



FRAMEWORK PAPER
For
**Land Policy, Administration and Management
in the English-Speaking Caribbean.**

by

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“Land is the source of all material wealth. From it we get everything that we use or value, whether it be food, clothing, fuel, shelter, metal, or precious stones. The availability of land is the key to human existence, and its distribution and use are of vital importance. Land records, therefore, are of great concern to all governments” (Belisle, 1988, on land in Belize)

1. BACKGROUND¹

In most of the Caribbean, in the 1960’s and 1970’s the post colonial State led some sort of land reform to increase the number of medium and small scale private holding of agricultural land through state acquisition of large estates and the re-distribution of land to the peasant sector. These programs have largely been abandoned.

In recent years, as a result of continued market, societal and political pressure on land resources, an enormous amount of activity is occurring around tenure regularization of irregular holdings—urban and rural—and property registry modernization.² These efforts aim at making property markets more influential in the assignment of property to people. The policy argument is that those who have the resources and inclination to make property productive should be able to get access to property by engaging in market transactions.

At the same time, pressures to establish environmental zoning, promote eco-tourism, manage urban expansion, protect coastal zones, control deforestation and provide affordable access to land and housing have put other pressures on governmental agencies to intervene in land markets. The resulting programs have meshed poorly with the trend toward marketization of individual land rights.³

1.1 *Some useful definitions*

Land administration and land management are terms that describe the formal systems that define and regulate the relationship between people and land. These systems evolve as this relationship changes. The historical processes of population growth, urbanization, globalization, changing State-society relations and the attempt to create environmentally sustainable development are now the main drivers of change in people’s relationships with the land.

We define the term “**land management**” as decision making by land owners about the use and enjoyment of land. Land management, including the management of State owned land,

¹ An earlier version of the first sections of this paper was prepared for *the Workshop on Land Policy, Administration and Management*. This version attempts to incorporate the ideas discussed at that Workshop. We are grateful for the support provided to the Workshop by the Inter-American Development Bank (IDB), the US Agency for International Development (USAID), the Department for International Development (DFID) and the Ministry of Agriculture, Land and Marine Resources, Government of Trinidad and Tobago.

² De Janvry, Alain, Elizabeth Sadoulet and Wendy Wolford. 1998. “The Changing Role of the State in Latin American Land Reforms.” Paper prepared for the WIDER-FAO workshop on “Access to Land,” Santiago, Chile, April 27-29.

³ Forster, Nancy. 2000. “Back to the Basics: Designing Tenure Institutions for Ecologically Sustainable Resource Management.” Forthcoming in Zoomers, Annelies, ed., Regulating Land Tenure under Post-Liberalism: Land Policy in Latin America. Amsterdam: KUT Press/CEDLA.

spans the direct use of land by private individuals, corporations and State agencies, the leasing of land by the owners to private holders and also the supervision of those leases. Public land management functions also include the acquisition of private land for public purposes.

The term “**land administration**” means the processes for collecting, recording and disseminating information about the ownership, use, and value of land⁴. “Land administration” includes the deeds or land registration systems (information about land ownership), land use patterns, soil and water taxonomies, topographical mapping (information about land use); and appraisal and taxation of land (value of land).

The term “**land**” refers to a piece of the surface of the earth, and any permanent structures attached to it. Equivalent concepts include “immovable property”, “real property” and “real estate”. Graaskamp defines the later term as “artificially delineated space with a fourth dimension of time referenced to a fixed point on the face of the earth”⁵.

1.2 Caribbean Challenges

The institutional transformation of land management through the privatization and marketization of land rights and the globalization of property markets represent a major restructuring of property rights and the institutions (such as the property registration systems) which protect these rights .. The institutions created in the post-independence period for restructuring the colonial land holdings are not well adapted to balancing the competing demands for the marketization of land, protection of the environment, and provision of access to land by the disadvantaged.

The small island status of most of the Caribbean states poses particular problems for the marketization of land and for balancing the competing policy goals. Land and fresh water resources are very limited. The ways that people use coastal zones are of crucial importance to the environment and economy of most Caribbean states. Decisions about land management on-shore can have serious implications for coastal zones. Tourism development and issues of access to beaches and other coastal resources have become central issues in many islands and have the potential to create social disruption, conflict, and the dilution of traditional customs and way of life. In addition, the opening of property markets to foreign investors has led to significant appreciation of property prices in certain localities, forcing local property owners out of the property market and a loss of traditional land uses. At the same time, the large-scale out-migration of Caribbean citizens to the United States, Canada and the United Kingdom results in frequent cases of absenteeism amongst land owners and creates particular complications with respect to widely encountered “family land” phenomena. Even in the larger continental territories, the small and closely related nature of the land-society relationship complicates the issues of land management and administration.

⁴ United Nations Economic Commission for Europe, Land Administration Guidelines, New York and Geneva, 1996, p., 6. See also the instructive book Land Administration, recently authored by John McLaughlin and Peter Dale.

⁵ Jarchow, Stephen P. 1991. Graaskamp on Real Estate, Washington, D.C.: ULI-Urban Land Institute, p. 42.

The challenges for Caribbean land managers and administrators are thus rapidly growing. Awareness of these challenges in the context of market-led economies has made land management and land administration a much broader and complex locus of endeavor than ever before, where legal frameworks, political agendas, economic development planning, environmental management techniques, and information technology intersect, often uneasily. The challenge is to re-orient and upgrade the capacities of land management and land administration institutions in the Caribbean to effectively and simultaneously balance the ‘triangle’ of broad policy goals of economic development, social equity and environmental protection and sustainable use.

In the region, these challenges are being addressed in a variety of projects which aim at improving land tenure security and trade-ability of land through the privatization and individualization of rights to land, the modernization of land registries and cadastral offices, and regularization of informal land titles.⁶

2. THE “TRIANGLE” OF COMPETING LAND POLICY GOALS

In the current era there are three overlapping and potentially competing policy goals influencing the definition of processes and the practice of land administration and management, which reflect this historical evolution in the Caribbean:⁷

- Improve the economic efficiency and productivity in the use of scarce land resources by developing more dynamic land markets, and enhancing security of tenure;
- Increase the access of disadvantaged groups to land and housing;
- Provide for the availability of land and water resources to future generations through the sustainable uses of these resources.

These policy goals emerge as part of the political process and frequently are suppressed by that process as one goal emerges as predominant. An example is the establishment of the colonial estate at the expense of indigenous peoples, at a time when policy formulation focussed on the first goal to the detriment of the second, with no thought of the third. Typically, such a situation of the predominance of one goal over another does not seem to last long, and the other goals eventually emerge from policy debates and political movements.

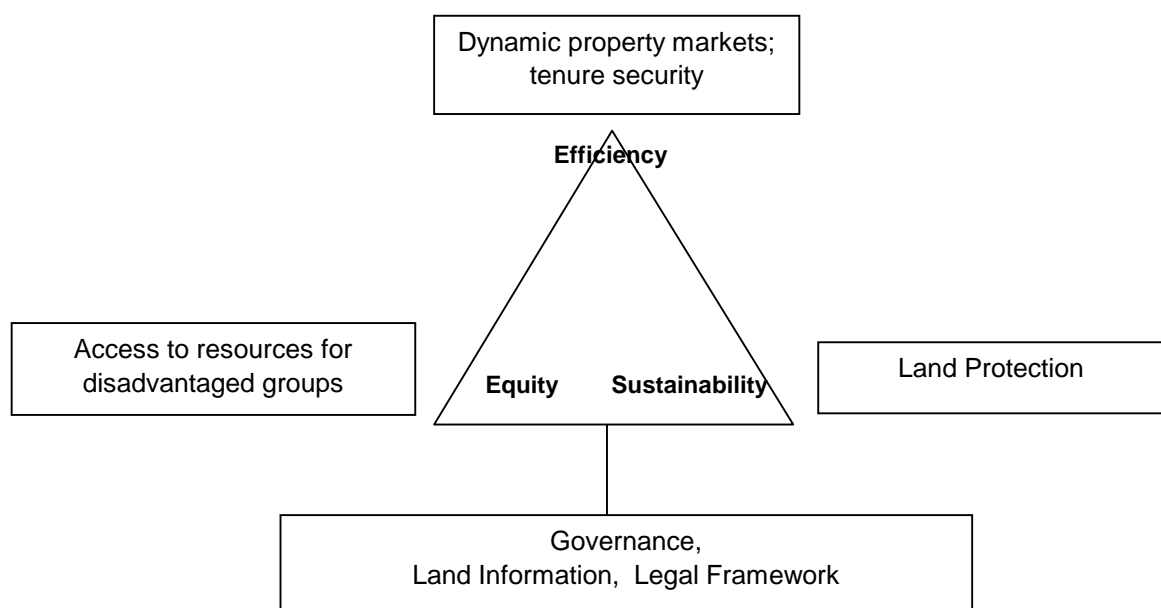
⁶Existing programs on these themes partially funded by the IDB in the Caribbean include Bahamas, Belize, Guyana, Jamaica, Trinidad and Tobago, Suriname, Dominican Republic, and Haiti, DFID is funding land projects in Guyana and Trinidad and Tobago; CIDA is involved in Jamaica and Denmark is working with Belize, Holland with Suriname and Trinidad and Tobago, and Japan with Trinidad and Tobago and the Bahamas. USAID has land projects in Jamaica while the World Bank is supporting projects involving land administration and management issues in Jamaica and other countries.

⁷ On the historical evolution of land administration see Ting, A. and I. Williamson. “Land Administration and Cadastral Trends: The Impact of the Changing Humankind-Land Relationship and Major Global Drivers.” UN-FIG Workshop on Land Tenure and Cadastral Structures for Sustainable Development, Bathhurst, Australia, 18-22 October, 1999

These debates and movements get expressed in the structures of governance, including national and local government agencies, community organizations, NGO's, and other instruments for the definition and implementation of policies. In turn those governance structures rely on information about the ownership, use, and value of land for policy implementation. Structures of governance also develop and rely on rules for the administration and management of land expressed in laws and regulations. The foundations of land policies are the structures of governance, land information, and legal infrastructure.

Figure 1 depicts the “triangle of land policy imperatives”, and the foundation on which these imperatives are expressed.

Figure 1. Triangle of property rights imperatives



Maximizing one policy goal may conflict with the maximization of another. For example, maximizing security of ownership under the “market” goal, will often clash with efforts to regulate owner use of the land for environmental protection reasons or may contradict efforts to provide access to land assets for the disadvantaged. Maximizing the protection of the environment may impinge on the abilities of private owners to generate economic benefits from the land that they own.

These contradictions, however, do not relieve policy makers from the responsibility of somehow moving forward on each dimension. The challenge is how to make policy that will achieve each goal, and will be relevant at least long enough to reach an acceptable and measurable degree of efficient use of the land which is equitable and sustainable.

The trio of competing policy goals in land administration under today’s rapidly changing conditions creates compelling new challenges for land administration systems and land managers to mediate among the diverse interests in land. As the Bathurst Declaration puts it, “These issues are forcing the re-engineering of land administration systems to ensure that

they support sustainable development and efficient land markets. Land administration frameworks will be forced to respond rapidly to these unprecedented changes.”⁸. If there is not an adequate response, land administration and management institutions may become a constraint on the achievement of sustainable development goals.

3. ECONOMIC EFFICIENCY

Dynamic property markets: tenure security and investments, productivity

The first of the policy goals is intended to contribute to improved efficiency of resource use by making the exercise of land rights more marketable. These efforts support the goal of economic efficiency of land use because private owners presumably will act in their self interest to maximize their incomes from their investments in the land. These efforts also supposedly stimulate the increased owner investment in their land, since they can expect to recover in the future their investments in the land which they make today.

To support the stimulation of land markets, the governments of Caribbean countries are embracing legal, institutional, and technical reforms that seek to make their land administration and management systems more market responsive and efficient. The ultimate purpose of these reforms is to provide the basis for satisfying the needs of the population in a sustainable way. The question is whether this focus on land market promotion can be made compatible with programs addressing social equity and environmental protection. It can happen that limiting reforms to making land more marketable eclipses the desire to facilitate disadvantaged peoples’ access to land both for food and income generation, and for low-income housing. The market approach can also overwhelm the desire to protect environmentally sensitive and reserved areas and to assure the sustainable use of land and water resources by private and public owners of the land.

The market approach to development typically focuses on the problem of land tenure insecurity. The inclination of landholders to invest time and money in their land is related to the security of property rights. Two aspects of tenure security are involved in this hypothesis: expectations for short term gain from investments of time and money in the land, and expectations for longer term gain from the future sale of the land.

