



Land Law and Agricultural Production in the Eastern Caribbean:

A Regional Overview of Issues and Options



Land Law and Agricultural Production in the Eastern Caribbean:

A Regional Overview of Issues and Options

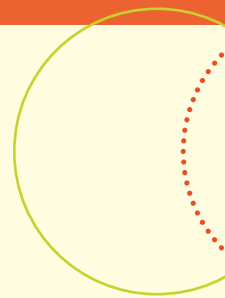
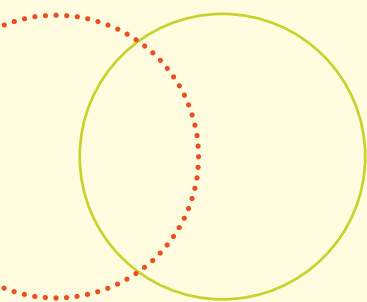
By Christine Toppin-Allahar



**Food & Agriculture Organization
of the United Nations**

Rome, 2013





The designations employed and the presentation of material in this information product do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations (FAO) concerning the legal or development status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. The mention of specific companies or products of manufacturers, whether or not these have been patented, does not imply that these have been endorsed or recommended by FAO in preference to others of a similar nature that are not mentioned.

The views expressed in this information product are those of the author(s) and do not necessarily reflect the views or policies of FAO.

ISBN 978-92-5-107489-3

© FAO 2013

FAO encourages the use, reproduction and dissemination of material in this information product. Except where otherwise indicated, material may be copied, downloaded and printed for private study, research and teaching purposes, or for use in non-commercial products or services, provided that appropriate acknowledgement of FAO as the source and copyright holder is given and that FAO's endorsement of users' views, products or services is not implied in any way.

All requests for translation and adaptation rights, and for resale and other commercial use rights should be made via www.fao.org/contact-us/licence-request or addressed to copyright@fao.org.

FAO information products are available on the FAO website (www.fao.org/publications) and can be purchased through publications-sales@fao.org.



Table of Contents

Foreword	iv
Acknowledgements	v
Acronyms and Abbreviations	vi
EXECUTIVE SUMMARY	vii
INTRODUCTION	1
EXISTING LEGAL and INSTITUTIONAL FRAMEWORKS	2
Land Tenure	2
Right to property	2
Compulsory acquisition	2
Security of tenure/land reform	3
Family land	5
Communal land	5
Land Administration	6
Land records	6
Land valuation and taxation	7
Crown/State lands administration	8
Land Use	11
Land use planning	11
Regulatory control of land use	12
Environmental impact assessments	13
Conservation of Natural Resources	14
Soil conservation	14
Water resources or watershed management	14
Conservation of forests and wildlife	15
Plant and animal protection	17
Control of agrochemicals	17
Institutional arrangements	17
ANALYSIS of LESSONS LEARNED and OPTIONS FOR REFORM	19
Key Land Tenure, Land Use and Land Administration Problems and Practices	19
Key Policy and Legislative Responses	21
Distribution of Crown/State lands	21
Security of Tenure of Private Lands	21
Conservation of Natural Resources	21
Land Use Planning and Development Control	22
RECOMMENDATIONS	23
Land use planning and development control	23
Agricultural production zoning	23
Consolidation of natural resources management laws	23
Interagency coordination	23
Compulsory acquisition	23
Land records	23
Crown/State lands administration	24
Land tenancy	24
Family land	25
Soil conservation	25
Control of agrochemicals	25
Tree conservation	25
Land taxes and transaction fees	25
Land loans	25
Harmonization at OECS level	25



Foreword

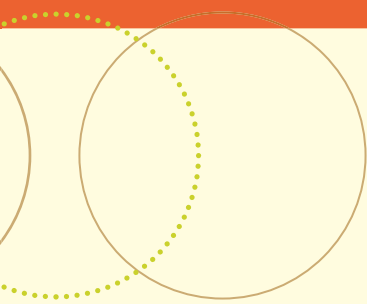
Poor land management has been recognized as a major constraint to sustainable agricultural production in the Caribbean.

It is further recognized that land use policy and legislation can play an important role in addressing this problem. To this end, a number of countries in the English speaking Caribbean have identified Land Use Policy as a priority area for assistance under their Country Programme Frameworks for assistance from the FAO. This document seeks to share the experiences in land tenure, land use policy and legislation and land administration of six countries of the Organisation of Eastern Caribbean States (OECS) – Antigua and Barbuda, the Commonwealth of Dominica, Grenada, the Federation of St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines; as well as the knowledge and experience of a leading Caribbean land law expert.

The report highlights commonalties and differences among prevalent land tenure, land use and land administration problems and practices affecting agriculture in the OECS, as well as policy and legislative responses to those problems. Recommendations for amending, updating or harmonizing existing national laws, as appropriate, are also proposed.

A key message which has emerged from this study is the need for strong political commitment to ensure that the policies are translated into action and that legislation is enforced. There is also need for an integrated, participatory approach rather than a top down approach to the formulation of land use policy and legislation to ensure that all stakeholders – government, private sector and civil society have a voice in the formulation process. There is need for strengthened capacity and increased sharing of information and knowledge in all areas of land use planning and administration. Moreover, efforts to harmonize land use legislation should continue across the region.

It is hoped that land use planners, policy makers, legislators and land administrators would find this document to be a useful tool in the practice and implementation of their work in the region.



Acknowledgements

This document, which was written by Ms. Christine Toppin-Allahar, is a compilation of reports of National Legal Consultants from Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines and is also informed by the existing literature and the author's extensive knowledge of the subject. Thanks are offered to the Ms. Toppin-Allahar and the National Legal Consultants - Mrs. Nelleen Rogers-Murdoch from Antigua and Barbuda, Mr. Henry M. Shillingford from the Commonwealth of Dominica, Mr. Feron C. Lowe from Grenada, Mr. Anthony L. Johnson from St. Kitts and Nevis, Mr. Ira A. d'Auvergne from St. Lucia and Ms. Nicole Sylvester from St. Vincent and the Grenadines, for their valuable contributions.

Special thanks also go to Mr. Jon Lindsay, Legal Officer in FAO, Rome who provided technical oversight for the legal aspects of the project, Dr. Lystra Fletcher-Paul who provided technical backstopping of the project and Ms. Jan Blenman who edited the document.

Acronyms and Abbreviations

APUA	Antigua Public Utilities Authority
CAO	Chief Agriculture Officer
DOE	Department of Environment
DCA	Development Control Authority
DOWASCO	Dominica Water and Sewerage Company
ESDU	Environment & Sustainable Development Unit
EIA	Environmental Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
GIS	Geographic Information Systems
GULP	Grenada United Labour Party
LRIS	Land Resources Information Systems
NCEMA	National Conservation and Environmental Management Act
NCEPA	National Conservation and Environmental Protection Act
NRMU	Natural Resources Management Unit
OECS	Organisation of Eastern Caribbean States
OECS-ESDU	OECS Environment & Sustainable Development Unit
SIDS	Small Island Developing States
UNCED	United Nations Conference on Environment and Development
UNDP	United Nations Development Programme
UNCHS	United Nations Centre for Human Settlements
UNECLAC	United Nations Economic Commission for Latin America and the Caribbean
UWI	University of the West Indies
WIR	West Indian Reports
WRMA	Water Resources Management Agency
WTO	World Trade Organization

Executive Summary

This report originally prepared in 2002 and revised in 2012 covers three topics. The main body of the report consists of an overview of the existing legal and institutional frameworks relevant to agricultural land use in countries of the Organisation of Eastern Caribbean States (OECS) that were studied. The overview is based primarily on the six country reports prepared in 2002 by the National Legal Consultants for Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines respectively, but is also informed by the existing literature on the subject and the knowledge of the author who was the Regional Legal Consultant on the project. In the second part, the key lessons learned and options for reform are summarized, and in the final section some recommendations have been put forward for consideration.

Overview of existing legal and institutional frameworks

The constitutions of all the OECS countries guarantee the right to property subject to certain limitations and that no property may be compulsorily acquired except for a public purpose on payment of compensation. The Land Acquisition Acts in force in the OECS predate and are not fully consistent with the constitutions. The system is intended to be transparent and equitable, however, the compulsory acquisition of land is quite contentious. This is partly because of loopholes in the law, but is chiefly due to maladministration.

Many farmers are land tenants not landowners. Insecurity of tenure is recognized as the main factor limiting the ability of land tenants to invest in improvements to their farms. Since the 1930s, this problem has been addressed by laws giving land tenants security of tenure provided they practice "good husbandry", coupled with laws for the creation of land settlement schemes on Crown/State lands. In most countries this old legislation is in disuse. The security of tenure legislation introduced in St. Kitts and Nevis in 1991 has been slow in being effected. However, the 1996 legislation providing for freehold conversion of house plots has been successfully implemented.

"Family land", which is co-owned in undivided shares by the heirs and successors of the original purchasers, is very common in the Caribbean, particularly in the civil law jurisdiction of St. Lucia where 45 percent of all land holdings falls into this category. This affects agricultural development as all the beneficial co-owners of the land enjoy the right to live upon and cultivate the land and no individual can borrow against it. Although an application for partition may be made to subdivide the land, this is sometimes impossible and only St. Lucia has introduced legislation to facilitate dealings with undivided family land.

Dominica is the only island with a community of indigenous people, the Caribs. The Carib Council holds all the land within the Carib Reserve as communal land and administers it in accordance with the provisions of a special Act. The fact that the land is communally owned affects the occupants' access to credit and investment in agriculture. The situation

in Barbuda is also unique as all the land is vested in the Crown on behalf of the people of Barbuda in perpetuity and all the inhabitants of the island are deemed to be land tenants. Historically, therefore, land in Barbuda has been treated as communal land, which continues to frustrate agricultural development. Legally, the use of the land by residents is controlled by the Barbuda Council. However, an issue arises between the central and local government about which body has responsibility for the allocation of land to foreign investors.

Two systems for proving and transferring title to land exist in the OECS countries: the Common Law Deeds system, which is in force in Grenada and St. Vincent and the Grenadines and the Torrens system of registered title, which is used in Antigua and Barbuda and St. Lucia. Both systems coexist in Dominica and St. Kitts and Nevis, but in these countries the old systems of land registration are not cadastral-based. The countries that have adopted compulsory land registration systems have the best land records. However, as a result of institutional constraints, it is doubtful that the land registration process is operating much more efficiently than the deeds registration process.

Taxation has not been used as an instrument for guiding land use. Only Antigua and Barbuda, St. Lucia and St. Vincent and the Grenadines have direct taxes on land. With the possible exception of St. Vincent and the Grenadines where there is an exemption for small farms, land tax is being used primarily for the purposes of revenue collection and not as a policy instrument. In the other countries, taxes and other imposts are payable on the transfer of land. In some cases, for example in Dominica, where caveats are used to secure loans in order to avoid the fees payable on the registration of mortgages, the system of charges on land transactions has some perverse results.

In addition to land acquired compulsorily or by agreement, the Crown/State holds all land for which no land grants have ever been issued. The amount of land owned by the Crown/State varies greatly among the OECS countries, but in every country there is legislation governing its administration. There are also several problems that affect the ability of the agencies responsible for Crown/State lands administration to discharge their mandate. Chief among these are inadequate land information, limited institutional capacity and a policy environment in which Crown/State land is a tool for political patronage. Additionally, there are, in some cases, deficiencies in the legislation under which these agencies operate that further aggravate these problems.

All the OECS countries have land use planning and/or development control legislation. With the exception of the St. Vincent and the Grenadines legislation enacted in 1992, much of this legislation was obsolete until recently. Hence, land use laws in the region have not been effective in curtailing the conversion of arable land to non-agricultural uses. One of the reasons for this in some countries is that the provision with respect to agricultural land has been persistently misinterpreted. However, all of the OECS countries studied have recently enacted new land use

legislation. These enactments are intended to provide a better and more participatory system of land use planning and a more equitable and transparent system of development control, including provisions for environmental impact assessment.

With the exception of St. Lucia and St. Vincent and the Grenadines, none of the islands has legislation dealing specifically with soil conservation, although there are a few provisions with respect to soil conservation in the forest and land tenancy laws. Moreover, it appears that only Antigua and Barbuda and Grenada have laws for the control of agricultural fires. Loose livestock, which do appreciable environmental damage, are a major problem particularly in the Leeward Islands (Antigua and Barbuda and St. Kitts and Nevis), where there are large numbers of landless livestock farmers. In most countries, the law takes a punitive approach to this problem by providing for the impoundment of loose livestock. In St. Lucia, however, the law also provides for the declaration of publicly owned lands as pasturage on which animals may be grazed by licence.

With the exception of Antigua and Barbuda, the OECS countries have satisfactory legislation for water resources and watershed management that includes responsibility for the provision of water for agriculture. In the best cases, these laws provide for coordination between the agencies responsible for water resources and the agencies responsible for forest conservation. The laws relating to the conservation of natural resources are generally good. However, there is a case for consolidation of this legislation. There is also legislation for plant and animal protection and the control of pesticides in most of the countries studied, however, the latter does not cover the control of all agrochemicals.

Several institutional issues, which have an impact on the efficacy of the legislation, appear to be common to all the OECS countries. These include:

- Dearth of legal requirements for interagency coordination
- Shortage of regulations for the implementation of legislation
- Inadequate records, particularly with respect to Crown/State lands
- Non-appointment of advisory/executive boards for administration of the laws
- Lack of institutional capacity, particularly adequate human resources
- High demands on relevant institutions because of reliance on command and control mechanisms, rather than incentive measures
- Weak links between law and policy as a result of the failure to repeal outdated legislation which is in disuse
- Lack of political will to enforce the law, particularly with respect to tenants and squatters on Crown/State land.

Analysis of lessons learned and options for reform

The distribution of publicly owned land, by grant, sale or lease, has historically been the major mechanism for stimulating agricultural development in the OECS countries. This practice has long been supplemented by land reform programmes involving the compulsory acquisition and redistribution of privately owned estates. There are a number of problems associated with the implementation of this policy. Generally, there are fewer deficiencies in the existing legislation than in its administration.

Over the past half century, a collateral effort has been made to protect the interests of the tenants of private land and promote agriculture by means of legislation guaranteeing security of tenure to small farmers who

hold leases, but legislation for this type security of tenure is largely in disuse. However, legislation for this type of security of tenure is being succeeded in some countries by laws that offer land tenants the option to purchase the land on which they reside or farm at a nominal cost. The positive response to this type of legislation, suggests that freehold conversion is a more workable option for the development of agricultural land than the continuation of leasehold schemes.

The OECS countries have all inherited colonial legislation that provided in some ways for the conservation of natural resources. Much of this legislation was inconsistent with modern approaches to the management of natural resources. Little attention has been paid to the question of soil conservation and to issues such as the control of slash and burn cultivation and loose livestock. The current need to revitalize agriculture following the removal of price support for bananas may have created a policy environment which can focus on and address these fundamental issues.

Land use planning has been described as an activity that has been marginalized in the subregion because none of the existing land use plans has ever been approved or explicitly endorsed by the political directorate. However, the foundation has been laid for the revival of land use planning through the United Nations Centre for Human Settlements (UNCHS) Environmentally Sustainable Land Use Planning and Sustainable Development Project implemented in the subregion in the 1990s. This project included (i) the development of model legislation and its customization in several countries and (ii) a number of measures to strengthen the capacity of the OECS countries to undertake land use planning and development control.

Recommendations

The report contains various recommendations with respect to:

- Land use planning and development control
- Agricultural production zoning
- Consolidation of natural resources management laws
- Interagency coordination
- Compulsory acquisition
- Land records
- Crown/State lands administration
- Land tenancy
- Family land
- Soil conservation
- Control of agrochemicals
- Tree conservation
- Land taxes and transaction fees
- Land loans
- Harmonization at the OECS level.

It is also recommended that the OECS countries should continue to pursue an approach of harmonizing their legislation. Given the constraints of institutional capacity in individual countries, devices for resource sharing should be explored. This would strengthen practice and harmonize the implementation of legislation in these OECS countries.

Introduction

Between 2000 and 2002, the Food and Agriculture Organization of the United Nations (FAO) assisted the governments of six OECS countries – Antigua and Barbuda, Dominica, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines – to implement a project entitled, 'Assistance in the Development of Land Use Planning and Agricultural Production Zoning in the OECS' (TCP/RLA/0067). The project had three inter-related objectives:

1. To assist the Governments of the OECS Member States in the evaluation of their land resource base in specific areas in each country, with a view to developing policy options and programmes for the rationalization of land use, the zoning of production and utilization of idle lands
2. To assist the Governments in reviewing existing land use policies and to develop modified or new policy options that will facilitate the acceleration of the regional diversification programme
3. To strengthen planning and management of land resources through improved systems of land evaluation in the OECS member states.

In pursuing these objectives, project activities progressed along two tracks. The first of these related to enhancing land information and land evaluation capacities within the respective Ministries of Agriculture. The second cluster of activities involved the analysis of existing policy and legal and institutional frameworks in each country, focusing on those elements that are particularly relevant to agricultural land use constraints and opportunities.

