market economies offered a unique “test laboratory” for experiments in social engineering.

At the same time, however, it should be realized that the degree of collectivization varied widely over the different socialist economies. For instance, in East Germany and Hungary the majority of arable land was brought under collectivist structures, while Poland and former Yugoslavia actually maintained a large proportion of privatized agriculture. At the eve of the fall of the Berlin Wall, an estimated 70 percent of arable land in Hungary and even as high as 86 percent in East-Germany was cultivated collectively. On the other hand, Yugoslavia and Poland showed a completely opposite picture as, respectively, 68 and 76 percent of the total acreage was in private hands (FAO, 1994, pp. 9, 17, 29, 41). When the socialist block in Central- and Eastern Europe and the Soviet Union disintegrated, the first major question which politicians faced was how to strike the right balance between market forces and state intervention in property rights. Similar to the time of collectivization, the various nations reacted to this major issue in different ways.

Former Soviet republics such as Albania, Armenia and Kyrgyzstan opted for the outright privatization of land resources (in the early to mid-1990s) in order to stimulate a land market. Much later, after years of stagnation in reforms, Moldova also has gone through a sweeping agrarian reform and land titling process (from 1998 to 2000).¹⁵ On the other hand, China, Vietnam and Uzbekistan are clear examples of transitional economies that have consciously opted to refrain from the privatization while reserving the ultimate control over land for the state.¹⁶ Although Russia was certainly not one of the late-reformers in terms of the ‘individualization’ of farmland use,¹⁷ it fared a more cautious course in the liberalization of the land market, in the various stages of land reform during the 1990s. The Russian Duma passed a law that allowed for the private sale of agricultural land only in May 2002. However, in response to parliamentary concerns over land speculation by foreign investors President

Putin secured through an amendment to the law shortly afterwards. Through the amendment foreigners are no longer allowed to buy and sell agricultural land but only entitled to lease for a maximum term of 49 years (NRC Correspondent, 2002; Reuters, 2002b).

The question remains whether privatization—and land titling, for that matter—is also a precondition for stable economic development and well-functioning markets as postulated by neo-liberal economics. Let us have a closer look at a few transition economies.¹⁸ Belarus, for instance, is clearly committed to private-property rights and land titling. The protection of private property is stipulated in law, whereas there is a statutory system of land registration which records rights in land, including ownership. In a recent study, however, it was noted that Belarus has performed rather poorly with an average decline of 50 percent in agricultural output, and of 30 percent in agricultural labor productivity in first 9 years since de-collectivization (Swinnen, 2003). In addition, over the period 1999–2001 the average annual growth in GDP was a mere 0.8 percent (World Resources Institute, Earthtrends, 2003, country profiles, section economic indicators at <http://earthtrends.wri.org>). This should, however, mainly be contributed to the poor functioning of markets and institutions, and even ‘bad governance’, represented by wide-spread corruption, rent-seeking at all institutional levels, mismanagement and continued political interference in economic decisions to be taken by economic actors.

In contrast to Belarus, Uzbekistan and the People’s Republic of China belong to a handful of transition countries that have excluded, or strongly restricted private land ownership (apart from the traditionally existing subsidiary private plots). Out of ideological and practical reasons—a fear of land speculation and social conflict—these countries have enshrined the principle of state and collective land ownership in the Constitution, which has been further reinforced in subsequent laws and regulations. At the same time, Uzbekistan and most certainly, China, can be ranked among the most successful of the transition countries in terms of economic growth in the post-socialist period. In 1997 the agricultural output in Uzbekistan was 86 percent of the 1990 level, higher than any of the other former Soviet nations, and only slightly behind the average for the Central and Eastern European countries (Jerome, 1999). According to the World Resources Institute, the Chinese economy has demonstrated the highest economic growth rates in recent world history, with an average annual growth in GDP over 1991–2000 of 10.1 percent (World Resources Institute, Earthtrends, 2003).

