

CHALLENGES AND OPPORTUNITIES FOR THE FORMALIZATION OF UNCOMPENSATED EXPROPRIATED PRIVATE LANDS IN THE DOMINICAN REPUBLIC



This paper presents the challenges and possible opportunities to resolve an intractable issue plaguing both land tenure security and social equity in the Dominican Republic – an issue which is a remnant of the agrarian reform process and in particular a result of uncompensated expropriations of private lands.

With the enactment of the Agrarian Reform Law (Law 5879/1962), a process of agrarian reform was initiated in the Dominican Republic that modified the regime of ownership and exploitation of land in the country. As a result a new legal and institutional structure was created, which included the creation of the Dominican Agrarian Institute (IAD), as the entity responsible for carrying out agrarian reform through expressly stipulated powers, among which is: *"To request, in accordance with the law, of the Executive Power, the expropriation of any property that it deems necessary for the purposes of the law."* Under the Agrarian Reform Law, the IAD would have the task of establishing and distributing State lands (assigned, acquired or expropriated) to constitute family farming units on which families of poor farmers would be placed. Subsequently, in 1972, a set of subsidiary laws and regulations were promulgated with the aim of accelerating the implementation of agrarian reform.

However, this legal framework combined with a vigorous and politicized public policy of massive expropriation immediately began to generate a problem which has survived to today in the rural areas of the country. That is, the expansive application of expropriation without payment of the corresponding just compensation and the subsequent distribution of the expropriated land to small farmers without providing proper land title. From a property rights perspective the problem stems from the well-intentioned Article 97 of the Land Registration Law (Law 108/2005) which stipulates that when a property is expropriated, the Registrar of Title will not proceed to register the transfer of any right over the property until it has been demonstrated that the holder of the registered right has received full compensation. Since compensation has not been paid, the expropriated owner remains on the land registry causing what is essentially a situation of *'government imposed reciprocal tenure insecurity'*.

The resulting situation exemplifies a significant ‘lose-lose’ in which expropriated land owners still hold valid title, but without occupancy or control over the land and with little chance of receiving just compensation, and small farmer occupants without the possibility to formalize their government assigned occupation into a legally registered title. Within this policy, legal and property rights system context, the tool of expropriation, even if it was intended for the purpose of equitable and efficient redistribution of rural lands, has in practice become an economic and social constraint to the rights of both the land owners and the land occupants. In-turn generating widespread land tenure insecurity.

The paper briefly describes the magnitude of the current situation while highlighting the very complex structure of the underlying legal property rights system which is exacerbated by the Dominican Republic maintaining a dual land registration system; a Torrens-based Registry of Title system established during the US military occupation of the 1920’s alongside the Ministerial System established in 1890 with its origins in the French deeds system. The paper also stresses the spirit of the Dominican Constitution of strong property rights and the Dominican Government’s commitment to promote ‘a landowning country’ through the programmatic intervention of the Permanent Commission for Land Titling under the auspices of the Ministry of the Presidency.

Given this context and these circumstances, it is important to look for innovative options to effectively address this issue that continues to negatively affect rural land tenure security and property rights at its base, and equitable rural development as the ultimate objective. Thus, consideration should be given to lessons learned and innovative strategies from international experiences that may offer pragmatic solutions to the situation. Since, in the end, resolving this situation not only represents putting to rest a lingering internal problem of the arbitrariness and inequity of many of the expropriation processes of the past, but will also generate and demonstrate an overall climate of legal security and economic and social equity.

Addressing this problem is at least three-fold: 1) development of a national strategy for land tenure formalization that is framed within an adequate public policy for development of rural communities and individuals; 2) development of effective guidelines and operational mechanisms that provide incentives to both registered land owners and informal land occupants to engage in negotiations leading to private land formalization and registration of ownership; and 3) proactive government advocacy to bring willing parties together and to formally acknowledge the result of agreements. Items one and three will require government support and intervention, but item two could and should be led by the private sector and civil society.

In an effort to provide lessons learned from various international experiences which can serve as a reference point to address the situation in the Dominican Republic, the paper reviews emblematic cases from Central and Eastern Europe, as well as experiences from Latin America. These cases have used innovative formalization processes to confront and provide solutions to problems of tenure insecurity resulting from incomplete or unsuccessful implementation of an agrarian reform process and/or from state expropriations. In light of the situation in the Dominican Republic and taking into consideration international experiences from Colombia, Mexico, Honduras, a series of possible solutions is offered to facilitate discussion leading to public policy decisions to address the situation in the Dominican Republic. Implementation of any of these solutions should be preceded by the completion of an up-to-date inventory of expropriated land for which land owners have not be compensated. Given the time since the majority of the expropriations and the significant lack of available official information on the cases, this inventory is needed to fully understand the legal situation and ‘genealogy’ of each parcel.

The possible solutions presented in the paper are: (i) government compensation to registered land owners through the provision of socio-environmental and/or economically equivalent land; (ii) establishment by one or more of the registered land owners of a private land trust followed by the subsequent sale or leasing of individual parcels from the trust to current individual occupants; (iii) government-promoted and recognized private negotiations leading to land sales between owners and occupants (i.e., market-assisted land reform); and (iv) government issuance of compensation vouchers or coupons which can be used to acquire state-owned lands or as payment of property taxes. Each of these possible solutions are described in the paper. Recent efforts by Land Alliance to promote these solutions to Dominican government authorities and civil society organizations are also described.