For the latter component of the project, six national reports were prepared by the National Legal Consultants under the supervision of the FAO Development Law Service in 2002. A regional synthesis report was initially prepared in 2002 on the basis of the country reports.

Additionally, inputs based on the knowledge and experience of the author who served as the Regional Legal Consultant were also included. The synthesis report highlights commonalities and differences with respect to key land tenure, land use and land administration problems and practices, as well as key policy and legislative responses, focusing on the main problems affecting agriculture in the OECS region. It included recommendations for amending, updating or harmonizing existing national laws, as appropriate.

The regional synthesis report was discussed at a Regional Workshop on the project held in Grenada 19 - 20 September, 2002¹. At that workshop, the Regional Legal Expert made a presentation relating several problems affecting agricultural production in the OECS countries to inadequacies in the existing legal and institutional frameworks. The participants of the workshop adopted several recommendations on legal and institutional reform to address the deficiencies identified. Some of those recommendations were of general relevance while others were country specific.

Although in limited circulation over the past decade, the regional synthesis report has proved to be a valuable document. Hence, in 2012, the findings and recommendations of the report were reviewed and updated for the purpose of wider publication.



The project entitled 'Assistance in the Development of Land Use Planning and Agricultural Production Zoning in the OECS' (TCP/RLA/0067) had three inter-related objectives.

¹ The six National Legal Consultants were: Mrs. Nelleen Rogers-Murdoch, Antigua and Barbuda; Mr. Henry M. Shillingford, the Commonwealth of Dominica; Mr. Feron C. Lowe, Grenada; Mr. Anthony L. Johnson, the Federation of St. Kitts and Nevis; Mr. Ira A. d' Auvergne, St. Lucia; and Ms. Nicole Sylvester, St. Vincent and the Grenadines.

Existing Legal and Institutional Frameworks

LAND TENURE

Right to property

The constitutions of all the OECS countries which participated in the project have what the Privy Council has called "a family resemblance". They all contain Bill of Rights guarantees concerning property, based ultimately on the European Convention on Human Rights. Hence, the constitutions of OECS countries guarantee the right to protection of property and from deprivation of property without compensation, subject to limitations designed to ensure that the enjoyment of those

some cases, for example in Grenada and St. Lucia, the words used are "prompt payment" of "full compensation".

However, the constitutions of OECS countries also provide that nothing contained in or done under the authority of any law contravenes this right in so far as that law provides for the taking possession or acquisition of property for specific purposes. These purposes include the conduct, on the property, of works for soil conservation, the conservation of other natural resources and agricultural development or improvement (if the owner or occupier of the land has, without a reasonable excuse, failed to carry out such works).

The constitutions of OECS countries guarantee the right to protection of property and from deprivation of property without compensation.



The constitutions of OECS countries make specific provision for the enforcement of the protective provisions, through which any person whose property rights have been contravened may apply to the courts for redress. As stated by the leading authority on the subject, "Of all the rights dealt with in the constitutions, that of property is most often and most profoundly affected by governmental action in planning and development"².

However, there is a considerable body of jurisprudence in the Commonwealth Caribbean to support the conclusion that the protective provisions of the constitutions of OECS countries and the recourse available to property owners for their violation are effective.

Particularly noteworthy is the decision of the Privy Council in the case of *Gairy (Jennifer) v. Attorney General of Grenada*³, holding that Government cannot rely on the customary prerogatives of the Crown to avoid the payment of compensation for infringements of the constitutional protection of property rights.

rights by any person does not impair the rights and freedoms of others or the public interest.

With respect to the expropriation of property, the constitutions provide specifically that no property can be compulsorily acquired except for a "public purpose" under a law that provides for the assessment and payment of compensation. There are subtle but significant differences in the language of this provision amongst the OECS countries and in

Compulsory acquisition

All of the OECS countries have in place Land Acquisition legislation providing for the exercise of the right of the Crown/State⁴ to compulsorily acquire private land for public purposes, otherwise known as the right of eminent domain. This legislation has been utilized in some instances for the purposes of land reform and agricultural

² Demerieux, M. 1992. *Fundamental rights in Commonwealth Caribbean constitutions*, p. 385. Faculty of Law Library, UWI.

³ (1999) 59 West Indian Reports (WIR) 174.

⁴ The Commonwealth of Dominica is a republic, but all the other OECS countries are constitutional monarchies.

development projects⁵. On the face of the legislation, the system is intended to be transparent and equitable. However, throughout the Commonwealth Caribbean, the compulsory acquisition of land is quite contentious. This is partly because of loopholes in the legislation, but is chiefly attributable to poor administration.

The Land Acquisition legislation invariably predates Associated Statehood and Independence and is inconsistent with the protective provisions of the constitutions of OECS countries, to the extent that they provide for the “prompt payment” of “full compensation” for property that is compulsorily acquired. However, as shown by the decision of the Court of Appeal of the Eastern Caribbean States in the case of *Mills v. Attorney General of St. Kitts and Nevis*⁶, these rights are false in cases where the constitution contains an “existing laws savings clause”. This clause shelters laws in force before Independence from invalidation because of their inconsistency with the Bill of Rights provisions of the constitution.

Common to all of the OECS countries are the complaints that in practice the Crown/State does not pay the open market value for land and that there are lengthy delays before the compensation payable is assessed and payment is actually made. Exacerbating these problems is the lack of provision for the payment of commercial rates of interest on the amount of the compensation payable from the date of acquisition until the date of payment. This results in considerable financial hardship for landowners from whom land is compulsorily acquired. Additionally, the statutes are also silent with respect to what constitutes a “public purpose” for which private land may be compulsorily acquired and the checks on the abuse of power by government for political reasons with regard to land acquisition are minimal and ineffective⁷.

Questions also arise about the use to which the compulsorily acquired land can be put if the public purpose for which it was acquired is abandoned, as well as the claims of the former landowner to such lands. However, these questions appear to have been answered elsewhere in the Commonwealth Caribbean in terms that favour the Crown/State.⁸

Security of tenure/land reform

As a result of their origins as plantation economies, the OECS countries are characterized by inequity in the ownership/control of land, which has historically been dominated by a small and privileged elite. As a result, many persons occupy the land on which they farm or reside as land tenants

- in St. Lucia rented land constitutes about 15 percent of all holdings,
- in St. Kitts and Nevis nearly 12 percent of all land is rented,
- in Nevis, even more, nearly 18 percent of land is rented,
- in Dominica, more than 11 percent of agricultural land is rented or occupied rent-free and

- in St. Vincent and the Grenadines the figure is nearly 6 percent.

Insecurity of tenure is recognized as the principal factor constraining the ability of land tenants to invest in the improvement of their land and buildings. There have been attempts to address this problem through legislation aimed at improving security of tenure and, in some cases, introducing land reform in all the OECS countries. This practice originated from the recommendations of the Royal Commission of 1897⁹ which was followed almost immediately by the enactment in St. Vincent of the Land Settlement Ordinance of 1899¹⁰.

The Antigua and Barbuda *Agriculture Small Holdings Act*, Cap. 72, enacted in 1938, is an example of old legislation of this type. Statutes with the same name are found in most of the OECS countries, the most recent being enacted in St. Lucia in 1983, as part of a package of land reform legislation¹¹. The major differences between the enactments in the countries studied relates to the definition of a “small holding”. In Antigua and Barbuda, small holdings are limited to holdings of between a quarter of an acre and 25 acres. In Dominica, the range is between half an acre and ten acres; and in St. Lucia, it is not more than five acres. The legislation (the *Agriculture Small Holdings Act*), which does not apply to tenancies of Crown/State land, requires that contracts of tenancy be made in writing and tenants are protected against eviction, unless the landlord proves in court that they are in breach of the terms and conditions of contracts of tenancy set out in the Act. Central to these is the requirement that the tenant must cultivate the land in accordance with the rules of “good husbandry”, including soil conservation and maintenance of the fertility of the land. Provision is also made for the control of rents, which cannot be increased without the consent of a statutory tribunal established to assess rental rates for the purposes of the Act. In the event that a tenancy is terminated, under the Act, compensation must be paid to the tenant for any improvements made to the land.

In most countries, the *Agriculture Small Holdings Act* has fallen into disuse. It is reported that in Antigua, although Regulations were made to implement the Act in 1952, no register of contracts of tenancy has been kept and no Agricultural Rent Board has been appointed for over 20 years. In St. Vincent, where no regulations have ever been made for the implementation of the Act, a large number of small tenancies do not conform to its requirements. In Dominica, there are no registered agricultural leases that adhere to the Act. Even in St. Lucia, where the Act was introduced as recently as 1983, it is not being implemented and is described as a forgotten piece of legislation.

The Antigua and Barbuda *Land Settlement Act* Cap. 237 is a companion piece to the foregoing legislation, enacted in 1939, that provides for areas of Crown land to be declared as “land settlement areas”. These

⁵ Although in others (for example, for the ‘Sugar Industry Rescue Operation’ in St. Kitts and Nevis) special legislation was enacted.

⁶ (1993) 45 WIR 125.

⁷ See: *Spencer v. Attorney General of Antigua and Barbuda and Others* (1999) 3 LRC 1, holding that the Leader of the Opposition did not have legal standing to challenge the compulsory acquisition of an environmentally significant area to be transferred to foreign investors for the purposes of hotel development.

⁸ By the decision of the Privy Council in the consolidated cases of *Blanchfield and Others v. Attorney General of Trinidad and Tobago* and the *Chaguaramas Development Authority and Cross and Hoyte v. Attorney General of Trinidad and Tobago and the Chaguaramas Development Authority* (2002) 61 WIR 443.

⁹ *Report of the Royal Commission on the West Indies 1897*, cited in J. Momsen, *Land settlement as an imposed solution*. In J. Besson & J. Momsen, eds. *Land and development in the Caribbean*. 1987. Macmillan Caribbean.

¹⁰ Still in force as the *Land Settlement and Development Act*, Cap. 242 (Revised Laws 2009).

¹¹ Chap. 58:07 [Dominica]; Cap. 29 [St. Vincent and the Grenadines]; Act No. 22 of 1983 [St. Lucia].

areas were meant to be allocated for subdivision into agricultural small holdings to be sold to settlers. Under this Act, the beneficiaries are prohibited from selling, letting, encumbering or otherwise dealing with the land other than by testamentary disposition¹², or from selling any crops unless the purchase price of the land has been paid off or Government consent is given. The Act also shelters the beneficiary from losing the land to satisfy judgment debts. This Act is a piece of land reform legislation intended to (i) create a land-owning peasantry and (ii) prevent the beneficiaries from capitalizing in the short term, directly or indirectly, on Crown land that has been sold to them at concessionary prices. The Act is also in disuse and there is no record of any land in Antigua and Barbuda ever having been declared a land settlement area under the Act.

Similar legislation exists in several other OECS countries. In Grenada, the Land Settlement Act Cap.161, enacted in 1933 and twice amended in the 1960s, applies to private land as well as Crown land which is relatively scarce in Grenada. It provides that any Crown land may be declared a land settlement area. In addition, any private land may be purchased, taken or leased by agreement. Failing agreement, the land may be compulsorily acquired for the purposes of the Act, which are deemed to be public purposes within the meaning of the Land Acquisition Act. A size limit of 5 acres is set on small holdings and settlers are precluded from encumbering the land for a period of 3 years or selling it for a period of 15 years without the consent of Government. The Act provides for the creation of a Land Settlement Development Board, but no such board exists and the Act is in disuse. Despite the non-existence of the board and the Act's disuse, the Carriacou Land Settlement and Development Act Cap.42, which contains almost identical provisions, was enacted in 1955. A board also does not exist for the administration of this Act and it is also in disuse.

The most recent security of tenure legislation is the St. Kitts and Nevis Land Development Act 1991, which provides for the registration of agricultural lands and for the security of tenure for tenant farmers on such land. The Act provides for agricultural lands to be leased for periods of 35 years under registered leases and protects lessees from eviction by the landlord provided that the land is developed and used in accordance with the lease. The lessee is permitted to mortgage or charge the leasehold land as security for a loan from a bank prescribed under the Act. It appears that this Act is intended to apply to publicly owned land and to provide a framework for the regularization of Government's practices regarding the leasing of agricultural land. However, it is reported that implementation of the legislation has been slow in getting off the ground.

Previously, farmers were given possession of land under a letter of intent. However, they did not qualify for loans under the letter of intent as they could not utilize their land as collateral. A similar situation exists in Antigua and Barbuda where the Crown Lands Act Cap.120

provides that Crown land must be let on annual leases which have no collateral value. It is reported that, although some longer leases of agricultural lands exist, farmers are often given the land before these leases are formalized. However, these leases may never be registered because of the costs of registration and therefore cannot be utilized as collateral. The resulting insecurity of tenure hampers investment in agriculture with the result that agricultural land is often left idle and is susceptible to conversion to built development.

The tenancy of building land or house spots for the erection of chattel houses is a unique but very common feature of all Commonwealth Caribbean countries¹³. Squatting on publicly owned land and to a lesser extent on private land is also pervasive, although squatting on Crown lands may be an offence under the St. Vincent and the Grenadines Crown Lands Act Cap. 238. Both of these phenomena are manifestations of the problem of landlessness among a large segment of the population. A contemporary trend in the Commonwealth Caribbean is the introduction of legislation for the security of tenure and/or, in some cases, "freehold enfranchisement" of residential land tenants and the regularization of squatters on Crown/State lands.

The earliest legislation of the security of tenure type is exemplified by the Antigua and Barbuda Rent Restriction Act, Cap.378 enacted in 1939, but it is reported that this legislation is in disuse as no rent commissioners have been appointed for at least 20 years. The St. Kitts and Nevis Village Freehold Purchase Act 1996 is an example of legislation for the freehold enfranchisement of land tenants. The Act confers upon the tenants of land in prescribed areas, the option to purchase the land on which they have been residing for a specified period at a special price. The tenant may exercise this option by serving notice on the landlord, and in the case of St. Kitts and Nevis, the Minister responsible for lands. This legislation has been successfully implemented and a number of title transfers have already taken place. This type of programme has implications for agriculture only in so far as it promotes investment in land in rural villages and provides an impetus to continued residence in such areas.

Squatting, particularly on Crown/State lands, is reported to be widespread in the OECS countries, with the exception of Antigua and Barbuda. In the countries where a system of registered title exists¹⁴, legal machinery exists for the recordation of title to land acquired by adverse possession¹⁵ by squatters. However, the legal costs of this process may be a barrier to its frequent use and in some countries (such as St. Lucia) the law expressly provides that title to Crown land cannot be acquired by adverse possession. In St. Vincent and the Grenadines, where no system of registered title exists, the Possessory Titles Act, Cap.328, enacted in 2004, provides a comparable process for the acquisition of title by adverse possession by court order. Although this legislation does not expressly bind the Crown, it is being utilized as a mechanism for the transfer of title to squatters on

¹² Leaving property at one's death, most often through a will. The person making the disposition retains ownership of the property until his or her death, at which time the property is transferred to the beneficiary.

¹³ Fraser, H. A. June 1972. Land law in the West Indies, with special reference to chattel houses. *Jamaica Law Journal*, pp. 26 - 31; Gibson, M. 1984. Pluralism, social engineering and some aspects of law in the Caribbean, *Bulletin of Eastern Caribbean Affairs*, 10(2): pp. 56 - 87; Matthews, G.J. & Toppin-Allahar, C. 1997. Chattel houses and mobile homes: Fixtures in Caribbean and Canadian Law, *Caribbean Law Review*, 7(1): p. 368.

¹⁴ Discussed in section Land Records below.

¹⁵ When a trespasser continues trespassing for an extended period of time, the law may give the trespasser the right to stay on the land. This right is known as "adverse possession". Adverse possession rights range from the right to live on the land, to the right to pass across it to get somewhere else.

Crown/State Lands¹⁶. While there are some other programmes for the regularization of squatters on Crown/State lands in the other OECS countries, for example St. Lucia, it appears that these are administrative initiatives, as no special legislation for this purpose, such as the legislation enacted in Trinidad and Tobago in 1998¹⁷, has yet been introduced in the countries studied.

Family land

The prevalence of “family land”, which is co-owned in undivided shares by the descendants of the original purchasers in the Commonwealth Caribbean countries and even in the United States¹⁸, is a phenomenon that dates back to the abolition of slavery. A considerable amount of research has been done on this type of land tenure¹⁹. All the beneficial co-owners of family land enjoy the right to live on and cultivate such land, and often to reap the crops planted by others, but no individual can pledge the land as collateral to obtain financing for its development. At the risk of oversimplification, it can be said that, whereas sociologists tend to regard family land as having an important welfare function in countries without a social safety net, agricultural economists tend to regard it as an obstacle to land development.

