

**FAO LAND TENURE STUDIES**

**3**

**Land tenure  
and rural  
development**

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## Foreword

The present volume is part of a series of Land Tenure Studies produced by FAO's Land Tenure Service of the Rural Development Division. Land tenure plays a vital role in achieving sustainable rural development. Increasing technological change and economic integration are requiring policy makers, planners, development experts and rural producers to re-examine the institutional arrangements used to administer who has rights to what resources for which purposes and for how long.

This volume is designed to support people who are involved in implementing rural development projects and programmes, rather than those involved specifically in land reform or land administration activities. It is frequently the case that land tenure issues are left out or misunderstood in rural development interventions, with often long lasting and very negative results. We have therefore prepared this practical guide to assist people in seeing where and why land tenure is likely to be an issue in rural development projects and programmes.

This guide brings together lessons learned from an extensive literature review plus experience gained in many years of working with rural development projects.

It forms part of the Land Tenure Service's programme designed in response to FAO's overall concern for food security and poverty alleviation. Sustainable agricultural and rural development is a critical area of activity, where improving access to land by the poor (especially women, minorities and other disadvantaged groups) who want to engage in agricultural pursuits is a key aspect which is often unrecognised and not well understood. This book, like others in the series, does not seek to be exhaustive but rather

reflects what FAO and its many international collaborators have discovered are “good practices” for sustainable agricultural and rural development. It is intended to be of use to technical officers of Member Nations and other senior authorities responsible for rural development and FAO field officers. FAO’s Rural Development Division looks forward to continuing collaboration with its larger audience.

**Maximiliano Cox**  
Director  
Rural Development Division

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## **1. Introduction**

- 1.1 This guide reflects the increasing recognition that access to land is frequently critical if vulnerable households are to enjoy sustainable rural livelihoods. Secure access to land, whether through formal, informal, customary or other means, is necessary for rural households to enjoy sustainable livelihoods, and is an important part of sustainable development. As this guide illustrates, what constitutes secure access is relative and the attributes of security will change from context to context. Land tenure problems are often an important contributor to food insecurity, to restricted livelihood opportunities, and therefore to poverty. Secure access to land should thus be considered when designing solutions to specific rural development or food insecurity situations. This requires recognizing and tackling land tenure related problems even in the earliest stages of a rural development project.
- 1.2 For this guide, discussion of land tenure is not restricted to access to land alone, but also includes access to other natural resources, such as water and trees, which may be essential for people's livelihoods. For convenience, "access to land" is used here to include access to other natural resources as well.
- 1.3 The purpose of this guide is to provide support to those who are assessing and designing appropriate responses to food insecurity and rural development situations. It recognises that this audience is drawn from a diversity of academic and professional backgrounds, but that few have had training in land tenure issues, either formally or informally. Although the guide is directed primarily at designers of rural development projects, its contents should also be relevant to those working in broader development programmes.
- 1.4 This guide aims to show where and why land tenure is an important issue in food security and sustainable rural livelihoods. It defines land tenure

and how it is administered in different situations. Analysis of how land tenure works in practice – as evidenced by the practical issue of who has what type of access to land, and when – is essential and defines the key issues both of access and of the security of that access. Additionally it reveals the various stakeholders who have an interest in land: those who control it and how they exercise that control; those who use it; and those, often women, indigenous peoples and other disadvantaged groups, who may be landless or may have insecure claims to land.

- 1.5 The guide analyzes important contexts where land tenure is currently of critical concern. These include situations where unsustainable increases in pressure on, or insecure tenure over, land resources give rise to environmental degradation, and where gender-discrimination in access to land disadvantages individuals, households and communities. In other situations, conflicts may have been provoked by disputed access, or may make problems of access difficult to address. These conflicts, with their associated disruptions, migration and displacement, provide great challenges from a land tenure perspective.
- 1.6 The information presented in the guide is intended to be relevant to those working in rural development projects throughout the world. While the guide has been prepared to familiarise readers with the context and key issues in land tenure, it should be noted that tenure issues vary considerably from one country to another, and even within a country. Moreover, tenure issues are far more complex and context dependent than described here, both in terms of the specific forms of tenure and of the inter-relationships over time, space and resources that may exist between different rights. The guide thus does not attempt to provide the reader with a detailed knowledge of land tenure, but instead provides a methodology in chapter 5 that can be used to identify people who can bring specialist land tenure knowledge into rural development projects or programmes.