Bentham (1864)⁹ observed that "property is nothing but an expectation of deriving certain advantages from a thing we are said to possess." Ely (1914)¹⁰ noted that "by property we mean an exclusive right to control an economic good." Following in this tradition, Raup (1967)¹¹ observed: "before you can risk your labor and your seed for a harvest that may be

⁸ The Bathhurst Declaration. “Report on the Workshop on Land Tenure and Cadastral Infrastructures for Sustainable Development.” Bathhurst, Australia, 18-22 October 1999.

⁹ Bentham, Jeremy. Theory of Legislation, 1864. Edited by C.K. Ogden. London: Routledge and Kegan Paul Ltd. 1931.

¹⁰ Ely, R.T., The Fundamentals in the Existing Socio-Economic Order, Treated from the Standpoint of Distribution. New York: Macmillan. 1914.

¹¹ Raup, Philip M. "Land Reform and Agricultural Development." In Southworth and Johnston, Agricultural Development and Economic Growth. Ithaca: Cornell University Press. 1967.

months away, you must have assurance that you will be able to reap where you have sown." This notion of security of expectations is central to the private property system.

Raup refers to the empirical expectation of "sowers" to harvest a crop and sell it for covering the expenses of sowing and reaping. Dorner (1964)¹² generalizes this concept by observing that the security of property rights means that landholders with security of possession can expect to receive the economic benefits of their labors from the property they claim. Such a notion includes the longer term expectation that investments in a property's infrastructure will be recovered from improved production, as well as from a future sale where such investments will contribute to higher sales income.

The expectation of recovering investments, then, from securely held land comes a) from a short term belief that investments in production will produce profits captured by the landholder, and b) from a longer term belief that investments will be recovered at least in part from the possible alienation of the asset. This latter expectation also applies to people who may not contemplate the sale of the asset, but are thinking of passing the property to their children and other heirs.

In countries with dynamic land markets, there are large numbers of transactions --sales, leases, mortgages, gifts --every year. For market oriented development strategies, such dynamic markets are crucial to the long-term growth and development of a country. When people frequently engage in market transactions, buyers of rights should make investments in these assets, and the holders of land can expect to profit from investments both from production as well as through land sales (should that option be chosen).¹³

As discussed below, several "tenure security and market constraints" issues are being addressed in the Caribbean.

3.1 Generational (Family) Lands

As discussed above in the St. Lucian case, generational or family lands pose a particularly difficult problem for the dynamic functioning of land markets and particularly for projects which aim at tenure regularization and registration of property rights. Family land has been described as follows: "customary tenure principles applicable to such lands [where] rights are inherited jointly by all the children, the rights are not forfeited by absence, and the family land should not be sold or permanently divided".¹⁴ Registration of these lands under Land Registry systems is difficult because identifying individual ownership is often not possible.

While family land is not easily accommodated into existing land registration systems and is said to reduce the economic benefit from the land resource as well as stifle land markets, it is nonetheless a recognized customary form of land tenure which provides specific benefits to both urban and rural families. One possible answer is to register these lands as some sort of family land trust or as tenants in common. However, in many instances the legal framework

¹² Dorner, Peter, "Land Tenure, Income Distribution and Productivity Interactions." Land Economics No. 40. 1964.

¹³ See Peter Bloch, "Economic Impact of Land Policy in the English Speaking Caribbean", Keynote address to the Workshop on Land Policy, Administration and Management in the English Speaking Caribbean, Port of Spain, 19-21 March, 2003.

¹⁴ Center for Property Studies, Consultant Report for the IDB, 1998.

for establishing family trusts does not exist. Perhaps more difficult than the legal issue is the willingness of the “family”, especially when as extended as they tend to become, to address and clarify this issue.

3.2 *Common Lands*

The evolution of a collapsed plantation system frequently resulted in the claims of community residents to the land formerly held and managed by plantation owners. The Colonial administration responded to such claims in a variety of ways, including supporting the use of force to re-instate the plantation owners, their heirs or purchasers of the freehold. However, in many instances, the de facto situation resulted in the need to provide the community claimants with legally recognized rights to the land. The Commonage Act of 1896 in the Bahamas was meant to provide more beneficial and regulated use of lands identified as commonage, i.e., land granted to more than 20 people and not partitioned. But such a tenure form was not limited to the land left by collapsed plantations. In 1938 the Harbour Island and Spanish Wells Commonages were recognized in the Bahamas, officially granting land to the people who had helped in fighting the Spanish. Other land parcels which from their situation of being held in common by a large number of people might be regarded as commonage, but have not been officially designated.

Such lands are still held in common by the heirs of the original community residents, without written designation of which portion of the commonage parcel is held and used by which of the tenants in common. The commoners, however, have rights to the land which has been in possession of members of their families.

Commonage creates a restraint on the alienability of the land and in effect makes the land ineffective for commerce and development. With commonage none of the owners can sell their rights or use the property as security for a loan, because purchasers and lenders will require evidence of title in the person trying to sell or mortgage, and this title does not exist and cannot be produced. This is true even where the property has been improved¹⁵.

The Barbudan commons have long provided a basis for identity among the members of the island’s single village of Codrington, as well as for swidden cultivation and feral-livestock raising¹⁶.

In Jamaica, the common treaty land of the Leeward Maroons sustains house-yard and provision-ground food forests, cash cropping, livestock raising, and provides forest medicines and timber¹⁷. The Leeward commons, which maroons state were left by Colonel Cudjoe “for the born and unborn”, are also sacred space and a cultural site in the global networks of modern migrant maroons who return to visit and participate in the annual Myal ritual.¹⁸

¹⁵ From Peter Rabley and Tex Turnquist, “Land in the Bahamas”, Workshop in POS, March 2003

¹⁶ See Jean Besson, 1995. “The Creolization of African-American Slave Kinship in Jamaican Free Village and Maroon Communities.” In *Slave Cultures and the Cultures of Slavery*, edited by Stephan Palmie, 187-209. Knoxville: University of Tennessee Press.

¹⁷ Jean Besson. 1997. “Caribbean Common Tenures and Capitalism: The Accompong Maroons of Jamaica.” In *Common Land in the Caribbean and Mesoamerica*, edited by Bill Maurer, Special Issue, *Plantation Society in the Americas* IV, no. 2 & 3: 201-232.

¹⁸ Jean Besson. 2001. “Empowering and Engendering Hidden Histories in Caribbean Peasant Communities.” In *History and Histories in the Caribbean*, edited by Thomas Bremer and Ulrich Fleischmann, 69-113. Madrid: Iberoamericana; Frankfurt am Main: Vervuert.

In the Leeward Island of Nevis, where share-cropped estates were bought for government land settlements through rental, the peasantry has transformed the officially imposed solution of land settlement into an unofficial system combining the principles of common land and family land – despite the virtual absence of either long leases or legal freehold¹⁹. As Momsen notes, many farmers “could trace their family’s presence on a particular estate back through the period of sharecropping to slave days”, and “even without land ownership settlers have often attempted to ensure that their heirs, resident or absentee, [were] allowed to take over occupancy of the settlement plot”. The Nevisian peasantry therefore “recreated its traditional attitudes to land within the formal structure of the land settlement” (ibid: 65). Some migrants were also retaining their settlement land. The symbolic role of such settlement land (in providing a basis for kinship, community, security, and autonomy) and its frequent use as a form of common land for grazing livestock, parallels the role of unofficial tenures rooted in the proto-peasant past elsewhere in the English-speaking Caribbean²⁰ (Besson 1995d).

3.3 Informal occupation of private and public land (squatting)

Where land is restricted either by physical limitations, by control from the government or by a limited number of owners, scarcity and inaccessibility lead people to move onto both private and public lands. In many cases the occurrence of informal occupation is more severe on public land as there is a general absence of vigilance and limited political will to reverse invasions. While such “squatting” may satisfy an immediate need for the individuals facing economic hardships, it causes insecurity of tenure for both the landowner and the squatter. In turn, this insecurity results in land market inefficiencies, poor government land administration and management, and lack of access by the squatter to the benefits associated with full land-ownership or as a recognized tenant.

While some countries have prepared written policies to identify and describe the squatting issue, few have taken the essential next step to develop operational strategies to both recognize and regularize squatter rights, or to provide resources to outright prevent squatting or remove it through relocation or eviction where it may result in negative economic, social or environmental impacts. In many cases it seems a compromise position is warranted, e.g., on private land, through direct monetary compensation to owners for relinquishing their rights, or through freely negotiated land rental or sale agreements between the owner and squatter. In many countries previous efforts to ‘facilitate title’ between landowners and informal tenants remain, albeit relatively unused, in land tenure law. To some degree these sale/rent agreements could also be subsidized by government. However, these ‘market-assisted’ efforts should be carefully analyzed and tailored to adjust to specific tenure and land market circumstances in order to avoid undesired and unexpected economic, social and environmental impacts. On public land, the problem is a bit more straightforward especially if the policy of the government is to regularize tenure. In many cases, if the possessor can

¹⁹ Janet Momsen, Janet. 1987. “Land Settlement as an Imposed Solution.” In *Land and Development in the Caribbean*, edited by Jean Besson and Janet Momsen, pp. 57-66. London: Macmillan.

²⁰ Jean Besson. 1995. “Land, Kinship and Community in the Post-Emancipation Caribbean: A Regional View of the Leewards.” In *Small Islands, Large Questions: Society, Culture and Resistance in the Post-Emancipation Caribbean*, edited by Karen Fog Olwig, 73-99. London: Frank Cass.

show beneficial occupancy over time (which is defined differently in various countries and for different types or uses of land), as well as positive recognition by the community, the land should be delivered to the ‘squatter’ through an official leasehold agreement.

3.4 *Insecurity of Leasehold Tenure*

Analysis of the Guyanese case -- which focuses on the problems of leasing of state owned agricultural land --, suggests it is also applicable to conditions in Jamaica, Belize, Trinidad and Tobago and other countries with significant state land leasing combined with ineffective land administration and management institutions:

Both leasehold and freehold tenure arrangements are rendered insecure by the failings of the respective registers and by a history of administrative delays in issuing leases. Informal arrangements and violations of lease terms are common place and leave many in a legally precarious position. All land users who do not possess a valid title experience the risk and uncertainty of not having secured land rights to some degree. Those who are most vulnerable are the groups with weakest tenure rights or with constraints to accessing the formal land administration system. Some farmers operate under provisional leases with annual renewals. Others have failed to convert a lease into their own name upon the death of the leaseholder. Other farmers never obtain leases despite years of occupation.²¹

Without a valid lease, or with a lease inherited from a long dead relative, farmers may not be inclined to make investments in the land’s sustainable productivity using their own labor and capital resources, and cannot gain access to credit for investments from credit institutions. Moreover, such land holders are vulnerable to eviction.

3.5 *Evidence*

The quantitative evidence for a causal link between tenure security and investments in land assets is not very plentiful in the Caribbean, but some studies have been done²²:

- In Trinidad and Tobago, agricultural land tenure regularization was predicted in 1993 to generate benefits in terms of improved land use (tree crops), increased access to credit,²³ and additional investment (semipermanent structures such as animal pens) that greatly exceeded the costs. Calculations suggest that the internal rate of return would have been on the order of 30 per cent.²⁴

²¹ Andrew Bishop, “Land Administration and Management: Guyana Country Paper”, prepared for the Workshop on Land Policy, Administration and Management in the English Speaking Caribbean”, Port of Spain, 19-20 March, 2003, p. 12

²² From Bloch, 2003, op.cit.

²³ . but see footnote 12, above, for contrary evidence from the same publication.

²⁴ . Williams, N. And D. Stanfield, “Economic and Least Cost Analysis of the Viability of the LRDP.” in J.D. Stanfield and N. Singer (eds). *Land Tenure and the Management of Land Resources in Trinidad and Tobago*, Part 1. Land Tenure Center Research Paper 116, 1993. The cited article presents undiscounted estimates of

- In a later study in Trinidad and Tobago²⁵, Rajack looked specifically at tenure security and its impacts in urban settings. The study reached several conclusions. Firstly, legal documentation of property rights is not necessary for the enjoyment of perception-based tenure security, since perception derives from other factors. Secondly, both perception-based tenure security and regularization (identification of holdings and infrastructure improvement) are positively associated with dwelling improvement and maintenance. However, because so many other factors affect improvement/ repair behavior, regularized settlers do not necessarily improve or repair their dwellings to a greater extent than unregularized settlers.
- A study in Saint Lucia suggests that while there was no evidence that improved tenure security created by the Land Registration and Titling Project increased access to mortgage finance, there was good evidence that non-family land parcels were more likely to be used as collateral. In addition, owner-cultivated parcels tended to be more intensively used than either rented parcels or family land parcels, although the differences were not especially great.²⁶

3.6 Actions: Country Cases

A common response to the above identified constraints to land markets, tenure security, and investments are land titling and registration programs. A central objective of such programs is that they will improve the security of tenure of the landholders as well as raise their expectations of recovering investments in the future either through economic use of the land or through the future sale of the land to recover investments, or both. These programs are supposed to achieve this goal by more clearly delineating property rights (including ownership and leasehold rights), where there is some reason to doubt who holds the rights of use and alienation of land. This action is commonly referred to as “titling” or “adjudication of rights” and the registration of these clarified rights in the real property register. Programs of tenure security also may aim to provide a state administrative apparatus -- the real property register (in some countries combined with some sort of “cadaster”) -- to guarantee and support private property claims. Through increased tenure security, the holders of land will have greater basis for expecting future gain from present investments, thereby stimulating them to make those investments and thereby contribute to the economic development of the country.