In the OECS countries, family land is most common in St. Lucia, where more than 45 percent of all land holdings, including the majority of agricultural holdings, are classified as family land. In Grenada, 15 percent of the land is classified as family land, as is 11 percent in Dominica. In St. Vincent and the Grenadines, although family land is also common²⁰, the incidence of family land is unknown as the figures for parcels held in “owner-like possession” are combined with the figures for “owned” land. “Owner-like possession” is an expression used to describe land occupied by persons with a beneficial interest in such land that has not crystallized into a legal interest, because the occupants have no title documents. Land inherited by individuals under unadministered wills and the laws of intestacy would fall into this category, as would family land.

The dominance of family land in St. Lucia is explained in part by the fact that the laws of inheritance are based on the Napoleonic Code, under which all family members are entitled to shares in inherited land. This is the only OECS country in which an attempt has been made to address this problem by legislation. *The Land Registration Act*, Cap. 5:01 provides that where there are more than four co-owners of land, the first four named as proprietors in common of the parcel of land hold the land in trust for sale. Trust for sale in the Act has the same meaning as under Article 2141 of the Civil Code, which empowers the trustees to sell the property. Moreover, the Act provides that proprietors in common must deal with their undivided shares in land in favour of another proprietor in common, except with the consent in writing of the other co-owners, which shall not be unreasonably withheld.

In most countries, an application for partition can be made to the court for the subdivision of land held by co-owners in undivided shares. In the event that the parcel of land is incapable of subdivision into the requisite shares, the land can be sold through the court and the proceeds distributed proportionately. In St. Lucia, this can be done in notarial form if all the co-owners agree or by the Registrar upon application of one or more of the proprietors in common or where there is a court order for the sale of an undivided share in land in execution of a decree. Such partition provisions conflict with the regulatory control over the subdivision of land given to land use planning agencies by development control legislation²¹. However, the incidence of partition is low as most of the co-owners of family land are reluctant to apportion land left to “the heirs of the heirs” between members of the current generation and, in any event, most parcels of family land are incapable of subdivision among all the potential claimants.

Communal land

Dominica is the only OECS country in which there is a community of indigenous people. The Caribs of Dominica occupy an area of approximately 3 700 acres, known as the Carib Reserve, delineated in 1901 by survey. The administration of this area is governed by the *Carib Reserve Act* Chap. 25:90²² which makes provision for the election of a Carib Chief and Carib Council. The council is empowered to make By-Laws for the occupation and use of land in the Reserve, which is vested in the council for and on behalf of the people of the Reserve. As custodians of the land, the council may demarcate, apportion, allot or exchange lands in the Reserve to members of the Carib community, for agricultural or other approved purposes. However, the Government of Dominica retains responsibility for the overall development and planning of the Reserve.

The Act, enacted in 1987, creates a statutory framework for the vesting of communal land in the Carib community and codifies customary law as to its tenure and use. By custom, Carib land is owned by the entire tribe and individuals or families acquire and retain title to specific areas by making use of them. Since the land is communally owned and there is a tradition of cooperative labour or “coup de main” associated with Carib society, these circumstances are regarded as major hurdles to investment in agriculture, as they affect the individual’s access to credit.

The existence of the Carib Reserve is not without its opponents in Dominica and although the Act provided for the issue of grant of the lands to the Carib Council and for the conversion of that grant to a Certificate of Title, this was resisted by the previous Government on the grounds that it would create a State within a State.²³ However, a grant of a smaller area of 82.03 acres was eventually made to the Carib Council in 1996.²⁴

¹⁶ FAO. August 2010. *Report on the conversion of agricultural land to non-agricultural uses: St. Vincent and the Grenadines*, by C. Toppin-Allahar. FAO GCP/RLA/167/EC SFA 2006. St. Vincent.

¹⁷ *State Lands (Regularisation of Tenure) Act*, Chap. 57:05.

¹⁸ Mitchell, T. W. 2000. From reconstruction to deconstruction: Undermining black landownership, political independence and community through partition sales of Tenancies in Common. *Wisconsin Land Tenure Center Research Paper* No. 132, p. 72.

¹⁹ Besson, J. 1987. A paradox in Caribbean attitudes to land. In J. Besson and J. Momsen, eds. *Land and Development in the Caribbean*, pp.13 - 45. Macmillan Caribbean.

²⁰ Rubenstein, H. 1987. Folk and mainstream systems of land tenure in St. Vincent. In J. Besson and J. Momsen, eds. *Land and Development in the Caribbean*, pp. 70 - 87. Macmillan Caribbean.

²¹ This conflict can be resolved by the court granting partition subject to the consent of the regulatory authority being duly obtained for subdivision of the land. See the decision of the Guyana Court of Appeal in the case of *Dennis Li v. Lucy Walker* (1968) 12 WIR 195 @ 204.

²² As amended by the *Carib Reserve (Amendment) Act 1994*, Act No. 8 of 1994.

²³ Banks, E.P. 1956. A Carib village in Dominica. *Social and Economic Studies*, 5(1): p. 89; Owen, N. 1975. Land, politics and ethnicity in a Carib island community. *Ethnology*, 14(4): pp. 385 - 393; Gregoire, C. & Karem, N. 1989. The Caribs of Dominica: Land rights and ethnic consciousness. *Cultural Survival*, 13(3): p. 52.

²⁴ *Carib Council State Grant Notice 1996*, SRO 17 of 1996.

LAND ADMINISTRATION

Land records

Two systems for legally proving and transferring title to land exist in the OECS countries, the Common Law Deeds system and the Torrens system of registered title, both of which are operative in some countries.

All land, except unallocated Crown/State land was originally held and transferred under the Common Law or “old law” system of land grants and deeds of conveyance. Where this is the law, the onus is on the landowner to prove ownership of the land by showing that his/her claim to the land stems from a “good root of title” and the owner of land has the capacity to convey ownership of the land by his/her own “act and deed”. Legal mortgages are created by the conveyance of the land to the lender, subject to the borrower’s equity of redemption upon liquidation of the loan²⁵. In most countries, this system is underpinned by a system of the registration of deeds, which facilitates searches into the history of title to land, as title must be proved afresh with respect to every land related transaction. In such cases, an unregistered deed is inoperative, but the State does not warrant that the validity of the deeds be recorded. Additionally, there is no requirement that a survey plan should be annexed to or referred to in a deed. Hence, land is often simply described in deeds and the actual extent and the boundaries of the parcels conveyed are uncertain.

In many jurisdictions, this system is being or has been replaced, incrementally or comprehensively, by a system of registered title, under which the State warrants the title to land and the validity of recorded land transactions. Initially, when land is first registered, a thorough inquiry into ownership of the land and encumbrances on the title is undertaken and a record that mirrors the state of the title is compiled. The State assumes liability for the accuracy of this record and guarantees the title, so it is not possible to look behind it. This is borne out by the decision of the Privy Council in the case of *Attorney General of Dominica v. Shillingford*.²⁶ One of the advantages of this system is that title to land acquired by adverse possession can be regularized and a title instrument obtained. All future transactions that take place with respect to the land, including transfers, mortgage and leases are entered on the register. Transaction fees are paid into an assurance fund out of which compensation can be paid to persons who are affected by any mistakes made by the Registry. Apart from certainty, in theory this system offers the advantages of lower costs and greater efficiency.

In St. Vincent and the Grenadines and Grenada, land ownership and transactions are still governed exclusively by the “old law” system of conveyancing. The system is found in its most basic form in St. Vincent and the Grenadines, where conveyancing is based on archaic British laws, the 1881 *Conveyancing Act* and the 1535 *Statute of Uses Act*; although deeds of conveyance, mortgage, trust, etc., must be registered. In Grenada, the practice of “old law” conveyancing was simplified by the *Conveyancing and Law of Property Act*, Cap.64, which sets out the law

relating to property and the transfer of property and makes provision for the use of standard forms of conveyance, mortgage, etc. In addition, the *Deeds and Land Registry Act*, Cap.79, provides for the registration of certain legal instruments affecting land, including wills.

Dominica is the first OECS country to have introduced a system of registered title, via the *Title by Registration Act*, Chap.56:50, enacted in 1883. However, registration of title under this Act is not mandatory and the system of land registration coexists with a system of deeds registration governed by the *Conveyancing and Law of Property Act*, Chap. 54:01, and the *Registration of Records Act*, Chap 54:04. It is reported that few land transactions are carried out by deeds of conveyance, which are primarily used to prove title for the purposes of first registration of land under the *Title by Registration Act*. The determining factor in this system appears to be the policies of financial institutions, which do not grant mortgages unless the land is held under the secure Certificate of Title, rather than any of the practical advantages theoretically associated with a system of land registration. This is borne out by the fact that leasehold interests are usually created by deed of lease rather than by registered lease, because financial institutions do not accept long-term leases as collateral.

The system in St. Kitts and Nevis, where the *Title by Registration Act*, Cap. 279 was enacted in 1886, is analogous to that in Dominica, the main difference being that the majority of private lands are still held by deeds governed by the *Conveyancing and Law of Property Act*, Cap. 271. The majority of Crown lands, other than the sugar estates and other lands that were compulsorily acquired, are registered. However, long-term leases of Crown lands are not always registered. It is reported that there are problems associated with both systems of title. The system of land registration is not a cadastral-based system and in the absence of parcel-based identification, there have been instances of duplication in the registration of title to land. The administrative systems in the Registry are said to be lax, in that no record is made of deeds presented for registration and no proper records are kept with respect to legal instruments being handled by persons engaged in title searches, with the result that deeds and Certificates of Title are sometimes lost or stolen. A number of deeds were also damaged or destroyed by fire in 1983.

Antigua and Barbuda and St. Lucia operate modern compulsory land registration systems. In Antigua and Barbuda, all land is registered under the *Registered Land Act*, Cap. 374 enacted in 1975. The process of registration was carried out under the *Land Adjudication Act*, which provides for the extra-judicial resolution of title and boundary disputes for the purposes of first registration. In St. Lucia, the same system was introduced in 1984 by the *Land Adjudication Act* Cap. 5:06 and the *Land Registration Act* Cap. 5:01. Before 1984, land transactions were recorded by means of a deeds registration system, operated in accordance with the provisions of Chapter 242 Articles 2013 and 2017 of the Civil Code of St. Lucia.²⁷

²⁵ Except in St. Lucia, a civil law jurisdiction, in which hypothecs take the place of mortgages. In the case of hypothecs, the borrower retains title to the land and where there is a default in repayment, the lender must resort to judicial sale of the land to recover the loan money.

²⁶ (1970) 14 WIR 576.

²⁷ Vol.21 of the Laws of St. Lucia (2008 Revision).

In these systems, the land records in the Registry include a Registry Map for the whole country, showing all the individual parcels of land in the country to which parcel numbers are assigned. Parcel files and land registers are also assigned to every individual parcel. The subdivision of land is effected by a process of mutation in which new parcel numbers are assigned and parcel files and registers are substituted for the records of the parent parcel. One of the deficiencies of land registration legislation in some Commonwealth Caribbean countries, including Antigua and Barbuda and Dominica, is that the Land Registrar is under no obligation to ensure that statutory consent for the subdivision of land has been obtained before registering the subdivision of a parcel. This system allows developers to circumvent regulatory controls on the development of agricultural land. Another difficulty which exists in St. Lucia, is that under land registration laws, parcels may be delimited by general boundaries, whilst the legislation governing land surveys provides otherwise.

Although there are some legal weaknesses in the land registration systems in the OECS countries, the main problems are administrative. Land records are not fully computerized and the institutional capacity to keep the manual records up to date is lacking. It was reported in 2002 that in Antigua and Barbuda, for example, that the Land Registry is understaffed and overworked and is not adequately equipped to carry out its mandate. This means that there is considerable delay in having disputes resolved so that cautions can be lifted, and even in getting mortgages and transfers of title registered. However, in 2005 Antigua and Barbuda was selected as the pilot and demonstration site for an OAS-funded Land Folio Cadastre and Land Registry project for the reorganization and computerization of the Land Registry and Lands and Surveys Department.

Hence, it can be said that the systems of title and land records in the OECS countries vary greatly from country to country. Of the six countries that are the subjects of this study, two rely on a system of registered deeds, two have mixed systems in which registered deeds coexist with registered title, and two have systems of compulsory land registration. The countries that have adopted compulsory land registration should have the best land records, particularly as this system is a cadastral-based system. However, because of the institutional constraints under which all the land records systems are operating, in 2002 it was considered doubtful that the land registration process was operating much more

efficiently than the deeds registration process. In countries, such as Antigua and Barbuda, where the Land Registry has been modernized since 2002, this should no longer be the case.

Land valuation and taxation

For the most part, taxation has not been used in the OECS countries as an instrument for guiding land use, including the use of land for agriculture. Of the subject countries, only St. Vincent and the Grenadines, Antigua and Barbuda and St. Lucia have direct taxes on land. Of these countries, the tax in St. Lucia is calculated simply on the extent of the land. In the other two countries, where tax is calculated on the value of land, some concessions are made with respect to agricultural land. However, it would be true to say that, with the possible exception of St. Vincent and the Grenadines, land tax is being used rather bluntly as a policy instrument and that its primary purpose appears to be revenue collection.

In St. Vincent and the Grenadines, a tax is payable on all land included in the tax rolls prepared under the Land Tax Act Cap. 316. Tax is not payable on Crown Lands, lands used exclusively for public worship or education and parcels of agricultural land of 5 acres or less. In addition, forested lands that should remain under natural cover may be exempted from the payment of tax, wholly or partly, over such a period and subject to such conditions as may be deemed expedient. Additionally, the land tax may be partly or entirely remitted on the grounds that the person liable to pay it is poor or the tax is oppressive. The exercise of the discretion to exempt forested land from tax or to remit the taxes payable on other land is vested in the Governor General. These provisions are very commendable, although an exception with respect to reforestation of marginal lands would also be merited. However, it appears that few people are aware of the existence of these tax exemptions for lands in forestry and agriculture. With one possible exception, there have been no claims in recent years for exemption from land tax by the owners of parcels of agricultural land of under 5 acres in size.²⁸

In Antigua and Barbuda land tax is imposed by the Property Tax Act, No.15 of 2000, which provides for an annual tax to be levied on land and buildings, with certain exceptions. Agricultural and grazing land

²⁸ FAO. 2010. *Report on the conversion of agricultural land to non-agricultural uses: St. Vincent and the Grenadines*, by C. Toppin-Allahar. FAO GCP/RLA/167/EC SFA 2006. St. Vincent.

is taxed, but provision is made for the tax on such land to be reduced by up to 75% by the Minister, on an application made by the landowner. The basis of and mechanism for valuation of the property is set out in the Act, and is the responsibility of the Chief Valuation Officer. Additionally, the Act makes provision for the appointment by the Minister, of a Property Valuation Appeals Board and appeals to the High Court on point of laws are allowed from decisions of the Board. This law is rigorously enforced, but it is not known whether any applications for the reduction of property tax on agricultural or grazing land have been made or granted. In addition, there is a Land Sales Duty Act, Cap. 236, under which a capital gains tax is payable on the transfer of any land which has been developed with the benefit of concessions awarded by Government. There is no record that this tax has ever been applied to the transfer of agricultural land.

In St. Lucia, property taxes have been replaced by a land tax calculated on the basis of the area of the land, without reference to its existing or potential use or value. This land tax was formerly payable to Local Authorities (which have been inoperative since the suspension of local government elections in 1979)²⁹ under the Land and House Tax Ordinance, Cap. 217. This Ordinance has been replaced by the Land and House Tax (Amendment) Act 2001. The principal reason that the existing or potential use or value is not considered appears to be the absence of legal provisions and an institutional capacity for the valuation of land, whereas the area of land can readily be ascertained because there is a cadastral-based land registration system. Provision is made under the Forest, Soil and Water Conservation Ordinance, Cap. 25, for the remission of the land taxes payable by the owners of private lands that have been designated as protected forests, but it is reported that, as is the case in St. Vincent and the Grenadines, this tax relief has never been claimed (probably since the quantum of tax payable is so small).

In some OECS countries, the imposition of a tax on the transfer of land has been adopted in preference to the imposition of a tax on land *per se*, because it relieves the State of the administrative burden of compiling and maintaining land tax rolls. The main problem with this form of tax is that, unless measures are adopted to counter fraud, attempts can be made to evade tax by the understatement of the sale price of land or the purported transfer of land by way of gift. Additionally, the legal devices adopted to avoid transaction charges can have unforeseen economic consequences. In the case of Dominica, for example, the payment of fees on land loans is avoided by placing a caveat on the borrower's land to secure the lender's interests, rather than registering a mortgage. This practice precludes all transactions concerning the land until the original loan is paid off and prevents the landowner from using the unassigned equity in the land to obtain additional financing. In Antigua and Barbuda, the stamp duty to be paid on registered leases for periods exceeding two years, leads to the use of short-term leases or unregistered long-term leases, which are inadmissible in legal proceedings. Both these practices undermine security of tenure.

