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Land Tenure and Property Rights: Tools for Transformational Development

LAND IS ONE OF THE MOST IMPORTANT ASSETS for people throughout the world. This is particularly true for the rural and urban poor, for whom land may form the most significant part of their asset base.

Land is also the foundation for a wide range of cultural and social identities. It is a cornerstone of economic activity and regularly serves as the basis for institutional development. It is the underpinning for markets (credit, real estate, labor, rental contracts, and agriculture production). And, land and land-based natural resources are the focus of continuous planning and management for sustainable development.

Rights to land and property are fundamental to virtually every society. Secure land tenure and property rights (LTPR) are as essential to peace and stability as are rule of law, good governance, and sustainable, economic development.

Land tenure is the institutional (political, economic, social, and legal) structure that determines:

- How individuals and groups secure access to land and associated resources, including trees, minerals, pasture, and water.
- Who can hold and use these resources — for how long and under what conditions. Land tenure may also have both spatial and temporal dimensions and are typically defined through statutory or customary law.

Property rights refer to a bundle of rights on the use, control, and transfer of assets, including land. Property rights may range from private (or semi-private) to leasehold, community, group,

shareholder, or other types of corporate rights. Property rights systems include mechanisms to resolve disputes, defend rights, and administer or manage land resources.

Providing secure tenure and property rights has become a major tool in the arena of economic growth, social development, poverty alleviation, and natural resource management (NRM). Tenure security has become an essential part of a large programmatic push aimed at investment in land, agricultural production, the sustainable management of natural resources, and in the move toward market economies.

Land policy is the tool employed to outline a set of goals and measures for meeting objectives related to land: ten-

ure, use, management, property rights and administration, and administrative structures. Land policy has very clear links with key USAID sectors and development goals. It is linked to agricultural policy and production as well as sustainable NRM and resource extraction. More recently, conflict management and mitigation programming is recognizing that land policy and security of tenure and property rights are central to efforts to minimize conflict.

As USAID moves forward to address transformational development, it increasingly needs to predicate its efforts on land reform and security of property rights. Because property rights are so closely linked to development agendas across the globe, it is important to understand how these rights shift as economies move through the stages of economic growth and democratization (and, in some cases, from war to peace) and how these shifts require different property rights interventions.



Peter Hertz, ARD, Inc.

Ethiopia is in the midst of one of the most ambitious land tenure and titling efforts in Africa. Here in Tigray Province, land titling must occur among competing land uses and high population density.

Land tenure and property rights (LTPR) refer to rights that individuals, communities, families, firms, and other corporate or community structures hold in land, water, forestry, wildlife, and, in some cases, mineral resources.

LTPR and USAID as a Learning Organization

USAID and its partners have discovered a great deal over the last three decades about the relationship between property rights and economic growth, productivity, and, to a lesser extent, NRM and conflict. There are several important lessons learned from the last decade of research and policy work on property rights, with a particular emphasis on land tenure.

- ▶ **Secure property rights are a critical component of economic development and social stability.** Inappropriate property rights policies and institutional structures that are not synchronized with economic, political, and environmental realities can undermine growth, erode natural resource bases, and catalyze violent conflict. Insecure and non-negotiable property rights are some of the critical factors that limit economic

growth and democratic governance throughout the developing world.

- ▶ **In development programming, property rights are most frequently dealt with in the context of land reforms and land tenure reform.** Programming decisions made in a variety of sectors that take land tenure into consideration can have profound impacts on land use and management, agricultural systems, and associated NRM.
- ▶ **Too often, land tenure and property rights reforms are measured in terms of *outputs* rather than *impacts*.** For example, if one were looking only at outputs, one would measure the number of land titles issued rather than focus on increased market performance and investment, reduced conflicts, or improved sustainable management practices. Such an emphasis prevents USAID from fully understanding the efficacy and potential cross-sectoral benefits of its property rights reforms and programs.