In most countries, titling and registration programs are insufficient to deal with tenure issues, and so efforts are made to remove the institutional, legal and cultural origins of the tenure constraints. Institutional “re-engineering” is often attempted, as expressed in the consolidation and unification of administrative functions into single agencies and in the development of the geographic information infrastructure.

benefits and a lump sum of the costs. Subsequent analysis extended the return period to twenty years and prorated the total project costs over the nine years of LRDP implementation.

²⁵ Rajack, Robin, “Squatter Regularisation, Perception-Based Tenurial Security And Dwelling Improvements - Evidence From Trinidad”, Port of Spain, December, 1999. This paper is based on Rajack, R.M. (1997). *Tenurial Security, Property Freedoms, Dwelling Improvements and Squatter Regularisation - A Case Study of Trinidad*. Unpublished Ph.D. thesis, University of Cambridge, England, 1997.

²⁶ Lemel, H. “Land-use Intensity and Investment: Evidence from the LRTP Baseline Survey.” Chapter 3.2 of Land Tenure Center, *Land Registration, Tenure Security, and Agricultural Development in St. Lucia: A Research Report*. Vol. 1. 1988.

The following cases were presented at the Workshop and illustrate the issues identified and the actions which are being undertaken to resolve them.

Guyana²⁷

The Guyana case identified the following main problems encountered with land markets:

- 1) holders of leases and freeholds without documentation. Overall, approximately one third of all land does not have any lease or title. The proportion of public land that is unregularized is much higher than that of private land and stands at an estimated 47 per cent.
- 2) lease terms insufficient to enable leaseholders to get access to credit;
- 3) inadequate information by the holders of land about markets; and
- 4) the domination of the informal market transactions resulting in ever greater frequency of holdings without legal documentation of rights.

The Land Tenure Regularization project was implemented to improve the documentation of rights, to introduce the 50 year lease, to convert some leases into freehold tenures, and to reduce transaction costs, thereby encouraging people to maintain their tenure documents in formal, legal forms.

A major institutional reform was the creation in 2001 of the Guyana Lands and Surveys Commission. This semi-autonomous agency unites the registration of rights with descriptions of properties and has wide powers for the regularization of tenure, the management of state lands for the regularization and management of leases of those lands, the development of land policy, and the planning of land use.

Jamaica²⁸

It was estimated that approximately 45% of parcels of approximately 1 million land parcels are not on the Register Book of Titles in Jamaica.. This situation has resulted in difficulties in identifying and examining documentation as to ownership, and great gaps in the Register. In the absence of a comprehensive cadastral map and with outdated records, the Office of Titles is confronted with the serious issue of dual registration and keeping abreast of various types of fraud.

Major land market issues are:

Family Lands

The tenure situation becomes more complex as each generation dies without making arrangements for the transfer of property and the number of beneficiaries multiplies. This increase in the number of beneficiaries results in what is known as “Family Lands”. What this term means is that there are several persons, some living abroad, who are entitled to make a legal claim to the land. In some instances the numbers are so great that no identifiable group can be deemed to be the owner. Such situations result in unsupervised fragmentation of lands as individuals claim “house spots” and farming lots often with the approval of the

²⁷ The Guyana case was prepared by Andrew Bishop, 2003, op. cit.

²⁸ Jacqueline daCosta, 2003, op.cit.

matriarch or patriarch who is seen as the person “in charge” of the property. The advent of the National Housing Trust has resulted in contributors attempting to secure documentation for these and other properties in order to access the cheapest source of housing financing available in the island. Many persons’ efforts are thwarted, as in several instances the documentation related to the properties are with relatives overseas. Some of these relatives wield economic power gained by supporting aged relatives and paying various funeral expenses. They are reluctant to part with documents as they see themselves as the fee simple owners and are unwilling to have any activity carried out on the land without their blessings.

Updating Of Tax Roll

The fact that in many instances individuals’ claims to properties are tenuous has affected the revenue departments’ abilities to collect property taxes. Fifty percent of persons interviewed who are in possession of land were not on the Tax Roll. Many of these persons express the view that without their names being on the Tax Roll they feel no obligation to pay. Such views may find greater support in light of the recent increases in property taxes. Persons with insecure tenure also feel that it is risky to undertake long-term development of lands and consequently many erect houses and plant crops that are not of a long-term nature.

High costs of bringing land onto the Registry

The minimum costs related to surveying a parcel of land is US\$300/J\$15,000, Transfer Tax on Death amounts to 15% of improved value, while *inter vivos* transfers attract Stamp Duties and Transfer Taxes of 13%. The minimum total cost associated with bringing the smallest parcel of land under The Registration of Titles Act (where there is no complexity) is approximately US\$900/J\$45,000.00. The related costs multiply when such activities relate to an estate where subdivision is necessary.

Squatting

Many persons are seeking to occupy properties near towns and cities. Because of unaffordability/unavailability issues, the problem of squatting has become monumental and chronic. Some areas which were reserved as open spaces and others which are environmentally fragile are now being illegally utilized by persons hard pressed to find places to live. Many of these people lack the income to afford formal housing solutions. In many instances these persons occupy plots that are either not viable for development, or are contending with legal owners for possession.

Several activities have been undertaken to address these issues:

The National Land Policy

The National Land Policy of Jamaica was tabled in Parliament in July 1996. The objectives of the policy are to ensure the sustainable productive and equitable development, conservation, use and management of the country’s natural and man-made resources and promote comprehensive and integrated development in urban and rural areas. The Policy aims to relate and coordinate socio-economic development plans and programmes (including poverty eradication) while challenging and seeking to remove

inefficient, onerous and outdated legal, administrative, management and other barriers. The Policy specifies the development and implementation of a rational set of strategies, programmes, and projects to facilitate stable and sustainable development.

The National Land Policy was a product of love and labour done free of charge over a period of several years, involving several hundred Jamaicans for the well-being of Jamaicans. Inputs were made by the public and private sector organizations and individuals as well as professionals, NGOs community, educational, religious, and special interest groups. It was the subject of discussion in many parts of the island through public forums. The draft policy was also commented on by members of bilateral and multilateral financial institutions and knowledgeable experts from across the world

Geographic Data Management

Substantial investments are being made in the development and growth of geographic data management, with the following program objectives:

- To create a National Spatial Data infrastructure to facilitate the effective and efficient management of land resources and to ensure informed and correct decision making on land related matters;
- To create national standards for geographic data collection, storage and exchange.
- To establish a National Spatial Data Management Centre;
- To develop human resources to manage and operate the National GIS centre and other GIS facilities;
- To create digital geographic information databases;
- To develop user mechanisms and tools to facilitate access to land and geospatial information.

Pilot Tenure Regularization Project

In 2001, the Government signed an agreement with the IDB to undertake a Land Administration and Management Programme. The major portion of the loan is to undertake a pilot program to prepare a cadastral map for 30,000 parcels of land in the parish of St. Catherine and to undertake tenure clarification and regularization of these parcels.

The National Land Agency

The National Land Agency is an executive agency created from the combination of the former Office of Titles, Survey Department, Land Valuation and Estates Department. Among the Agency's objectives is an efficient approach to streamlining the administration and management of land, in particular government owned lands. The Agency is undertaking programs to:

- establish an efficient and transparent land divestment and land titling system;
- create modern cadastral and other maps for Jamaica;
- develop modern information systems to support the sustainable development of Jamaica's resources.

The merger has enabled the Government to provide more efficient services such as:

- Business process improvements to reduce the time it takes to secure a title;
- Computerization of data and on-line access to clients, such as lawyers investors, real estate dealers and developers;
- Single window access to all the services provided by the Agency and
- The establishment of an Internet based service to enable all government agencies, local government, and private sector organizations, access land information.

The National Environment and Planning Agency

The National Environment and Planning Agency was created through the merger of the former Town Planning Department the Land Development and Utilization Commission and the Natural Resources Conservation Authority.

The establishment of this Executive Agency sought to ensure the protection and efficient use of limited human and physical resources; a more integrated approach including public participation to planning for sustainable development; resolution of overlaps in formulation and enforcement of environmental and planning policies and legislation to ensure effective overall management of land. This more effective institutional framework is designed to help resolve conflicts between environmental and development interests when considering appropriateness of development proposals. One objective is to significantly reduce the time period to review and process applications for environmental, subdivision and development approval.

The core functions of the National Environment and Planning Agency are:

- Policy and programme development;
- Sustainable Development planning;
- Environmental and natural resource database maintenance and mapping;
- Monitoring Compliance and enforcement;
- Habitat Protection, Biodiversity Conservation, Parks and Protected Areas;
- Coastal Zone, Watershed and Pollution Management Operations;
- Application approvals;
- Environmental education and public information services.

Various Ministries and Departments of Government are examining a number of recommendations as listed below, to resolve the issues highlighted.

- The enacting of legislation simplifying the land registration and land transfer processes while reducing the related cost.
- The enacting of new legislations to deal with family lands and the fragmentation of land.
- An organized and sustained land allocation process.
- Continued development of rural communities and road networks to reduce the strain on urban housing.
- A documented process as to the use and development of idle lands.
- A comprehensive educational program with respect to issues related to land.

Bahamas²⁹

Current land management in the Bahamas gets its underpinnings - both in terms of legislation and process, from 1920's English Law. Land is optionally recorded at the Registrar General's office in a deeds registry and there is no Title Registry. Surveys of properties are not required (apart from Crown Grants), the Real Property Division records are incomplete, and the Physical Planning Department struggles to provide planning.

Land tenure is dominated by the issues of commonage and generational lands which are further complicated by the existence of parallel title where multiple owners have strong legal claim to the same property. The use of the Quieting Titles Act, which was introduced to resolve title disputes, has created an environment where misuse of the Act is prevalent. It is estimated that twenty five percent (25%) of all land is in dispute and the main reason is the lack of clear documentation.

The administration of important records needed for clear and secure documentation of property ownership is separated among multiple agencies including the Ministry of Agriculture, the Ministry of Public Works, the Registrar General, the Department of Lands and Surveys, the Department of Physical Planning, the Real Property Tax Department, and the Treasury Department. Data are largely paper based and records are incomplete and weakly managed in most cases. Attempts have been made at each of the agencies to better organize existing records as well as improve day forward processes such as the issuance of new Crown Grants, but serious gaps exist complicating further transactions. The recording of all information related to land is not mandatory, nor is it based on a common property identifier, and as a result it is very difficult to link the multiple record sets that describe the same real property unit.

In all cases each of the departments charged with land administration have the same core functional problems, these are:

- Outdated manual processes that reflect methods and requirements from pre independence days;
- Outdated legislation that has not kept up to date with modern methods of land administration;
- Inefficient collection of fees that do not reflect current cost of processing nor the value of the transaction;
- Fees that are generated for land transactions are assigned to the general fund and not the individual departments;
- Many of the land recording processes are optional and not mandatory;
- Financial disincentives to record land, i.e. high transfer taxes;
- Lack of coordination and integration among the different agencies managing land resulting in a lack of information available for each department to complete its task effectively;
- Lack of funding for staffing, training, core data set development and maintenance, and equipment modernization.

Over time this situation of incomplete, sometimes erroneous and “stovepiped” storage of land information has created an environment where serious inefficiencies have been introduced and where the real property market is operating at a fraction of its potential. As a result government is under-served by the information it collects; it is not able to provide an

²⁹ See Rabley, Peter and Tex Turnquist, 2003.

adequate recording of land interests and information related to land, and therefore is not able to effectively plan for future growth and development.

Realizing the increased threat and pressure from unguided development and growth and the government's inability to effectively steward land, resources, the Government of the Bahamas embarked in 1998 on a National GIS Project (BNGIS). This project was administered by the Inter American Development Bank and funded through Japanese Grant and brought together more than 13 government agencies to work collectively on the project to try and illustrate through two pilot studies(one an urban information system and the other an environmental study) how integrated land management using GIS and spatial data could benefit the Bahamas. The Government realized the BNGIS project would be the first step toward modernizing land administration in the Bahamas.