One of the lessons to be learnt from the transition experience is that private land ownership has not proven essential for the effective functioning of the rural economy, nor for a (rudimentary) land market, in particular when one would compare the experience of China and Vietnam

¹⁵There is a specific case of Turkmenistan, which—as the only Central Asian state—has private property in its constitution. It went through a process of land registration, and there is an emerging ‘private’ sector. The meaning of ‘private’ is questioned in this particular case as the economic system is still largely a Soviet-type planned one, and the political system is authoritarian, with no independent institutions that might guarantee or even secure ‘private-property rights’. See for an overview of the differences in land reform strategies: Spoor and Visser (2001).

¹⁶In fact, also North Korea recently made a similar stipulation, see Reuters (2002a). In the article it is pointed out that despite intentions for economic reform, North Korea will stay away from privatization of land.

¹⁷See for the explanation of the term ‘individualization’, Lerman.

¹⁸For a good comparative overview of land registration in various countries, see UNECE (2000).

with that of the countries of the FSU. Moreover, gradual institutional reforms that follow economic change rather than vice versa seem to be an underlying parameter for success. The critical question, however, is whether property rights reform excludes titling altogether, or whether somewhere down the path of transition some form of registration—be it ownership or use rights—becomes a necessity. If so, land titling will inevitably stir up land related grievances. The economies-in-transition share a common past in which issues of nationalization and socialist land reform programs still determine, to a stronger or lesser extent, the nation's property rights structure.

At the time of the communist take-over, the property rights structure in most countries included a wide variety of rights systems, such as traditional pasture commons, village forests governed under customary law, and land holdings owned by the local nobility and religious institutions such as monasteries, mosques and churches. In general, the pre-socialist state had also implemented statutory rights systems which to varying degrees co-existed with, or influenced customary rights structures. When the collectivization movement swept through rural society, these rights systems were invalidated and supplanted by a socialist property structure at times with state violence and force. However, as various studies have shown, collective memory did not forget customary and pre-socialist land ownership and use rights, although this also depended on the length of time a country was under a communist regime (which was different in China, Vietnam and most of Central and Eastern Europe, in contrast with the FSU).¹⁹ This implies that the successive post-socialist administration should seriously consider whether to recognize these rights or not. Yet, in many of the ex-socialist transition economies, memory runs considerably shorter with limits that often do not extend any further than the date of collectivization or land reform.²⁰

In addition to the period of validity accorded to property rights, land registration also touches on the problem of ex-ownership. In short, should the title be allocated to the new owner with appropriate redress for the former owner? Or should title instead be granted to the former owner while compensating the new owner? Either way, the problem is a tricky one as the former owner might have deceased so that the rightful descendants must be traced, whereas ex-ownership is often difficult to prove because pre-socialist titles have been lost, destroyed or are simply non-existent. The manner in which the state handles the balance between customary and post-socialist rights structures during land registration might make the difference between social stability and the eruption of large-scale land disputes.

Differences can also be noted between various land reform strategies, such as based on share versus physical plot distribution, redistribution versus restitution, and finally the provisioning of usufruct rights (with various lengths of contractual arrangement) versus private-property titles (or any combination of these). A crucial difference indeed, as conflict has a profound impact on agricultural production.

Transition countries have indeed chosen quite diverging paths. China, for example, has consciously opted to downplay the ex-ownership issue in favor of social stability—even up to the point of deliberately shrouding ownership rights in legal and political ambiguity (Ho, 2003b; Weiguo, 2005). Hungary, on the other hand (but also the Baltic states), decided to return land holdings to the original owners with the dismantling of its rural collectives. In 1991 the parliament passed the Compensation Law which aimed at providing legal redress to individuals for damages incurred through a variety of acts on the part of the state, dating as far as back as 1939—i.e. anti-Jewish laws, laws on nationalization, land reform expropriation, and population resettlement laws. Compensation varied from 30 to 100 percent of the suffered damage. Under the law, cooperative farms were informed of the total claims against them, after which they need to provide for the compensation in kind. In practice, the collective farms had to assign an area which was sold by auction to the claimants. It needs to be noted, though, that the Hungarian state might be in a better position to implement these policies in comparison with other transitional economies. During the formation of the agricultural cooperatives, members did turn over their land to these farms, yet, contrary to the Soviet-style *kolkhoz* the farmers maintained legal title to it.