In Grenada, the mandate of the Valuation Division, as provided for by the Land Transfer Valuation Act, No.39 of 1992, is solely to value land and other immovable property for the purposes of assessing transfer taxes. The Act provides that the open market value of land prevails over the sale price stated by the parties to the transaction. However, the accuracy of this assessment is undermined by the fact that, in the absence of cadastral-based land records, the true extent of the land being valued is unknown. The tax payable on the transfer of land is imposed by the Property Transfer Tax Act, No.37 of 1998. Both Acts provide for the filing and hearing of objections to and appeals against the valuations set on land and the transfer taxes assessed by the relevant authorities. There is also a provision in the Land Development Control Act Cap. 160, that the vendor of any land is liable to payment of a development levy³⁰ on any land being transferred, if the Comptroller of Inland Revenue is satisfied that the land is suitable or intended or designated for development. This provision is interesting because the vendor may be exempted from payment of this levy if, after having consulted the Development Control Authority with responsibility for land use, the Comptroller is satisfied that the land is not suitable, intended or designated for development. However, it appears that this provision is not enforced.

In Dominica, there is no tax on land (although there is a tax on houses) and no tax on income from agriculture, these are measures that are apparently intended to promote agriculture. However, there is a land value appreciation (or capital gains) tax payable under the Title by Registration Act, Chap. 56:50, whenever land is being transferred, and this is computed on the difference between the original purchase price and the current selling price of the land. It is reported that this tax is not collected, although the law provides that it is the first charge on land. The reason for this may be that, given the coexistence of two legal systems for the transfer of title in Dominica, it could be avoided by the simple expedient of selling the land by deed of conveyance under the Conveyancing and Law of Property Act, Chap. 54:01. Fees are payable on the basis of the value of the land with respect to transactions under both systems and there is a Voluntary Conveyances Act, Chap. 54:06, to ensure that such fees are not evaded by the expedient of transferring lands by purported deeds of gift.

Crown/State lands administration

In the OECS countries, the Crown/State owns land derived from two sources. In most countries the majority of land owned by the Crown/State is unallocated land, for which land grants have never been issued. Other than in Antigua and Barbuda and St. Lucia where there is a system of compulsory registration of title, no title records for such land exist. Additionally, land purchased by the Crown/State by agreement or by means of compulsory acquisition proceedings, is usually also vested in the Crown/State although in some cases it may be vested directly in or divested to an agency of the State, such as a statutory corporation with land development functions or responsibility for the provision of public utilities. Generally, title documents exist for

²⁹ *Green Paper on Local Government Reform*, Ministry of Community Development, Culture, Co-operatives and Local Government (St. Lucia).

³⁰ Payable in accordance with the provisions of the Stamp Act, Cap. 309.

such lands only where they have been acquired by agreement or the land is registered land.

In every country there is legislation governing the administration of Crown/State lands and an agency responsible for its administration. There are several problems that are constraints on the ability of these agencies to effectively utilize the existing “land bank” of the Crown/State for the development of the country. These constraints typically include inadequate information on the extent of Crown/State lands, limitations on the institutional capacity of these agencies to discharge their mandate and powers conferred on other agencies with respect to the utilization of Crown/State lands and a policy environment in which Crown/State is treated as a tool for political patronage. Additionally, there are, in some cases, deficiencies in the legislation under which they operate that exacerbate the aforementioned problems.

In St. Vincent and the Grenadines, for example, “all such Crown Lands ... as are situate 1 000 ft and over above sea level” were reserved by Royal Proclamation made August 22nd 1912. This proclamation excludes any Crown lands above the 1 000 ft contour that had been “administered or disposed of otherwise” prior to the 1912 enactment. The land area thus reserved by the 1912 Proclamation cannot be readily identified without specific information relating to the amount of Crown land above the 1 000 ft contour that was disposed of prior to 1912 as, unfortunately, no survey maps existed or currently exists that identify such lands.³¹ Additionally, it is reported that the Deeds Registry does not have any records for land that has been compulsorily acquired, as under the Land Acquisition Act such land, by law, is vested in the Crown without the need for preparation of title instruments. Records of land compulsorily acquired can only be obtained by searches in the national archives of back issues of the *Official Gazette* in which acquisition notices must be published. Such searches are fraught with difficulties because of the state of the archives. Although the exact extent and location of all Crown lands is still unknown, an effort to make an inventory of titled Crown lands has been started. Other than the requirements inherent in the Act, there is no written policy (followed by the relevant department) with respect to the management of Crown lands. However, since 2008 the general policy of the current government with respect to Crown lands has been to “turn dead capital into live capital” by disposing of Crown lands.³²

In Dominica, a more accurate record of State land that has been disposed of is available, as a result of the Title by Registration Act. This Act has been in force since 1883 and it provides that a grantee of State lands may elect to have a Certificate of Title issued instead of a grant. Moreover, the State absorbs the costs of preparing the transfer to encourage this practice. Consequently, it is reported that all grantees of State land exercise this option so that untitled State land becomes registered on disposition by grant. Additionally, the State is registered as the proprietor of all land acquired by the State compulsorily or by

agreement. Under the Land Survey Act, Chap.53:04, survey plans must be made of all land before title is registered. Additionally, under the State Lands Regulations, records must be kept of all grants, sales and leases of State lands, including survey plans of such land. However, it is reported that, although there is a register recording the issue of grants, copies of the instruments and the related surveys are not on file as required by law. Furthermore, neither the Commissioner of State lands, nor the Director of Surveys nor the Registrar can say how much unalienated State land or private land exists, so that this can be deduced arithmetically.

Nevertheless, the principal problem in Dominica lies in the administration of State lands. All State land is vested in the President, the non-executive Head of State, and under the State Lands Act, Chap. 53:01, the President also has the power to dispose of State lands by grant, sale, exchange or lease. In practice, however, this power is exercised on the advice of a Minister. It is reported that this advice comes not from the Minister responsible for State lands, but the line Minister responsible for the use to which the land is to be put, for example, agriculture or housing. The result is that there is no coherent policy with respect to the development of State lands. The State Lands Regulations provide that the price or rent at which State land is to be sold or let is to be set by a Valuation Committee, constituted as prescribed and the Committee does regulate land prices or rents as it relates to agricultural land, but land for housing is priced by the Valuation Unit of the Planning Division.

The result is that there is no coherent policy with respect to the development of State lands. The State Lands Regulations provide that the price or rent at which State land is to be sold or let is to be set by a Valuation Committee, constituted as prescribed, and this is done with respect to agricultural land, but land for housing is priced by the Valuation Unit of the Planning Division.

The Regulations also set out standard terms for agricultural leases, to be enforced by the Chief Agricultural Officer before the option to buy can be exercised. In practice very little land is leased, as the policy is to transfer title to persons to whom State land is allocated. Persons to whom land is allocated occupy the land before title is transferred and transactions are often not completed. Consequently, the State does not collect payment. It is reported that currently some EC\$9 million (US\$3.4 million) is owed to the State for lands occupied by persons to whom they have been allocated. In addition, the State is not immune from the acquisition of title by adverse possession. The State Lands Regulations provide machinery for the regularization of persons squatting on State land for more than 12 years. A dispensation is also given to persons squatting for less than 12 years who have made “improvements” to the land. This Regulation is an incentive for the unauthorized clearance of State land, including marginal land.

³¹ FAO. November 1992. *Report on National Parks* by C. Toppin-Allahar. FAO/CARICOM Tropical Forest Action Programme Country Mission to St. Vincent and the Grenadines.

³² FAO. August 2010. *Report on the conversion of agricultural land to non-agricultural uses: St. Vincent and the Grenadines*, by C. Toppin-Allahar. FAO GCP/RLA/167/EC SFA 2006. St. Vincent.

In Antigua and Barbuda the situation with respect to the administration of Crown Lands is better. The situation in Barbuda is unique in that all land in Barbuda is vested in the Crown in perpetuity on behalf of the people of Barbuda and all the inhabitants of Barbuda are deemed to be land tenants. Traditionally, land in the island has been regarded as communal land and the system of land tenure and use is said to have "successfully baffled the incursions of agricultural development for a century and a half".³³ Under the Barbuda Act, Cap.42, the Barbuda Council established by the Barbuda Local Government Act, Cap.44, is empowered to allot, distribute and divide land in the village of Codrington amongst the villagers and, with the consent of Cabinet, to set aside and divide into plots agricultural land for cultivation by the villagers. Land rent is payable to the Barbuda Council. The issue of Barbudan land and its control, particularly the leasing of land to foreign investors, has been a source of contention between the Barbudan community and the national government.

With respect to Antigua, the Crown Lands (Regulation) Act, Cap.120, enacted in 1917, governs the management of Crown Lands. It vests all Crown Lands in the Governor General, the Queen's representative, and confers on the Governor General the power to appoint a Land Board and Land Officer to administer Crown Lands. The Act provides that such lands may be rented, leased, occupied or sold and for the making of Regulations concerning the terms and conditions under which this may be done. The Regulations authorize the Director of Agriculture to deal with the sale and rental of Crown Lands. All lands allocated must be surveyed and a register of Crown Land is to be compiled. There are also special Regulations governing the subdivision of Crown Lands intended for settlement. These Regulations make provision for setting aside reserves of any land needed for the use by the Department of Agriculture, including lands for reforestation.

The regulatory regime established by the Act is partly implemented as intended. The Agricultural Extension Division maintains a register of land tenants that is up to date and available for inspection, but the register does not indicate how much land is actually under cultivation. It is reported that, in many instances, the tenants have ceased to cultivate the land allotted and the rent, which is due annually in advance, has not been paid for many years. Although the land is let from year to year and the law provides that it must be cultivated to the satisfaction of the Director of Agriculture, who may terminate the

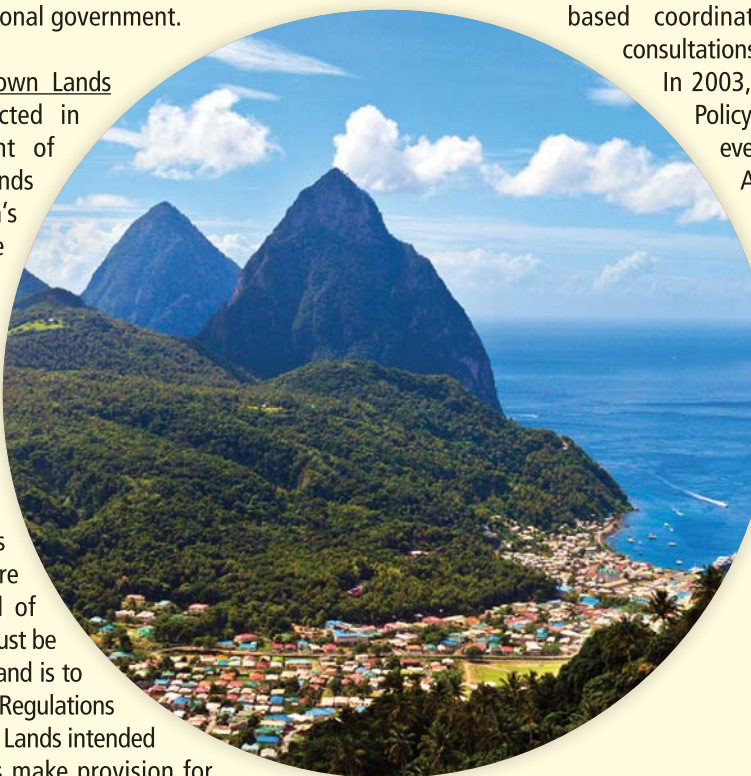
tenancy on giving three months notice in writing to the tenant, in practice, tenants in breach of the prescribed terms and conditions are not evicted. Even where land that appears to have been abandoned is reallocated, former tenants may assert claims to the land. This administrative culture, which is partly due to the inadequacy of the human and material resources for monitoring Crown Lands, undermines what is otherwise a fairly comprehensive legal regime for the management and development of Crown Lands.

In St. Lucia, Crown lands administration is governed by the old Crown Lands Act, Cap.5:03, certain provisions of the Land Registration Act, Cap.5:01 and the Civil Code. In 2008, the Government of St. Lucia formally adopted a National Land Policy.³⁴ This policy was the culmination of a process begun in 2000, overseen by a broad-

based coordinating committee and involving consultations with a wide range of stakeholders.

In 2003, a Green Paper on National Land Policy emerged out of that process, which eventually led to a White Paper in 2007.

Although the final document can be criticized as being, in some respects, lacking in firm policy proposals (for example with respect to management of the coastal reserve of Crown land known as the Queen's Chain), both St. Lucia's decision to formulate a National Land Policy and the inclusive process adopted in its formulation are precedents worthy of imitation by the other OECS countries.



³³ Berlant-Schiller, R. 1987. Ecology and politics in Barbudan land tenure. In J. Besson and J. Momsen, eds. *Land and Development in the Caribbean*, pp. 116 - 131. Macmillan Caribbean.

³⁴ Available at <http://web.stlucia.gov.lc/docs/NationalLandPolicy.pdf>

LAND USE

Land use planning

Legislation that deals with land use planning, based on British Town and Country Planning legislation, was introduced into all the OECS countries many years ago.³⁵ These enactments provided for the preparation of development plans, the implementation of such plans and their revision to ensure that they do not become obsolete. In varying degrees, they also make provision for public participation in the planning process. For many years, although this anachronistic legislation had not been repealed and replaced, it was in disuse throughout the subregion. One of the reasons for its disuse was the effective abandonment in many OECS countries of the traditional Town and Country Planning legislation in favour of Land Development Control legislation, which was purely regulatory in nature. In some cases, for example in Grenada, no provision was made for the continued administration of the Town and Country Planning legislation after the introduction of the Land Development Control legislation. In others, for example St. Lucia, express provision was made for the Development Control Authority to continue to administer the pre-existing land use planning legislation after the introduction of the development control legislation. However, the land use planning legislation still fell into disuse.

Three of the OECS countries were exceptions to the rule. The Dominica Town and Country Planning Act 1975³⁶ made provision for the preparation of a hierarchy of physical plans, including a national structure plan, regional structure plans, subject plans and local plans. Although this provision reflected a more modern approach, the Act was still very thin on provisions for public participation and transparency in the plan preparation and approval stages of the planning process. The Antigua and Barbuda Land Development and Control Act 1977³⁷ also made provision for the preparation of a Development Plan for the State by the Development Control Authority. The land use planning provisions of this Act were very brief, but provide explicitly that the approved plan must be the basis for Government policies and development control. An apparent jurisdictional problem with respect to land use planning was created by the fact that this Act (unlike the Dominica Act) did not repeal the old Town and Country Planning Act, Cap.432, enacted in 1948, under which the Central Housing and Planning Authority (CHPA) was responsible for land use planning.³⁸

A more thorough effort at modernization is found in the St. Vincent and the Grenadines Town and Country Planning Act 1992, Act No.45 of 1992. This Act, which is still in force (unlike the 1975 and 1977 laws of Dominica and Antigua and Barbuda mentioned above) makes detailed provisions concerning the preparation and approval of a

hierarchy of national, regional and local area plans. The Act also includes the matters to be taken into account in plan preparation, the material to be included in the different types of plans and the process of plan approval. The legislation is still somewhat weak with respect to public participation in the planning process, which is limited to the right to comment on draft plans before their approval by Government. To date, no statutory land use plans have been prepared and adopted under this legislation or the earlier legislation in Dominica or Antigua and Barbuda.

A concerted effort to address the problems of land use planning in the subregion was launched in the 1990s under the UNCHS Environmentally Sustainable Land Use Planning and Sustainable Development Project. The project involved a programme of institutional strengthening in nine OECS countries, the preparation of a comprehensive OECS Model Physical Planning Act and its adaptation to the needs of each jurisdiction. The OECS Model Act makes detailed provision for the preparation and adoption of land use plans, including full provisions for public participation in the planning process. An important feature of the legislation is that it expressly deals with the legal status of land use plans, providing that public investment decisions, as well as regulatory decisions with respect to development by the private sector, are in accordance with approved land use plans.

The model legislation was customized for several jurisdictions, either by consultants employed under the project or by the beneficiary countries themselves. The countries that have adopted this course include St. Kitts and Nevis, Dominica and Antigua and Barbuda. St. Kitts and Nevis is a federal state and the Development Control and Planning Act 2000, Act No.14 of 2000, which is a customization of the OECS Model Act, repeals and replaces the former legislation only with respect to St. Kitts.³⁹ In Dominica, a customization of the OECS Model Act was enacted as the Physical Planning Act 2002, Act No.5 of 2002. This legislation departs from the OECS Model and its adaptation in other OECS countries by conferring responsibility for the administration of the Act on the existing corporate body established by the Development and Planning Corporation Act, 1972, Ch.84:01.⁴⁰ In Antigua and Barbuda, another customization of the OECS Model Act was enacted as the Physical Planning Act 2003, Act No. 6 of 2003.

New land use planning legislation has subsequently been prepared for St. Lucia and Nevis under the auspices of the United Nations Economic Commission for Latin America and the Caribbean (UNECLAC) and for Grenada on its own initiative. This legislation is shorter and less complex than the OECS Model Act. Although the strategy of simply customizing the model legislation was not adopted in St. Lucia, Grenada or Nevis, the model served as one of the inputs to the legislative drafting process. The St. Lucia Physical Planning and Development Act 2001, Act No. 29 of 2001, was enacted in November

³⁵ Home, R. 1993. Transferring British planning law to the colonies. *Third World Planning Review* 15(4): pp. 397 - 410.