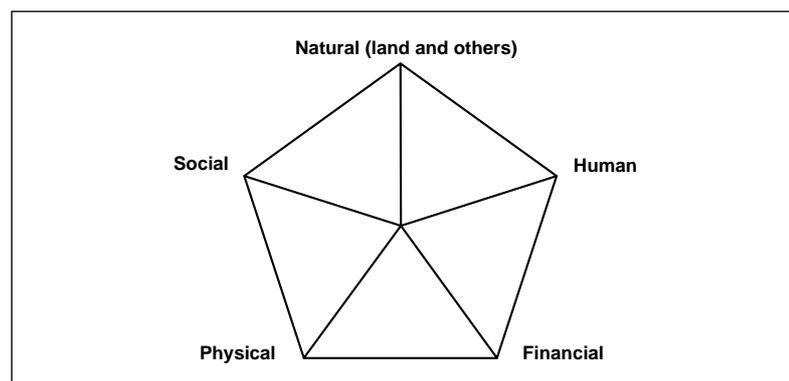
## **2. Why land tenure is important**

- 2.1 In response to concerns for food security and poverty alleviation, development agencies and organizations are introducing strategies that help to build assets and promote the self-reliance of poor people and communities. Interventions include helping poor people protect and enhance their natural resource base, improving access to agricultural land through resettlement schemes, and ensuring food security of the vulnerable, including women, minorities and indigenous groups.
- 2.2 In many cases, responses to concerns of environmental sustainability, social conflicts, and food security of the vulnerable are affected by land tenure and have an impact on land tenure. Failure to consider land tenure implications at the beginning of an intervention is likely to result in unanticipated outcomes and may lead to it not generating an improvement. In some cases it may even worsen the situation, for example by inadvertently dispossessing people of their rights to land. Situations of this kind have arisen, for example, when projects have resettled displaced people on land that was incorrectly identified as vacant.
- 2.3 Eradicating hunger requires increasing the access to food of a person or family. The extent to which individuals and families are able to be food-secure depends in large part on the opportunities they have to increase their access to assets such as land, as well as access to markets and other economic opportunities. People who have extensive rights to land are generally more able to enjoy a sustainable livelihood than those who have only limited rights to land; those who have limited rights are, in turn, often better off than those who are landless.
- 2.4 Land tenure is important in rural development interventions which place an emphasis on building people's endowments of assets so they can enjoy sustainable livelihoods. A livelihood is sustainable when it can cope with,

and recover from stresses and shocks, and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base. In this context, a livelihood comprises the capabilities, assets (including both material and social resources) and activities required for a means of living. Property rights to land, together with labour, form the most common endowments used to produce food for home consumption as well as cash crops that allow the family or individual to pay for other needs such as health and education. Property rights to land are thus one of the most powerful resources available to people to increase and extend their collection of assets beyond land and labour to the full portfolio necessary for sustainable livelihoods, i.e., natural resources, social, human, and financial capital as well as physical assets (Figure 1.)

- 2.5 Land tenure is also important in rural development interventions that use a rights-based approach to programming. Such programming should ensure that causes which prevent people from enjoying their rights are eliminated or reduced. For example, the UN Commission on the Status of Women noted in 1998 that land rights discrimination against women is a violation of human rights. A rights-based perspective should undertake to ensure that the support programme does not reinforce discrimination against women,

**FIGURE 1**  
**Sustainable livelihood assets**



minorities and other vulnerable groups, but instead helps to overcome it. When dealing with aid and development in rural areas, a rights-based approach to programming should address the rights to land that the beneficiary groups in the project or programme have. It necessitates identifying what rights are recognized within the project area, how these rights are organised, and whether adequate institutional arrangements exist to determine who has rights to land, for how long, for what purposes, and under what conditions.

