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FROM THE AMERICAN PEOPLE

Introduction to Land Tenure and Property Rights (LTPR)

Karol Boudreaux
Land Tenure & Resource Rights
Practice Lead, The Cloudburst Group
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— WELCOME TO LTPR 101 OUR PLAN FOR THE WEEK



GOALS

- Introduce you to Land Tenure & Property Rights (LTPR) as an important development issue
- Provide a strong background in key LTPR terms and concepts
- Discuss how LTPR relates to and affects other development sectors
- Strengthen your skills to support more effective programming, implementation, and problem spotting

ROADMAP

- Present modules that link land tenure and property rights to key sectors and development objectives
- Build a working knowledge of terms, concepts, land governance systems and USAID's technology innovations related to land and geospatial analysis
- Work with you and explore 3 scenarios that will support learning and help you identify possible programming options
- Provide information about how E3/LU can support you with technical assistance and through contracting mechanisms

LOGISTICS

- Each day we will have 2-3 presentations w/ ample time for Q&A
- After lunch T-Th we will work through a scenario
- Then, end-of-day recap; ending @ 4 pm M-Th: 12:30 on Friday
- Please be on time
- Phones on silent; take calls outside the room
- We will have coffee breaks – lunch is on your own

— KEY TERMS & CONCEPTS

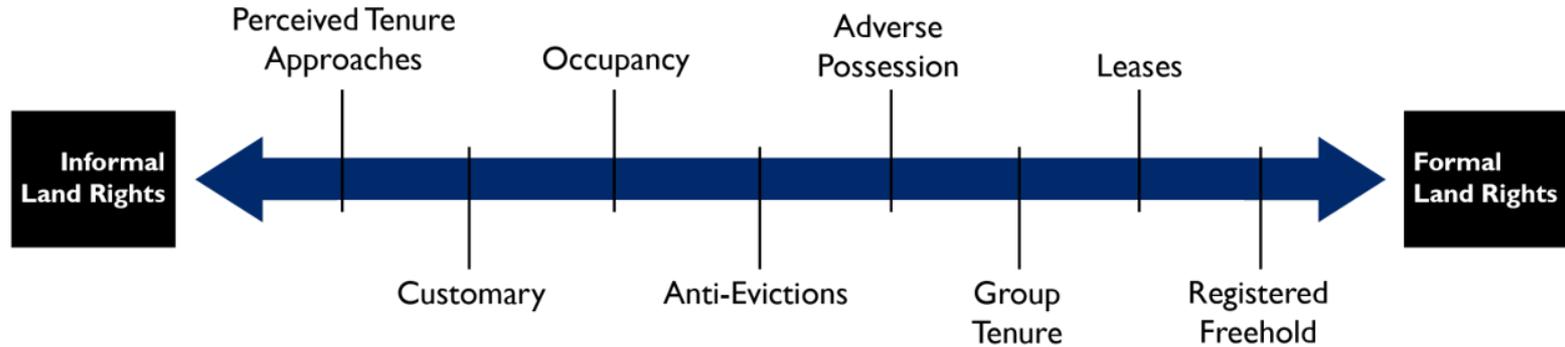
THE BASICS



WHAT IS LAND TENURE

- The relationship among people with respect to land and land-based resources:
 - Can be defined formally or through custom
 - Can be relationships between individuals, groups, or the state
 - A web of interrelated interests typically exist – a “bundle of rights”

THE “CONTINUUM OF LAND RIGHTS”



WHO “OWNS (OR HOLDS) THE LAND?

Private

Individual

Group

Corporate

Communal

Over common areas

Customary rules

Usually cannot be sold

State

Title held by Government

Smaller % in developed world

Default in socialist states and
still in many developing world
countries

Open Access

“Res nullius”

Example: High Seas

Many “de facto” open
access resources

IN MUCH OF THE DEVELOPING WORLD

- Land is not formalized – i.e., people do not have a formal title document
 - As much as 70% of the world’s land lacks formal documentation of rights
- Land is held under indigenous and/or communal rules
 - In SSA, as much as 90% (governments often hold “in trust” for users)
 - Much of this land has not yet been accurately mapped (this is changing)
 - Rights are typically not formalized but, increasingly, can be certified
 - Certifying communal use may help promote important development objectives

OTHER COMMON TERMS

- **Freehold/fee-simple**
 - A parcel owned by someone with “full” rights to control, use, mortgage and transfer (subject to regulatory requirements & eminent domain)
- **Allodial**
 - The holder has “absolute” title with no higher or superior owner/s
- **Leasehold**
 - A right to use and control for a period of time (an apartment lease; a lease of a field)
- **Usufruct**
 - A right to use land or a resource - such as an easement, right to harvest firewood, withdraw water

Note: No one type is necessarily superior

LAND MAY HAVE MULTIPLE USERS

- **Primary users** – formal owners or customary “owners” (often men)
- **Secondary users** – may have rights to plant food or tree crops based on agreement with primary user
- **Tertiary users** – may have rights to use land or resources based on agreement with secondary users
- *Women, migrants, youth, pastoralists often have secondary or tertiary rights*
- Need to understand who uses the land