³⁶ Act No.17 of 1975.

³⁷ Act No.15 of 1977.

³⁸ This Act was eventually repealed by section 83 of the Physical Planning Act 2003.

³⁹ As explained below, new Nevis Island legislation on the same subject was subsequently prepared with assistance from UNECLAC and enacted in 2005.

⁴⁰ Although this entity was responsible for the administration of the former Town and Country Planning Act 1975 and was described in 1994 as existing only in name while in practice the Physical Planning Unit carried out its functions. See: Rapid Environmental Assessments Ltd., *Procedures for Incorporating Environmental Considerations into the Planning Approvals Process*, A Report to the Government of the Commonwealth of Dominica and the Caribbean Development Bank (January 1994).

2001. However, parts of it were not brought into force immediately as new institutional arrangements had to be made for its administration.

The following year, the Physical Planning and Development Control Act, 2002, Act No.25 of 2002, was enacted in Grenada. This Act was followed a few years later by the enactment of the Nevis Physical Planning and Development Control Ordinance, No.1 of 2005. Both the St. Lucia and Grenada Acts and the Nevis Island Ordinance make full provision for the preparation of land use plans, including express provisions for ensuring that land use planning is part of an integrated development planning process. Provisions, similar to those in the OECS Model Act, are also made with respect to the legal status of land use plans.⁴¹

Regulatory control of land use

The original Town and Country Planning legislation made provision for the regulatory control of land use. However, these powers applied only to areas that were the subject of land use plans. The failure of the relevant authorities in the OECS countries to exercise the planning powers conferred by the legislation undermined their ability to exercise regulatory control over land use. This is apparently the reason why the old Town and Country Planning legislation fell into disrepute and development control legislation was adopted by most of the OECS countries during the 1960s and 1970s.

A common feature of the original development control legislation in the OECS⁴² was the establishment of a statutory board, generally called the Development Control Authority (DCA), to which applications for the development of land were submitted for approval.⁴³ The constitution of the statutory board was specified in the legislation and included in all cases the senior officers of the public agencies responsible for physical planning, public health, public works, and, in some cases, housing and lands and/or agriculture, as well as representatives of civil society. Notwithstanding their designation as statutory authorities, these DCAs had no offices and staff of their own. In each country, the staff of the physical planning department of the relevant Ministry served as a secretariat to the DCA, receiving and processing applications for permission to be decided by the board. This hybrid administrative framework for development control was evidently crafted to (i) compensate for inadequacies in the institutional capacity of the relevant government departments, (ii) reduce opportunities for secrecy and personal corruption, and (iii) insulate decision-making with respect to development control from direct political influence. These are problems which are common to all Caribbean Small Island Developing States (SIDS).

In Dominica, the Town and Country Planning Act 1975 conferred development control powers on the Development and Planning Corporation, a statutory body created by earlier legislation.⁴⁴ This arrangement has been perpetuated by the Physical Planning Act, 2002, Act No.5 of 2002, notwithstanding the moribund status of that corporation which now exists only as a board, as is the case of DCAs elsewhere. In St. Vincent and the Grenadines, the DCA, which is called the Physical Planning and Development Board, is responsible for both land use planning and development control under the Town and Country Planning Act 1992. The DCA model of development control decision-making, being well established by the 1990s, was incorporated into the OECS Model Physical Planning Act and is to be found in all the modern physical planning legislation in the region based on that Model Act. The St. Kitts Development and Planning Act 2000 and the Antigua and Barbuda Physical Planning Act, 2003, as well as in the Grenada Physical Planning and Development Control Act 2002 and the Nevis Physical Planning and Development Control Ordinance 2005, however, are not customizations of the Model Act.

Only the unique St. Lucia Physical Planning and Development Act 2001 dispenses with the hybrid DCA mechanism and provides for the planning department of the relevant Ministry to prepare physical plans and exercise the power of development control. This reflects governmental confidence in the country's capability to strengthen the competent department to enable it to discharge its functions in a manner similar to that functioning well in neighbouring Barbados since 1966.⁴⁵

In the OECS countries that have adopted new physical planning legislation, which all include comprehensive provisions for physical planning, the planning authority has been given a general power of development control that is not dependent on the adoption of land use plans. Although there are subtle differences in the definition of "development" in the legislation in various OECS countries, the term has the general meaning that is customary in land use planning legislation in the Commonwealth Caribbean. Hence, there are three aspects of land development that are subject of control. These are (i) building, engineering, mining and other operations, (ii) changes in the use of land or buildings and (iii) the subdivision of land. In all cases, however, certain operations or changes of use are exempted from development control requirements. One of the exceptions relates to the use of land for the purposes of agriculture or forestry.⁴⁶ In some OECS countries, the relevant provisions have been persistently misinterpreted with unfortunate, perhaps calamitous results, with respect to the subdivision and alienation of agricultural land.

⁴¹ It should be noted that the new physical planning legislation in Antigua and Barbuda, Dominica, Grenada and Nevis has all been enacted since the six national reports and the regional synthesis report were prepared in 2002. This fulfils several of the recommendations made in those reports in 2002.

⁴² E.G: The Grenada *Land Development Control Act*, Cap.160, the St. Lucia *Land Development (Interim Control) Act 1971*, Act. No.8 of 1971, and the Antigua-Barbuda *Land Development and Control Act 1977*.

⁴³ However, in the case of St. Kitts and Nevis the power of development control was vested in the relevant Minister by the former *Land Development (Control) Ordinance 1966*, Act No.15 of 1966.

⁴⁴ Established by the *Development and Planning Corporation Act 1972*.

⁴⁵ Provision was made in the Act for the DCA, established under the legislation and repealed by the Act, to continue in being during a transitional period pending the making of satisfactory new administrative arrangements.

⁴⁶ It should be noted that no exception is made for the use of land for the purposes of agriculture and forestry in the St. Vincent and the Grenadines *Town and Country Planning Act 1992*.

In Dominica, for example, section 13(2)(e) of the former Town and Country Planning Act, 1975 provided that “the use of land for the purposes of agriculture and the use for any of these purposes of any building occupied together with land so used” is not taken to involve development for the purposes of the Act. Although this exception was clearly limited to the use of land and buildings for the purposes of agriculture, this provision was interpreted by the relevant authority in Dominica to mean that it has no jurisdiction over building, engineering or other operations on agricultural land, the conversion of agricultural land to non-agricultural use or the subdivision of agricultural land.⁴⁷ This mistake of law persisted for nearly a decade after it was recognized and a recommendation was made that the relevant authority should assert control over building and engineering operations on agricultural land and the subdivision of agricultural land. Fortunately, this problem has now been eliminated in Dominica by the rewording of the exception, now paragraph (e) in the definition of “development” in section 2(1) of the Physical Planning Act 2002, which makes exception for “the use of land for the purposes of agriculture of forestry, but not including any building or engineering activity thereon or the operation of a sawmill” from planning control.

Likewise, in Antigua and Barbuda section 8(2) of the former Land Development and Control Act, 1977 provided that development permission was not required for the matters specified in the Schedule to the Act. This Act included in paragraph (a) “The development of land for agricultural or forestry purposes, including the construction of buildings, structures and facilities directly related to such use”. Although there was some ambiguity in this provision, it is clear that the exception did not extend to the development of land for non-agricultural purposes. However, from statements made in the country report on Antigua and Barbuda, it appears that in 2002 the Development Control Authority was operating on the basis that it has no authority over agricultural land, including no jurisdiction over the conversion of agricultural land to other uses. Although, in a dubious decision⁴⁸ in the case of *Lopinot Limestone Ltd. v. Attorney General of Trinidad and Tobago*,⁴⁹ the Privy Council held that operational development of the land, the carrying out of non-agricultural or forestry building or engineering operations on such land or the subdivision of such land is clearly controlled development.

Similarly, in an patently erroneous decision in the case of *American Drywall Building Centre Ltd. v. Development Control Authority* HCA No.1102 of 1998, a court in St. Lucia ruled that a huge billboard constructed of cement, sand, mortar and tiles on a rock-face overlooking the scenic Castries-Soufriere Road at Canaries, not being built for human habitation, fell within one of the classes of permitted development under the Land Development (Interim Control) Act No.7 of 1971, namely “buildings not used for human habitation and other works on agricultural holdings ...”. In St. Lucia and Antigua and Barbuda, like Dominica and

other OECS countries, the new planning legislation adopted over the past two decades has been designed to eliminate these misconceptions. However, planning law is not taught or well understood in the region and it remains to be seen whether the relevant authorities will apply the new laws effectively to control the conversion of agricultural land to non-agricultural uses.⁵⁰

Environmental impact assessments

As documented by the OECS-Natural Resources Management Unit (NRMU), Environmental Impact Assessments (EIA) practice in the OECS countries has been very uneven.⁵¹ St. Kitts and Nevis is the only OECS country with environmental framework legislation - the National Conservation and Environmental Protection Act, No.5 of 1987, which mentions EIAs; but this pioneering legislation requires EIAs only with respect to projects to be carried out in the coastal zone. However, the St. Vincent and the Grenadines Town and Country Planning Act 1992, the OECS Model Physical Planning Act and all the new physical planning legislation subsequently enacted in the region make provision for EIAs to be submitted as a prerequisite for the grant of development permission in appropriate cases.

In the case of St. Vincent and the Grenadines, the procedure for the imposition of EIA requirements and the processing of EIAs is specified in the principal Act. In all the other countries, the physical planning legislation requires the promulgation of EIA Regulations. Draft EIA Regulations have already been prepared for St. Lucia, Antigua and Barbuda and Grenada. Hence, provided that the required subordinate legislation on EIAs is enacted, the main concern about this aspect of the law in the OECS countries relates to the capability of the relevant agencies to implement these measures effectively.

⁴⁷ Rapid Environmental Assessments Limited, *Strategies for Improvement of the Environmental Management Capabilities of the Physical Planning Unit and Collaborating Agencies*, Report to the Government of the Commonwealth of Dominica and the Caribbean Development Bank (December 1993).

⁴⁸ Toppin-Allahar, C. 1999. *Lopinot Limestone Limited v. Attorney General of Trinidad and Tobago: A retrospective analysis*. *Journal of the Association of Professional Engineers of Trinidad and Tobago*, 32(1): p. 65.

⁴⁹ (1987) Vol 32 No.1 36 WIR 389.

⁵⁰ It should be noted that, because of these exceptions, the actual use to which land is put for agricultural or forestry purposes is not regulated by the entities responsible of the control of land development.

⁵¹ Toppin-Allahar, C. 2001. A comparative analysis of environmental assessment law and planning practice in the Commonwealth Caribbean, *Caribbean Law Review*, 11(1): p. 1.

CONSERVATION OF NATURAL RESOURCES

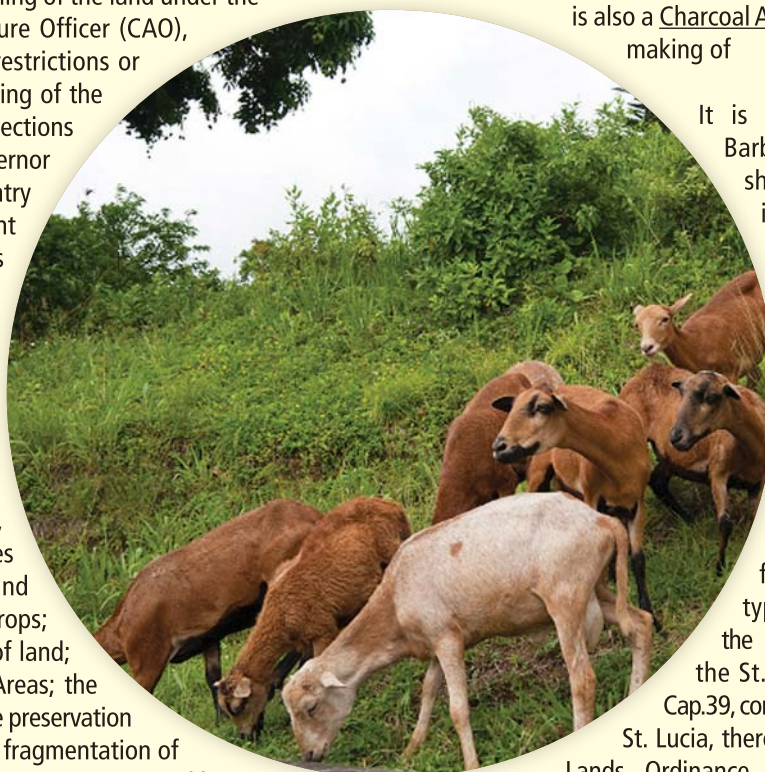
Soil conservation

Most of the OECS countries studied do not have legislation that deals specifically with soil conservation, although there are provisions in legislation dealing with forestry and land tenancy that are directed to soil conservation. The exceptions are St. Vincent and the Grenadines and St. Lucia.

The St. Vincent and the Grenadines Agriculture Act, No.23 of 1951, requires the owners or occupiers of agricultural land to manage it in the general interest and to practice good husbandry, including terracing land and preventing soil erosion. Where an owner or occupier fails to comply, the Act empowers the Governor General to issue an order placing the management and farming of the land under the supervision of the Chief Agriculture Officer (CAO), who may impose requirements, restrictions or prohibitions on the use and working of the land. Non-compliance with the directions of the CAO is an offence. The Governor General may also divide the country into agricultural areas and appoint agricultural area committees. It is reported that such committees are not appointed regularly and that the Act is rarely applied.

The St. Lucia Land Conservation and Improvement Act, No.10 of 1992, provides for the making of Prohibition Orders for prohibiting, regulating and controlling activities on land, including the clearing and cultivation of particular land or crops; the lighting of fires and burning of land; the declaration of Conservation Areas; the promulgation of Regulations for the preservation of soil fertility and prohibiting the fragmentation of lands within a Conservation Area or an area covered by a Prohibition Order. The Act also provides for the appointment of Conservation Officers to supervise the use of and encourage the conservation and improvement of land. A significant feature of this Act is that it provides for the appointment of a Land Conservation Board, which is responsible for advising the Minister with respect to the implementation of the Act and for coordinating with other agencies concerned with land use, land and water resources conservation and, where necessary, the owners and occupiers of land. Unfortunately, it is reported that this comparatively recent Act is not being implemented.

Additionally, there is some legislation that is aimed at controlling some of the agrarian practices which cause soil erosion, chief among which are slash and burn cultivation and the uncontrolled grazing of loose livestock.



In Antigua and Barbuda, there is a Bush Fires Act, Cap.62 that prohibits the setting of fires on land within any part of the country at such times as may be specified. A person who wishes to set an outdoor fire must apply to the Commissioner of Police for a licence to do so. Breach of these requirements is an offence and every police officer has the power to enter on any land that is on fire for the purpose of extinguishing the fire, if he or she thinks that it may spread. The permission of the Commissioner of Police is also required for the setting of fires on Crown land. However, it is reported that this legislation is rarely enforced. There is also an Agricultural Fires Ordinance, Cap.6, in force in Grenada. Apart from soil conservation, this type of legislation is important for preventing forest fires caused by the spread of agricultural fires. The other main cause of forest fire is charcoal making, which is usually controlled under the Crown/State lands and forest legislation. However, in St. Vincent and the Grenadines there is also a Charcoal Act, Cap.57, which criminalizes the making of charcoal on the lands of another.

It is reported that in Antigua and Barbuda, where there are 15 000 sheep and 23 000 goats and an increasing number of landless livestock farmers, there is no legislation that addresses the problems caused by loose livestock. It appears that this is also the situation in St. Kitts and Nevis. In St. Vincent and the Grenadines there is a Stock Trespass Act, Cap.54, which enables any owner of land to seize and impound any animal found trespassing thereon. This is typical of the law on this subject in the Commonwealth Caribbean and the St. Lucia Animal Trespass Ordinance, Cap.39, contains similar provisions. However, in

St. Lucia, there is also a Government Pasture Lands Ordinance, Cap.42, which empowers the Governor General to declare any lands owned or controlled by the Government to be pasture lands and requires livestock farmers to obtain licences to tether livestock on such lands.

It appears that there is no law in any of the OECS countries studied that prohibits livestock farming by persons without any facilities for animal husbandry or requires livestock farmers to pen their animals or to fence their holdings, although in some countries the law relating to agricultural loans facilitates this.

Water resources or watershed management

Antigua and Barbuda has the lowest rainfall of the OECS countries studied and the management of water is regarded as the key to agricultural production. Groundwater provides a significant fraction of Antigua and Barbuda's water supply, together with surface water from reservoirs and ponds. However, desalinated water is now the main

source of piped water. The production of desalinated water is too costly for use in agriculture. The management of water resources, waterworks and water supply systems in Antigua and Barbuda is the responsibility of the Antigua Public Utilities Authority (APUA) established by the Public Utilities Act, Cap.359. Under this legislation the APUA has jurisdiction over watercourses and waterworks, but no responsibility for the management of watersheds or the supply of water for agriculture.

