

encouraging, but they should be comprehensive (covering state, private, and communal land) and clearly linked to land rights. Also, because many problems with the current land use planning and policy framework can be traced in part to absence of comprehensive and up-to-date land use information, prompt compilation of such information (including up-to-date benchmarks for valuation) is needed. Finally, there is need to ensure that institutions using land-related information share databases to avoid duplication of effort and confusion. In land dispute adjudication, absence of a mechanism to share information led to extensive forum shopping and parallel processes. Establishment of a networking system such as the one between police, prosecution, and courts in criminal cases is recommended.

Sustainability of the Rural Land Registration System

Ensuring the sustainability of rural land registration requires at least a minimum level of investment in equipment and human resources for maintenance. Such investment will need to be linked to monitoring of registry performance and establishment of financing arrangements (for example, clear user fees and possibly some cross-subsidies from urban areas) to ensure sustainability of the registration system at federal, regional, and local levels. Federal standards can greatly reduce the cost of such maintenance.

Strengthening of Local Governance

A very positive aspect of the current land administration system is its high level of decentralization. However, though authority for most decisions rests at the local level, guidance to inform officials at *woreda* and village levels is lacking. Defining local governance structures, roles, and mandates in land governance should be considered. Because limited capacity of local implementing structures at the local level is a pervasive problem, building the capacities of these structures should continue to be a policy priority. Capacity-building efforts should also be considered by putting in place the necessary federal and regional laws, regulations, and guidelines as well as making technical support available.

INDONESIA

Indonesia, with a population of 230 million, had a formerly highly centralized system that has been reformed over the past decade to become highly decentralized, while land functions remain highly centralized. With 33 provinces, significant power devolved to districts and municipalities. Indonesia also illustrates the challenges of a country faced with management issues regarding its significant forest and natural resources and the problems that may be associated with legal pluralism, that is, the coexistence of the national state law with customary laws (*adat*) that govern Indonesia's traditional communal land tenure system. In this context, many opportunities exist for Indonesia to overcome

obstacles that prevent economic actors from gaining more secure rights to land and, thus, for society to fully benefit from the advantages of land as a safety net and to respond to incentives for sustainable management and investment.

Recognition and Enforcement of Rights

Land tenure (see tables 4.6 and 4.7) is regulated by the 1960 Basic Agrarian Law (BAL) that provides legal recognition of many different tenure types, including individual registrable rights of ownership (*Hak Milik*), plantation (*Hak Guna Usaha*), building (*Hak Guna Bangunan*), or use (*Hak Pakai*). The BAL also recognizes nonregisterable rights, including communal ones (*Hak Ulayat*), under customary law.

Despite the recognition of a broad range of rights, three factors lead to considerable uncertainty of rights. First, and most important, the scope of the BAL is extremely limited in practice because it applies to only approximately 30 percent of the country's land area that is not classified as forestland.⁵⁹ Formally designated forestland, which represents almost 70 percent of the total land in Indonesia, is managed by the Ministry of Forestry, although large parts of the forestland are degraded and no longer carry trees. Because only temporal concessions and no tenure rights can be obtained on forestland, communities that may have been living on the land for a long time often find themselves with no legally recognized rights to such land. The difficulty of achieving formal recognition of communal property rights on forestland perpetuates tenure insecurity.

Second, even though the BAL dates from the 1960s, while many regulations to enforce certainty of land rights have been promulgated, there have been little efforts to enforce them at the grassroot levels (for example, lack of training or absence of a reliable mechanism to disseminate new regulations and monitor their enforcement). For example, because the BAL does not contain regulations for the recognition of group rights, and in spite of attempts to pass regulations conferring rights to groups, groups that want to have their rights legally recognized are de facto required to individualize them. Doing so will significantly increase the cost of demarcation and may be in line with neither local visions and aspirations nor actual land use patterns. More important, although in practice individualization is required, the process to actually formalize individual land tenure is lengthy and can be expensive. Furthermore, communal tenure exists on land administered by the National Land Agency (*Badan Pertanahan Nasional* [BPN]) and on forestland administered by the Ministry of Forestry, and other sectoral agencies (including mines and energy) issue concessions or permits over such land. Taken together, the multiplicity of ill-defined rights and institutional responsibilities means that different types of rights are frequently superimposed, which presents challenges for their enforcement and provides an environment that is conducive to the emergence of conflicts.