The BNGIS project is considered one of the most comprehensive of its kind in the hemisphere as it included the following core components:

- Comprehensive review of land in the Bahamas;
- Provision of hardware and software required to establish a full center as well as a training facility;
- Training for more than 100 government officials in a variety of land and GIS related issues;
- Draft National Spatial Data Infrastructure (NSDI) document;
- Numerous technical documents on modernizing different departments and improving workflow;
- Detailed development of two pilot studies – one urban (Pinewood Gardens in New Providence) the other environmental (San Salvador).

While the project itself was successful, its work has not been carried forward nor sustained since its completion in February of 2001. Much of the reason for this can be attributed to the same core factors that have created the current land administration environment, namely, a lack of government priority and resources given for training, data collection, and modernization of the land administration institutions and their processes.

In order to realize effective land administration, the current administration needs to address the following:

- Reform and modernize into a rational, single, integrated structure the departments currently dealing with land³⁰,
- Modernize legislation related to land;
- Move from a deeds named based registry to a title registry;
- Reform land use policy and develop a comprehensive national land use plan and policy;
- Provide for equitable Property Taxation and Accurate Valuation;
- Create a National Spatial Data Infrastructure and multipurpose cadastre that will underpin the title registry, land use, and property taxation.

The results of these activities will lay the foundation for economic planning in that the relationship of land parcels, the use to which the land is put, and the proprietary interests residing in that land provide a means of achieving a sound fiscal base to meet social and community needs. Furthermore, they will establish an effective decision-making framework

³⁰ Except for Planning, Permitting and Sub Division Control

in relation to decisions that concern the natural environment and the impact of development on that environment.

Barbados³¹

The *Tenancies Freehold Purchase Act* of 1980 had a radical and irreversible effect on landholding in Barbados. From a situation with 30 elite families owned 80% of the island around the turn of the 20th century and with the ex-slaves landless and dispossessed, the end of the century saw 75% of dwellings being owner-occupied. Official Census figures show that at the end of 2000, 56% of people acknowledged being owners of their land. It is possible that another 22% were indeed owners of their land but they did not respond to the census takers when interviewed. In any case, it is clear that by 2000 at least 56% of lands were owned privately.

Another result of this dramatic reduction of both the chattel house and the early uncertainty of land tenure is that many former tenants have been able to upgrade from impermanent chattel houses and outdoor or pit latrines to elaborate concrete structures with indoor plumbing facilities.

A remarkable transformation has taken place, particularly during the last twenty years. Sugar has lost its crown, and has been supplanted by a bustling tourist industry. Barbadians by and large have erected large, very comfortable and numerous dwelling houses where sugar and agricultural crops once stood; the number of golf courses has expanded; the social services infrastructure and road network have improved beyond recognition and Barbados has become a regional hub for trade and international financial services.

Despite the country's achievements, have with the question of the shortage of affordable land has still not dealt in a thorough way. In an interesting twist of irony, the virtual near-extinction of the traditional tenancy on sugar estates has seen the rapid rise of the new Barbados tenant, who acquires land from a landlord who himself was landless a generation before. Large numbers of these domestic tenancies have arisen in circumstances where rents are uncontrolled. Of 83,026 occupied dwelling units, 18,286 (just over 21%) were leased in the year 2000, whether formally or informally. Since there is a perceived scarcity of lands available for development, new ways must be found of guaranteeing reasonable security of tenure for the new Barbados tenant while still allowing the new landlord to realize the benefits of his investment.

One option which has a long history in Barbados is rent control, although landlords are generally opposed to this program, and its effectiveness is limited. Landowners responded to early efforts at rent control by shifting away from investing in housing development towards other types of development. The number of rental units as dwelling houses also declined sharply. Faced with a statutory cap on rents, landlords allowed their premises to deteriorate. The relationship between the passage of the new legislation and the drop in such economic activity was obvious, and not surprisingly, the level of activity rose once Government granted tax incentives to encourage the building of more rental units and the repair of existing ones.

³¹ See Timothy O. Maynard, "Land Reform and the Search for Security of Tenure: The Barbados Experience", Workshop paper, 2003.

Another option was the approval of legislation which prohibited landlords in certain situations from ejecting tenants except for specified infractions. The law thus created a type of statutory tenancy. With the widespread number of new tenancies emerging in Barbados today, the issue here, too, would be the extent of the public interest in legislating island wide statutory tenancies. This issue will also raise the further question of the constitutionality of such legislation, particularly the right not to be deprived of property without compensation as enshrined in Section 16 of the Barbados Constitution.

Another option is to encourage market transactions, by making them cheaper and more secure. Same para Thus in 1988, n 1988, the Land Registration Act and the Land (Adjudication of Rights and Interests) Act came into force and with them a new system of dealing with land in Barbados. The object of these two symbiotic pieces of legislation was to cheapen, simplify and expedite dealings with rights and interests in land in Barbados in a new global economy.

It was well accepted at the time that the old process of unregistered conveyancing was cumbersome, expensive, and time-consuming in facilitating transfers of rights and interests in land. The old law imposed a high degree of care and skill on a purchaser who was expected to make full and detailed investigations of his vendor's title to be satisfied that he was getting a satisfactory title. These inquiries had to be repeated time and again on every transfer, often at short intervals. Needless to say, this process wasted effort, time and money. So, for example, a purchaser may have to make minute examinations into family settlements, joint ownership, and other complex matters with the result that dealings with unregistered interests in land had become an obstacle to the ready marketability of land.

It was in this context that the decision was made to embark on the system of registered conveyancing based on the Australian Torrens model but still incorporating many English features. The complexity of rights and interests in land makes it impossible to transfer registered interests in land as easily as stocks or shares but in essence the principle is the same. The principal aim of the registered system is that a single title, guaranteed by the State, replace the repetitive, unproductive process involved in unregistered conveyancing. Generally there will no longer be the need to conduct long searches that are wasteful of much effort. Instead the official Land Register maintained by the Registrar of Titles provides an authoritative statement of the title as it stands at any given time.

Transactions involving registered land should normally take place in a fraction of the time when compared with the traditional process. They also relate to savings in costs. For example, legal fees payable in Barbados on a transfer of registered land are one-third cheaper than before. In mortgages, the fees are two-thirds less. There have also been noticeable differences in the time it takes to complete transactions in the new system when compared with the older version.

To date, approximately 10,000 out of an unofficially estimated 120,000 titles have been registered.

St Lucia³²

One of the earlier attempts at identifying and correcting land tenure issues constraining land markets occurred in St Lucia. This case illustrates some of the issues also encountered in other countries of the region, specifically, the dual structure of agriculture -- plantations and small scale farms, and family land, particularly in the small farm sector. The case also illustrates the importance of organized consultations with the general population about land tenure issues, as well as the subsequent derivation of a project, successfully implemented, to deal with the issues identified in the consultative process.

Consultations

The Government of St. Lucia formed a Land Reform Commission in 1979 following a series of studies which had identified the land tenure structure of the country as a primary constraint on the development of a more productive and equitable agricultural system. The studies reported by Laville, Momsen, Mathurin, and Maliczek³³ in the 1960s and 1970s pointed to the dual problem of a plantation dominated agriculture in a few estates and the relatively large number of small farmers -- many relegated to poorer quality land and forced into an overuse of fragile lands.

The second feature identified as a land tenure problem in St. Lucia was the prevalence, particularly in the small farm sector, of the undivided family holdings, wherein a number of heirs held shares in the land but without there being a physical partition of the property or a clear identification of individual owners of the land. This form of holding, known as family land, has been limited largely to the small farm sector, and added to the problems farmers had to deal. The management of these holdings was difficult in that the farmers trying to cultivate the land were often unsure of when or how their co-owners might intervene in the production process and particularly in the harvest of crops on family lands. Investment decisions were held to be inhibited as were the daily management decisions of the cultivating owners.

Another difficulty of the family land tenure form was the problem of dealing in the land. Since the cultivator of the land was simply the member of a larger group with ownership claims to the land, it was difficult for the cultivator of the land to pledge it as security for loans or to sell or otherwise alienate the family land parcels.

Nonetheless, the family land form of holding exhibited certain positive features. This type of holding often benefited the family members who decided to continue cultivating the land

³² See Vargas, Alberto and David Stanfield, 2003.

³³ Laville, Ben. 1978. "Report on land use and credit facilities in St. Lucia as applied to the small farmer". In *Legal and Sociological Survey of Land Use and Tenure*. University of the West Indies, December. Mathurin, D.C. Emerson. 1967. "An unfavorable system of land tenure: The case of St. Lucia". In *Proceedings of the Second West Indian Agricultural Economics Conference*. Trinidad: University of the West Indies. Meliczek, Hans. 1975. "Land tenure: St. Lucia, project findings and recommendations". Rome: UNDP/FAO. Momsen, Janet D. 1972. "Land tenure as a barrier to agricultural innovation: The case of St. Lucia". In *Proceedings of the Second West Indian Agricultural Economics Conference*. Trinidad: University of the West Indies.

because if the land had been partitioned among all heirs, the fragmentation would have been severe and the amount of land available to the cultivating family member would have been substantially less. In many cases, the number of heirs exceed 10 and often 20 individuals, so that if each had been granted a physical portion of the land, the area usable by each would have been very small and the difficulty of consolidation of individually owned parcels compounded. Beyond this, the family nature of the interests in land also gave the land certain affective features for some family members, particularly those who had left the land but wanted the security of knowing that they could return in emergencies or upon retirement.

The Land Reform Commission took testimony throughout the island concerning these issues, and identified a third problem with the land, namely, the archaic and costly system of deeds registration. That system had evolved over the years and represented a significant cost which was particularly onerous for the smaller property owners and renters who desired to protect their interests in land through recourse to the formal property system based in law and enforced through the courts. The system of deeds registration in St. Lucia had resulted in a relatively inefficient system of defining and protecting rights to land. The records that were registered were incomplete in that many deeds were vague as to the location of the land and as to exactly who held what rights to that land. There was little assurance that the deeds and mortgages that were registered were consistent with previously registered transactions relating to a specific parcel of land. Finally, the canceling of obsolete transactions and the weeding out of documents that had been superseded by subsequent transactions was very difficult, and this caused the Deeds Registry to become unnecessarily congested and practically unmanageable.

Project Definition

The discussions concerning what to do about these problems of land tenure in St. Lucia became focused, through the hearings of the Land Reform Commission, on the suggestion made a number of times previously (especially in the 1975 FAO sponsored study by Maliczek) for carrying out a land registration program. Such a program was conceived to accomplish a number of objectives, namely: (1) the provision of the basic information which the government might need to locate and evaluate the performance of the large plantations; (2) the improvement of security of land ownership and the regularization of confused, vague, or ambiguous rights in land through a systematic adjudication of claims in land; and (3) the introduction of a land parcel based system of registration of rights in land to establish a cheaper and more accurate mechanism for dealing in land and protecting the appropriate rights in land.

4. EQUITY

Improve access to resources by disadvantaged groups

A second policy imperative is to address issues of access to land by marginalized or disadvantaged groups (the poor, women in some regions, ethnic groups). The goal of greater social equity recognizes the crucial role played by improving the equitable access to land in efforts to improve economic and social status through land reforms, programs of affordable housing, special credit for such asset acquisition and other such programs. Such programs aim at improving the effective ownership of land by the disadvantaged and thereby improve

levels of living and the capacities of these sectors to participate more fully in the economy and in political processes.

4.1 Access Through Market Transactions, State Programs, and Informal Occupations

Land markets are an access mechanism. People can get access to land buy buying or leasing. Market transactions in land have a long history stretching back to the colonial period, including periods when the landowning elite's attempted to restrict market transactions to their class. Emergence from slavery occurred by emancipation as well as through small scale land purchases (see Besson, 2003³⁴).

Undoubtedly people get access to land via market transactions. Yet there are many in Caribbean society that do not – and can not – acquire land through the formal markets. Partly in response to this situation and partly due to the State's acquisition of plantation land following independence, a common form of land access is through leasing of land from the state. Such leasing is not restricted to programs providing land access only to the disadvantaged, but also to companies and individuals who want access to large areas of land. The reasons for policies which prefer leasing of state land to private users rather than sale are well rooted historically in Guyana, Jamaica, Suriname, Belize and many of the smaller jurisdictions.

Access to land via market transactions or through leasing has not always worked well. In many countries the costs of transactions -- private market ones as well as state leases -- are often high in money terms and in time needed, let alone the political influence that is often required for leasing/renting/concessions.