In St. Vincent and the Grenadines, the controlling legislation is the Water and Sewerage Authority Act, No.6 of 1978, under which the Authority may declare any area to be a protected area for the purposes of protecting national water resources and regulate activities in any such area. Additionally, the Forests Reserve Conservation Act, No.47 of 1992, makes provision for watershed conservation. It has been noted, however, that the legislation in St. Vincent and the Grenadines does not reflect a modern approach to water resources management and implicitly recognizes private property rights in water, instead of treating water as a resource to be managed in the public interest.⁵² The legislation in the other OECS countries studied is much better.

In St. Kitts and Nevis, the main legislation dealing with the management of water resources is the Watercourses and Waterworks Act, Cap.185. This Act establishes a Water Board that is responsible for the control, management, maintenance and supervision of all watercourses and waterworks in St. Kitts and Nevis, but other legislation assigns the functions of the Water Board in Nevis to the Nevis Island Administration. The Act provides for the declaration of specific areas as watersheds, within which certain activities may be regulated. Additionally, the National Conservation and Environmental Protection Act, No.5 of 1987, also provides for the conservation of water and watersheds. Under this Act the Minister, in consultation with the Water Board, may make Regulations for the conservation and development of the country's water resources. No such regulations have been made, but the Regulations made under the Watercourses and Waterworks Act prohibit certain activities, including cultivation and grazing, within a prescribed distance from watercourses.

In St. Lucia, the Water and Sewerage Act 2005, No.14 of 2005, is the principal legislation dealing with water. This Act established a Water Resources Management Agency (WRMA) charged with the sustainable management of St. Lucia's water resources, including the preparation of watershed management plans, the grant of abstraction licences and the control of the discharge of wastes which may pollute water sources. The WRMA may also request the relevant authority to take action under the Forest, Soil and Water Conservation Ordinance, Cap.25, to regulate deforestation if this threatens any water gathering ground. One of the grounds on which Crown lands may be declared forest reserves and private lands as protected forests under this statute includes the maintenance of water supplies in springs, rivers, canals and reservoirs. Several such declarations were made in the 1980s.

Grenada has very similar legislation for the management of water resources. The National Water and Sewerage Authority Act, Cap.208, vests the National Water and Sewerage Authority with full power and authority over all the surface and groundwater resources of Grenada. The Act specifies that, unless prevented by drought or unforeseeable incident, the Authority is obliged to provide the population with a satisfactory supply of potable water for agricultural purposes, as well as domestic, commercial and industrial purposes. The Act also requires Government to have and implement a national policy for water and sewerage, including the conservation, augmentation, distribution and proper use of water resources and the preservation and protection of catchment areas.

Dominica has the highest rainfall of all the islands and is recognized as having abundant surface water resources. These water resources have been commercialized for export by way of bulk sales to cruise ships as well as bottled spring water. Dominica also has the best legislation for the management of water resources in the subregion. Under the Water and Sewerage Act, Cap. 43:40, the Dominica Water and Sewerage Company (DOWASCO) has the power to protect catchment areas or gathering grounds, by requiring these to be retained or proclaimed on State lands as forest reserves or on private land as protected forests under the Forest Act or controlled areas under the Water and Sewerage Act. Regulations may be made under the Act for the prohibition or regulation of activities, such as cultivation and animal husbandry, within catchment areas if this is necessary for protecting the sanitation or production capacity of these areas. Further, under the Act, DOWASCO may request the relevant agency to enforce the forest laws, if this appears to DOWASCO to be necessary for the protection of water resources.

Conservation of forests and wildlife

With the exception of Antigua and Barbuda, all the OECS countries studied contain relatively large areas within which the natural ecosystems have not been disturbed. All are the beneficiaries of colonial legislation for the conservation of the forest and to some extent, the wildlife of these areas. In fact, the Kings Hill Forest Reserve in St. Vincent and the Grenadines, established in 1791 by the Kings Hill Enclosure Act, Cap. 239, is the second oldest protected area in the western hemisphere.⁵³ The original forest legislation in the subregion was deficient since it made no provision for the control of deforestation on private land, but this problem has been remedied by the introduction of new legislation in most countries. Likewise, the original wildlife legislation targeted the conservation of specific species, mainly avifauna, but did not provide for habitat conservation or the regulation of hunting. This problem has also been addressed by new legislation in some of the OECS countries. Some of the wildlife legislation expressly allows for the extermination of animals considered to be agricultural pests. There is also no legislation for the creation of a system of national parks and protected areas in some countries, but legislation establishing a National Trust does exist in some cases.

⁵² Pollard, D.E., Anderson, W.A., Forde, N.M., LaCorbiniere, P.V., Joseph, C. & Christie, D. 1991. Environmental laws of the Commonwealth Caribbean. *Caribbean Law Institute*, U.W.I. p. 518 @ p. 312.

⁵³ The oldest is the Main Ridge Forest Reserve in Tobago.

There are very few areas in Antigua and Barbuda where the natural vegetation has not been disturbed, although there are some areas in which secondary forests have become established following the decline in sugar cultivation. The Forestry Act, Cap.178, enacted in 1941, deemed all remaining forested Crown Land to be forest reserve. The clearance of such land for the purposes of cultivation or grazing, the felling of any timber or clearing or burning of any wood without a permit is prohibited. Additionally, the Minister is empowered to extend the application of the Act to any estate which becomes subject to reforestation in accordance with a scheme prepared by the Chief Forest Officer and subsequently to declare any such estate to be a forest reserve. It does not appear that this power has been utilized. There are Regulations governing logging operations in forest reserves. Under the Barbuda Local Government Act, the Barbuda Council is responsible for the administration of forestry services in Barbuda.

By the Wild Birds Protection Act, Cap.115, enacted in 1912, specified species of birds are absolutely protected and others are protected from hunting except in the open season. The Turtle Act, Cap.333, absolutely protects turtles under a certain weight and restricts the hunting of turtles to an open season. However, there is no legislation protecting any species of terrestrial fauna. The National Parks Act, Cap.290, was enacted in 1984 to provide for the preservation, protection, management and development of the natural, physical, ecological, historical and cultural heritage of Antigua and Barbuda. This Act provides for the declaration and management of national parks and prohibits the relevant authorities from granting regulatory approval for the development of any land within a national park without the consent of the National Parks Authority. This provision does not govern the use of land in a protected area for agriculture. To date, the only area that has been declared a national park is the Nelson's Dockyard historical site, hence, the Act has not been used to conserve forests or wildlife.

The controlling legislation for the conservation of forests in St. Vincent and the Grenadines is the Forest Reserve Conservation Act, No.47 of 1992. This legislation makes provision for the conservation, management and proper use of watersheds, the declaration of forest reserves, cooperative forests and the prevention of forest fires. The Wildlife Protection Act, No.16 of 1987, protects wildlife as well as their habitats. It provides for the designation of wildlife reserves, within which hunting is prohibited, and for the regulation of hunting by licence in the open season. The import and export of wildlife is also controlled. St. Vincent and the Grenadines therefore has in place relatively new legislation for the conservation of forests and wildlife that remedies the deficiencies of the former legislation. In addition, after many years of discussion, legislation for the establishment of a system of national parks and protected areas in St. Vincent and the Grenadines, the National Parks Act, Act No.33 of 2002, was finally enacted in 2002.

In St. Lucia, the controlling legislation for the conservation of forests is the Forest, Soil and Water Conservation Ordinance, Cap.25. This Act

provides for the declaration of forest reserves on Crown land and of private lands as protected forests and for the regulation of the forestry sector. One of the grounds on which reserves may be declared is to prevent damage to adjacent agricultural land. A landowner may also request that the Chief Forest Officer supervise or manage private land with a view to conserving or establishing forests. It has been observed that this legislation does contain some enlightened provisions, especially the use of incentives, which is a welcome departure from the customary reliance on purely negative sanctions. However, this Act, when viewed as a whole, does not satisfy the requirements of modern forestry management.⁵⁴ The St. Lucia Wildlife Protection Act, No.9 of 1980, establishes three categories of wild fauna, those that are absolutely protected; those that are protected in the closed season and those that are unprotected. These two pieces of legislation are complemented by the St. Lucia National Trust Act, No.16 of 1975, establishing a non-governmental organization with a mandate for the conservation of the natural and cultural heritage.

In Grenada, the Forest, Soil and Water Conservation Act, Cap.116, like its namesake in St. Lucia, provides for the establishment of forest reserves on Crown land and protected forests on private land. However, the only forest reserve on the island of Grenada was created by the pre-existing Grand Etang Forest Reserve Act, Cap.124. Additionally, the conservation of wildlife in Grenada is still the subject of antiquated laws, the 1928 Wild Animals and Birds (Sanctuary) Act, Cap.314, and the 1957 Birds and Other Wildlife Protection Act, Cap.36. However, Grenada does have a relatively new National Parks and Protected Areas Act, Cap.206, which makes provision for the declaration of any area of Crown land or private land purchased or donated for that purpose as a national park or a protected area. The main deficiency of this Act is that it does not provide for the declaration of protected areas that consist of or include private land, which is more common in Grenada than Crown land.

Dominica is distinguished by its excellent system of national parks and forest reserves, which covers some 28 percent of the country. This system was created and is managed under three related pieces of legislation; the 1959 Forest Ordinance, Cap.80, the National Parks and Protected Areas Act, No.15 of 1975, and the Forestry and Wildlife Act, No.12 of 1976. The National Parks and Protected Areas Act provides for any State land to be designated as a national park and provides for the preparation of park management plans. The Forestry and Wildlife Act establishes a Division of Forestry and Wildlife and makes provision for the protection of wildlife and their habitats, including the creation of wildlife reserves. It supplements the pre-existing Forest Ordinance, which provides for the declaration of forest reserves on State lands and of protected forests on private land, prohibits specified activities in such areas and regulates forest operations.

In St. Kitts and Nevis, the conservation of forests and wildlife and the establishment of protected areas are covered by the unique National

⁵⁴ Pollard, Duke E.E. et al. op.cit. @ p. 282 - 284.

Conservation and Environmental Protection Act, No.5 of 1987, (the NCEPA) which repealed and replaced the laws relating to forests and wildlife. Two historic sites, Brimstone Hill in St. Kitts and Bath Hotel in Nevis, are specially protected by the Act, but it also makes provision for the protection of other areas for the purposes inter alia of conserving biodiversity, specific species and ecosystems and natural areas that are important for basic ecological processes, including water recharge and soil regeneration. The Act provides for the establishment of a Conservation Commission with advisory and trusteeship functions. However, the fact that no Commission was appointed for several years stymied the implementation of the law. As a result, the Act was amended by Act No.12 of 1996 to establish a Department of Environment (DOE) and make provision for the administration of the Act by the DOE. Under the Act, various activities that can degrade the environment are prohibited or controlled. These activities include the cultivation, clearance or burning of certain lands and the grazing of livestock.

In 2002, the National Legal Consultant reported that the Act was being enforced, although most of the prosecutions up to that date were for offences such as littering and the unlawful removal of beach sand. A comprehensive review of the legal and institutional framework for environmental management in St. Kitts and Nevis identified several deficiencies in the existing law and institutional arrangements for its administration. Following that review, a Bill for a National Conservation and Environmental Management Act (NCEMA) to repeal and replace the obsolete NCEPA was drafted in 2005, but this legislation has not yet been enacted.⁵⁵

The land use planning legislation in many of the OECS countries studied, and certainly the countries that have adopted legislation based on the OECS Model Physical Planning Act, also contains provisions for the protection of trees or plants. The legislation requires the making of orders to designate specific sites but no use has been made of these powers to date. In St. Kitts and Nevis there is also a Fruit Trees (Destruction Prohibition) Act, Cap.93, that prohibits the felling or destruction of certain fruit trees, which may only be cut down under a licence. This Act takes the onus for identifying trees that ought to be protected by the regulatory authorities. It appears that there is no similar legislation in any of the other OECS countries.

Plant and animal protection

Virtually all the OECS countries have legislation for the protection of plants and animals. These are vector control measures. In Antigua and Barbuda, there is a Plant Protection Act, Cap.329. This legislation provides for the control of the importation of fruit, vegetables, planting material, plant products, plant pests, soil or non-plant products in order to protect the agricultural resources of the country, and to prevent the spread of pests and diseases. In addition to similar plant protection legislation, Grenada has an Animals (Diseases and Importation)

Ordinance, Cap.15, which provides for the segregation of infected animals and the destruction of diseased animals. In St. Lucia, in addition to both of these types of legislation, there is also legislation aimed at the control of a specific species, the Importation of Bees Ordinance, Cap.43.

Although this type of legislation is intended to protect commercially valuable organisms, it has the added advantage of protecting the ecosystem against the importation of exotic organisms, which can compete with and lead to the extinction of indigenous, including endemic, species.

Control of agrochemicals

There are reports that the indiscriminate use of biocides and chemical fertilisers has caused considerable environmental damage in the OECS countries. Complaints about this environmental damage are particularly common in the Windward Islands (Dominica, St. Lucia, Grenada, and St. Vincent and the Grenadines), where banana farming is predominant. All of the OECS countries studied, now have legislation for the control of the licensing, importation, packaging, labelling, storage and use of pesticides; reflecting the fact that this legislation was introduced as the result of a subregional initiative. In some of the countries, for example Dominica and St. Vincent and the Grenadines, this legislation is strictly enforced. In others, such as Antigua and Barbuda, no Regulations have been made for the implementation of the Act. However, there are still few controls on herbicides and fertilizers.

Institutional arrangements

Generally, the administration of the law relating to land tenure, land administration, land use and the conservation of natural resources is the responsibility of line agencies of the central governments of the OECS countries. In all the countries studied, however, some of the relevant agencies, chiefly the entities responsible for providing public utilities, including water supplies and the development of publicly owned lands, are constituted as semi-autonomous statutory authorities. These agencies are corporate bodies and have some independence with respect to their hiring, procurement and contracting practices, including dealings with real property. In some cases, financial institutions with a mandate to facilitate development, including agricultural development, have also been established as statutory corporations. The administrative structure is therefore sectoralized and is not well integrated laterally.

Several institutional issues, which have an impact on the efficacy of the legislation, appear to be common to all the OECS countries. These include:

- Dearth of legal requirements for interagency coordination
- Shortage of regulations for the implementation of legislation
- Inadequate records, particularly with respect to Crown/State lands
- Non-appointment of advisory/executive boards for administration of the law

⁵⁵ Toppin-Allahar, C. 2004, 2005. *Review of the Legal and Institutional Framework for Environmental Management in St. Kitts and Nevis*, OECS Environment and Sustainable Development Unit (2004) and the draft *National Conservation and Environmental Management Bill*, 2005. This work was undertaken as part of the CIDA-funded OECS Environmental Capacity Development Project.

- Lack of institutional capacity, particularly adequate human resources
- High demands on relevant institutions because of reliance on command and control mechanisms, rather than incentive measures
- Weak links between law and policy, as a result of the failure to repeal outdated legislation which is in disuse
- Lack of political will to enforce the law, particularly with respect to tenants and squatters on Crown/State land

The principal instrument, found in regional legislation, for interagency coordination with respect to land use, is the constitution of executive or advisory boards. This legislation is provided for by enactments such as the development control or environmental conservation legislation. Generally, such enactments provide that specific officials must sit on these boards, although some latitude for appointing non-governmental members is afforded to Government. The efficacy of this device depends on whether these boards function as intended. This is sometimes not the case as there are difficulties in convening meetings, particularly where no honorarium is paid to board members for attendance. Also, in many cases, there are reports that the boards, provided for by law, have not been appointed for years, sometimes decades.

Legal requirements for consultation between agencies are rare, as are legal requirements that the consent of relevant agencies be obtained before other agencies can act on their powers. There are some requirements for consultation by land use planning agencies in the planning process, notably the provisions in the St. Lucia Physical Planning and Development Act 2001, but virtually none when it comes to the exercise of regulatory control. The Antigua and Barbuda National Parks Act, which provides that other named agencies may not grant permission for development within a National Park without the prior consent of the National Parks Authority, is quite exceptional in this respect.

As a result, different pieces of legislation do not reinforce one another. For example, the legislation relating to the registration of transfers of title does not prohibit the transfer of part of a larger parcel of land unless regulatory approval has been granted for subdivision. The more recent water resources management legislation in the subregion, for example, the Dominica Water and Sewerage Act is a welcome innovation. It provides that the relevant agency may require watersheds, including private lands, be protected under the forestry legislation and that the forests laws be enforced by the agency responsible for forest conservation.

In many cases, agencies are hamstrung by failure to implement and to make subordinate legislation, particularly regulations. For example, no regulations have been made over the past 20 to 25 years under important and innovative legislation such as the St. Kitts and Nevis National Conservation and Environmental Protection Act of 1987 and the St. Vincent and the Grenadines Town and Country Planning Act 1992. Regulations do exist for the implementation of some of the older legislation in the region, such as the State/Crown lands Acts, but some of these regulations are quite obsolete. For example, in the case of the Dominica State Lands Regulations, a provision originally intended to foster agricultural development now encourages the

marginal lands by squatters.

