



Property Rights and Resource Governance Issues and Best Practices

Module 1: Introduction to Land Tenure and Property Rights (LTPR) Concepts

Selected Land Tenure Definitions

Adjudication

Adjudication is the process of final and authoritative determination of the existing rights and claims of people to land. This may be in the context of first registration of those rights, or it may be to resolve a doubt or dispute after first registration.

Cadastre

Cadastre (F); *Catastro* (E) The International Federation of Surveyors (FIG) defines the cadastre as follows: “A cadastre is normally a parcel based and up-to-date land information system containing a record of interests in land (i.e., rights, restrictions and responsibilities). It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, and ownership or control of those interests, and often the value of the parcel and its improvements.

Common property

Biens communaux (F); *Bienes comunitarios* (E) Common property is typically land and other resources in which entitled beneficiaries, whether individual or community defined, have specific common rights. For example, community members can use a common pasture for grazing their cattle independently of one another. The community controls the use of the common property and can exclude non-members from using it. Common property in this sense is distinct from “open access systems” where there is no control on access and no one can be excluded.

Common property management reform

Reform of the institutions and rules governing management of common property by communities and other corporate entities.

Communal ownership

Propiedad comunal (E) “Communal ownership” is a commonly used term to describe those situations where rights to use resources are held by a community. It often includes communal rights to pastures and forests, and exclusive private rights to agricultural and residential parcels. In such community-based tenure regimes, people may not have the right to transfer their land to others, or may have strictly limited rights to transfer (e.g., transfers may be limited to heirs through inheritance, or sales may be restricted to members of the community).

Community-based (market-mechanism) land reform

Redistributive land reform which relies upon market mechanisms rather than compulsory land acquisition by the state to change distribution of land and property rights.

Compulsory acquisition/Expropriation

Expropriation/Expropriation pour cause d'utilité publique (F); *Expropiación/Expropiación por causa de utilidad pública* (E) Compulsory acquisition or expropriation is a procedure by which

public needs for land or property rights in the pursuit of government policy are met. Processes of compulsory acquisition and needs vary from country to country. The processes of acquisition are statutorily defined, and will include detailed requirements and timetables for procedures and notices on the part of both parties. The processes will also include a basis for setting compensation for the loss of the owner expropriated.

Custom/Use/User

Coutumes/Coutumier (F); *Costumbres/Consuetudinario* (E) Custom results from practice since time immemorial. Use rights can be created in land on the basis of custom. These rights are often created by the use of the land over a long period of time. They are often the rights created by ancestral occupation and use of land by traditional societies. The creation and recognition of boundaries where these exist for such land will often use natural features, or planted trees or hedges. Although custom and customary use rights are most frequently associated with traditional societies, western societies may also recognize such rights.

Fee simple absolute

The fee simple absolute, also known as the freehold, is full ownership of land in Anglo-American law, providing the owner with the largest ‘bundle of rights’ of ownership available at law.

Freehold

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Land administration

The field of endeavor in which state actors provide services in support of a private property system. It may also include administration of public land..

Land administration reforms

Reform of land administration organizations, often involving the consolidation of land administration functions (land survey, land registration, land valuation) in a single institution.

Land consolidation

Consolidation of holdings which consist of several non-contiguous parcels into a smaller number of larger parcels.

Land formalization

Action to confer or recognize existing informal or customary property rights and make an official record of those rights.

Land grabbing

A pejorative term used to characterize large-scale land acquisitions that displace existing land users, covering acquisitions by domestic or foreign actors for a wide range of purposes (commercial agriculture, conservation, mining).

Land law harmonization

Reforms within land tenure systems characterized by legal pluralism, in which the objective is achievement of better coordination and a smoother co-existence between the various systems.

Land law reform

Reform of the law governing access to and management of land by individuals, communities and the state.

Land ownership

Ownership includes a right to possess and use the land perpetually, the right to pass land to heirs by will or intestacy, and the right to transfer the land to others, either temporarily or permanently.

Land policy

An authoritative statement of the intentions and objectives of government for the country's land sector. It is in most cases a statement of the policy of the government of the day, vulnerable to shifting political conditions. It does not, like law, bind subsequent governments until changed.

Land reform

Réforme foncière (F); *Reforma agraria* (E) Land reform is the generic term for modifications in the legal and institutional framework governing land policy. Land reform is intended to implement changes in land policy that are designed to realize desired changes in a changing political, economic and social environment in the interest of efficiency and/or equity. The most common types of land reform are probably those dealing with reallocations of land and those redistributing legal rights of ownership.

Land registration

The International Federation of Surveyors (FIG) defines land registration as follows: "Land registration is the official recording of legally recognised interests in land and is usually part of a cadastral system. From a legal perspective a distinction can be made between deeds registration, where the documents filed in the registry are the evidence of title, and registration of title, in which the register itself serves as the primary evidence."

Land registration reform

Reforms of systems of registering land rights, most commonly a transition from deeds registration to title registration, but also including improvements in the workings of any system of land registration.

Land regularization

Action to improve spatial distribution of parcels in informal settlements, often including formalization of those informal parcels

Land tenure

Tenure (F); *Tenencia* (E) Tenure is the relationship, whether legally or customarily defined, among people as individuals or groups, with respect to land and associated natural resources. Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long, and under what conditions.

Land tenure (property rights) reform

Reform of the legal rights and property institutions governing access to and use of land.