Table 4.6 Tenure Typology for Indonesia, Urban Sector

Tenure type	Legal recognition and characteristics	Issues and potential overlaps
<i>Land under the control of the National Land Office</i>		
State land	Legal recognition: By constitution Registration/recording: Possible Transferability: Application by eligible parties to the state through the relevant land office	In principle, all land is controlled by the state. In practice, land that is not zoned as forest and that has no existing title (other than for the state) is state land. <i>Control</i> includes the authority to regulate land use and make it available to private parties. Once a plot of land is state land, it should be possible for the person who has possession over it or who can prove possession or chain of possession over it, to apply for registered titles (<i>Hak Milik</i> , <i>Hak Guna Bangunan</i> , <i>Hak Guna Usaha</i> , or <i>Hak Pakai</i> , as discussed below). To be converted to certificated (registered) title, land with noncertificated (nonregistered) title (for example, <i>adat</i> land held individually) must have its title relinquished, must revert to the state (technically becoming state land), and must have a new application made for land rights to be issued with certificated title.
Registered and certificated private ownership	Legal recognition: Basic Agrarian Law (BAL) 1960 Registration/recording: Possible Transfer: To eligible parties	<i>Hak Milik</i> , a right of ownership, provides the most comprehensive land right in Indonesia. <i>Hak Milik</i> is transferable and inheritable and can be the subject of security. It can be held only by Indonesian citizens and, under very limited circumstances, certain Indonesian bodies (for example, banks). A <i>Hak Milik</i> is a primary title and can be encumbered by the grant of secondary land rights (see below).

(continued next page)

Table 4.6 (Continued)

Tenure type	Legal recognition and characteristics	Issues and potential overlaps
Registered and certificated private possession and use	Legal recognition: BAL Registration/recording: Possible Transfer: To eligible parties for specified use only	<p>The most common use right is <i>Hak Guna Bangunan</i> (HGB; the right to construct and use buildings on nonowned land), a renewable 30-year right for citizens and legal entities incorporated and domiciled in Indonesia. <i>Hak Pakai</i> is a right of use on state land that is not owned. HGB can be held by Indonesian companies and foreign individuals and companies. <i>Hak Pakai</i> can be held by foreign citizens domiciled in Indonesia and foreign corporate bodies having representation in Indonesia.</p> <p>Each title is granted for different time periods. HGB can be extended. A <i>Hak Pakai</i> can be granted indefinitely for a specific use and will lapse once that use comes to an end. It can also be granted for a limited period of years for unspecified use.</p> <p>HGB and <i>Hak Pakai</i> can be granted as primary titles on state land or as secondary titles on <i>Hak Milik</i>. Where such titles have been created as a secondary title, their continued existence will depend on continuation of the primary title and the relevant terms of the agreement under which the secondary title was created.</p> <p>Transferability of each title depends on its characteristics, use, and the identity of the transferee.</p>
Unregistered private ownership (possession and control)	Legal recognition: Regulation No. 24 of 1997 on Land Registration Registration/recording: Possible Transferability: Possible	Documentary nonregistered evidence of possession such as agreements to transfer or relinquish title or a power of attorney is recognized and can be registered with suitable documentary evidence. Without such evidence, and under specific conditions, ownership can be registered following physical possession for more than 20 years.

Unregistered ownership by government agencies	Legal recognition: BAL; Reg. No. 24/1997; Reg. No. 11/2010 (National Land Agency) Registration/recording: Possible Transferability: s.t. criteria	State companies or regional governments often claim ownership and control of land without documentary evidence of title. The entity that has ownership or control of the land is frequently unclear. A 2004 law requires that land controlled by the central or regional government must be registered. Transfer of such land must then be carried out with approval of the minister of finance and the relevant ministry.
Unregistered occupation and use of land	Legal recognition: BAL; Reg. No. 24/1997; Reg. No. 11/2010 Registration/recording: No Transferability: No	People frequently occupy land, most commonly state land, but also privately owned land (for example, on the boundary of a factory or power station). Under specific conditions, ownership can be registered following physical possession of the land for more than 20 consecutive years.
Abandoned land	Legal recognition: BAL; Reg. No. 24/1997; Reg. No. 11/2010 Registration/recording: Possible Transferability: No	Abandonment of a plot of land for a certain period of time may lead to the termination of the title vested upon the land. The head of the National Land Office has the authority to determine whether a plot is abandoned. This will include cancellation of the relevant title and categorization of the land as state land. The public use of the land will be determined by the head of the National Land Office.
<i>Land under the control of the Ministry of Forestry</i>		
Unpermitted use of forestry-zoned land	Legal recognition: No Registration/recording: No Transferability: No	In some urban and peri-urban areas, houses and commercial buildings have encroached on land zoned as forestland. Where land is zoned as forest, it is not legally possible for a land title to be granted, regardless of the fact that no trees exist on the land and that buildings have been constructed.

