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Land Tenure and Property Rights Concepts and Terminology

Presenter: Mike Roth

**Best Practices for Land Tenure and
Natural Resource Governance in Africa**

Monrovia, Liberia

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Land in the News

Delegates And Government Clash On Customary Land

TRUTH EVERY DAY

Daily Monitor

Rwanda: Land Registration Complete

THE New Times

What's Behind International Land Grabs?

abc NEWS

THE New Times

Families in Kacyiru, Kimicanga Areas to Be Expropriated

ZIMBABWE LAND REFORM 'NOT A FAILURE'

BBC NEWS

Objectives

1. Introduce some fundamental concepts and terms used in the course concerning both issues and interventions in land tenure systems
2. Provide participants with a shared vocabulary of land tenure and property rights
3. Identify a few common confusions in the use of key terms which can lead to miscommunication in policy discussions



What is land tenure?

1. Land = Real, Tenure = Property
2. What's the point of property rights in land?

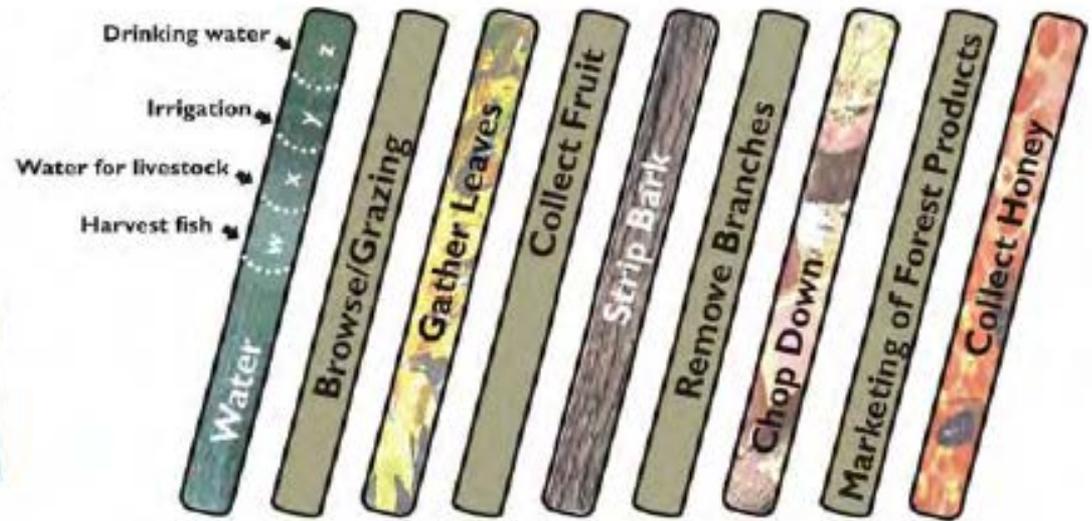


- Avoiding a free-for-all
- Reducing risks and creating incentives
- Allowing land to move among users
- Creating capital - land is a financial asset

What is tenure—A bundle of rights



Resources



Use Rights

Various strands in a bundle of rights related to a unit of land and associated natural resources may include:

- Right to use,
- Right to manage,
- Right to transfer (assign or reassign)
- use and management rights, and
- Right to “own”.

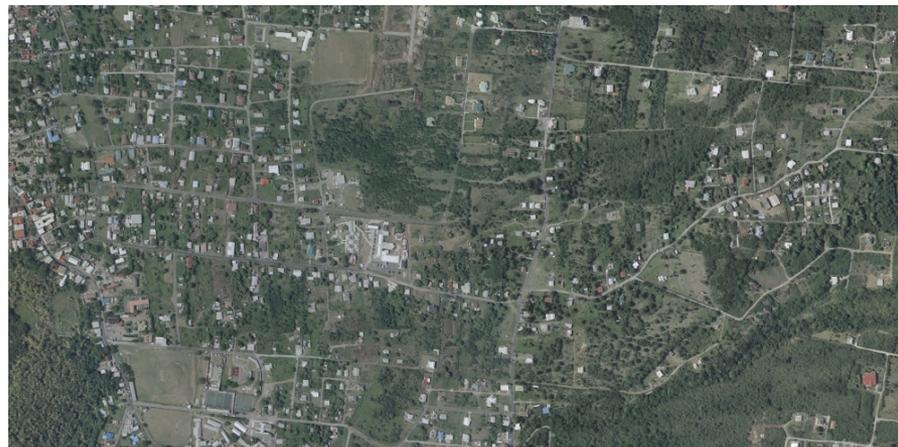
What are some basic tenures?