Facing such constraints, people acquire land informally. Unregistered sales of privately owned land, unrecorded transfers of leases to state land, and the informal settlement of land ("squatting") are the symptoms of land administration systems not working (usually Registries/Cadasters) and of land management systems for the leasing of state land being opaque and costly. The possession of land becomes muddled, complicated, non-transparent, individualized -- and in turn corrupted. People who cannot access land through formal market channels nor through the acquisition of state land, often opt for informal acquisition or go without land. The question here is how does a country – and in turn an individual as part of that country – develop themselves economically and socially, and especially under market oriented policies, if the system is not accessible to them and they remain informal or landless?

In general the countries of the English-speaking Caribbean share a legacy of land ownership and use embedded in plantation agriculture. This history has typically resulted in a cumbersome and costly legal framework for land policy and the current land administration system. Despite recent tinkering in some jurisdictions, this general legal framework (as well as the land administration and management system developed to implement it remain geared more toward infrequent land transactions) limited access to land by the disadvantaged

³⁴ Besson, Jean. "HISTORY, CULTURE AND LAND IN THE ENGLISH-SPEAKING CARIBBEAN", Keynote address to the Workshop on Land Policy, Administration and Management in the English Speaking Caribbean, Port of Spain, 19-21 March, 2003.

sectors, and is characterized today by the continued control of real property ownership and land use by the State and by those with means to access land and the access to capital which permit the acquisition of land. This skewed structure of power to access land has resulted neither in the allocation of land resources to the highest and best use nor to full and equitable societal access to land or to the institutions of land administration. As a consequence, legal, institutional, and financial barriers remain to the achievement of economic, environmental and societal goals. Informal occupation of land becomes the only way for many in society to protect their own survival.

“The formal mechanisms for the exchange or lease of land are widely perceived as being too costly, unfair or lengthy as to be either practical or affordable. Whilst the sale of freehold land is legal but is expensive and slow. Sub-division is possible only on freehold land, but again this is expensive and slow and it is not permitted to change the use of leasehold land.

This general inflexibility of the formal procedures for the sale, rental and sub-division of land has reduced access to land for members of the public through the main formal mechanisms. The informal market has responded to this by providing ways of accessing land more quickly and cheaply at the expense of security.”³⁵

4.2 Access to Land Often Limited by Market Transactions

The very dynamism of land markets may create access problems. Attractiveness for tourism and recreational land uses produces great interest, particularly among foreign investors, to buy land in several Caribbean countries. These countries’ main feature is their limited land base, particularly land along the beaches. The acquisition of land for tourism and recreation almost always produces the erection of fences and walls along the boundaries of the properties, and the exclusion of people who may have traditionally used the beaches for public recreation and/or for fishing.

4.3 Cases

Country experiences at improving access to land in the Caribbean are instructive. We present here four cases: Belize, Suriname, Trinidad and Tobago, and Barbados.

Belize³⁶

Throughout the 19th and the first half of the 20th Centuries, the Belize State transitioned from playing a passive role as formulator of land policy to one of instigator of change in land policy. Government efforts stressed the encouragement of foreign investors by offering land at low prices. At the same time, little attention was paid to the local citizens of the country who remained landless and could only gain access to a piece of land through the *rentier* system (in the North, or through squatting in the Central Areas and land reserves in the South). Over 75% of the productive land still remained in the hands of a few rich private owners who by and large controlled the executive and the legislative councils of the Crown

³⁵ See Andrew Bishop, Workshop Paper from Guyana, p.15

³⁶ See Joseph Iyo, Workshop Paper from Belize

Colony. Suffice to note that the uneven distribution of private land ownership has continued to impact on the private land market activity to-date. Some scholars have described the situation in the north as similar to the *Hacienda* or *Latifundia* system.ⁱ In 1971, the skewed nature of land distribution was evident by the fact that 3% of the largest landowners nationwide held 95% of land compared to 91% of the smaller landowners who held 1% of land. This formed the rationale for a major effort at redistribution in the 1970s and onwards, mainly through the application of the Land Acquisition (Public Purposes) Act (LAPPA) as a facilitating instrument.ⁱⁱ

Starting with the Land Reform Programme of the 1968-1977 period and further marked by the entitlement to “a piece of land for every citizen,” through to the current commitments to access, each successive government made the issue of land redistribution the stated cornerstone of their development strategy. So far, however, the extent to which these commitments were addressed has been sporadic and mostly demand-driven, and governments have not been able to effectively translate the pre-election pledges into a cohesive policy framework, even while responding to the pressure to deliver.

Many of the attempts at improving equity have been through the redistribution of land acquired for public purpose from individual owners of large estates and subdivided for sale or lease to multiple landholders. There have also been equity concerns raised with respect to gender. In this regard, the most significant advance has been the recent amendment to the laws, at instance of the Ministry of Human Development, so that women who have been involved in common-law unions for a continuous period of at least five years have rights to claim on property of their common-law spouses. The efficacy of this amendment on land distribution will depend in the extent of public relations and dissemination effected in the near future.

While the Government of Belize has continued to pursue an aggressive policy of land acquisition of private lands either due to forfeiture or in lieu of taxes, for public use and general distribution, the rise of the secondary land market (which is still evolving) cannot be ignored. A comparison of the prices for land bought from the public sector vis-à-vis lands sold by private sector agents and individuals is the clearest indicator of the demand for land and the distortions in the state’s programs for providing first time buyers or low income groups access to land. An average lot is sold on the private sector (secondary) market for anywhere five (5) to seven (7) times the value of an equivalent sized lot sold by the Government of Belize. The result of this discrepancy is a continued demand for land from the national estate, even in instances where clients are not first time buyers or low-income earners.

At present, dissemination of information using up-to-date records of ownership, use and value of land is yet to be fully developed. The understaffing situation at the Lands and Surveys Department added with a slow process of transfer of technology and expertise posed serious challenges to prior efforts to modernize the system. The initiatives under the Land Management Programme, combined with the concurrent developments in information technology and efforts at institutional strengthening, are expected to lend to the expansion and transformation of the Lands and Surveys Department. When completed, these initiatives

will transform not only the land information system, but more importantly, the whole gamut of land and property access in Belize.

Suriname³⁷

Access to land for the general population has been done traditionally through leasing of State owned land. However, an examination of the land allocation process for providing land to people in the Buursink Diagnosis of Land Management Issues report indicates that the land allocation process is time consuming for the individual applicant. A random selection of 21 request indicates that an average time of 55.5 months elapsed from the moment the request was made until the registration of the property. The Buusink report indicates that the waiting times appear to indicate serious workflow or procedural problems, apparently due to the large backlogs and bottlenecks at almost every step of the process.

The table below gives an indication of the number of applications for domain land and the number of leases that were issued.

Year	Number of Applications	Number of Leases Issued
1999	9,163	3,807
2000	8,855	4,043
2001	5,323	1,332
Total	23,341	9,182

The Buursink report notes further that the table does not show how many applications are rejected, but they suggest that each year the number of pending applications is growing, contributing to the mounting backlog and a noticeable fall in the quantity of leases issued in 2001. The Buursink report lists several reasons for this backlog. Here are some of the main issues listed:

- The search for determining of land is actually domain land and free of any other application or other encumbrances is tedious and involves a manual check of the record books and parcel maps;
- It takes time to secure advice from the District Commissioner, Land Inspection and Ministries other than Natural Resources;
- The Department of Ground Inspection does not have the required staff or transportation to work efficiently;
- No time limits are set for the various steps in the State land application process;
- Absence of approved regional development plans or the localized structure or destination plans needed to efficiently evaluate requests;
- The backlog of pending applications appears to be growing.

³⁷ See Harold Struiken's paper prepared for the Workshop, 2003.

It is clear that the institutions responsible for processing land applications need to be internally strengthened. Options for new institutional structures should be considered and explored, and an effort should be made to eliminate or reduce the applications backlog.

If the Government of Suriname wants to improve the allocation of land and the access to land using dynamic lands market and desires to stimulate economic productivity by enlisting land as a catalyst in this process, more consideration should be given to the re-introduction of freehold title regimes not encumbered by unnecessary administrative restrictions for issuing leasehold tenures inherited from a colonial past.

Trinidad and Tobago³⁸

Historically, there has been limited accessibility of land for the poor. The Colonial policy of systematic denial of access to affordable land by the formerly enslaved established the basis of present day problems of lack of access by the majority of the population, squatting, inappropriate land-use and environmental practices by the poor. These problems thus have a more than 150 year history and were caused by intentional action by the state rather than inadvertent outcomes of policy, market or institutional failure. These problems were furthered by programs of land access for indentured East Indian laborers who received or purchased mostly marginal and barren lands from either the State or the market.

The debates continue about whether East Indians got significant access to land in lieu of passage back to India, and whether Afro-Trinidadians were denied access especially in rural areas. What is clear is that there continues to be tensions between these two groups over the distribution and use of land in Trinidad and Tobago. Politicians have addressed the issue but not in a manner to resolve its negative impacts. These problems are relatively unique to the southern Caribbean countries of Guyana and Trinidad (not Tobago) and require different understandings and solutions than in the rest of the English speaking Caribbean.

One of the issues that has not been well developed in the southern Caribbean is the inter-relationship between ethnicity, land and post independence politics. In an early work, Wood (1968) considered that this was an important relationship and contrasted Guyana with Trinidad. While he noted the presence of the issue in Trinidad he suggested that it was not as critical as in Guyana where the racial and political lines are more clearly drawn. His insight would have however, to be reviewed in light of present day politics in Trinidad and Tobago.

There are two aspects of the relationship that need to be explored further. The first has to do with the underlying fear that the two ethnic groups have of the “other” getting greater access to land resources either via the State or the market. This is because access to land by either group is perceived to restrict access by other. There is some evidence that politicians use this as a mechanism to mobilize their constituencies at election time. Such political activities and ethnic perspectives permeate the rational development and implementation of broad land distribution and welfare programs.

The other aspect of the ethnic issue is that people of different cultural backgrounds approach the ownership, use, and alienation of land in different ways. Besson and Momsen (1987)

³⁸ See paper by Asad Mohammed, 2003.

amongst other authors have studied how Afro-Caribbean people view ownership of land. These values have affected common ownership and stewardship of “family land” traditions that are not in harmony with the single ownership that is normally part of the land market rationalization and land registration processes. East Indian attitudes to land in the Caribbean, though not so well studied, seem to support individual ownership tenure forms.

Both cultural groups appear to support access and use lands differently. It is a useful question to ask whether land registration processes and land use regulations in small societies can be adapted away from European and North American influences to accommodate heterogeneity.

Finally on this issue, there is the possibility that there are deep underlying factors that mitigate against clear, rational policies and programs in land titling, distribution and use. Unless ethnic and cultural issues are brought into the agenda in the southern Caribbean in dealing with land, it may be difficult to understand why apparently technically sound programs run into implementation problems.

Barbados

Coastal lands are now rarely available for sale and where available, they are usually at very high prices. Over the last two decades there has been a tremendous demand for and development of these valuable beachfront lands.

One consequence of such development, particularly unauthorized development, has been the conflict of views among some landowners adjoining the beaches and members of the public. The public claim the right to unhindered access to and use of the beaches while landowners claim the right to delimit the boundaries of “their” property.

Barbados’ declared policy in this matter is that all citizens and visitors alike have or must have access to all beaches including where possible, windows to the sea. Accesses would be provided, where necessary, by compulsory acquisition.

During the plantation era where land ownership was not in question and sugar receipts were the mainstay of the economy, disputes relating to beachfront lands would not have arisen or, certainly, not to any strident degree. Today, however, the rise in a well educated, land owning population, the dominance of a tourism oriented economy, together with the unfettered sale-ability of scarce land, especially coastal lands, have made it imperative for a small jurisdiction like Barbados to tackle head-on the issue of the ownership of beach lands.

One consequence of such development, particularly unauthorized development, has been the conflict of views among some landowners adjoining the beaches and members of the public. The crux of this debate is straightforward. The public claim the right to unhindered access to and use of the beaches while landowners claim the right to delimit the boundaries of “their” property. In some cases, it has been argued that private development has encroached upon ancient easements of way created by prescription, for example, by the illegal erection of signs and structures, blocking of views and accesses.

Barbados’ declared policy in this matter is that all citizens and visitors alike have or must have access to all beaches including where possible, windows to the sea. Access would be provided, where necessary, by compulsory acquisition.

In his Special Report referred to earlier, the Ombudsman quoted with agreement a 1980 report which stated:

“It is vital for the success of future tourist development that members of the Barbadian public should not feel that they are being prevented from enjoying the beauty of their coastline with its fine beaches and excellent sea bathing, by the construction of rows of high-rise hotels and apartment blocks dominating considerable stretches of the coast...”

It bears remarking, however, that even before and particularly since 1980, Barbados' economic health has been boosted by commercial tourism-oriented physical development in relation to the said coastal lands. But should a line be drawn? If so, where? Barbados, a small open economy heavily dependent on foreign exchange, is being forced to make tough choices between public sentiment reflecting Barbadians' strong attachment to their land and the country's ability to survive and compete internationally through giving up ownership of beaches and access to them to the new tourism/recreation landlords.