Source: Various sources; compiled by U. Meades.

Note: BAL = Basic Agrarian Law 1960; HGB = *Hak Guna Bangunan*; s.t. = strata title (condominium).

Table 4.7 Tenure Typology for Indonesia, Rural Sector

Tenure type	Legal recognition and characteristics	Issues and potential overlaps
<i>Land under the control of the National Land Agency</i>		
State land	Legal recognition: By constitution Registration/recording: Possible Transferability: Application by eligible parties to the state through the relevant land office	In principle, all land is controlled by the state. This is very common in rural areas with land often overlapping areas claimed by <i>adat</i> communities as ancestral land. The difficulties of recognizing <i>adat</i> land rights suggest that, in the past, registered title was often on <i>adat</i> lands and land claimed by <i>adat</i> communities may be treated as available for grant of title by the land office. In certain circumstances, <i>Hak Pengelolaan</i> (right to manage), derived from the state's authority to control land, can be granted as a primary title to government or agencies. It is not generally transferable, but secondary rights can be issued on its basis.
Registered and certificated private ownership	Legal recognition: Basic Agrarian Law (BAL) 1960 Registration/recording: Possible Transfer: To eligible parties	<i>Hak Milik</i> , a right of ownership, provides the most comprehensive land right in Indonesia. <i>Hak Milik</i> is transferable and inheritable and can be the subject of security. It can be held only by Indonesian citizens and, under very limited circumstances, certain Indonesian bodies (such as banks). A <i>Hak Milik</i> is a primary title and can be encumbered by the grant of secondary land rights.

Registered and certificated private possession and use	<p>Legal recognition: BAL</p> <p>Registration/recording: Possible</p> <p>Transfer: To eligible parties for specified use only</p>	<p>The most common use right is <i>Hak Guna Bangunan</i> (HGB; the right to construct and use buildings on nonowned land), a renewable 30-year right for citizens and legal entities incorporated and domiciled in Indonesia. <i>Hak Pakai</i> is a right of use on state land that is not owned. HGB can be held by Indonesian companies and foreign individuals and companies. <i>Hak Pakai</i> can be hold by foreign citizens domiciled in Indonesia and foreign corporate bodies having representation in Indonesia.</p> <p>Each title is granted for different time periods. An HGB can be extended. A <i>Hak Pakai</i> can be granted indefinitely for a specific use and will lapse once that use come to an end. It can also be granted for a limited period of years for unspecified use.</p> <p>HGB and <i>Hak Pakai</i> can be granted as primary titles on state land or as secondary titles on <i>Hak Milik</i>. Where such titles have been created as a secondary title, their continued existence will depend on continuation of the primary title and the relevant terms of the agreement under which the secondary title was created.</p> <p>Transferability of each title depends on its characteristics, use, and the identity of the transferee.</p>
Unregistered private ownership (possession and control)	<p>Legal recognition: Regulation No. 24 of 1997 on Land Registration</p> <p>Registration/recording: Possible</p> <p>Transferability: Possible</p>	<p>Documentary nonregistered evidence of possession, such as agreements to transfer or relinquish title or a power of attorney, is recognized and can be registered with suitable documentary evidence. Without such evidence, and under specific conditions, ownership can be registered following physical possession for more than 20 years. In rural areas, significant uncertainty relating to evidence of title and land boundaries exists.</p>

(continued next page)

Table 4.7 (Continued)