Two years ago, USAID embarked on an effort to capture more of its LTPR experience. The results of this first effort are described in the **LTPR framework**—a conceptual tool for examining LTPR constraints and interventions, writ large, in international development programming. The framework draws heavily from three important USAID programming arenas: (1) the **agency's experience with land tenure reform** as an economic growth tool and, to a lesser degree, natural resources programming; (2) the **foreign assistance framework**; and (3) the **conflict assessment framework** developed by USAID's Office for Conflict Management and Mitigation.

The LTPR Framework

The LTPR framework includes a four-volume set:

- 1. Land Tenure and Property Rights Framework.** A conceptual tool for examining LTPR constraints and interventions in USAID programming and how they might be adopted and institutionalized within the agency. It also includes a glossary of commonly used LTPR terms. ▶

Lessons learned from the comparative analyses of land tenure policy suggest that:

1. Secure land tenure can improve the welfare of the poor.
2. The exchange and redistribution of land is central to aiding land access by productive but land-poor producers, as well as the eventual development of financial markets that rely on the use of land as collateral.
3. Governments have a major role to play in promoting and contributing to the clarification and enforcement of land tenure and property rights.
4. Numerous socioeconomic concerns, including environmental stress, ethnic clashes, violent conflict, and the use/abuse of natural resources, grow out of insecure land tenure and property rights.
5. The recognition of customary rights to land and natural resources in statutory law and the devolution of management authority to local levels are basic to sustainable NRM.



In Albania, forests are threatened by overgrazing and overharvesting, while fragmentation of agricultural lands is impeding development of the agricultural sector. Insecure or poorly defined property rights are at the roots of these poor management practices.

Kim Glenn-ARD, Inc.

2. Country-Specific LTPR Themes and Donor Interventions Report.

This is a database on LTPR constraints for each USAID-presence country. The data are drawn from bilateral and multilateral literature sources.

3. Country-Specific LTPR Rankings and Maps.

These are expert rankings of major LTPR constraints in USAID programming countries around the world and an illustration of those constraints within “regional neighborhoods” (USAID programming regions).

4. Land Tenure and Property Rights Assessment Tools.

This collection of analytical tools can be used by USAID missions to expand understanding of LTPR constraints in their respective countries and determine how these contribute to or impede development programming. These tools are aimed at standardizing the format and content addressed in USAID property rights assessments and facilitate development of potential programming in this area.

The LTPR Matrix (Figure 1) illustrates a fairly complex but finite set of land tenure and property rights constraints intersected by a set of possible LTPR interventions.

CONSTRAINTS

The matrix comprises five categories (columns) of LTPR constraints: (1) violent conflict and post-conflict instability, (2) unsustainable NRM and biodiversity loss, (3) insecure tenure and property rights, (4) inequitable access to land and natural resources, and (5) poorly performing land markets.

INTERVENTIONS

The matrix also illustrates six categories of interventions (rows): (1) key institutional arrangements, (2) conflict or dispute resolution, (3) legal and regulatory framework, (4) redistribution of land or natural resources within society, (5) land administration and the specific mechanisms and agencies used to implement land policy, and (6) sustainable land-use management and conservation mechanisms.

The matrix is not meant to be read sequentially from left to right, nor from top to bottom; rather, it serves as a menu of constraints and interventions that need to be considered within the realm of land tenure and property rights. Individual cells of the matrix represent critical intersections between constraints and interventions.

SUBCONSTRAINTS

Within each heading of the LTPR constraints are subconstraints that include historical, cultural, political, economic, and social nuance. This nuance provides depth and complexity to the LTPR constraints. For example, “Violent Conflict/Post-Conflict Instability” in itself is generic, but when the focus is a theme dealing with displaced persons or the restoration of rule of law in a conflict or post-conflict situation, this category takes on practical dimensions for LTPR policy and program development. ▶

Figure I. The LTPR Matrix

		LTPR CONSTRAINTS				
		Violent Conflict/ Post-Conflict Instability	Unsustainable NRM/Biodiversity Loss	Insecure Tenure and Property Rights	Inequitable Access to Land and Natural Resources	Poorly Performing Land Markets
LTPR INTERVENTIONS	Key Institutional Arrangements					
	Conflict or Dispute Resolution					
	Legal & Regulatory Framework					
	Redistribution					
	Land Administration					
	Land-Use Management and Conservation					