WHAT IS TENURE SECURITY

- The expectation that you can use land/resources for a reasonable period of time
- Free of undue interference from others and in a way that allows you to reap benefits of your actions
- Security depends upon enforceability and is based on both real control and perception
- Land programming is often focused on increasing tenure security

A key question to ask:



SECURE LAND AND PROPERTY RIGHTS

- Share the following characteristics:
 - Clearly defined
 - Secure or enforceable
 - Efficiently transferable
 - Of sufficient duration for the purpose
- Example:
 - Laws on compulsory land acquisition often have ambiguous or very broad definitions of “public use,” limited guidance on “just” compensation and limited legal recourse to challenge government decisions. This can create insecurity for those whose property is taken for development. Donors should be aware of this when supporting infrastructure and energy projects

SECURITY EXISTS ALONG A CONTINUUM

- No/low security → high levels of security (impacts economic development)
- Critical part of an enabling environment (inclusive, sustainable business relies on secure land tenure and property rights)
- Benefits of security
 - Reduces conflict
 - Creates positive incentives and spillover benefits
 - Often improves environmental outcomes

WHAT FACTORS CONTRIBUTE TO TENURE INSECURITY

- Weak legal and regulatory frameworks
- Overlapping land governance systems (legal pluralism, or overlapping legal systems)
- Lack of capacity to manage land governance/land administration institutions
- Corruption
- In some cases, customary norms
- Examples:
 - Widows and tenure insecurity in Tanzania
 - Slum dwellers in Haiti

“SECURE ENOUGH” TENURE IS A GOOD PRACTICE

- You may be “secure enough” with:
 - Public recognition of customary or indigenous rights
 - Certificates that secure the rights to use or manage resources
 - Community-managed titling process
 - More formal strategies such as land titling or creating public land registries
- Secure enough for what?
 - Investment
 - Improved use and management
 - To reduce conflict

WHAT IS LAND GOVERNANCE?

The whole structure of rules, processes and institutions that make decisions about:

- The allocation and use of land
- The transfer of rights to land/resources
- The enforcement of rights
- The scope and nature of sanctions
- Systems also exist on a continuum from very weak to quite strong
- Land governance is an important component of governance writ large

FORMAL LAND GOVERNANCE SYSTEMS

- The variety of state institutions including:
 - Land Administration Offices & Land Ministries (and related ministries – Agriculture, Environment, Mining impact formal land governance)
 - Formal Constitutional, Statutory and Regulatory frameworks
 - Court systems
 - Various support professionals: lawyers, conveyancers, surveyors, assessors, real estate agents, mortgage bankers
- Much development programming focuses on formal land governance
- Example:
 - USAID's Land and Rural Development Project in Colombia

OTHER LAND GOVERNANCE SYSTEMS

- The variety of non-state institutional arrangement to allocate land:
 - Can be customary/informal – often have strong local support, respect
 - Can be religious
 - Often unwritten rules that evolve over time
 - Decisions often unwritten and reflect consensus
 - Does not rely on professional service providers
- Until recently little development programming focused on informal land governance; this is changing
- Example:
 - USAID's Tenure and Global Climate Change project in Zambia

WHAT IS LEGAL PLURALISM & WHY DOES IT MATTER?

- Multiple systems can create confusion
- Opportunities for corruption and fraudulent transactions
- May weaken the business enabling environment
- Can lead to rights' violations
- It is important to find ways to bridge gaps between systems



WHAT IS LAND ADMINISTRATION

- The technical “infrastructure” for managing formal land relations
 - Appropriate Ministries/Offices (decentralized in U.S., often centralized in developing countries)
 - **Title/deeds registries** (often centralized register of contractual, financial & spatial information)
 - **Cadastral offices** (often centralized register/map of real property/parcel locations with ownership, tenure status)
 - Mapping/surveying agencies
 - Court & regulatory agencies/offices (land use planning, zoning)
- When this system is corrupt, lacks capacity or resources tenure is often less secure
- Development programming often focuses on modernizing this system

LAND

FORMALIZATION / REGULATION

- Formalization or regularization = some public sector (formal) recognition
 - Titling (systematic v. sporadic)
 - Certification (use rights) or registration (the process through which a formal document is recorded)
- Example:
 - USAID's Feed the Future Land Tenure Assistance Activity in Tanzania

— LAND RULES & SYSTEMS MATTER



LAND IS A CRITICAL ASSET

- Land is linked in fundamental ways to multiple dimensions of poverty:
 - Income, wealth, food, housing, credit, government services, household & community-level decision making
- Secure land tenure is a necessary foundation for inclusive prosperity, combatting extreme poverty, and building resilience
- Yet, around the globe, poor governance of land and resource rights prevails