In dealing with the legacy of the former German Democratic Republic (DDR), the German authorities chose a similar path as Hungary. The Agricultural Adjustment Law promulgated during the early 1990s, explicitly addresses issues of ex-ownership in two ways. First, the law stipulates the return of land and capital shares to the original owners or their successors from whom property had been seized after 1949. Even land-owners who had left East Germany were entitled to land holdings. Second, members of the cooperatives—also known as LPGs (or *Landwirtschaftliche Produktionsgemeinschaften*)—had a valid claim to the collective property of the farm under the condition that it had a positive value after debt clearance (FAO, 1994). However, such stipulations were not always sufficient to avoid the emergence of land-related grievances as was demonstrated in a recent case at the European Court for Human Rights in Strasbourg. In the final days of the DDR, its prime minister Hans Modrow ordained that full ownership be granted to the LPG farmers and their heirs. The Kohl administration, however, reversed this measure in 1992. In reaction around 70,000 former LPG members and their descendants filed a case at the European Court for Human Rights, which in January 2004 ruled that the decision by

¹⁹In the case of pastoral customary rights, this has been noted for several regions in China. See, for example, Banks (1999) and Ho (2000). Mearns observed a similar phenomenon in Mongolia, see Mearns (1996). For information on traditional forest rights in China, see also Yeh (2000).

²⁰For example, in communist China the law states “all land deeds that predate Land Reform in 1950 are invalid.” Article 30, 1950 Land Reform Law in Sun (1998).

the Kohl administration was unlawful. In addition, the German government has been ordered to provide suitable financial redress to the expropriated victims. At the time of this writing, the German government is still studying the possibility of a higher appeal (Kerres, 2004).

Land registration has been an integral part of the redistributive or restitution-based agrarian reforms in Central- and Eastern Europe, and in some countries of the FSU. Sometimes these highly complicated processes of land titling have taken place in very short time-spans (such as in Albania, Armenia, and more recently in Moldova). As side effect, thousands of claims had to be researched, and innumerable land conflicts had to (and still are to be) resolved, unfortunately by emerging institutions that were—in most cases—not really ‘credible’ or ‘trustworthy’ institutions. In most cases new agencies were set up from scratch, such as land reform institutions, land cadastres and land registration agencies, and finally real estate institutions. They were mostly financed by external donor programs, in particular by USAID, which specialized itself in land reform programs in Central- and Eastern Europe and the FSU. The underlying theorization is of course the supposed correlated phases of land reform—land registration—emerging land markets—land consolidation—agricultural growth and improved efficiency. Whether this sequence necessarily leads to more ‘security’ and improved productivity has however to be questioned, in particular in view of the poorly performing markets and institutions in many of these countries.

Although much high-quality research has been conducted on issues of land reform in a transitional setting, little is known on the specifics of land registration, and its role. Moreover, most of these studies are relatively fragmented and isolated. There are few works that bring together the various efforts in one comparative study of land titling and transition, although World Bank (2003) does this, deliberately pursuing a neo-classical position, and defending (sometimes against all odds) the market-led agrarian reform (MLAR) (see, for example, Walker, 1991; Chen and Wills, 1999; Land Tenure Center, 1995; see for a comparison of land reform in the 12 members of the Commonwealth of Independent State of the FSU: Spoor and Visser, 2001). This volume unites contributions from various disciplines—economics, law, anthropology and sociology—in an attempt to analyze land registration, which has been central to understanding the multifaceted dimensions of the economic reforms in economies-in-transition.

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