The subconstraints illustrate the delicate balance between identification and analysis of the particular theme — that is, the identification of problems and their causes. Examples that arise under each category include the following:

- ▶ **Violent Conflict/Post-Conflict Instability.** Deaths resulting from conflict over land and natural resources; refugees/internally displaced persons; returning combatants; inequitable land resources distribution; destruction of land records and property rights infrastructure; and weak or absent rule of law and trusted governance systems.
- ▶ **Unsustainable NRM/Biodiversity Loss.** Natural resource loss, degradation, and/or unregulated exploitation; peri-urban sprawl; poor land-use planning and management; land fragmentation; and loss of and encroachment on protected areas.
- ▶ **Insecure Tenure and Property Rights.** Open access; loss of indigenous rights; loss of transhumant rights; loss of equitable rights; evictions of tenants and farm workers; eminent domain; insufficient duration of rights; and limited individual or group rights defined and supported by the law.
- ▶ **Inequitable Access to Land and Natural Resources.** Unequal access and distribution of resources; landlessness/squatting; resource theft; and uneconomical/nonproductive land or resource holdings.
- ▶ **Poorly Performing Land Markets.** Failed/failing inheritance systems; insecure contracts; high transaction costs; limited sharecropping/rental/tenancy opportunities; constrained sales or markets; speculation; limited collateral opportunities; and failed/failing marital property practices.

The Universe of Land Tenure and Property Rights Interventions

As land is a main factor for economic production in most countries where USAID operates, it is the main focus of the LTPR framework. For the most part, land tenure will refer to the ways in which individuals or groups acquire access to land, the rights they hold, and the ways they defend those rights. Most decisions concerning land have a direct and often immediate impact on NRM and property rights.

The LTPR matrix (Figure 1 on page 3) is designed to illustrate the categories of possible constraints and interventions associated with land tenure and property rights. Here in Figure 2, the LTPR matrix is populated to illustrate the possible range of LTPR interventions that could be employed in development programming. The range of possible interventions is large but finite; not all possible interventions are noted here. Both the range of possible interventions and the sequence in which they are applied can have either a singular effect on a constraint, or a multiplying effect on a number of LTPR constraints. ▶

Figure 2. The LTPR Universe: Potential Interventions

Land Tenure and Property Rights Interventions		Violent Conflict/Post-Conflict Instability	Unsu Man
	Key Institutional Arrangements	Rule of law Restoration of safety and security Commitment to protection of human rights Free and fair elections Transparency	Decen syste Collab syste Instit Establi men Nation biol
	Conflict or Dispute Resolution	Peace and reconciliation commissions Mediation/arbitration Restitution/compensation Resolution of conflicting claims to common resources Compensation	LTPR c Comm Comp Harmo
	Legal and Regulatory Framework	Civil code Constitutional development reform Judicial reform Land law review commissions	Protect Forestr Sustain Water
	Redistribution	Resettlement of soldiers Resettlement of refugees/internally displaced persons Reallocation of state land and property Restitution Land swaps	Ecosys Easeme Transfe
	Land Administration	Provisional land titling Land demarcation Reconstruction of property Reconstruction of records	Comm Conce com user Environ
	Land-Use Management and Conservation	Land reclamation Demining Control of unbridled resource exploitation Land suitability assessment	Particip zoni Land-u Environ Develop tives Integra agen
Cross-Cutting LTPR Interventions: • Support for Gender, Eth			