5. SUSTAINABILITY OF RESOURCE USE

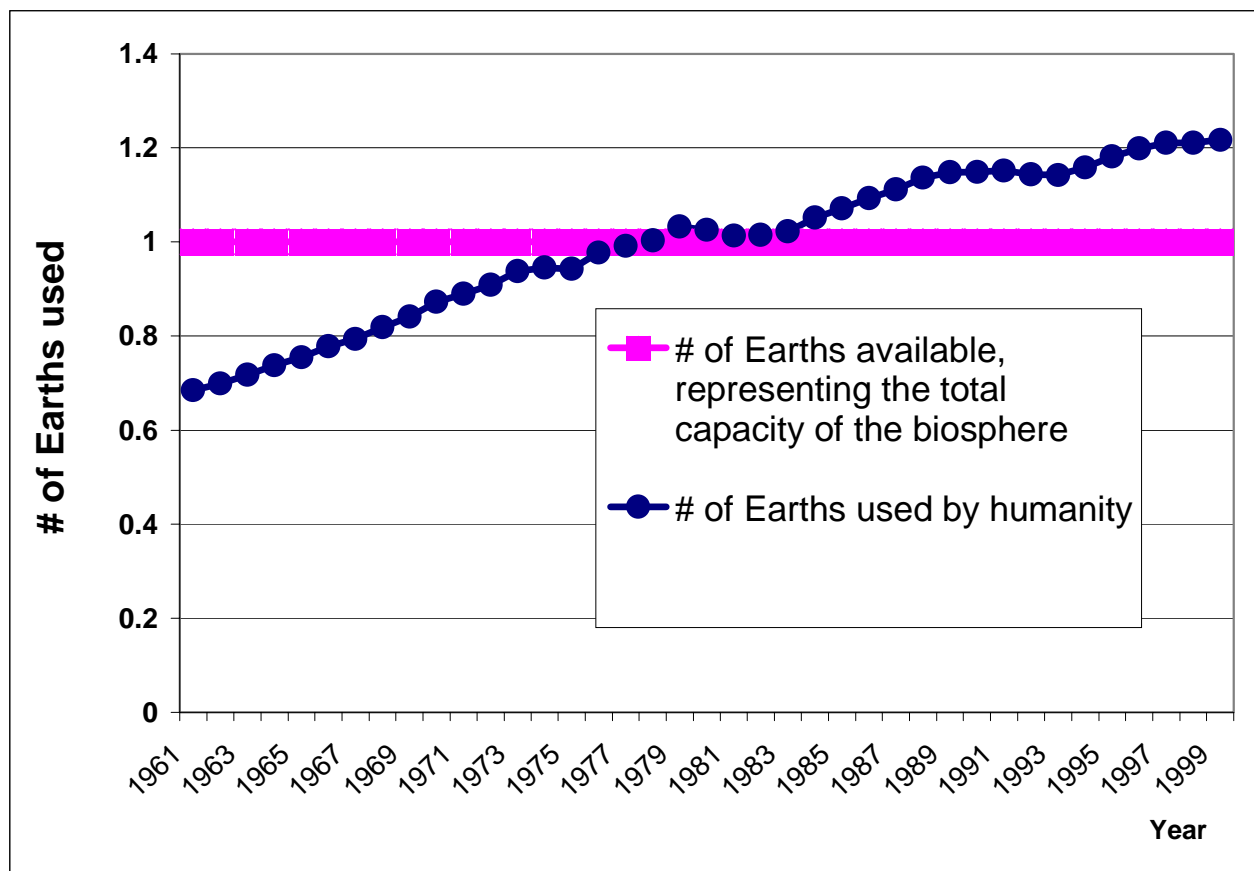
Protection of land and water resources

A third land policy imperative is to protect land and water resources for the use of future generations, by prohibiting certain destructive uses of the land by private and public owners, and by protecting environmentally sensitive areas (wetlands, water sources for settlements, national parks). This policy goal is usually expressed as environmental protection and sustainable use of land resource.

5.1 Global Concerns

The concern over our planet's capacity to maintain the demands of its human inhabitants has given rise to ecological accounting. The following graph shows that since the year 1980, humans have been using more of the planet's resources than can be re-generated, and by the year 1999 the excess is about 20%.

Figure 2: Number of Earths Available and Used Since 1961³⁹



Following this approach, is the measurement of the amount of the world’s biological productivity⁴⁰ a country uses in a given year—its “ecological footprint”. The deficit in 1999 was about 0.4 global hectares for the planet as a whole. Table 1 shows selected footprints on a per capita basis ranging from a deficit of 4.4 global hectares for the USA to a surplus of 5.4 global hectares for Canada. These figures mean that Canada has large amounts of land and water resources in reference to its actual consumption patterns, while the US clearly consumes more than it has, relying on the rest of the world and on the depletion of natural resources for feeding its deficits.

³⁹ Mathias Wackernagel, Chad Monfreda, and Diana Deumling. “Ecological Footprint of Nations”, *Redefining Progress*, Sustainable Issue Brief, Oakland, California, November, 2002. www.RedefiningProgress.org

⁴⁰ “...productive land and water area required to produce resources consumed, and to assimilate the waste generated using prevailing technology.”, Wackernagel, et. al, 2002, p. 2

Table 2: Comparison of Ecological Footprint with Available Resources for Selected Countries

	Deficit or Surplus?	No. of “Earths”
World	Deficit of 0.4 global hectares	1.2
Canada	Positive 5.4 global hectares	4.6
Russia	Positive 0.4 global hectares	2.4
USA	Deficit of 4.4 global hectares	5.1
Trinidad and Tobago	Deficit of 2.5 global hectares	1.7
Jamaica	Deficit of 1.5 global hectares	1.1
Cuba	Deficit of 0.4 global hectares	0.8

Source: Wackernat et.al. 2002

The second column of Table 1 shows what would happen if all of the planet used its resources as does the countries listed. For the planet as a whole, we need 1.2 planets to satisfy our demands in a sustainable way, which means that we are depleting our resources. If all countries used resources as does the USA, we would need 5.1 planets. If everyone used resources as does Trinidad and Tobago, we would need nearly 2 planets to satisfy the demand. Jamaica’s way of using resources is less likely to destroy the planet we live on, only requiring 1.1 planets. Cuba’s resource management produces consumption in excess of its biological capacity, but if expanded to the entire planet, Cuba’s approach would require only .8 planet. For most countries, Mother Nature will have the last word, and that word will likely be “NO!!” unless the squandering of our planets resources in most countries is dramatically reversed.

These ecological accounts are beginning to alert governments, corporations, NGO’s and the general public to the need to find creative ways to live on this planet, with the alternatives being quite stark.

This analysis shows that since approximately the year 1980, humans are using about 21% more of the planet’s resources than can be re-generated.

For the Caribbean the unsustainable use of the planets land, water and air resources may mean that the gradual warming of the planet will raise the sea levels and eliminate much if not all of the productive and inhabited land areas of many countries.

This planetary concern is reflected in the growing debates within countries of the region about ecological issues, if only since the dangers are so obvious in countries with such limited land and water resources.

5.2 Environmental Issues in the Caribbean:

Some cases

At the March, 2003 Workshop, several cases were presented concerning the debates about environmental issues.

St. Kitts

St. Kitts is a small island of just 69 square miles, with a population of 41,000 people. The small land base sets limits on the amount of land that can be allocated for different uses. Traditionally sugar production has dominated the economy, but in recent years tourism related investments have been booming, while sugar production is in decline.

The main environmental constraints include:

Water

- Water used in St. Kitts comes directly from rainwater;
- A high percentage of this rainwater reaches the sea within a short time of falling (due to steep topography);
- About 20% rainfall becomes ground water flow or a ground water recharge of about 30 million gallons per day;
- There are 6 surface supplies and twenty wells in use;
- There is a total storage capacity of 6,687,800 gallons;
- Consumption of water in tourism related development is increasing with little likelihood of increasing the supply of water.

Waste Management

- The amount of waste produced in St. Kitts is increasing, and new methods of disposal are needed to replace old ones. Private dumping and dumps are now illegal, and hog feeding is no longer a practical solution to waste management.
- Sanitary land fills are designed to reduce environmental pollution (especially ground water pollution), but such when land fills are full the cost of maintenance is significant and they may threaten ground water if not properly constructed and maintained.

Tourism Related Issues

Tourism generates a significant amount of income for the St. Kitts/Nevis economy. The average annual tourism expenditure during the 5-year period (1995-1999) amounted to EC\$188 million. 77% of this expenditure was generated through Hotel and Guest Houses. This clearly establishes the relationship between establishment of these units and the growth of the tourism sector.

The policy to encourage the growth in tourism infrastructure involves the granting of concessions and the provision of land. The total value of concessions related to consumption tax, import duties and custom service charges amounted to about 5% of GDP (EC\$42.1 million) in 1999. Hotel expansion has involved the construction of the 900-room Marriott

Royal St. Kitts resort and casino at Frigate Bay, the 18-hole Frigate Bay Golf Course and prospects for one or two more golf courses in St. Kitts.⁴¹

The construction sector is responding to the increasing demand for tourism and retirement building. The increases in construction from EC\$71m in 1999 to EC\$104m in 2000 suggest that the land market is very vibrant in St. Kitts/Nevis.

Land sales and land values have been influenced by the construction of Hotels, Golf courses and retirement homes.

The land market in St. Kitts/Nevis is generating solutions that are challenging the “carrying capacity” of the location. The electricity requirements for the newly constructed US\$200 million 900-room Marriott Royal St. Kitts Resort and Casino Hotel far exceeded the generating capacity on St. Kitts. They were eventually allowed to construct their own generating facility. The demands of the Golf courses on the water resources are beginning to add up to a sizeable volume.

Taken together, the construction sector, the tourist expenditures, and tourism concessions in the year 2000 comprised over 40% of the country’s GDP. The challenge is for St. Kitts/Nevis to ensure the sustainability of its resource base while encouraging such investments in land. For instance, an area of approximately 235 hectares of sugar lands is to be declared a National Park in order to protect it from any possible land market conversion to a golf course. This is because of the significance of its underground water resource to the capital city.

The tourism/retirement/recreation “sector” has serious potential costs. High water consumption

- Chemical pollution
- Ground water contamination
- Damage to landscape and wildlife habitat
- Conversion of agricultural land permanently to non-agricultural uses
- Cultural heritage damaged
- Pressure for golf course development around urban areas
- High infrastructure cost

Tensions between economic development and environmental sustainability:

- Increased economic uncertainty about agri production will result in the transfer of land to more economically valuable uses;
- As governments in the region seek to cope with the realities of globalization, land as an economic asset will be the focus of diversification;

⁴¹ Description of the Government’ vigorous programme for facilitating and upgrading hotel accommodation as expressed in the 2002 Budget Address.

- Increasingly, the political survival of governments in the region will be dictated by land management policies and the relationship with development;
- Economic development strategies have to be informed by environmental management practices, which should seek to add value;
- For diversification to prove healthy due emphasis must be placed on environmental sustainability;
- Habitat destruction is an economic deal gone sour;
- Urbanization of the country side produces an artificial landscape that is incongruous to rural development.

Montserrat⁴²

With the onset of the volcanic crisis in 1995, emerging land related issues require clear policy guidelines for their resolution and control. The finite nature of the land resources on Montserrat warrants proper management for this to be achieved, and to maintain a sustainable pattern of growth and development. Although Montserrat is a small island, the natural resource development potential of the island rests in its high ecological and scenic value, ground water resources, and certain geologic resources (deposits of rock, gravel quarry sand). Of potential value are the prospects for nature-based tourism and residential tourism activities.

The island is however a very sensitive and fragile ecosystem and signs of environmental stress are evident in certain areas. The more significant natural resources management problems include:

- Loss of forest cover from volcanic activity and from indiscriminate agricultural practices and the implications for soil and water conservation and the maintenance of wildlife habitats, landscape amenity value and recreation-tourism potential;
- Soil depletion and erosion associated with the clearing of vegetation on steep slopes and other poor land use and land management practices, such as uncontrolled grazing of loose livestock;
- Until recently, the unregulated extraction of beach sand for construction purposes, resulting in severe problems of coastal erosion and reduction of the recreation capability of beaches;
- The holding of land for speculative purposes;
- The high cost of land and scarcity of development finance;
- The absence of clear land use policies to provide the level of certainty and confidence needed by developers to make investment decisions.

