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Land Tenure and Property Rights Concepts and Terminology

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**Property Rights and Resource Governance
Issues and Best Practices
October 2011**

Objectives

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

Terms

- Land tenure
- Some basic tenures
- Tenure systems
- Legal pluralism
- Customary land tenure
- Common property
- Security of tenure
- Land reform
- Land formalization
- Take-aways



What is land tenure?

- Land = Real, Tenure = Property
- 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 “a tenure”? A bundle of rights
- For example: ownership = usus, fructus, abusus)

What are some basic tenures?

- Tenures are characterized in terms of both:
 - The type of right: ownership (freehold), tenancy (leasehold), usufruct (use right), concession, license.
 - The holder: individual (private), state (public), community (common).
- Tenures are not made in Heaven, but are created by law.



What is a tenure system?

- A tenure system includes all the tenures present within a given polity, for example a nation.
- A tenure system 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)
- The tenure systems of most developing countries include several sub-systems from different sources.

What is legal pluralism?



How does legal pluralism work (or not work)?

- Legal pluralism validates diversity, protects culture and identity.
- The co-existing bodies of law may be well or poorly coordinated; in the latter case, insecurity and conflict may arise.
- Imagine you are a farmer. What does legal pluralism mean for you?
 - You may hold parcels under different tenure sub-systems. This is not itself a problem.
 - But if the systems are poorly coordinated, there may be uncertainty about which tenure sub-system parcel falls under and what authorities are responsible for it.

What is customary land tenure?

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

What is common property?

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



What is security of tenure?

- The Holy Grail: A secure expectation by the user of continued use of the land.
- Why is a secure expectation important?
- What are key elements of tenure security?
 - Robust rights in the bundle
 - Sufficient duration
 - Inheritability?
 - Marketability?
 - Assurance of protection
- Is security of tenure an objective or subjective phenomenon?

What is land reform?

- Reforms that strengthen property rights and security
 - Land law reform (land tenure reform)
 - Land formalization (titling and registration)
 - Reform of land management/ land administration
- Reforms that strengthen access
 - Redistributive land reform
 - From large private holders, or the state
 - Expropriation or market mechanism
 - Tenancy reform and other law reforms
 - Restitution
- Regulatory interventions
 - Land use planning
 - Land consolidation

What is land formalization?

- Informality = insecurity
- Titling: the state confers a title on an individual in specified land, either by grant or by recognition of a pre-existing right
- 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?

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

Points to take away

- Terminology matters: Example: Does “security of tenure” imply transferability? And what is “private property”? Always query key terms.
- Use of political language confuses matters: A constitution provides: “Land belongs to the people”.
- “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.
- Remember, one man’s “reform” is another’s deform (sic).