LAND GOVERNANCE EVOLVES

- People have always depended on land for:
 - Our basic needs (food, water, shelter, defense)
 - Our emerging wants (materials for producing things and places to enjoy)
- People have always had rules about who can access land for what purposes and time frame
- The people who control access to land have power
- Rules about land access/use/transfer evolve as conditions change:
 - Rising populations
 - Environmental conditions change
 - Value of resources shifts or new resources are created/discovered
 - As demand for land or resources increases people tend to create different rules to manage access, use of resource and to sanction misuse

THESE RULES & SYSTEMS MATTER

- Rules (informal and formal) about land tenure and property rights create powerful incentives
- Incentives can be positive:
 - To conserve resources
 - To invest and improve productivity
- Incentives can be negative:
 - To overuse, misuse
- Getting the incentives right is essential but often frustrated by elites, a lack of capacity, or a lack of resources
- Nonetheless, **local people can and do create positive and successful rules to manage land and resources**

Ineffective Systems	Effective Systems
<ul style="list-style-type: none"> • Women and vulnerable people are more at risk 	<ul style="list-style-type: none"> • Women and vulnerable people are empowered
<ul style="list-style-type: none"> • Producers are less likely to make improvements to their land 	<ul style="list-style-type: none"> • Producers are more likely to invest, enhance productivity and move to higher value crops
<ul style="list-style-type: none"> • Housing and reliable municipal service provision faces constraints 	<ul style="list-style-type: none"> • Housing and reliable municipal service provision is less constrained
<ul style="list-style-type: none"> • The investment and finance climate suffers 	<ul style="list-style-type: none"> • The climate for investment and finance is strengthened
<ul style="list-style-type: none"> • Resource degradation and environmental tensions increase 	<ul style="list-style-type: none"> • Stewardship of soil, forests and other resources is improved
<ul style="list-style-type: none"> • Land disputes can feed into broader civil conflict 	<ul style="list-style-type: none"> • Peace and stability are easier to achieve and maintain

A BETTER TOMORROW

SECURE LAND RIGHTS CAN MAKE A DIFFERENCE FOR THE WORLD'S POOREST FAMILIES

Agricultural production
increased by 60%*



Annual family income
increased by 150%*



Investment in property
improvements **doubled***



High school graduation
rates **doubled***



Number of hours worked
increased by 17%*



Teen pregnancy
reduced by half*



Evidence is growing. Results vary by context.

— PROBLEMS & CHALLENGES



COMMON PROBLEMS & CHALLENGES

- Rights might not be clearly defined; easy to transfer; adequately enforced
- Too costly to formalize rights
- Women's rights are de facto weak
- Governments often lack capacity and resources
- Inequitable distribution of land access, for example
 - Paraguay: 80% of land in the hands of less than 2% of owners
 - Guatemala: 80% of land held by 8% of owners
- Asymmetric information exists (on rights, on value, on rules and deal terms—along the value chains and across parties to a deal)

LAND PROBLEMS CAN BE COSTLY

- They create various kinds of conflict
 - Consider killings of land rights/environmental defenders
- They create negative incentives (to overuse, misuse, bribe, etc.)
- They frustrate economic growth
- They disproportionately affect vulnerable groups
- We need context-specific solutions that take into account local needs/local knowledge

INTERNATIONAL EFFORTS

- **Voluntary Guidelines on the Responsible Governance of the Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)**
 - Define principles and best practices across a wide range of sub-topics
 - Intergovernmental negotiation with active civil society and private sector participation
- **Principles for Responsible Investment in Agriculture and Food Systems (RAI)**
 - Promotes responsible conduct among stakeholders in ag–public, private, large or small farms, and recognizes need to respect legitimate land rights
- **Analytical Framework for Land-Based Investment in African Agriculture**
 - Developed by New Alliance/Grow Africa
 - Best practice guidance for investors on consultation, negotiation, due diligence processes, grievance mechanisms

STRENGTHENING LAND GOVERNANCE IS POSSIBLE

- We can improve incrementally
 - Understand and prioritize stakeholder needs
 - Build support among key stakeholders
 - Work to strengthen capacity at different levels
- We can work towards “secure enough” rights
 - Secure enough to create the positive incentives
- We can use a rights-based approach to help the vulnerable
- Local people can use high & low technology to address a number of problems

SIX WAYS YOUR WORK CAN HELP

1. Understand how the tenure system/s work in your country and implementation sites
2. Recognize that women and other vulnerable groups often have different land tenure, property rights, and obligations than men and elites
3. Understand that LTPR create powerful incentives—positive and negative—and work to secure and strengthen LTPR for sustainable and inclusive results
4. Advocate including LTPR as a cross-cutting issue in your organization's planning and budget processes, in inter-governmental agreements, and with your partners
5. Build in appropriate monitoring and feedback opportunities
6. Share learnings

TAKE AWAY MESSAGES

- Land is power
 - Politics, economics, social and cultural forces are all at play in the land sector and we need to recognize this
- Systems evolve and find ways to meet growing demand
- Overgeneralization and “one size fits all” approaches can frustrate progress and do harm — even when intentions are good
- Incremental approaches can work to increase security
- “Secure enough” is often the right target



E3/Land and Urban Office
www.LandLinks.org
landmatters@usaid.gov
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