⁴² Derived from Franklyn Greenaway, "Land Policy Issues—Montserrat", Paper presented to the Workshop on Land Policy, Administration and Management", Port of Spain, March, 2003

Soil types and slope conditions have resulted in farmers utilizing unsuitable land for cultivation and grazing. This problem has been exacerbated as a result of the volcanic crisis, where almost two-thirds of the island has been made inaccessible. Associated with such land use practices, however, are problems of soil erosion, landslides, reduction of the quality and quantity of the ground water resources, and a decline in landscape amenity value.

On the other hand, there are also cases of inappropriate and inefficient use of high quality agricultural lands. Prior to the volcanic crisis (1995), approximately 25% of the land found to be suitable for agricultural purposes was already lost to built development. This represented a loss of a prime resource and resultant decline in the agricultural development potential of the country.

Inefficient use of land and simply leaving land idle also exist in the urban context, and affect the timely supply and development of prime land for housing, industry, and community facilities. These problems are associated with such development constraints as the holding of land for speculative purposes, the high cost of land, scarcity of development finance, and the absence of clear land use policies to provide the level of certainty and confidence needed by developers to make investment decisions.

The Government of Montserrat has sought to promote efficient utilization of the remaining land resource of the country through 1) the formulation and implementation of appropriate land use policies to guide the development process and 2) the harmonization of laws to facilitate the coordination of sustainable development activities.

St. Vincent and the Grenadines⁴³

St. Vincent & The Grenadines (SVG) consists of 32 islands and cays of which only eight (8) are inhabited. Its population of 115,900 (2000) is the second largest among OECS, while its economy (EC\$617 million in 2000) is the fourth largest in the sub-region. Agriculture is the mainstay of the economy, amounting to 12% of the total GDP. However, in its attempt to diversify the economy, the Government is focusing on promoting Tourism and Offshore Financial Services.

The total area of St. Vincent and the Grenadines is about 96,000 acres, 47% of which are in forests and 32% in agriculture. The total number of parcels of agricultural land is 8,258. About 73% of these agricultural lands are under "Owner or Owner-like" possession. Rental land accounts for about 23% of agricultural land under use. These rental arrangements vary from cash rentals to Government and others to sharing of crops.

St. Vincent & The Grenadines is faced with the challenge of moving from a society organized around large parcels of land owned by Government and a few private estates to a more diversified and viable economy with wider access to property ownership. Although a more vibrant land market can facilitate such a transition, intervention by the State is still required to address the social issues relating to land ownership and access.

⁴³ See the paper by Allan Williams, "St. Vincent and the Grenadines: Country Paper", presented to the Workshop on Land Policy, Administration and Management, Port of Spain, March, 2003.

The difficulty in accessing land can be gauged from the large proportion of “informal” rental arrangements and the incidence of squatting. One estimate puts the number of squatters at 16,000. The Forest reserve is threatened by illegal occupation and watershed management becomes a frustrating exercise. Competition for access to land through the continuous increase in land values is evident in the Land market.

Squatting on publicly owned land is considered pervasive in St. Vincent & The Grenadines. One estimated puts the number of squatters at 16,000.⁴⁴ This presents a number of problems. The Forest reserve is threatened by illegal occupation, and watershed management becomes dysfunctional. Consequently, policy efforts to prevent the clearing of forests, to encourage reforestation on lands deemed unsuitable for agriculture are continuously thwarted by social forces that drive illegal occupation. While individual Departments of Government may see the problem as one of removal of such persons and termination of such occupation, there are larger questions of land access and intensifying agriculture on lands that are deemed suitable for cultivation.

Watershed management is also considered a serious problem. There is a legal framework for natural resource management in the only Act regarding forest reserves, the Kings Hill Enclosure Act Cap 239 of 1990. There have been attempts to improve the management of the forests. The draft National Forest Resource Conservation Plan (February 1994) done by the Ministry of Agriculture was one that among other things had planned to establish the Mesopotamia Forest Reserve. Because of poor monitoring however, this area has been mostly cleared for agriculture, except for the highest and steepest ridges.

Tobago

The major uses of land in Tobago include land for agriculture, conservation and watershed protection (forests and wetlands), built development and recreation.

There are several factors which affect the sustainable use of the land in Tobago:

1) Inappropriate use of land

- The most productive land in Tobago based on the most recent land capability survey is now under built development – exemplified by the Dwight Yorke Stadium and the adjacent Bacolet housing development.
- Subsistence agriculture is often practiced on lands, (marginal lands) which may be suited for other purposes.
- In the southwest of the island where the land lends itself to mechanization and where the potential for large-scale agricultural activity is greatest, tourism related infrastructure development is given priority.
- Access of the population to beaches traditionally open to their use has been restricted, producing conflicts and loss of life.

2) Ill advised and outdated cultural practices

- Over tilling of the soil
- Use of fires to clear land for cultivation

⁴⁴ Land Consultancy Report for St. Vincent & The Grenadines by Nicole O.M. Sylvester, February 2002. p.13.

3) **Inappropriate solid and liquid waste disposal**

- Backyard dumps are common, where any and everything is dumped and burned. Over time these practices can lead to high levels of accumulated chemicals rendering such areas useless.

4) **Land ownership pattern**

- A number of persons occupying lands in Tobago have no vested interest in the long-term sustainability of these lands in the circumstances where they are merely occupiers and not land owners.
- Some persons occupy lands that were ‘leased’ to ancestors by estate owners and over generations have occupied these lands without possessing formal title to these lands.
- Lands with clear title of ownership have been ‘given’ to family members who continue to occupy but have not completed the formal process of administration to have clear title to this land.
- Fragmentation as individuals utilize to utilize family lands to construct homes, engage in animal husbandry, cultivate a vegetable plot, etc.

One can conclude that the shift from agriculture to housing, tourism and recreational based land uses are stressing the capacities of the eco-system and the social fabric to respond. It is likely that environmental practices and regulations will increasingly continue to influence land use possibilities in the future. This trend is exaggerated on small islands where the land resource is limited and intensively utilized.

6. THE FOUNDATION OF THE “TRIANGLE”

Moving toward some sort of balance among the three policy objectives requires a strong foundation comprised of progressive, capable and flexible **governance** institutions, a supporting **legal framework** and accessible, accurate and timely land **information**.

6.1 Governance

The functions of land administration and land management operate within an institutional structure of some sort, governmental and formal, or community based and informal. In the Caribbean, the evolution of countries from dependencies of colonial powers to a status of independence, and the continuous challenges of governing in a rapidly changing world economy, have produced institutional responses of varying effectiveness.

Administrative Fragmentation

In several countries of the region, the public agencies for exercising land administration and management functions have become fragmented across many Ministries. Moreover, there are often unsatisfactory mechanisms for the involvement of communities in the formulation of land policies and their practical application.

For example, in Trinidad and Tobago, much of the land remains under State ownership. Prior to independence, a similar situation existed. The Crown Lands Ordinance of 1918 provided that the administration and disposal of Crown Lands should be exclusively vested in and exercised by the Governor as Intendant of Crown Lands, who appointed a Sub-Intendant of Crown Lands. The apparent effectiveness of State land management under the colonial

system was in part due to the ability of the Sub-Intendant to delegate authority to local Wardens for ensuring that land was properly managed. The State Lands Act of 1980, abolished this system and replaced the Sub-Intendant post with a Commissioner of State Lands post which to date has never been filled, but whose functions have been combined with that of the Director of Surveys. The position of Warden was abolished.

Effective mechanisms for decentralized State land management under the Commissioner of State Lands was not devised to replace the Sub-Intendant/Wardens system.

Instead, what has evolved has been the creation of numerous governmental and quasi-governmental entities with special mandates for State land management. Some of these entities have been vested with the authority to manage State lands instead of the Commissioner, such as the Chaguaramas Development Authority. Others have been assigned some of the State land management functions of the Commissioner but not all of them, such as the Land Administration Division of the Ministry of Agriculture, Land and Marine Resources, which identifies the lessees but relies on the Commissioner to prepare and execute the leases, and to take legal action when a lessee is in breach.

To further complicate effective land administration and management in many countries, the administration of land records related to the ownership and management of land tend to be the responsibility of two (or more) government agencies. Typically, private land ownership records fall under the ministry of legal affairs or finance, with public land records being the responsibility of a Commissioner of State Lands office, generally in the Ministries of agriculture, natural resources or housing. This separation of responsibility for land records administration requires the maintenance of two or more registries of land information, neither of which typically have the resources to operate properly. The existence of various registries severely constrains the land market as landowners, providers of credit and investors need not only make a property rights investigation, but also determine in which registry the land records, or conflicting claims, may reside. This becomes a time consuming and costly process with the costs being passed on to the client, or worse, restricting credit availability as transaction costs per loan become uneconomical and not profitable for the lenders, or too risky to approve investments.

Mohamed⁴⁵ describes this fragmentation of governance as pertaining to land administration and State land management. Rabley⁴⁶ also describes this debilitating fragmentation of governance. In recognizing the difficulties of fragmented governance, Jamaica has combined some land administration functions (title registration, cadastral surveys, and land valuation) under a single agency.

Another option is the de-concentration of service delivery by government agencies, bringing the services closer to the communities but retaining central control. An example of this approach is the opening of document collection offices by the Registrar General, in Tobago and San Fernando (in southern Trinidad).

⁴⁵ See Asad Mohamed, *op. cit.*

⁴⁶ See Rabley, *op.cit.*

Contrasting with the decentralization and de-concentration efforts is the “consolidation” of some land governance functions, which is being tried by some countries in the region. The National Land Agency which brings into one agency the formerly separate Survey Department, Titles Office and Land Valuation in Jamaica, the Guyana Lands and Survey Commission and the State Land Management Agency being contemplated in Trinidad and Tobago are examples of “centralization” of land administration (Jamaica), the centralization of State land management (Trinidad and Tobago), and the centralization of both land administration and management in Guyana. Countries are clearly experimenting with the consolidation of land administration and management functions and responsibilities previously scattered across Ministries and agencies.

Registry reform, uniting the administration of land records in a single institution, including the mapping of parcel boundaries, is being considered in several countries and implemented in some. The inertia of existing interests in maintaining their familiar systems of administering important land and property records has proven difficult to overcome.

Financing

A continuing constraint on the exercise of good land governance is the frequent lack of motivation of staff, owing to bureaucratic rigidities and poor salaries in comparison with the private sector. Experiments with partial self-financing for some public service agencies are being tried, such as the GLSC in Guyana.

In some cases direct registration fees are legally mandated, low, and out of step with current market pricing. What is most damaging to the registry agency and in the end the registration process is that registration fees and revenues are typically transferred directly to the central treasury, leaving the land registry agencies to fight for budget from other non-revenue generating operations. Typically, the budget allocation from central treasury provides for salaries and, on occasion supplies, but does not provide for, the upgrading of services or proper security of documentation.

Even with relatively low fees, registry offices typically generate a significant cash flow for the government purse. For example, in Guyana, where by all professional and anecdotal accounts the Deeds Registry is not functioning at all well, the fees and revenues collected in 1993 amounted to the equivalent of over US\$1,000,000, while the annual budget allocation to the Deeds Registry amounted to just over US\$46,000. There is no questioning this financial message. And the Guyanese registry agency is not alone in its plight. Case studies currently underway from around the Caribbean are intended to collect budget data specifically to demonstrate this problem. Without political support which translates to budgetary support for the registries, registry managers must continue to rely on un-trained staff and limited materials to provide limited and slow service to the public, or they must seek limited and highly competitive project-based financing which is typically non-sustainable. Obviously without more cognizance of the significance of real property systems, and the importance of the land registries as the backbone of these systems, land registry offices will continue to be under-staffed, poorly managed, unable to meet the needs of a modern society, and unable to support the implementation of land policies seeking to achieve and balance economic, social and environmental goals.

Transfer Tax or Land Taxation

Taxation of land holdings is attractive since wealth embedded in land is visible and can be identified and taxed. There are costs, however, in getting land taxation to work, both politically (since the land holders often fight against it) and administratively (since a bureaucracy is required to value land and collect the taxes). A frequently used option is to charge a tax on the land at the time that it changes ownership, and build the cost of the tax into the selling price. As an option to, or in the absence of a fiscally productive real property tax system, many jurisdictions attempt to capture revenues from transfer taxes at the time of sale, transfer or mortgage. While the absence of a significant property tax itself results in land market distortions such as speculation and under-utilization of land, the use of a transfer tax provides a direct disincentive to register title and, in turn, has direct impact on the maintenance of the land registration system. In many countries, where properly registered title is not the norm or ingrained in the culture, buyers and sellers take an informal route to property transfer simply to avoid the transfer tax.