In most cases, the existing legislation reflects a command and control approach to administration and enforcement in which extensive powers and duties are assigned to the relevant agencies. For example, much of the legislation for the leasing of State/Crown land for agriculture provides for the control of land use by means of leasehold covenants. This approach presumes that the relevant agency has the capacity to monitor and enforce compliance with these covenants. There are no reports that suggest that these measures are effective. Moreover, there is no OECS country in which fiscal legislation has been used to offer incentives for the achievement of similar results. Only a few measures, notably the St. Vincent and the Grenadines Land Tax Act, even offer indirect incentives for keeping land in agriculture and these are evidently either too modest or inadequately publicized to have the desired effect.

Reliance on such command and control measures, which place a heavy burden on public administration, exacerbates the problems caused by deficiencies in the institutional capacity of the relevant agencies. There are reports that many agencies lack adequate human and even material resources to discharge their mandates. This problem is further compounded by the absence of adequate records, particularly of Crown/State lands. It is reported that in some OECS countries, the extent and location Crown/State land is unknown and that proper records are not even maintained for lands compulsorily acquired by the State/Crown. In addition, there is widespread non-compliance with legal requirements concerning the registration of leases and contracts of tenancy of private and State/Crown land.

Some of these problems result from the fact that many of the laws on the statute books are in disuse. Whilst these laws have not been repealed, it appears that they do not reflect current policy and, hence, are not enforced. As there is no doctrine of desuetude in the Common Law, which renders such laws obsolete, these laws remain in force and create the impression that there is a body of law on certain subjects, but in fact these laws are ineffective. Good examples of such laws are the well-intentioned colonial statutes relating to security of tenure of agricultural land tenants, which are still on the books in several countries. The overriding factor in these cases is political will and there are several instances reported in which the existing laws are not being administered as intended because of political interventions.

Analysis of Lessons Learned and Options for Reform

KEY LAND TENURE, LAND USE and LAND ADMINISTRATION PROBLEMS and PRACTICES

Agriculture is declining in the OECS countries. The traditional estate crop, sugar, is already a dead industry in most countries. The established export crop, bananas, is in crisis and production has been steadily declining over the past ten years in St. Lucia, St. Vincent and the Grenadines and Dominica. In Dominica, agriculture contributes less than 20 percent of GDP, and in St. Kitts and Nevis, it contributes less than 3 percent. Even the infusion into the OECS of substantial international aid for agricultural diversification, following the World Trade Organisation (WTO) mandated removal of price support for bananas, has not been effective to halt this declining trend in production.

Arable land is scarce, both in absolute terms, because of the small size of the OECS countries, and in relative terms, because of the rugged topography of most of the OECS countries, particularly the Windward Islands. In St. Lucia, for example, on the basis of land capability, only 5.6 percent of the total land area is suited for cultivation, although over 25 percent is cultivated, indicating that much of the cultivation is taking place on marginal lands.

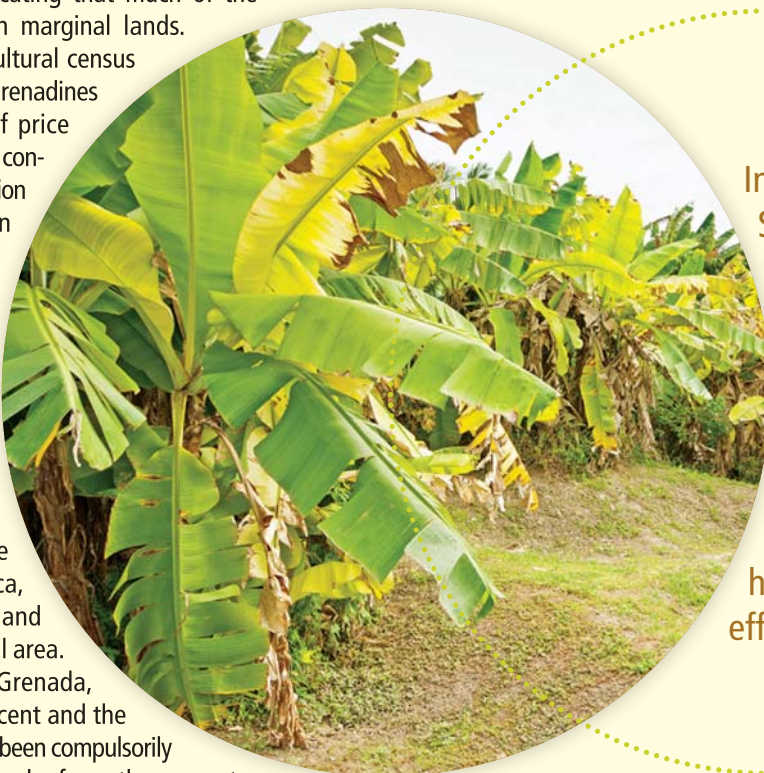
However, the available agricultural census data from St. Vincent and the Grenadines suggests that the removal of price support for bananas may have contributed to a reduction of cultivation on such marginal lands between 1985 and 2000.

A significant percentage of the total land area remains as unallocated Crown/State lands, partly because of the topography of the islands, which dictated the reservation of critical watersheds. In the most mountainous of the OECS countries, Dominica, unallocated Crown/State land exceeds 60 percent of the total area. In some countries, notably Grenada, St. Kitts and Nevis and St. Vincent and the Grenadines, where estates have been compulsorily acquired for the purposes of land reform, the amount of private land has actually decreased. Despite the universal existence of legislation governing the management of Crown/State lands in most countries, the records concerning Crown/State lands are poor and encroachment on such lands is common. In St. Vincent and the

Grenadines, for example, there are over 16 000 squatters on Crown Lands.

One of the reasons for this squatting is that, for historical reasons, the pattern of tenure of privately owned lands is skewed. Hence, the majority of arable land is occupied by in large estates and the majority of farmers either own or let subeconomic parcels or have an undivided share in family land. In Dominica, for example, 66 percent of all farms are less than five acres in size. Consequently, many, if not most, farmers are part-time farmers. In Antigua and Barbuda, for example, where 40 percent of farms comprise less than two acres, 69 percent of farmers are part-time. Family land is most common in St. Lucia where 45 percent of all agricultural holdings fall into this category. More than 10 percent of holdings in Dominica and 15 percent of holdings in Grenada are also family land.

In several countries, Government has engaged in land settlement and land reform programmes to address this basic problem. However, these programmes have had limited success. In most countries, State/Crown



In most countries, State/Crown lands have been granted, sold or leased to small farmers, but the measures intended to ensure that these lands are used for agriculture have not been effective.

lands have been granted, sold or leased to small farmers, but the measures intended to ensure that these lands are used for agriculture have not been effective. In the countries where agricultural estates have been compulsorily acquired for subdivision and distribution to

the landless, the intended transformation has not been realized. In Grenada, for example, only 20 percent of the land compulsorily acquired in 1967, under the Grenada United Labour Party (GULP) administration's "land for the landless" programme, has ever been allocated to beneficiaries.

This skewed land tenure pattern and, particularly in the Leeward Islands (Antigua and Barbuda and St. Kitts and Nevis), cultural preferences account for the large number of landless livestock farmers. These loose livestock have contributed to severe land degradation in some of those countries. The only solution to this problem is punitive and it is enshrined in the law of most countries. The grazing of livestock in certain areas, particularly protected areas, is prohibited and provision is made for loose livestock to be impounded until redeemed by the owner on payment of a fine or destroyed. Few measures have been contemplated or adopted to assist landless livestock farmers to rear penned animals. Only in St. Lucia is there legislation for the designation of Government lands as pastures on which animals can lawfully be grazed.

Other common land use practices that have an adverse effect on soil and watershed conservation, and thus on sustainable agricultural development, are slash and burn cultivation and the cultivation of marginal lands. Specific legislation aimed at soil conservation is absent in most OECS countries except St. Lucia and St. Vincent and the Grenadines. Only two countries, Antigua and Barbuda and Grenada have legislation for the control of slash and burn cultivation, except within forest reserves. Most of the OECS countries studied have legislation for the management of water resources. Some of this legislation is strong on watershed management and includes controls on the deforestation and use of private lands and provisions for reforestation. However, price support for bananas has led to encroachment on marginal lands that are not suitable for cultivation.

All of the countries have legislation for forest conservation, but poor records concerning the extent and location of Crown/State lands and institutional and policy constraints on the enforcement of the laws protecting Crown/State lands, including forest reserves, undermine the effectiveness of these laws. In some cases, for example in Dominica, the law actually encourages squatters to deforest unallocated State lands. The legislation relating to the conservation of wildlife is weaker and does not specifically target the conservation of flora and fauna of importance to agriculture. However, in some cases the wildlife legislation does facilitate the extermination of animals that are considered agricultural pests.

Dependency on economic activities other than agriculture is increasing and this has led to the conversion of significant areas of prime agricultural land to built development, including primarily housing and tourism. All of the OECS countries have, until recently, been operating with obsolete land use planning legislation, with the exception of St. Vincent and the Grenadines which introduced modern legislation in 1992. Although land use plans have been prepared for all of the OECS countries, primarily with assistance from United Nations Development Programme (UNDP) and UNCHS, government has never taken ownership of these plans and, for all practical purposes, land use

decisions are not guided by the statutory planning process.

The failure of land use planning led, some decades ago, to a philosophical switch to development control legislation. This switch permitted an ad hoc approach to land use decision-making that was lacking in transparency. This legislation was of limited applicability to the use of land for agriculture, but in some OECS countries misinterpretation of the material provisions led to the relevant agencies avoiding responsibility for the control of the subdivision of agricultural land and building and engineering operations on agricultural land. By 2002, this obsolete land use planning and development control legislation had been replaced in St. Kitts and St. Lucia by comprehensive modern legislation. Before 2012, comparable modern legislation had also been enacted in Antigua and Barbuda, Dominica, Grenada and Nevis. These initiatives were undertaken with assistance from UNCHS and UNECLAC.

Virtually no use has deliberately been made of fiscal measures to influence land use. In some cases, the regime of administrative fees and charges payable with respect to land transactions, particularly the registration of mortgages and leases, has had unintended and perverse results. However, financial incentives and disincentives, such as tax concessions, financial subsidies and penalties, have not been used coherently to support sustainable agricultural development. One of the reasons for this lack of use of incentives appears to be administrative convenience, which is a reflection of the limited institutional capacity of the relevant agencies.

Generally, a sectoral approach is taken to land use planning and control and land administration. In this approach line agencies work more or less independently under the general supervision of the Government. There are some administrative and legal devices for interagency coordination. However, these are the exception rather than the rule. As is the case in many countries, working with line ministries does not promote an integrated approach to planning, programming, implementation and management. To some extent, the small size of these countries mitigates this problem, as informal arrangements can be used to overcome the deficiencies of the formal administrative structures.

However, small size is also at the root of fundamental problems affecting land administration and land use control. Many of the agencies charged with responsibilities for land use planning, development control and land administration; do not have adequate resources, particularly human resources, to discharge their mandates. In some cases, paraprofessionals are required to do the work of professionals. Additionally, the social intimacy of small communities, results in greater access to decision-makers, which often militates against strict administration and enforcement of the law. This shortcoming is reflected in reports that there is a lack of political will to enforce the law or political interference in the administration of the law.

KEY POLICY and LEGISLATIVE RESPONSES

Distribution of Crown/State lands

The distribution of publicly owned land, by grant, sale or lease, has historically been the major mechanism for stimulating agricultural development in the OECS countries. This practice has been supplemented by land reform programmes involving the compulsory acquisition and redistribution of privately owned estates. The practice is the result of the decrease of the amount of arable land available for allocation and other policy considerations, including the decline of traditional estate crops. There is a considerable body of legislation related to these initiatives, including legislation relating to the administration of Crown/State lands, land settlement schemes, land acquisition and land development. In the case of leased lands, covenants expressed or implied in the lease are the main device for ensuring that these lands are used for agriculture. In the case of lands that are sold at peppercorn rates, restrictions are generally placed on the disposal of the land on the open market.

There are a number of problems attendant on the implementation of this policy and generally these are fewer deficiencies in the existing legislation than in its administration. There is virtually no enforcement of leasehold covenants governing the use of the land. It is reported that in some OECS countries, the rents payable by Crown/State land tenants and/or the purchase price payable for State/Crown lands transferred to beneficiaries are not paid and no action is taken by the relevant agencies to collect the money outstanding for political reasons. Moreover, the lessees of Crown/State land may remain and continue to occupy the land notwithstanding the termination of leases, so that land cannot be reallocated. In effect, Crown/State land has therefore been given away. Where land has been compulsorily acquired for redistribution, it is reported that most of the land in Grenada has not been redistributed and in St. Vincent, built development is taking place on lands allocated for agriculture.

However, there are some problems associated with these programmes that stem from provisions of the legislation. For example, some of the old Crown/State lands laws provide for agricultural land to be let from year to year. This practice would discourage investment in the land by tenants who, on paper, have no security of tenure. In any event, it appears that financial institutions in the subregion do not accept even long-term leases as collateral for loans. Hence, even if the legislation were to provide for long-term leases, as the most recent legislation does, this practice undermines the feasibility of utilizing a leasehold strategy to promote agricultural development. This deficiency could be addressed by the creation of a loan guarantee facility for farmers on leasehold land. However, unless there is the will to collect on the loans granted to such persons, this arrangement would only be a further drain on the public purse.

Security of Tenure of Private Lands

Over the past half century, a collateral effort has been made to protect the interests of the tenants of private land and promote agriculture by means of legislation guaranteeing secure tenure to small farmers. Most of the countries studied have legislation that provides for rent control,

protection against eviction and compensation for leasehold improvements for land tenants, whilst imposing obligations on land tenants with respect to the productive use of agricultural land. Perhaps because the social context has changed since the era when this legislation was enacted, this legislation is largely in disuse. The result is that the legislation is now outdated. What this may mean in practice is that the law has made it so difficult to raise rents or evict land tenants that landlords have ceased to monitor and enforce contracts of tenancy. With respect to protecting the interests of land tenants, the policy behind this legislation has therefore been successful. However, where it was also intended to promote investment in agriculture by small farmers, its outcome is less certain. The preference of financial institutions for dealings with freehold land has contributed to this uncertainty.

This type of security of tenure legislation is being succeeded in some countries by laws that confer upon land tenants an option to purchase private land on which they reside at a nominal cost. The positive response to this type of legislation in the Commonwealth Caribbean, as well as the problems attendant on the supervision of Crown/State lands leases and tenancies of private land, suggests that freehold conversion is a more workable option for the development of agricultural land than continuing leasehold schemes, even schemes which provide for long-term leases. To date, no freehold conversion legislation, which is applicable to agricultural land, has been adopted anywhere in the Commonwealth Caribbean. In Guyana, an IDB-financed programme for freehold conversion of beneficially occupied small holdings of State land is being implemented administratively, but the failure to enact enabling legislation to facilitate transfers of title under this programme has hampered its implementation.

Conservation of Natural Resources

The OECS countries have all inherited colonial legislation providing in some ways for the conservation of natural resources, including laws with respect to forestry, wildlife, water resources and protected areas. Much of this legislation was inconsistent with modern approaches to the management of natural resources. However, international concerns about the environment, stemming from the Stockholm and the UN Conference on Environment and Development (UNCED) processes have led to the investment of international resources in the modernization of much of this legislation in the subregion. At the risk of over generalization, the focus of most of these efforts has been on the conservation of biodiversity, although modern legislation for fisheries and water resources management has also been adopted in many OECS countries.

By contrast, little attention has been paid to the question of soil conservation and to issues such as the control of slash and burn cultivation and loose livestock, which are serious problems in most of the OECS countries. These problems were exacerbated by price support for bananas, which led to the cultivation of marginal lands. Apart from a lack of international interest in these issues, the reason that they have not attracted significant attention from domestic policy-makers may be the decline in the importance of agriculture throughout the subregion. The current need to revitalize agriculture following the removal of price support for bananas may have created a policy environment for addressing these fundamental issues.

Land Use Planning and Development Control

The OECS countries have had legislation for land use planning in place for several decades and land use plans were produced for all of the countries in the 1970s. However, land use planning has been described as an activity that has been marginalized in the subregion because none of the existing land use plans has ever been approved or explicitly endorsed by the political directorate in any OECS country. Consequently, land use plans have played an insignificant role in the development process and the major developments that have taken place have been carried out without reference to the guidelines set out in the land use plans.⁵⁶

The UNCHS Environmentally Sustainable Land Use Planning and Sustainable Development Project implemented in the subregion in the 1990s included the development of model legislation and its customization in several countries, as well as a number of measures to strengthen the capacity of the OECS countries to undertake land use planning. These measures included the introduction of Geographic Information Systems (GIS) technology, training at the professional and technical levels⁵⁷ and technical assistance in the preparation of new land use plans, including the National Land Use Plan for Antigua and Barbuda. The foundation has therefore been laid to revive land use planning in the OECS countries.