Tenure type	Legal recognition and characteristics	Issues and potential overlaps
<p><i>Adat</i> community on lands under Badan Pertanahan Nasional (BPN; Indonesian National Land Agency jurisdiction)</p>	<p>Legal recognition: BAL; Reg. No. 24/1997; Reg. No. 11/2010 (National Land Office) Registration/recording: Possible Transferability: s.t. criteria.</p>	<p>Many <i>adat</i> communities live and use land under the jurisdiction of the BPN. Provision exists for formal recognition and registration of <i>adat</i> land rights, but the procedure is complicated, and such rights are subject to statutory ownership (see below). For establishment of such rights, regulations require determination whether <i>adat</i> rights still exist. The existence of <i>adat</i> land belonging to a specific <i>adat</i> community must be recorded on a land registration map showing the boundaries of the land and must be registered.</p> <p>The exercise of <i>adat</i> rights by communities excludes plots possessed by individuals or statutory bodies by virtue of a certified land title under BAL or plots acquired or appropriated by government institutions.</p>
<p>Individual <i>adat</i> rights</p>	<p>Legal recognition: BAL; Reg. No. 24/1997; Reg. No. 11/2010 Registration/recording: No Transferability: No</p>	<p>Individual <i>adat</i> rights are legally recognized but have limited relevance in practice.</p>
<p><i>Land under the control of the Ministry of Forestry</i></p>		
<p>Land zoned as forest</p>	<p>Legal recognition: Law 41/99 (Forestry Law) Registration/recording: No Transferability: No</p>	<p>In forest-zoned areas, three types of overlaps are common. First, many oil, gas, and mining concessions are granted over land that is zoned as forest. Though concessions do not convey land rights (which, as those for use and access, must be negotiated separately with the Ministry of Forestry), a lack of coordination among the relevant ministries (Energy and Mineral Resources vs. Forestry) often causes issuance of overlapping permits or granting of mining concessions in forest where mining is prohibited. Second, forestry and mineral permits and concessions are often issued with limited regard for existing land occupation and use. This has caused significant problems,</p>

because many communities, including *adat* ones, live and earn their livelihoods on forest-zoned land. Third, land title can be obtained legally only once land is released from forest zoning in a complicated and long process. But, in certain areas, titles have been issued over forest-zoned land.

<p><i>Adat</i> communities using land zoned as forest</p>	<p>Legal recognition: Law 41/99 Registration/recording: No Transferability: No</p>	<p><i>Adat</i> communities frequently occupy and use forest-zoned land. The Forestry Law states that the use of <i>adat</i> forests by an <i>adat</i> law community may be carried out under certain conditions. However, the procedure can be cumbersome: the law requires verification of the existence of the <i>adat</i> community and the issue of a local government regulation confirming its existence.</p>
<p>Non-<i>adat</i> communities using forest-zoned land</p>	<p>Legal recognition: Minister of forestry Regulation No. P.37/Menhut-II/2007 on Community Forest (as amended)</p>	<p>Many non-<i>adat</i> communities occupy forest-zoned land and can obtain certain rights. A request for a permit to use an area as a community forest working area enables the governor or regent to propose that a specific forest area be designated as community forest working area. If approved, the minister of forestry issues a decree designating the area as community forest belonging to the specific community.</p>
<p>Individuals using forest-zoned land</p>	<p>Legal recognition: Law 41/99 (Forestry Law) Registration/recording: No Transferability: No</p>	<p>Communities can then apply for a permit to the regent to carry out activities in the community forest. The procedure is cumbersome, however, and overlaps exist. A community forest can be designated in an area that is zoned as protected forest or production forest but only if no other right or permit, including a concession, has been granted.</p>
<p>Individuals using forest-zoned land</p>	<p>Legal recognition: Law 41/99 (Forestry Law) Registration/recording: No Transferability: No</p>	<p>It is not technically possible to obtain registered land title on forest-zoned land, although in certain areas of Indonesia this has occurred. From a legal perspective, land title can be obtained only after the land has been released from the forest zoning, in most cases a lengthy and complicated process.</p>

Source: Various sources; compiled by U. Meades.

Note: BAL = Basic Agrarian Law 1960; BPN = Badan Pertanahan Nasional.

Third, though the BAL is neutral regarding gender, and in spite of past efforts to promote joint titling, the amount of land registered in women's names remains limited.⁶⁰ Improving the share of land held by women and gender awareness are not yet a key part of contemporary discussions on land administration and policies.

In urban areas, the legal framework recognizes titled individual properties as well as condominiums, for which appropriate arrangements to manage common property exist. Both can be registered, either individually or through strata title registration. Nevertheless, there are high levels of informality, with some informal settlements having existed for several generations with no formal status. Individual informal property recognized under traditional or customary rules may also be formalized and subsequently registered but the process does not involve recognition of group rights. Squatters seldom benefit from adverse possession. Although the BAL intended to act on statutory limitation on the size of land ownership, enforcement is weak. It is difficult for creditors to repossess land and other guarantees for loans in default (that is, foreclosure) without court intervention. This action is costly in the best of circumstances and is even more difficult in an environment in which courts are seen as favoring debtors and often not being impartial. It is thus not surprising that the cost of credit in Indonesia is very high by regional standards.