In other countries, where properly registered title is seen as desirable, buyers and sellers often collude to falsify the stated sales price and in-turn reduce the transfer tax due. Typically in these cases, the registration process is stopped for months or even years as the land registration staff requests an official government assessment of the property -- who, of course have their own budget and human resource limitations and imposed political priorities. Certainly, we cannot fault the land registry staff from doing their job. But the message here is to avoid institutionalizing disincentives to property owners who sometimes as a result either evade or attempt to subvert the registration process. The risk is that each unregistered land transaction reduces the reliability of the registration system and in the end erodes the ability of government to implement land policies focusing on the 'triangle' of policy goals, and in particular impedes the efficient functioning of the land market.

Ineffective Land Use Planning and Development Control

Another governance issue is the exercise of land use planning, development and control. Countries have created agencies to develop codes of appropriate building construction and development standards and practices, and to ensure that all persons and agencies concerned adhere to both the requirements a plan and the codes of standards and practices. Same paraThis approach often pits the population against the planning authority and produces ineffective implementation of land use plans.

An option which is being tried in Tobago, a small jurisdiction, is the preparation of land use development plans through consultations with the population, reaching a measure of consensus before implementation.

The Government of Montserrat⁴⁷ has sought to promote efficient utilization of the land and water resources of the country through the formulation and implementation of appropriate land use policies to guide the development process. To this end, the Development Control Authority (DCA) was replaced with the Planning and Development Authority (PDA), with a broader based membership incorporating major stakeholders in the development process.

⁴⁷ See Greenaway, op.cit.

The emphasis and focus has also changed from strictly development control to the Authority playing a more proactive role in the development process, through a structured development promotion program. On behalf of the PDA, the Physical Planning Unit promotes the adopted land use policies and key development projects amongst major landowners, developers, public sector agencies, financial institutions and the general public. The Unit also assists the various participants in the development process in the conceptualization of projects. The Unit also carries out an ongoing review of the development control process (regulations, policies, standards, application procedures, etc.) with a view to streamlining the process in keeping with current circumstances, and in order to reduce delays and costs in the process of land development.

Perhaps none of the attempts at re-structuring of state land governance agencies alone will work. Another approach begins with a critique that government-led development without the active support of civil-society, and civil-society movements without the institutional and enabling support of government have both failed. What is required is the investment in “democraticizing” of land governance, the incorporation of the needs and priorities of the disadvantaged into the re-structuring process through consultations and the active participation of communities in this re-structuring.

“The active participation by communities in the planning and implementation of development policies and programs is an essential prerequisite to sustainable human development. These lessons point to the need for more effective alliances linking governments to their civil-society organizations, coupled with the moral and financial persuasion of the international community.”⁴⁸

6.2 Legal Framework

Like the institutional framework for land governance, the legal framework is often like a dusty library, with laws and regulations passed in responses to problems long ago in the colonial period which litter the legal landscape as their relevance has receded. In some cases, the importation of legal codes also implies the importation of concepts which do not include the subtleties of land tenure arrangements in the Caribbean, such as family or generational land.

Added to the legal constraints, is the number of different land and resource related laws in the region. The number of laws per 1000 population is undoubtedly higher in the Caribbean than in continental countries. With so many small jurisdictions, each with its own parliament generating laws without reference to standard legal formulations, the lack of legal harmony is confusing to outside investors and locals alike and opens the door to opaque regulatory practices.

The cost of applying laws to specific situations is also frequently high. The sporadic nature of land conflicts or problematic situations, such as the need to bring a land parcel onto a Torrens style registry, and the lack of reference to regional best legal practices has allowed countries to produce legal procedures which are high on security but exorbitantly high on

⁴⁸ The Popular Coalition, “A Common Platform on Access to Land”, World Summit on Sustainable Development, Johannesburg, S. Africa, July, 2002.

cost. Such costs greatly complicate efforts to deal systematically with problems like the “informality” of title, and the acquisition of private land for affordable housing purposes.

With historical roots in grants from the Crown dating back to colonial times and more recently at the time of independence, and culturally in order to maintain control over the use and concentration of land, two distinct real property regimes are perpetuated: publicly-owned and managed property, and private freehold property. In fact, in most countries the majority of land, in terms of percentage of total area, remains under the control of the government. The existence and, more importantly, the difficulties in maintaining the operations of these dual regimes have profound impacts on land markets. The impact is especially noticeable when the rents on leasehold property are artificially frozen at antiquated “peppercorn⁴⁹” rates by a combination of out-dated legislation and political manipulation.

The debate over whether leasehold or freehold is a more desirable tenure form continues with plausible evidence on both sides. In many countries the compromise has been the retention of leasehold tenure, but providing a more “robust leasehold title”. This concept can be defined as, clear, and secure longer-term (more than an ‘individual lifetime’) tenure right provided through a freely transferable and marketable ‘title instrument’ whose annual rent or transfer price is determined at market-based prices. In the desire of various governments to provide this “robust leasehold title”, in most cases, they have rejected outright market-based auction of public land, the delivery of freehold rights and the first registration of title. Most governments have instead elected to retain leasehold tenure, but liberalize leasehold policies, make allocation processes more transparent and strengthen lease management systems. In turn, the conditions of the lease have changed – longer terms, easier transferability and mortgagability, land use conditions limited or abolished - in order for the lease instrument to ‘approximate’ freehold. However, the effects of this approximation of freehold by the new definition of leasehold title on land markets and economic development and social equity has yet to be determined.

A compelling problem, somewhat unique to the Caribbean countries and of interest due to its negative impact on secure tenure, reliable registries and the functioning of land markets, is the existence of multiple real property rights registration systems in many countries. In several instances governments have become involved in the process of a transition from a Deed Recording to a Land Title Registration system, but have not completed the transition. In Jamaica and Trinidad and Tobago this process began in the late 1800’s and is still not completed. During this extended “transition”, these dual systems add to an already complicated mix of tenure statuses and instruments that exist. In recent years there have been proposals to reform the 1890’s reform of the registration system, potentially producing a third parallel property rights registration system to further complicate matters.

The lack of coherent development strategies and land policies is a general problem in the region. Without a well accepted, understood and strategically formulated land policy, implementation becomes sporadic and subject to manipulation for vested interests. Legislation produced affecting land administration and management can become chaotic and

contradictory (a problem identified in Trinidad and Tobago pertaining to state land management).

The need for uniformity and harmony in land policy and land legislation within and among the various jurisdictions is of paramount importance to the public, who must feel confident that the expressions of policy are crystallized in law, and transformed into administrative decisions which appear to be uniform, equitable and transparent. To do so may require the creation of mechanisms to regulate and address the very disharmony in policy which are evident and which are institutionally obvious among the governance bodies. The apparent legal framework problem of conflicting provisions and inadequate formulations may be more due to a lack of consensus and disarray in policy formulation, and inconsistencies in the expressions of ad hoc policies as codified in statutes, rather than being an inherent legislative issue⁵⁰.

6.3 Land Information

Land information has been defined as the particular characteristic concerning land that is described and/or displayed. Land records are the medium in which land information is stored. Finally, land information systems (LIS) are the means by which land information and records are organized and managed in an orderly fashion.⁵¹ Accordingly, the concept of a LIS is broad and affects many of land governance mandates and operations. Land Information Systems are more broadly defined than Geographic Information Systems (GIS) and involve more than simply the introduction of information technologies to information administration⁵².

As land governance agencies developed to fulfill their mandates, they each devised land information systems which were historically paper based. These LIS develop as instruments of land governance. As time passed, these paper records deteriorated and the resources available for the maintenance of the LIS become limited.

Information Technologies have swept into this scene, offering efficiencies in information management and more security in archiving that information. The data storage and management capacities of these technologies have shown that in the older, paper based LIS, there is needless duplication of data, needless replication of work across agencies and costly document storage and retrieval techniques. Not only are the older LIS inefficient, they

⁵⁰ See the analysis of Kelvin Ramkisoorn, "An Analysis of the Legal Framework for State Land Management in Trinidad and Tobago", LUPAP project paper, Port of Spain, February 25, 2000.

⁵¹Holland, W. et al., *Wisconsin Land Information Program, Policy Objectives and Program Implementation in Light of the Enabling Legislation, 1989 Wisconsin Acts 31 and 339*. Wisconsin Land Information Board, 1991.

⁵² "LIS is a suite of technologies, data, and applications that share the commonality of a spatial relationship. By definition, LIS is an enterprise set of technologies that are driven by work and data flows related to land information management that occur within an organization. GIS, along with automated mapping and facilities management, permit and development tracking, traditional management information systems, electronic imaging, global position systems, and records management, are all viewed as subset technologies of an enterprise-wide LIS". From "Findings and Recommendations for the Establishment of a National Land and Geographic Information System (LIS/GIS) for the Government of Trinidad & Tobago", GeoAnalytics, Madison, Wisconsin, October, 1998.

squander scarce human and technical resources. At the same time, the single most often cited constraint cited by agencies is an overall lack of resources for operations. This environment also creates frustration and hopelessness which adversely affect productivity.

The introduction of IT into the operations of land governance agencies has proceeded quickly in some countries, particularly in the agencies of “land administration” (property registries, cadasters, valuation and taxation). Since such agencies inherently deal with information about land ownership, use and value, technologies which revolutionize the ways that they store and manipulate this information are very attractive.

The engineering of IT into land governance agencies at times is premature, however. The first and most important step may well be to re-engineer the land governance institutions themselves, as noted above, rationalize them, remove redundancy and provide an executive agency type environment. Without this re-structuring, IT focused projects may produce results which do not take hold nor are sustainable. If such projects do succeed, this success may be temporary, until the forceful personality responsible for the success leaves the scene, and would not be sustainable.

7. CONCLUSION

We have described three land policy imperatives which are sometimes mutually contradictory. We have described some of the specific land administration and management issues which have arisen in the Caribbean region. We have focussed on land governance, legislation, and information as providing a foundation on which to stand to juggle the three land policy imperatives and deal with the land administration and management issues facing the region.

The hope for the region lies in its people, their intelligence, and industry for improving how land issues are resolved. The agenda for action includes:

- 1) The knowledge and experience of people working in different countries on land administration and management issues has to be made available regionally, through regional experience exchanges and capacity building;
- 2) Land and property policies and legislation must be harmonized by sharing concepts and formulations regionally;
- 3) Governance must be made more “democratic” by involving stakeholders of all sorts in the search for solutions to the issues faced;
- 4) Regional and international agencies committed to assisting in the resolution of land issues should draw on regional expertise thereby contributing to its strengthening and to the harmonization of national institutions.

In recent years, international development agencies and national governments have placed a renewed emphasis on addressing land management and administration issues. At the Second Summit of the Americas held in Chile in 1998, the heads of governments declared property rights registration as a key to poverty alleviation. It was agreed that property registry reform influences the goals of the summit: justice, human rights, gender equality, education, and economic integration.

Development Banks have large and growing loan portfolios for projects aimed at meeting the three land policy goals outlined above. A case in point is that since 1995, the Inter-American Development Bank has spent approximately US\$4.7 million on the analysis of land tenure and the legal, institutional and technical aspects of real property rights systems throughout the Latin America and Caribbean region. This expenditure has led to the design and on-going implementation of roughly US\$750 million in projects to support the security of land tenure, the streamlining and modernization of land administration systems and the improvement of land management. Currently, there are three new land projects in preparation for approval in 2003/2004. Potentially, the total government and IDB financing for these projects is approximately \$205 million.

Including the efforts of the main donors and financiers in the region -- USAID, the World Bank, the Department for International Development (DFID) and the Caribbean Development Bank (CDB) -- the total amount of land-related efforts in the Latin American and Caribbean region in the past ten years certainly approximates US\$1 billion.

While the majority of this funding is undoubtedly earmarked to the larger countries of South America, the share earmarked to the countries of the Caribbean is substantial. "Land" projects in the study and preparation phase total about \$1.7 million, while projects in execution total \$33.7 million.

Such capital does not flow without demand, and it is clear that the governments of the region are reacting to the demonstrated demands and needs of the society to change the systems that define and regulate the continually changing relationship between people and land, with programs focussing on such topics as:

- ▶ clear and formalized land rights;
- ▶ robust and more marketable land tenure instruments;
- ▶ practical and enforceable regulations on land use land rights;
- ▶ modern, affordable and accessible public land administration services;
- ▶ affordable access by the disadvantaged to land for housing and food production;
- ▶ reasonable and achievable building regulations for low-income housing;
- ▶ protection of fragile environments.

The list goes on. Surely with this level of funding earmarked to land as opposed to other pressing economic, environmental and social needs, it is now incumbent upon the politicians, the land administrators and the land managers of the region to react to the challenges of their countries' development with intelligence. They face questions about how to ensure an effective combination and implementation of the 'triangle' of land policy goals in order to achieve the institutional, legal, and technical framework required for a more responsive administration and management scarce land and water resources throughout the region.