In 2003, this initiative was supplemented by another aspect of the FAO's OECS Land Use Planning and Agricultural Production Zoning project designed to provide the OECS countries with enhanced Land Resources Information Systems (LRIS). These systems comprise thematic databases covering agroclimatic factors, soils, topography, physiography and vegetation. They also provide data on land use and land tenure. These systems are linked to a Geographical Information System (GIS) and are able to display combinations of data, and print maps showing different combinations of information. The project focused on establishing or upgrading the LRIS in Grenada, St. Lucia and Dominica, with the intention that Antigua and Barbuda, St. Kitts and Nevis and St. Vincent and the Grenadines, could draw on the experiences and expertise of these countries to develop their own LRIS..

⁵⁶ Armstrong, J. 1989. *Overview report on the human settlements sector in the OECS*, UNCHS. Habitat.

⁵⁷ A continuing capacity for professional training in this area also now exists in the form of the M.Sc. programmes in Planning and Development and GIS offered by the Department of Surveys and Land Information of the University of the West Indies.

Recommendations

Several recommendations may be made with respect to the amendment, modernization or harmonization of existing laws. These are as follows:

Land use planning and development control

A firm legal basis for the preparation of land use plans and for development control is needed to address the issue of the conversion of arable land to non-agricultural use. The modern physical planning legislation now in force throughout the region provides an adequate platform for the preparation of land use plans to be achieved. Nevertheless, the making of subordinate legislation (particularly EIA Regulations) is still required to implement the new laws in most countries. Although efforts to utilize the legal framework for physical planning have been initiated in some countries, for example Antigua and Barbuda and St. Vincent and the Grenadines, no statutory land use plans have yet been adopted. Hence, decision-making in the exercise of the development control powers continues to take place on an ad hoc basis. It is recommended that the commendable progress that the OECS has made in modernizing the law relating to physical planning should be brought to fruition by enacting the necessary regulations and adopting statutory land use plans.

Agricultural production zoning

The land use planning and development control legislation in the OECS countries can be used to preserve agricultural land, but is not concerned with the uses to which land reserved for agriculture is put. There are very few enactments in force in the OECS countries that have some bearing on agricultural production zoning. The piece of legislation that appears to be most relevant is the St. Vincent and the Grenadines *Agriculture Act*, which is rarely enforced. The Dominica *Land Management Authority Act* and the St. Lucia *Land Conservation and Improvement Act* have not been implemented. It is recommended that this existing legislation should be revived and enforced and that consideration be given to the adoption of legislation on this subject in the other countries studied.

Consolidation of natural resources management laws

In every country, except St. Kitts and Nevis, the conservation of soil, forests, wildlife and water resources and the designation of protected areas is the subject of several pieces of legislation. It has been recommended with respect to St. Lucia, that these enactments should be consolidated. This consolidation would bring about their harmonization and centralize their administration. It has also been recommended that the environmental protection laws of Grenada should be strengthened. These recommendations are applicable to

most of the other countries studied. A precedent for such legislation exists in the St. Kitts and Nevis *National Conservation and Environmental Protection Act* (NCEPA). However, as indicated by the review of this Act undertaken in 2004, the NCEPA is obsolete and could not simply be adopted and used as a model for the other countries. It is recommended that the draft *National Conservation and Environmental Management Act* (NCEMA) should be enacted to replace the NCEPA in St. Kitts and Nevis.

The OECS Model Environmental Framework Legislation was prepared in 2006.⁵⁸ Although draft environmental management legislation was prepared independently for Grenada in 2005, it is not suitable for a SIDS. That is probably why it has not yet been enacted. Hence, it is recommended that the OECS Model legislation should be customized for adoption by all the OECS countries, except St. Kitts and Nevis where new draft federal legislation has already been prepared.

Interagency coordination

All the legislation for land use planning and development control, natural resources management and agricultural development in the subregion should be reviewed, and if necessary amended, to ensure that provision is made for coordination among the relevant agencies. Where coordination mechanisms such as cross-sectoral boards exist, these should be revitalized. In this context, it may be necessary to provide for the payment of stipends to members for attending meetings.

Compulsory acquisition

The land acquisition legislation in all the OECS countries studied needs to be reviewed and revised. Firstly, so that the legislation conforms to the fundamental rights provisions of the Constitution and secondly, to ensure that the process is more transparent and efficient. In this context, the public purposes for which private land may be compulsorily acquired should either be defined or mechanisms to ensure that land is actually required for public purposes should be strengthened. Provisions should be made to ensure that the value of land is independently assessed, that compensation is paid promptly and that interest, computed at the prevailing commercial rate, is paid on outstanding payments from the date of acquisition until the date of payment. The formalities with respect to the transfer of title and maintenance of title records should also conform with those that ordinarily apply to the purchase of land.

Land records

Legislation for the introduction of a Torrens system of registration of title is required in both St. Vincent and the Grenadines and Grenada, where antiquated systems of deeds registration are still in force.

⁵⁸ Toppin-Allahar, C. 2006, 2007. *The development of OECS model environmental legislation: Interim Report*, OECS-ESDU, 30 June 2006 and *OECS model environmental framework legislation*, Final Draft, 12 February 2007. This work was undertaken as part of the CIDA-funded OECS Environment and Capacity Development Project.

Additionally, in St. Kitts and Nevis and Dominica, the nineteenth century Title by Registration Act should be reviewed and revised. The existing system should be converted to a cadastral-based system and land adjudication legislation should be introduced to facilitate the resolution of title and boundary disputes and compulsory registration. In all the OECS countries studied, the legislation should be amended if necessary, to enable the adoption of a computerized system. The land surveying legislation should be amended, where necessary, to harmonize it with the title registration legislation and to ensure that land records are parcel based.

Crown/State lands administration

Most of the legislation relating to the administration of Crown/State lands in the OECS countries studied is quite old and needs to be reviewed. In 2002, it was recommended that an inventory of Crown/State lands should be carried out in St. Vincent and the Grenadines and this work has begun. A legal requirement that such an exercise must be undertaken and that Crown/State lands records be kept up to date, should be adopted as an interim measure in all the countries studied. It is also evident that the agencies responsible for Crown/State lands administration need strengthening. It is noted in this context that a course in Land Administration is being introduced in the Department of Land Surveys and Land Information of the University of the West Indies. It is therefore recommended that persons from all the OECS countries should be selected for training in this field.

The existing systems for allocating Crown/State lands to beneficiaries are not transparent. The land settlement legislation in some countries is in disuse and, except for land in development schemes, land is allocated on an *ad hoc* basis in response to individual applications. It has been recommended that a means test should be adopted in St. Vincent and the Grenadines as a basis for allocation of Crown/State lands. However, it may be advisable to provide more generally that the Crown/State should allocate land on a competitive basis, according to published criteria. These criteria and the weight to be given to any criterion could then be varied depending upon the purposes for which the Crown/State is allocating the land. A single agency should be responsible for the allocation of all Crown/State lands.

It has been recommended, in the case of Antigua and Barbuda, that the Crown Lands (Rental) Regulations should be amended to provide for long-term leases of up to 25 years for farmers to promote greater security of tenure. This recommendation is subject to enforcement of the terms and conditions with respect to cultivation of the land and the payment of rent. For Dominica, it has also been recommended that steps

be taken to ensure that the covenants in Crown/State land leases are enforced. However, the agencies responsible for the administration of Crown/State lands evidently do not have the capacity to monitor and enforce the terms and conditions under which lands are let to farmers, including the payment of rent. Further, it appears that there is no political will for this to be done. Apart from the additional resources that will be required to implement these recommendations, it will also necessitate a change in the administrative culture.

In this context, it is recommended that the relevant legislation be amended to confer on tenants of Crown/State land an option to buy agricultural small holdings which have been beneficially occupied for a specified period, subject to the usual restrictions on resale to persons other than the Crown/State in the short term. This recommendation is made, provided that other measures are adopted to ensure that the land is used for agriculture, that the regulatory controls on the conversion of agricultural land to non-agricultural use are enforced, and that fiscal instruments, such as relief from land taxes, are used to encourage the productive use of agricultural land.

For St. Vincent and the Grenadines and St. Lucia, it is recommended that the legislation to prevent squatting on Crown lands should be strengthened to provide a better deterrent to squatting. This recommendation appears to be applicable to all the OECS countries studied, except Antigua and Barbuda where the incidence of squatting is very low. Additionally, the legislation in every country should be reviewed to identify and remove any measures that may provide incentives for squatting. In particular, the State lands Regulations in Dominica should be amended by removal of the provision that accelerates a squatter's claim to title if State land is deforested.

The situation with respect to Crown land in Barbuda is unique. It is recommended that the Antigua and Barbuda Crown Lands (Regulation) Act and the Barbuda Act should be reviewed and amended, where necessary, to clarify the mechanism for allocation of Crown land in Barbuda to foreign investors.

Land tenancy

The obsolete legislation on the subjects of security of tenure of agricultural small holdings on private land and land settlement schemes is in disuse in every OECS country studied. Even the most recent legislation of this type, the St. Kitts and Nevis Land Development Act 1991 is not being fully implemented. It has been recommended that this legislation should be revived. However, in light of the fact that this legislation is ignored, consideration should be given to repealing it and replacing it with modern legislation which gives land tenants an option to buy agricultural small



holdings that are beneficially occupied, similar to the St. Kitts and Nevis Village Freehold Purchase Act 1996. This recommendation is made subject to the proviso mentioned above with respect to the tenants of Crown/State land.

Family land

With the exception of the St. Lucia Land Registration Act, there is no legislation in the subregion that seeks to address the issue of family land and that legislation approaches the issue simply by creating a trust for sale. In most jurisdictions, there is legislation analogous to the Dominica Partition Act, which facilitates the subdivision or sale through the courts, of land that is owned by tenants in common, including family land. The Partition and Land Registration legislation needs to be amended to ensure that (i) no subdivision can be effected without the consent of the agencies responsible for the regulatory control of subdivision and that (ii) there is a minimum parcel size for subdivision, to prevent the indefinite fragmentation of agricultural land.

Soil conservation

There is little legislation in the subregion that is expressly concerned with soil conservation, except the St. Vincent and the Grenadines Agriculture Act and the St. Lucia Land Conservation Act. Additionally, few of the countries studied have legislation controlling slash and burn cultivation. With the exception of St. Lucia, none of the countries studied has legislation that addresses the need of landless livestock farmers for access to pasture lands. It is recommended that the available precedents in the subregion should be reviewed and model legislation on these subjects should be developed for adoption by all the OECS countries. In this context, it is recommended that the strategy of creating subnational local land management areas, similar to the type created for marine areas by the St. Lucia Fisheries Act No.10 of 1992, should be adopted for land conservation.

Control of agrochemicals

The Pesticide Control legislation in force in all the OECS countries studied should be reviewed and revised if necessary so that it applies to all agrochemicals. Regulations should be made under this legislation to control the indiscriminate use of agrochemicals in sensitive areas, such as watersheds.

Tree conservation

Only St. Kitts and Nevis has legislation for the protection of fruit trees. It is recommended that legislation providing that permission must be obtained to fell all mature trees should be introduced in Antigua and Barbuda. There is a precedent for this in Barbados.

Land taxes and transaction fees

It is reported that in most OECS countries there is little remaining arable Crown/State land which can be let or sold to farmers. Moreover, much of the land that has already been distributed is now idle. The implication is that it will be necessary to introduce some incentives to bring this land into productive use.

It is recommended with respect to Dominica that a land tax regime, based on land use, should be adopted and that the fees and charges payable

with respect to the registration of land transactions, particularly mortgages, should be reviewed. A similar recommendation has been made for St. Kitts and Nevis. It is reported that St. Lucia has found that the remission of land taxes alone is insufficient to induce the conservation of forests on private land. It is, therefore, recommended that a tax should be introduced on land that is idle for more than 12 months.

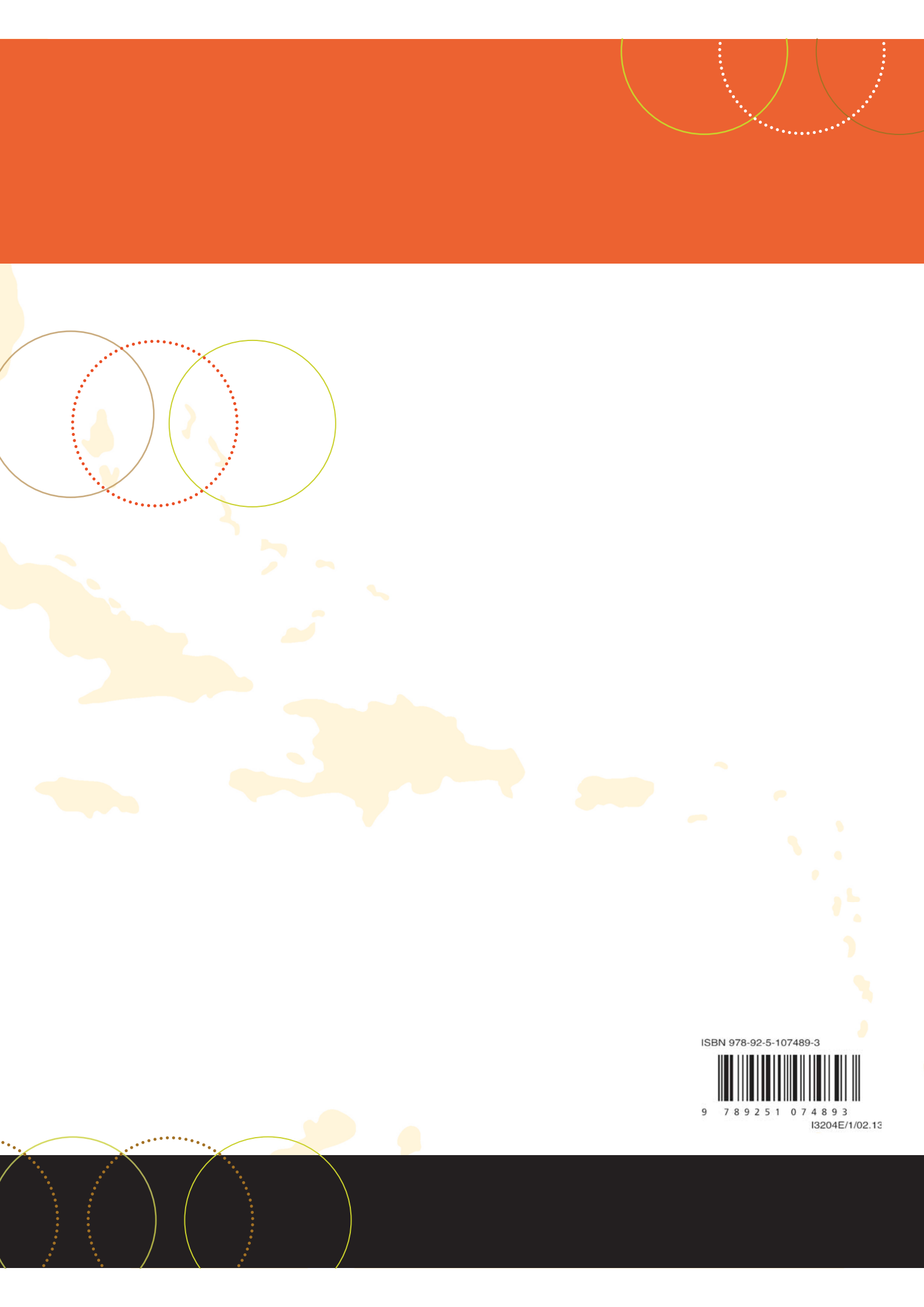
It is clear that the impact of fiscal measures and fees and charges on agricultural development is not well understood. It is recommended that this subject should be studied further and that a better targeted regime of land taxes and transaction fees and charges should be introduced. In this context, it appears that legislation and the institutional capacity for the valuation of land for tax purposes are absent or deficient in all the countries studied. This situation should be corrected if taxes on land are to be used as an instrument for implementing agricultural policy.

Land loans

The fact that financial institutions in the OECS countries do not lend against leasehold interests in land is a major problem for financing agricultural development. Unless the recommended strategy of converting leaseholds to freeholds is adopted, this problem can only be addressed by creating a loan window for land tenants. It has been recommended with respect to Dominica that Government banks should take the lead in this respect. This recommendation is applicable to most of the other countries studied. The question of financing for the development of family lands requires further study. Innovative strategies, such as the Grameen Bank approach, may be relevant in this context.

Harmonization at OECS level

Several initiatives for harmonization of legislation among the OECS countries, including legislation on land use planning, have already taken place. It is recommended that the OECS countries should continue to pursue this approach. Additionally, some institutional support in areas such as EIA is available to individual countries from the OECS Environment and Sustainable Development Unit (ESDU). However, given the constraints on institutional capacity in the individual countries, it is recommended that devices for resource sharing among the OECS countries should be explored. This would strengthen practice and harmonize the implementation of the law in the OECS countries.



ISBN 978-92-5-107489-3



9 789251 074893

I3204E/1/02.13