1. Tenures are characterized in terms of:
 - **Type of right:** ownership (freehold), tenancy (leasehold), usufruct (use right), concession, license
 - **Holder:** individual (private), state (public), community (common)
2. Tenures are not made in Heaven but are created by law



Property regimes

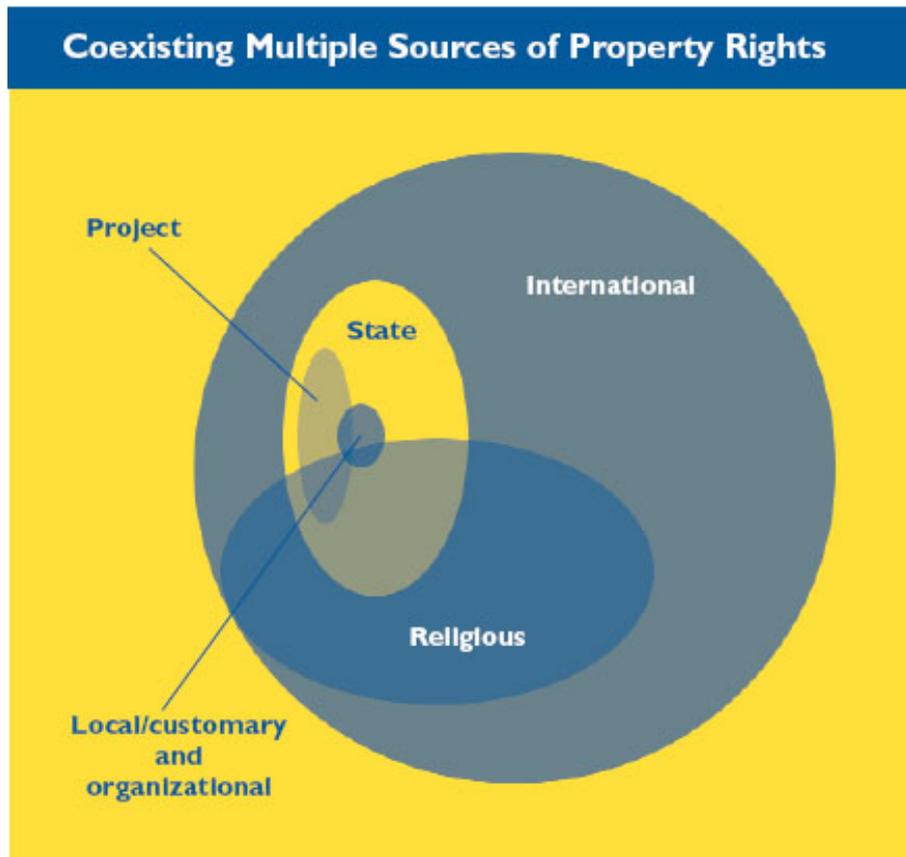
- **Private property:** Strands of property bundle are held by a natural or legal person
- **Common property:** Strands are shared among members of a community or association
- **Public property:** Strands are concentrated, held and managed by the government
- **Open access:** Either no specific rights to land or natural resources have been assigned or claimed by holders.



What is a tenure system?

