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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



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.