Interventions for LTPR Constraints

Land Tenure and Property Rights Constraints			
Sustainable Natural Resources Management/Biodiversity Loss	Insecure Tenure and Property Rights	Inequitable Access to Land and Natural Resources	Poorly Performing Land Markets
<p>Decentralization of NRM services and systems</p> <p>Participative/community management systems</p> <p>Technical coordination</p> <p>Enhancement of civil society management capacity</p> <p>Local environmental action plans/Biodiversity conservation strategies</p>	<p>Specialized community governance structures</p> <p>Judicial reform, courts, and magisterial systems</p> <p>Community governance structures</p> <p>Decentralization of government services and systems</p> <p>Civil society strengthening</p> <p>Notary systems</p>	<p>Constitutional provisions</p> <p>Presidential decrees</p> <p>Decentralization of services and systems</p>	<p>Supportive government service delivery systems</p> <p>Decentralization of notaries</p> <p>Mortgage/credit institutions</p>
<p>Conflict mediation systems</p> <p>Community conflict commissions</p> <p>Compensation systems</p> <p>Formalization of plural legal systems</p>	<p>Land arbitration systems</p> <p>Alternative dispute mechanisms</p> <p>Legal aid</p> <p>Controlled access to protected area resources</p> <p>Rights adjudication</p>	<p>Local arbitration systems</p> <p>Legal aid</p> <p>Land courts</p> <p>Compensation systems</p>	<p>Land claims courts</p> <p>Tenant/sharecropper conflict resolution systems</p>
<p>Protected area legislation</p> <p>Wildlife/pasture law reform</p> <p>Sustainable agriculture policy/legislation</p> <p>Land law reform</p>	<p>Laws to strengthen property rights</p> <p>Limits and safeguards to compulsory acquisition</p> <p>Establish magistrates/notaries</p> <p>Strengthen customary tenure</p> <p>Legal aid</p> <p>Land law review commission</p>	<p>Legal reforms that strengthen state acquisition and distribution of land and property</p> <p>Legal reforms addressing “open access” issues</p> <p>Land banks/land funds</p>	<p>Laws and regulations to enable transactions</p> <p>Conducive fee structures</p> <p>Land access/use contracts</p> <p>Strengthened notary systems</p> <p>Removal of legal barriers to land ownership and transfer</p> <p>Incentives for subsequent registrations</p>
<p>System assessments</p> <p>Evictions/expropriation</p> <p>Hereditary rights</p>	<p>Redistribution of land rights</p> <p>Restitution</p> <p>Formalization of customary tenure</p> <p>Community title to common property</p>	<p>Improper redistribution/eviction halted</p> <p>Land reform</p> <p>Resettlement</p> <p>Farm redistribution/restructuring</p> <p>Reallocation/privatization of land and property</p> <p>Expropriation</p> <p>Land banks</p>	<p>Market-assisted land reform</p>
<p>Community title to common property</p> <p>Leases/community license of common resources to third-party users</p> <p>Environmental and economic valuations</p>	<p>Rights adjudication</p> <p>Land certification/registration</p> <p>Registry development</p> <p>Immovable property registry</p> <p>Reconstruction of property and records</p>	<p>Land-use planning</p> <p>Environmental zoning and management systems</p>	<p>First registration systems</p> <p>Land titling and registration</p> <p>Immovable property register</p> <p>Private sector market information and valuation systems</p> <p>Public access to land information systems</p>
<p>Prohibitory land-use planning and zoning</p> <p>Resource monitoring systems</p> <p>Environmental/ecosystem zoning</p> <p>Development and conservation incentives</p> <p>Protected land/water resources management</p>	<p>(Community) land reserve trusts and conservancies</p>	<p>Land information systems</p> <p>Land survey/demarcation</p> <p>Land titling and registration</p>	<p>Zoning</p> <p>Taxation/tax incentives</p> <p>Town and regional planning</p> <p>Green areas/easements</p> <p>Public-private partnerships</p>

Gender, and Human rights • Public Information and Awareness • Capacity Building

Selecting from among the range of possibilities and understanding the sequence in which constraints and interventions should be addressed are critical to the practice of LTPR programming. Although there is no ideal sequencing of LTPR interventions, USAID is constantly learning lessons about how the sequencing of interventions can influence outputs and impacts associated with LTPR reforms.

Cross-Cutting Interventions

LTPR reforms will languish or alienate significant portions of any population unless interventions are specifically dedicated to removing the legal impediments that discriminate against women and marginalized groups. Public information and capacity building are essential tools for creating and implementing policy, helping communities maintain and enforce customary rights, and ensuring that beneficiaries know and understand their rights and act on them responsibly.



Janie Thompson, ARD, Inc.