Regarding the enforcement of rights, nondocumentary forms of evidence are accepted as proof of rights where documentary evidence is not available and where long-term peaceful occupation can be used to claim rights. However, because processes for recognizing long-term occupation are highly discretionary, few such claims are recognized in practice. For registration and formalization, an efficient, community-supported systematic registration process was developed under the Land Administration Project. In 2008, the project had registered a cumulative total of approximately 2.2 million parcels (or 4.6 million parcels, including cases in which users paid their own processing fees). However, BPN has been unable to scale up the systematic registration program as planned, and it is estimated that, at most, 38 million of the 80–100 million land parcels in Indonesia are registered. The cost of formalizing title to existing buildings is high and unaffordable by the majority of the population. As regards sporadic registration, formal fees charged by BPN (that is, excluding notary fees) are less than 5 percent of the property value, but informal fees exist and are significantly higher than formal ones. Finally, it is worth noting that land registration in Indonesia may still be subject to some level of tenure insecurity, given that a registered record can be challenged by a third party without time limit. Anecdotal evidence suggests that even people in possession of a land title for more than 10 years could still lose their land because a third party successfully proved before a court its claim based on an informal transaction. Many land titles are considered to be defective in one way or another. Although minor defects may not undermine ownership security, they can create the basis for future conflict.

Policy and Institutional Framework

Since 1999, when the regional government law established a more decentralized government structure, provincial and district governments have held more powerful legal positions and have begun to demand more authority in determining land policy within their respective jurisdictions (except for forestland, which, at least in principle, remains centrally managed). A highly complex mix of a hierarchal and top-down system of development and spatial planning exists, with the central government retaining the authority to override locally made spatial plans for special areas that have been deemed strategic and nationally important. Although the BAL describes norms for spatial planning with regard to land, the complex nature of functions and mandates allocated among governmental agencies has created an impasse. Land administration agencies, which include BPN, the National Coordinating Agency for Surveying and Mapping, the Ministry of Agriculture, and the Ministry of Forestry, are fragmented, with large overlaps and a tendency to perform land registrations and mapping largely for their own interests. With branches of each agency at national and provincial levels, overlaps are common, and activities often are assigned to individuals lacking skills. Lack of clear assignment of judicial authority and sectoral approaches to land management and administration result in inconsistent and discretionary application of policy, especially regarding the administration of rights to forestland, and coordination between sector agencies remains limited.

Indonesian land policy is derived from existing legislation as well as from memos providing technical guidance for policy implementation. A highly sectoral and compartmentalized approach that differentiates between land administration, land use management, and state forestland management (the latter not covered under the previous categories) results in inconsistencies in policy. No effort is made to reconcile these inconsistencies. Under this sectoral approach, *adat*, or customary laws and interests, are largely ignored in practice. Though BPN reports on implementation of its responsibilities under the BAL, the extent of such reporting is limited and often inconsistent. Public participation, particularly on land acquisition and spatial management, is guaranteed by law, but it often is unclear how this input will be incorporated into actual decisions, especially as regards forestry.

Land Use Planning and Taxation

Relevant legislation establishes a hierarchal system of land use planning, and detailed city plans exist to guide urban development in major metropolises such as Jakarta. However, implementation is expensive and difficult to enforce. Quite a number of regions (districts), including the new ones that resulted from administrative fragmentation, have yet to formulate and promulgate their own spatial planning documents. Different sectors (forestry, public works, trade and industry, and tourism) may also devise their own development

and land use planning. These may differ from the spatial planning documents made by the regional development planning boards at the provincial and district levels. It is also unclear how the BPN mandate to formulate land use policies connects to regional spatial planning documents. Changes in land use plans, many of them initiated by private commercial interests, are made frequently and without proper public notice. In some cases, such changes are made ex post to bring plans into accordance with actual land use on the ground rather than the opposite.

Restrictions on land use (zoning in urban and rural areas, protected areas, protection of archeological sites or historic buildings, and so forth) are largely based on public interest but are poorly enforced. Changes in land use are made difficult by a permit process whereby land use must conform to what is specified in the title, and any change of land use requires de facto a reversion to the state and a new grant of land rights. This process introduces an enormous element of bureaucratic discretion that can be perceived as an invitation to corruption and mismanagement. In general, building codes (including sanitary and safety regulations) are applied only to government buildings and constructions by commercial enterprises, which need permits from the local government. The forms to submit an application for land use change or to apply for building and construction permits are readily available in local government offices or on the Internet. However, the majority of the population living in urban areas or those living in the poorer quarters of the city tend to disregard any regulation that imposes limitations on land use (zoning regulations and building codes), resulting in widespread residential informality. Broad intervention and control over land by the state has given rise to considerable dissatisfaction among local populations.

