Land Tenure Concepts and Definitions

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Land Tenure, Property Rights, and Natural Resource Management – Issues and Best Practices
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OBJECTIVES

• Provide participants with a common vocabulary of land tenure and property rights (LTPR) terms and concepts
• Explain how property rights are components of land tenure systems, the different ways in which they relate to each other, and the scope for innovation
• Identify some common inconsistencies in the use of key terms, which can lead to confusion in discussion of land tenure policy issues
Terms

- Tenure and Tenure Systems
- Property and Ownership
- Tenancies
- Common Property
- Customary Land Tenure
- Legal Pluralism
- Tenure Niches
- Security of Tenure
- Land Formalization
- Interventions/Reforms
What Are Tenure and Tenure Systems?

• Land Tenure and Real Property Rights
• What is the point of property rights?
  – Avoiding chaos, reducing risk
  – Setting conditions under which land moves among users
  – Creating value – land becomes an asset (an income stream)
• What are some usual property rights in your countries?
• In what sense are they a “system”?
• Are tenure systems only a matter of rules?
What is Property?

• Is property the same thing as ownership?
• Is there a difference between real property and immoveable property?
• When is ownership “private”? “individual”, “absolute”?
• What is a usufruct?
  – Usus
  – Fructus
  – Abusus
What is Land Tenancy?

• What’s another name for tenancy?
• Are they the same?
• What are the basic characteristics?
  – For a specified period
  – For a consideration (rent)
• What are some examples?
  – Bargained-for tenancies
  – Regulated tenancies
  – Statutory tenancies
  – Fixed rent and
  – share tenancies
What is Common Property?

• What is a commons?
• What are some examples?
• What distinguishes it from an open access resource?
• How does it compare to “communal”?
• What are the two key factors in analysis of common property arrangements?
  – Tenure
  – Institutions
What Is Customary Land Tenure?

- Where do we find customary land tenure?
- What does “customary” mean, exactly?
- Four fallacies: customary land tenure is necessarily
  - Old
  - Unchanging
  - Communal
  - Informal
- Are customary land tenure systems just sets of rules, or something more? What more? Institutions
- Strategies: Replacement or Adaptation
What is Legal Pluralism?

• What does pluralism imply?
• Are most legal systems unitary?
• What are potential sources of tenure rights?
• Imagine you are a farmer. What are the Implications of legal pluralism for you?
  – You may hold parcels under different tenures
  – A parcel you hold may fall under multiple tenure systems
Legal Pluralism: Diagram

Coexisting Multiple Sources of Property Rights

- Project
- International
- State
- Religious
- Local/customary and organizational
What is a Tenure Niche?

• Landscapes are divided into a variety of land uses. Imagine the landscape of a village. What do you see?
• A “niche” is a space best fitted for a particular purpose.
• In that landscape, do you see land use niches?
• Are they also tenure niches?
• Are the two the same? Not necessarily.
• Land use niches are however often the visual expression of tenure niches.
What Is Security of Tenure?

- The Holy Grail: A secure expectation that land rights will be respected
- Why is a secure expectation important?
- What are key elements of tenure security?
  - Robust content of right – exclusivity and control
  - Assurance of protection of rights
- What might an economist add?
  - Duration of right
- Is security of tenure an objective or subjective concept? Or, how much security is enough?
What is Land Formalization?

- Formalization = Titling and/or Registration
- Titling: the state confers a title on an individual, either by grant or by recognition of a pre-existing right
- Registration: the state makes an official record of the right or the document creating the right
- Registration may be:
  - Sporadic: A parcel or transfer of a parcel is registered at the request of the holder or those involved in the transfer
  - Systematic: The state takes the initiative to register for the first time all rights in the land parcels in a designated area
Interventions/Reforms

Reforms that strengthen tenure security

• Land law reform
• Land tenure reform
• Land formalization
• Land regularization
• Harmonization of tenure systems
• Reform of land administration
Interventions/Reforms

Reforms that directly improve land access

• Redistributive land reform
  – From private holders, or the state
  – Expropriation or the Market
• Community-based land reform
• Tenancy reform
• Public land management reform
Interventions/Reforms

Reforms than improve land management

• Land use planning
• Land consolidation
• Public land management reform
• Common property management reform
Points to Take Away

• Terminology matters: Example: Security of tenure for some implies transferability, for others it does not.

• Unclear use of terms often confuses discussions of land tenure, e.g., “people” in a constitutional provision stating that “Land belongs to the people”.

• The problem is complicated by stipulative definitions: “In this law, the term ‘ownership’ means a right to use land for the life of the user.”

• One person’s reform is another’s deform.

• Always query what is meant by a key term, and pay attention to definitions in statutes.