In post-conflict East Timor, USAID supported the drafting of land laws based on strong public participation. This permits rural and urban property owners to file land titles in a national property and land registry in order to spur economic investments. A new 5-year USAID program will further strengthen this initial investment

The Other Pieces of the LTPR Framework

COUNTRY-SPECIFIC ISSUES AND DONOR INTERVENTIONS REPORT

The **Country-Specific LTPR Themes and Donor Interventions reports** have been developed to provide a profile of LTPR constraints and related donor interventions in USAID-presence countries. For each country addressed, the report provides a snap-shot of current LTPR constraints and the donor interventions that seek to address them. The report alerts readers to current LTPR concerns in each country, based on a common set of donor literature. Subsequent research and assessments conducted in each country will further inform this initial snapshot and provide the basis for intervention, if warranted.

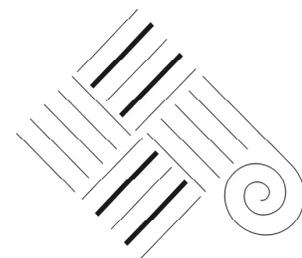
The report is based primarily on a

desk study and relies almost entirely on donor documents. The LTPR content in many of the documents reviewed is not as complete as it could be. Some entries in the report are limited and others are sparse — an indication that many of the donor programs and/or their reports are not, at present, focused on LTPR concerns.

COUNTRY-SPECIFIC LTPR RANKINGS AND MAPS

The **country-specific LTPR rankings and maps** are used to highlight and illustrate key LTPR concerns and draw attention to how they affect development and development programming. To this end, the LTPR country ranking process was developed to evaluate the severity of LTPR concerns in each USAID-presence country.

The country ranking process used an LTPR ranking tool to collect *informed judgments* on the severity of land tenure issues in each USAID-presence country. Rankings generated from this exercise are then used to illustrate country-specific LTPR constraints in a visual tool — the LTPR maps. The ranking process is still experimental, but increased use of the tool and process will validate the methodology and inform future refinements.



The Many Dimensions of LTPR

LTPR AND ECONOMIC GROWTH

There is a clear link between secure land and property rights and economic growth. Secure property rights are correlated with increased incentives for individuals and households to invest labor and other resources in land. Secure property rights also provide an incentive for land and real estate to enter formal markets.

LTPR AND GOVERNANCE

The control of land resources has been a traditional source of political and economic power. Local governance models, decentralization efforts, and local development activities are predicated on the sense of empowerment that is derived from and fortified by democratic reform, participation, and greater local accountability. Secure land tenure and property rights contribute to the formation of more effective and legitimate local government. They are also linked with local revenue generation from taxation and to fiscal decentralization.

LTPR AND NRM

Sustainable NRM is best achieved when land and natural resource tenure and property rights are recognized within the cultural, social, and ecological contexts and incorporated within the law. In addition, property rights over land and associated natural resources prove successful when enforcement of the rights is cost effective and perceived to be in the best interest of the individual and the community.

LTPR, EQUITY, AND POVERTY

For many of the world's poor, land is a key element of household wealth and the primary means for generating livelihood. Rights and access to land can serve to move the poor out of poverty as well as the rural poor away from heavy reliance on wage labor and susceptibility to economic, political, and natural shocks. Secure land and property rights can also prevent cases of poverty.

To provide security, land tenure and property rights must:

- Be of sufficient number and duration to provide incentives for investment/inputs.
- Have some way of assuring the holder that rights will be recognized and enforced at low costs to him or her.
- Be accompanied by mechanisms that allow for adjustment/variation in a changing environment.



Secure tenure has been shown to improve the social and economic status of citizens and contribute to a collective identity. It has been linked with investments in land, land transactions, and, in some cases, the production of marketable surplus. Secure tenure is increasingly seen as a tool for the creation of land markets and, along with microfinance schemes, a way of accessing capital and credit.

LTPR AND GENDER

In many places, women have fewer rights to land than men within a household. Women's rights are also often subordinate to those of men. Moreover, many barriers prevent women from translating formal land rights into economic benefits. Gender-specific social norms may restrict women's economic activities and decision-making roles. Women may face discrimination in the markets for land, labor, and capital. Legally and socially recognized property rights (including ownership) can ensure women's access to control over land-based earnings.