Powers to tax property are clearly defined and distributed between central, provincial, and local governments. The central government, represented by provinces, administers the tax in return for 10 percent of the revenue. The remaining 90 percent is returned to districts (64.8 percent), provinces (16.2 percent), and the central government (10.0 percent). As a result of the districts' share, coverage⁶¹ and property tax collection rates are high, and the tax is buoyant, because actual collection always exceeds targets based on previous years' collection. Exemptions are in line with policy considerations based on principles of equity and efficiency. However, the use of a very large set of variables to value properties results in a process that is often perceived as being complex and having little relationship to market prices. Under the prevailing tax law, the valuation rolls are not publicly available, and the information on a particular assessed property value can be obtained only by the concerned taxpayer. Sales prices are underdeclared, with most deeds stating a sale price a little above the "value of the tax object," which is not surprising because seller and purchaser must pay a 4 percent and 5 percent transfer tax, respectively, based on the declared price. Given the broad

tax base (a total of about 75 million parcel holders), the potential of land taxes to support local government and to encourage efficient land use could be better met.

Management of Public Land

All land for which ownership or use cannot be proved is presumed to be state land. However, the way that the state currently plans land use or manages state land does not prevent either large-scale underuse of valuable land or speculative accumulation of nonproductive land holdings. BPN, as the national land agency, formulates, coordinates, and implements national land policies and programs; supervises land administration; controls and oversees land use restrictions; and is in charge of land demarcation and mapping. But its authority is limited by the dualism in administration of land (between state land and state forestland), suggesting that BPN presently may manage only approximately 30 percent of the whole land territory. BPN has no jurisdiction over the management and administration of land within the area assigned as state forestland by the Ministry of Forestry. Although BPN was created in 1988, mechanisms for its coordination with other agencies (for instance regarding land data sharing) remain to be rolled out on a broader scale.

Little information on state land is publicly available, and district and municipal governments and other government services lack data on the amount of state land placed under their control. In a number of prominent cases, use of state land differs from its intended use, and sometimes, such land has been converted to private use (such as public parks used as residential areas).

In general, the government does not lease out state land. However, it is possible for private individuals or corporations to hold a right to construct and possess buildings on state land (*Hak Guna Bangunan*), a right to cultivate on state land (*Hak Guna Usaha*) or a right to use state land (*Hak Pakai*). Holders of those land titles are taxed. However, as regards state forestland, the Ministry of Forestry possesses the authority to rent out forestland to plantations. Forestland is then converted to other uses. In addition, the Ministry of Forestry may also enter into public-private partnerships to manage national parks. However, the inability to award tenure or ownership rights in forest areas limits the amount of capital the forestry industry can raise, prompts concession holders to mine the land with little consideration for long-term sustainability, and leaves local communities with little opportunity to participate in revenue streams from resources.

The rule, although mostly disregarded in practice, is that land may only be expropriated if the intended use by the government for public interest accords with existing spatial (land use) plans. Spatial plans, based on local government deliberations, putatively provide the justification for public land transfer. Although owners of titled land may receive full compensation, less is offered to

those holding land on the basis of tax receipts or under customary law. Squatters and illegal occupants, even if they occupy public land peacefully for a number of years and in some cases several generations, are not eligible to receive compensation. For those eligible, delays in making compensation payment are frequent, often because of disputes over the level of compensation. Lack of knowledge about appeals procedures and lack of independence in responding to complaints are responsible in part for delays. In addition, the fairness of compulsory acquisition has been contested.

Land Information and Land Administration

BPN is investing resources to develop the registration system and to roll out systematic registration. However, even for registered properties, the nature of recorded land information remains deficient. Less than half the registered properties are identifiable on maps, and links to the cadastre (land tax) maps are still at the level of pilots. The cost for registering property transfer is fixed (Property Tax Law No. 12/1994 and Government Regulation No. 46/2003) and below 1 percent of the property value, but there are additional charges. The parties to a transfer agreement must pay a fixed transfer charge of Rp 25,000 (about US\$2.90) plus a 4 percent charge, and the buyer must pay a further charge of 5 percent (duty to be paid for title transfer and value added tax). The cost of transferring land in Indonesia is one of the highest in the region, suggesting that a large number of efficiency-enhancing land transactions will not take place or will be driven into informality, with all the negative consequences.