- 2.6 Land rights are often a vital element when rural households balance their capabilities and assets, and determine their resulting strategies to cope with their daily production and food security. However, rights to land are not just a source of economic production, but are also a basis of social relationships and cultural values, and a source of prestige and often power. The resulting social networks that are built up within a specific social and cultural group are a very important asset in ensuring sustainability of livelihoods of rural households.
- 2.7 The more general lessons learned from recent research on land tenure include:
- The countries that have invested in the technical and institutional infrastructure required for efficient and equitable land tenure administration, and that have been in the forefront of ensuring property rights for both men and women, have developed much faster with a much higher level of food security, health and welfare. Such development has been much more sustainable where policy-makers, while recognizing the need to reform land tenure arrangements, have supported the protection of long-established rights of women and other disadvantaged groups to the resources they had held traditionally.
  - Agricultural food production will continue to be a sector dominated by family and household units. Frequently, one of the reasons for misplaced land tenure policies is the failure to understand the complex nature of the kinds of social relations that characterize the

“household” in any rural society. Policy interventions in land tenure can generate both positive and negative results. Policy based on accurate information and an appreciation of changing, dynamic contexts is much more likely to lead to the intended results.

- Denying large segments of rural society more equitable access to land and to the benefits of secure land tenure imposes unanticipated costs. This can be a major contributing factor to extreme poverty, dependence, social instability including conflicts and civil unrest, rural migration, land abandonment, and many other negative conditions. On the other hand, more equitable access to land and other assets can play a role in stimulating faster and broader-based economic growth.

## 3. What is land tenure

### **LAND TENURE**

- 3.1 Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. (For convenience, “land” is used here to include other natural resources such as water and trees.) Land tenure is an institution, i.e., rules invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.
- 3.2 Land tenure is an important part of social, political and economic structures. It is multi-dimensional, bringing into play social, technical, economic, institutional, legal and political aspects that are often ignored but must be taken into account. Land tenure relationships may be well-defined and enforceable in a formal court of law or through customary structures in a community. Alternatively, they may be relatively poorly defined with ambiguities open to exploitation.
- 3.3 Land tenure thus constitutes a web of intersecting interests. These include:
  - Overriding interests: when a sovereign power (e.g., a nation or community has the powers to allocate or reallocate land through expropriation, etc.)
  - Overlapping interests: when several parties are allocated different rights to the same parcel of land (e.g., one party may have lease rights, another may have a right of way, etc.)
  - Complementary interests: when different parties share the same interest in the same parcel of land (e.g., when members of a community share common rights to grazing land, etc.)

- Competing interests: when different parties contest the same interests in the same parcel (e.g., when two parties independently claim rights to exclusive use of a parcel of agricultural land. Land disputes arise from competing claims.)

3.4 Land tenure is often categorised as:

- Private: the assignment of rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. For example, within a community, individual families may have exclusive rights to residential parcels, agricultural parcels and certain trees. Other members of the community can be excluded from using these resources without the consent of those who hold the rights.
- Communal: a right of commons may exist within a community where each member has a right to use independently the holdings of the community. For example, members of a community may have the right to graze cattle on a common pasture.
- Open access: specific rights are not assigned to anyone and no-one can be excluded. This typically includes marine tenure where access to the high seas is generally open to anyone; it may include rangelands, forests, etc, where there may be free access to the resources for all. (An important difference between open access and communal systems is that under a communal system non-members of the community are excluded from using the common areas.)
- State: property rights are assigned to some authority in the public sector. For example, in some countries, forest lands may fall under the mandate of the state, whether at a central or decentralised level of government.

3.5 In practice, most forms of holdings may be found within a given society, for example, common grazing rights, private residential and agricultural holdings, and state ownership of forests. Customary tenure typically includes communal rights to pastures and exclusive private rights to

agricultural and residential parcels. In some countries, formally recognised rights to such customary lands are vested in the nation state or the President “in trust” for the citizens.