1. Includes all the tenures present within a given polity, for example a nation
2. Consists of:
 - Tenures (several bundles of rights and responsibilities which compliment each other) and
 - Institutions (land management/administration), with
 - Connections to larger systems (e.g., economic, political, social systems), which produce certain
 - Results (equity, efficiency, or more narrowly, security, productivity, distribution, marketability, credit access)
3. In most developing countries include several sub-systems from different sources

What is legal pluralism?



How does it work or not work?

1. Validates/protects diversity, culture, identity
2. Co-existing bodies of law may be well or poorly coordinated
3. Tenure systems may be unique or overlapping resulting in confusion and conflict

Imagine you are farmer?

1. Parcels may be held under different tenures
2. If systems are poorly coordinated then uncertainty about which system prevails or what authorities are responsible

What is customary land tenure?

1. Where do we find customary land tenure?
2. What does “customary” mean?
3. Is customary land tenure necessarily
 - Old and unchanging?
 - Communal?
 - Informal?
 - Insecure?
 - Headed for “the trash bin of history”?
4. Strategies: replacement, adaptation or ...?
5. Increased urgency: land market globalization

What is common property?

1. What is a “commons”?
2. *Common property* vs. *open access* resources
4. Two key factors in analysis of common property:
 - Tenure (the group right)
 - Management (institutions)
5. Can a piece of land be both common property and individual property?



What is security of tenure?

The Holy Grail:

- Perception of having secure rights to land and property on a continual basis
- Free from unreasonable interference from outsiders
- Ability to reap benefits of labor and capital invested, either in use or when leased or rented to another

Key Dimensions:

- Robust rights in the bundle
- Sufficient duration
- Inheritability?
- Marketability?
- Assurance of protection

Questions:

Why is tenure security important?

Is security of tenure an objective or subjective phenomenon?



What is land reform?

Type of Reform	Interventions
Reforms that strengthen property rights and security	<ul style="list-style-type: none">▪ Land law reform (land tenure reform)▪ Land formalization (titling and registration)▪ Reform of land management/ land administration
Reforms that strengthen access	<ul style="list-style-type: none">▪ Redistributive land reform<ul style="list-style-type: none">✓ From large private holders, or the state✓ Expropriation or market mechanism▪ Tenancy reform and other law reforms▪ Restitution▪ Resettlement
Regulatory interventions	<ul style="list-style-type: none">▪ Land use planning▪ Land consolidation