BPN has the sole authority to manage the land registry system through its land offices in the regions. Most of the records are paper based. The complexity of regulations governing first-time registration and land transactions results in cumbersome and poorly compiled property registration docket. The completeness and reliability of BPN data vary widely. In Jakarta, 80 percent of land is titled and information digitized. In other major cities in Java, the records are less complete. In outer regions, the coverage is very low. In line with this pattern, for Jakarta and other big cities, BPN provides a search service by parcel and title holder. But nationwide, one can undertake only a manual search of the records by land certification registration number. Only owners of land or those with powers of attorney may obtain copies or extracts of documents. Only the tax office and the police are authorized by law to obtain detailed information on land holdings. The high level of informality affects reliability of BPN records negatively, especially through subsequent transactions.

BPN has an adequate practice of publicity in case of first-time registration (Regulation No. 24/1997) that gives other third parties time to submit an objection against the application for registration or to supply any other relevant information that may make registration impossible. There are meaningful published service standards, and the registry makes known the process and

procedures for obtaining certain services, a price list, and an estimation of time required to complete the service. However, the registry does not actively monitor its performance against these standards, and it has not been fully effective in preventing illicit requests for additional money to speed up processes or to bypass certain formal requirements. Thus, in practice, many BPN officials do not follow standard procedures.

Dispute Resolution

Both formal and informal arrangements are in place in Indonesia to address land-related conflicts. Four different institutions possess parallel and overlapping competencies to handle land-related conflicts: the civil court, the criminal court, the administrative courts, and a dispute settlement forum established by BPN to handle disputes relating to land misadministration and errors in land registration or titling. BPN was also active in creating directives (Ministerial Regulation No. 5/1999) that provide guidance on how to settle conflicts regarding communal land. In some cases, BPN has been party to the dispute, impairing its ability to handle and settle disputes. Available tools to manage and resolve land conflicts appear to treat the symptoms rather than the causes, such as the lack of coordination among agencies and policies.

Because the formal dispute resolution system favors government agencies, dispute resolution mechanisms are even less effective in settling disputes with the state, particularly the Ministry of Forestry regarding forest planning and land use. Formal justice is available principally in district capital cities. However, access to justice is not equally distributed. Geographical conditions, costs, or lack of familiarity with procedures are a barrier. The long-standing perception that courts are not impartial has fueled society's distrust of the judiciary and police. Clear procedural regulations are in place and outline the right to appeal and bring a dispute to a higher court. However, making an appeal is costly and time consuming and is not readily affordable to the majority of people.

Policy Recommendations

Policy recommendations for Indonesia cover the necessity to strengthen land rights, to redefine institutional responsibilities, to better coordinate spatial planning, to reinforce the capacity for local land management, to improve land information quality, and to make service delivery more transparent.

Land Rights Recognition

A number of issues regarding land rights should be addressed. First, giving more explicit legal recognition to possession is desirable. Recognizing occupancy (possession) as evidence of land ownership and accepting informal evidence, such as tax receipts combined with testimony by neighbors, could greatly increase tenure security for poor people, help formalize millions of

informal land transfers (and, thus, eliminate an enormous source of conflict), and improve incentives for investment in the large areas that formal land registration efforts will not be able to cover in the foreseeable future. Community land ownership is a second area for action. Allowing communities to own land, provided they conform to minimum levels of accountability, could help ward off intrusion by outsiders, increase investment incentives, and be compatible with a transition toward individual title in cases in which that is the most appropriate option. In this context, in addition to acceptance of traditional laws (*adat*) as a basis of evidence for land claims, recognition of a range of occupation and use patterns (for example, before and after a concession has been granted, once logging has been completed, and in conversion forest), including secondary uses, can significantly strengthen *adat* and provide a basis for land use regulations. Examples include requiring that certain land remains forest, linking property rights to responsibilities for sustainable management of land and forest, and defining landowners' entitlements to timber resources once concessions expire. Concession holders would have the opportunity to become landowners through purchase of land to which no prior entitlements exist, and agreements between the concession holder and local communities could allow the latter to negotiate terms of harvesting subject to the forest management law and, thus, more effectively share in resource benefits. This recommendation will require that the issue of forestland ownership be addressed. Giving secure tenure to such land can provide a key incentive for legitimate users to make long-term investments. Demarcation and registration of forestland is also critical to help protect public assets and to provide the basis for effective management and land use planning by the state.

Institutional Structure

Given the confusion from institutional overlaps, a single government agency (that is, BPN), should be responsible for administration, including registration, of public lands such as forest. The Ministry of Forestry's responsibility should be limited to managing public use of the land. Having only one agency responsible for the administration of all land would require a comprehensive inventory of all land, whether state or privately owned, that would have to be established and administered by a single agency. Management of land use could still be entrusted to expert line agencies. This assignment of responsibility would reduce duplication and make land administration more efficient, for example, by merging land and tax administration. It could also permit easier monitoring and enforcement of compliance. The responsibility for land management could remain with the ministries to separate land administration and management.