Land tenure system

Faire-valoir/modes de faire-valoir (F); *Formas de explotación/modos de aprovechamiento* (E) The land tenure system in a given jurisdiction comprises the set of possible bases under which land may be

used. As such this range encompasses both rural and urban tenures and includes ownership, tenancy and other arrangements for the use of land.

Lease

Bail (F); *Arrendamiento/Arriendo* (E) A lease is a contractual agreement between a landlord (lessor) and a tenant (lessee) for the tenancy of land. A lease or tenancy agreement is the contractual document used to create a leasehold interest or tenancy. The period of the lease is known as the “term” of the lease. A lease requires the following as a part of the agreement. The lease should be for a definite period, or for a period that is capable of definition. The date of commencement should be fixed, and the date of termination either fixed, or capable of being fixed. The lease should provide to the tenant the right to exclusive possession of the land, thus giving the lessee the right to exclude others, including the landlord, from the land.

Legal pluralism

Legal pluralism is the coexistence (either de jure or de facto) within a single legal system of laws and rights (in our case property rights in land) which have their origins in different sub-systems of law, as for example when citizens of Tanzania, generally subject to national law, have certain family law matters regulated by Islamic or customary law, or a citizen of Missouri has civil rights under federal law but must marry and divorce under law of the state of Missouri.

Occupation/Possession/Squatting

Occupation (Envahissement/Appropriation) (F); *Ocupación/Invasión/Usucapión* (E) Occupation is the physical occupation of land. Occupation is distinct in English law from possession. The latter may involve occupation, or it may simply be the right to receive rents or profits from the land in question. It is generally a matter of fact, although legally speaking the fact of occupation may, for example, be established by an employee or representative of the claimant.

Parcel

Parcelle (F); *Parcela* (E) A parcel (or plot) of land is an area of land with a particular ownership, land use, or other characteristic. A parcel is frequently used as the basis for a cadastre or land registration system.

Prescription

Prescription (F); *Prescripción* (E) Prescription is the acquisition or extinction of rights by lapse of time. Prescription is the way in which property rights may be legally acquired through possession for a period of time that is continued, peaceable, and without lawful interruption for the legally stipulated period.

Private property

Propriété privée (F); *Propiedad privada* (E) Private property is property that is held privately, whether individually, jointly or corporately. Private property and the associated rights of ownership are a keystone of market economies. In those countries that have written constitutions, the right to hold private property is usually enshrined as a fundamental human right.

Property law (real/immovable)

Droit immobilier (F); *Derecho inmobiliario* (E) Property law is the generic term within which falls all of the legal framework dealing with property, its use, ownership, regulation and disposition. As such, property law applies both to real property and personal property, and is distinguished from land law,

which applies only to real property.

Public land

Land owned by the state or other units of government. Civil law recognizes two categories of public land: the public domain of the state and the private domain of the state. The former is devoted to public purposes, while the latter can be used by the state to generate income, and may be leased out or sold.

Public land management reform

Reform of the institutions or rules regarding management of public lands.

Redistributive Land Reform

Land reforms which seek redistribute land and/or property rights in land, often relying on compulsory acquisitions of land, compensated or uncompensated.

Secure tenure

Sécurisation foncière (F); *Legalización y reconocimiento de la posesión de tierras* (E) Secure tenure is related to the degree of recognition and guarantee of real estate rights. Improving security of tenure is seen as necessary: to encourage investments to improve the productivity of agriculture; for conservation and the sound use of natural resources; to encourage the use of temporary rights for the use of land including leasing; to reduce the number and the intensity of conflicts relating to the use and transaction of real estate. Conversely, insecurity of tenure is characterized when the users and holders of land, whether rural or urban, consider that their rights on the land are at risk to other actors and uncertain in their duration.

Share-cropping

A tenancy in which the rent is a share of the production rather than a fixed amount, as under a fixed-rent tenancy.

Sporadic registration

Sporadic registration of land is the process of registering land on a case-by-case basis usually as the result of a specific trigger such as the sale of the property. When introducing new systems of land registration or land titling it is usual to consider whether the most appropriate approach is for systematic or sporadic registration. Sporadic registration is usually based on a specific action or actions of the owner of the property to trigger bringing it into the registration system. The most common action used to trigger sporadic registration is the sale of the property.

State property

Propriété de l'Etat/Etatique (F); *Propiedad fiscal/Propiedad pública* (E) State property is property owned by the State. Different regimes adopt different approaches to the identification of state property. The feudal system from which English land law stems identifies the Crown (the personification of the State) as the source of all land ownership, as the ultimate owner of all land. In another sense the State is an owner of land as property in the same way as any other owner, public or private, and will acquire or dispose of land and enjoy the same rights as any other land owner.

Systematic registration

Systematic registration is the systematic approach to adjudicating, surveying and registering parcels on an area by area basis. When introducing new systems of land registration or land titling it is usual to

consider whether the most appropriate approach is for systematic or sporadic registration.

Tenancy

A lease, in which a lessor (the landlord) gives land to a lessee (tenant) to use for a limited period of time for payment of rent. The term tenancy is often used in preference to the term lease for informal or traditional lease arrangement, such as share-cropping.

Tenancy reform

Reform of the law concerning land tenancy to redistribute the balance of benefits between landlords and tenants, such as rent control or elimination of legal restrictions on rentals.