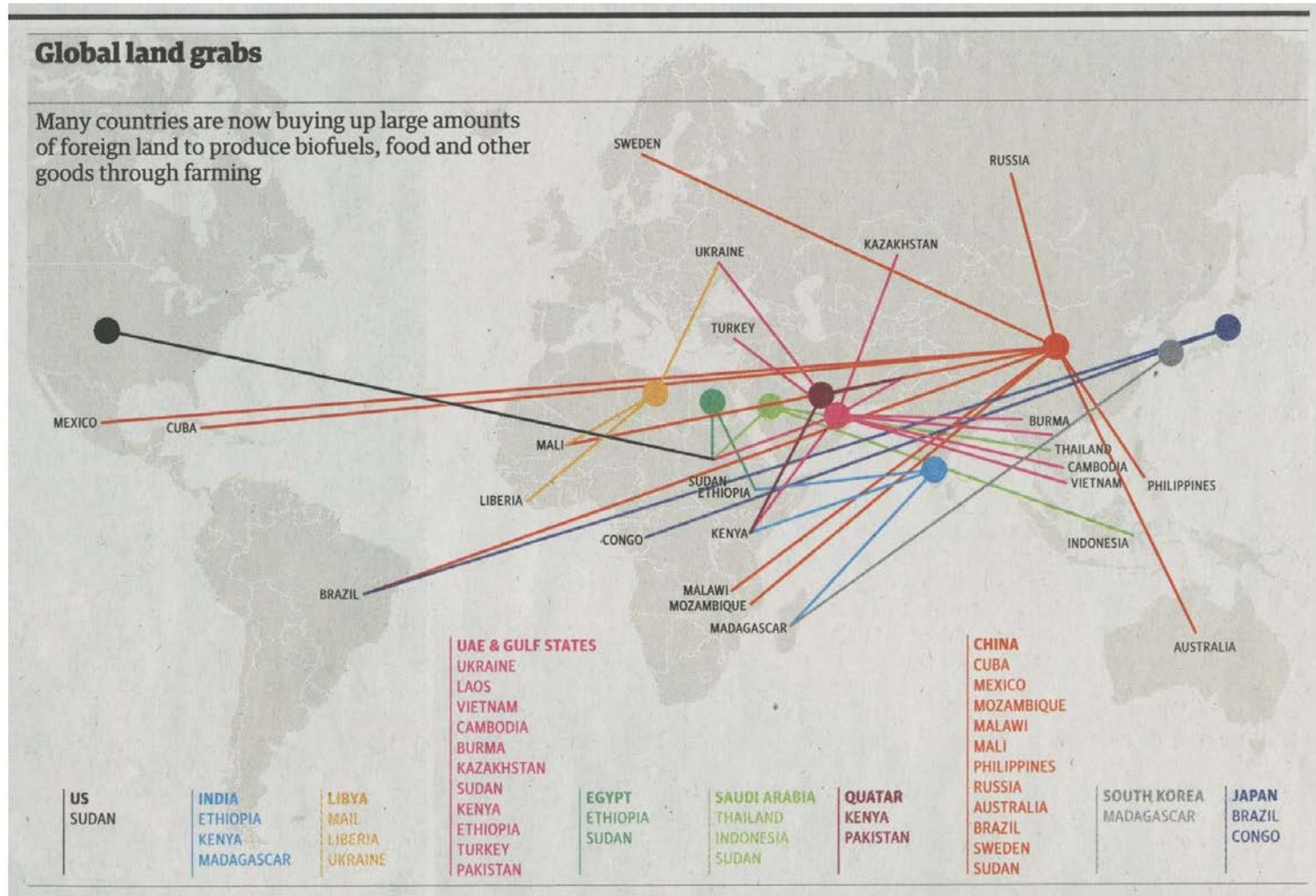
What is land formalization?

1. **Informality** = insecurity
2. **Titling**: the state confers a title on an individual in specified land, either by grant or by recognition of a pre-existing right
3. **Registration**: creation of an official, public record of the right (title registration) or the document creating the right (deed registration)
 - **Sporadic**: Demand driven, private initiative.
 - **Systematic**: Policy driven, public initiative.

What is land-grabbing (“large scale land acquisitions”)?

1. A pejorative term for large-scale land acquisition that displace existing users.
2. Can involve domestic or foreign actors, but is most often used in relation to foreign direct investment in land through land purchases and concessions
3. Can involve a wide range of purposes:
 - Commercial agriculture
 - Conservation (including REDD)
 - Biofuels
 - Mining and Petroleum Exploitation
4. Linked to the development of a global market in land

Which countries are involved in large scale acquisitions?



Source: The Guardian (4 July 2009)

Where are large scale acquisitions taking place?

Country	Projects	Area (000 ha)	Median Size (ha)	Domestic Share
Cambodia	61	958	8,985	70
Ethiopia	406	1,190	700	49
Liberia	17	1,602	59,374	7
Mozambique	405	2,670	2,225	53
Nigeria	115	793	1,500	97
Sudan	132	3,965	7,980	78

Data for 2004-09 except for Cambodia and Nigeria which cover 1990-2006.

Domestic share is proportion of total transferred area allocated to domestic investors:

Source: The World Bank, Rising Global Interest in Farmland, 2011.

Points to take away

1. Terminology matters: Example: Does “security of tenure” imply transferability? And what is “private property”? Always query key terms.
2. Use of political language confuses matters: A constitution provides: “Land belongs to the people”.
3. “Stipulative” definitions complicate matters: “In this law, ‘ownership’ means a right to use land for the life of the user.” Pay attention to definitions in statutes.
4. Remember, one man’s “reform” is another’s deform (sic).