Spatial Planning

Similar to the recommendations for institutional structures, developing a national planning approach and coordinating existing spatial plans will ensure

that land use planning is more transparent and public and that it is conducted at a local level. Focusing central efforts on defining clear performance criteria for land use while having detailed planning locally could lead to the establishment of coordinated and consolidated plans that would be more efficient and cost-effective. This approach also would allow zoning even in the many cases where cadastral maps are not currently available and are unlikely to become available in the foreseeable future. Redressing the lack of coordination and planning will require recognizing the ability of all owners to use land at their discretion subject to existing land use controls, ensuring community consultation, and making all plans publicly accessible at district (*kecamatan*) level. This approach will help to implement the autonomy law, to improve land allocation and accountability, and to establish comanagement approaches, with authority for decisions over land allocation resting at the local level, subject to consistency with this national approach to land use planning.

Local Land Management Capacity

Decentralization has greatly increased responsibilities of local governments. At the same time, resources (including facilities and staff) at their disposal to comply with obligations remain limited. One concern is that without extensive capacity-building programs for local governments, the local government simply will not be able to fulfill those responsibilities. To close the gap, the central government will need to support local governments in embarking on those functions and provide training and capacity building that will allow them to carry out those functions efficiently and transparently. Because the underfunding of land administration affects quality of service provision, an important aspect will be to use land taxation to pay for improved land delivery services. This expansion of services would require raising land taxes to realistic levels, based on the cost of providing land-related services and local tax needs, with the possibility of higher rates on unused land and exemptions for small and poor land owners. The national government could set maximum and minimum rates, eliminate tax breaks by local government, and manage horizontal redistribution. Land conversion tax and capital gains tax could be used in addition.

Quality of Land Information

At present, the value of land information is much reduced because such information is not complete and is often unreliable. A clear conveyancing law can help reduce the cost of transferring land and make registration a rule-based activity by setting standards and rules that transactions must follow, that control fraud and forgery, and that reduce opportunities for corruption. The law should allow for simplified, rapid processes for standard transfers (for example, inheritance and subdivision); establish publicity of records and transactions (such as by having witnesses certify transfers and requiring all surveys to become part of the public record); and clarify that forgery is void and that

registration of forgery does not cure this defect. In this context, adoption of well-defined processes will allow registries to eliminate defective deeds over time and, thus, be a more viable option. Many other countries have put qualifications on titles that are legally uncertain or without survey and have established mechanisms that allow qualifications to be cured, either by passage of time or by production of a survey on demand, and with at least partial cost recovery. This option should be seriously explored. Combining supply-driven systematic registration with incentives for demand-driven, group-based registration could also help to empower the poor, to increase public confidence in registration, and to provide incentives to register.

Transparent Service Delivery

Establishing standards for land agencies, publicizing individual offices' success in meeting those standards, performing independent audits and complaint handling, and outsourcing where appropriate will all be key to improving provision of land information. In addition, the huge amount of alleged land-related improprieties makes it mandatory (a) to strictly enforce penalties for land-related frauds; (b) to honor the rights of victims to reclaim a loss from the offender or to be otherwise indemnified; (c) to declare invalid registrations that have been established fraudulently; and (d) to recognize liability, including the possibility of dismissal, by civil servants for errors and fraud committed under their watch. These standards can be widely publicized through dissemination campaigns to help reduce transaction costs, disputes, and tensions. Setting clear standards regarding service delivery fees charged (formal and informal) and appointing an independent agency to monitor handling of complaints will support this transparency. Finally, the current system for resolving land disputes is very slow and often offers no fair representation for the poor and disadvantaged groups. The government needs to establish a more efficient system of land dispute resolution, such as supporting a mediation mechanism at the local level and providing legal assistance to the poor and disadvantaged groups who are involved in land disputes with government agencies or commercial plantations. Resources should be identified, involving communities, technical staff at the subdistrict level, and local government. The information generated can be integrated with district-level spatial plans to identify areas of possible conflict that should receive priority attention.

NOTES

1. Peru has 28 regional governments, 194 provincial municipalities, and 1,834 district municipalities.
2. Through Law 24656, the General Law on Peasant Communities, the state recognizes the communities as fundamental democratic institutions, autonomous in their organization, communal activities, and land use, as well as regarding economic and administrative issues. The law (a) defines who may be community