LTPR AND HIV/AIDS

Documentation suggests that HIV/AIDS is jeopardizing property rights, increasing land disposessions, and negatively impacting livelihoods — in particular, those of rural families. Evidence also suggests that HIV/AIDS most severely affects the poorest and most marginal members of society who are most vulnerable to losing, forfeiting, or alienating their land rights as a result of sickness or death within their households. There is evidence too that

the pandemic may be encouraging shifts to new forms of tenure, such as rental or increased land sales, or new patterns of cropping, land use, and natural resource exploitation.

LTPR AND NATURAL DISASTERS

One of the more dramatic and powerful natural disasters in history, the 2004 tsunami, has recently brought issues of property rights and land to the fore. How do hundreds of thousands of survivors of a natural disaster reestablish rights to land and property in the absence of any formal system? In the face of huge needs in a post-disaster response, proving ownership, determining individual versus household land rights, access to land, land distribution, and redistribution become major constraints. As the majority of the world's poor live in areas that are the most susceptible to disasters, they are the same people who often reside in areas with no formal land tenure, registration, or cadastre.

LTPR AND URBAN AND PERI-URBAN MANAGEMENT

Urban land tenure and property rights remain a key constraint internationally. Millions of urban dwellers in developing countries live without adequate security of tenure or property rights. In urban and peri-urban areas, the costs of access to legal land and housing are high and are rising faster than incomes. In some cases, informal settlements outnumber legally planned developments and are increasing rapidly. ▶

LTPR ASSESSMENTS

LTPR Assessments form an important part of the LTPR framework. Assessment tools are used to analyze and guide USAID mission and regional programming in response to LTPR constraints and concerns. These tools include guidelines and methodologies for several types of assessment exercises.

In addition to country-specific LTPR reports and rankings, the LTPR framework employs:

1. a **pre-assessment tool** – a short exercise Missions can conduct to determine need for a more intensive LTPR assessment exercise;
2. a **full LTPR assessment tool** – a more robust exercise designed to help Missions analyze the full range of LTPR issues and constraints in a country. These assessments contribute to the design of an LTPR component, project, or program. They can also be used to analyze interventions associated with ongoing USAID LTPR programming.
3. an **LTPR sequencing tool** – an analysis of the order and combinations of LTPR interventions. Experience has shown this analysis yields optimum results for programming interventions; and
4. an **impact assessment tool** – an exercise designed to look at the individual and cumulative impacts of LTPR interventions over time, and to help disaggregate and attribute results associated with USAID and non-USAID interventions.

In addition, the LTPR framework is augmented by additional measures to ensure its internalization and perpetuation within USAID. To secure its place as a development programming cornerstone alongside good governance, economic growth and rule of law, LTPR programming is supported by a rigorous capacity-building component aimed at USAID programming staff, and host-country partners and decision-makers. Annual training courses between 2007 and 2012 are an important part of the Framework's implementation.

The Framework also supports a platform of Knowledge Management (KM) that is designed to capture, store, and retrieve lessons learned and best practices emerging from this practice area. In addition, the KM system is designed to foster both USAID and international communities of practice on LTPR and will be launched in 2008. Investments made in all these LTPR tools will pay dividends down the line and help USAID create effective programming synergies with bilateral and multi-lateral donors.



Under a USAID program in Colombia, efforts to increase production of African palm, cacao, and other licit crops are used to move farmers away from illicit coca production. To have a chance of success, these efforts need to be based on secure land tenure and property rights.

When USAID operating units and missions find they need LTPR services related to programming, they should contact Dr. Gregory Myers, Senior Land Tenure and Property Rights Specialist, EGAT/NRM/Land Resources Management Team. Immediate needs for LTPR assistance can be met quickly through Mission buy-in to the PLACE IQC Task Order – Property Rights and Resource Governance Program. Longer term programming needs can be met through this and a variety of other procurement tools. For assistance please contact Dr. Myers at <http://usaidlandtenure.net/contact>.

This product is part of ARD's international work in land tenure and property rights. It is an abbreviated version of a four-volume set on the subject. These materials are available at:

www.ardinc.com/capabilities/ltp-rm.php

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