- 3.6 The right that a person has in an object such as land may be considered as property. The range of property is extensive and includes, for example, intellectual property. In the case of land tenure, it is sometimes described more precisely as property rights to land. A distinction is often made between “real property” or “immovable property” on the one hand, and “personal property” or “movable property” on the other hand. In the first case, property would include land and fixtures (buildings, trees, etc) that would be regarded as immovable. In the second case, property would include objects not considered fixed to the land, such as cattle, etc.
- 3.7 In practice, multiple rights can be held by several different persons or groups. This has given rise to the concept of “a bundle of rights”. Different rights to the same parcel of land, such as the right to sell the land, the right to use the land through a lease, or the right to travel across the land, may be pictured as “sticks in the bundle”. Each right may be held by a different party. The bundle of rights, for example, may be shared between the owner and a tenant to create a leasing or sharecropping arrangement allowing the tenant or sharecropper the right to use the land on specified terms and conditions. Tenancies may range from formal leaseholds of 999 years to informal seasonal agreements. If the farm is mortgaged, the creditor may hold a right from the “bundle” to recover the unpaid loan through a sale of the mortgaged property in the case of default. A neighbouring farmer may have the right from the “bundle” to drive cattle across the land to obtain water at the river. Box 1 gives some examples of rights.
- 3.8 At times it may be useful to simplify the representation of property rights by identifying:
- **use rights:** rights to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc.

## BOX 1

## EXAMPLES OF RIGHTS

- A right to use the land.
- A right to exclude unauthorized people from using the land.
- A right to control how land will be used.
- A right to derive income from the land.
- A right to protection from illegal expropriation of the land.
- A right to transmit the rights to the land to one's successors, (i.e., a right held by descendants to inherit the land).
- A right to alienate all rights to the entire holding (e.g., through sale), or to a portion of the holding (e.g., by subdividing it).
- A right to alienate only a portion of the rights, e.g., through a lease.
- A residuary right to the land, i.e., when partially alienated rights lapse (such as when a lease expires), those rights revert to the person who alienated them.
- A right to enjoy the property rights for an indeterminate length of time, i.e., rights might not terminate at a specific date but can last in perpetuity.
- A duty not to use the land in a way that is harmful to other members of society, (i.e., the right is held by those who do not hold the right to use the land).
- A duty to surrender the rights to the land when they are taken away through a lawful action, (e.g., in a case of insolvency where the right is held by the creditors, or in the case of default on tax payments where the right is held by the state).

- **control rights:** rights to make decisions how the land should be used including deciding what crops should be planted, and to benefit financially from the sale of crops, etc.

- **transfer rights:** right to sell or mortgage the land, to convey the land to others through intra-community reallocations, to transmit the land to heirs through inheritance, and to reallocate use and control rights.

Very often, the poor in a community have only use rights. A woman, for example, may have the right to use some land to grow crops to feed the family, while her husband may collect the profits from selling any crops at the market. While such simplifications can be useful, it should be noted that

the exact manner in which rights to land are actually distributed and enjoyed can be very complex.

- 3.9 In broad terms, land tenure rights are often classified according to whether they are “formal” or “informal”. There can be perceptual problems with this approach because, for example, some so-called informal rights may, in practice, be quite formal and secure in their own context. Despite these perceptual problems, the classification of formal and informal tenure can sometimes provide the basis for useful analysis.
- 3.10 Formal property rights may be regarded as those that are explicitly acknowledged by the state and which may be protected using legal means.
- 3.11 Informal property rights are those that lack official recognition and protection. In some cases, informal property rights are illegal, i.e., held in direct violation of the law. An extreme case is when squatters occupy a site in contravention of an eviction notice. In many countries, illegal property holdings arise because of inappropriate laws. For example, the minimum size of a farm may be defined by law whereas in practice farms may be much smaller as a result of informal subdivisions among heirs. Property rights may also be illegal because of their use, e.g., the illegal conversion of agricultural land for urban purposes.
- 3.12 In other cases, property may be “extra-legal”, i.e., not against the law, but not recognised by the law. In some countries, customary property held in rural indigenous communities falls into this category. A distinction often made is between *statutory rights* or “formally recognized rights” on the one hand and *customary rights* or “traditional rights” on the other hand. This distinction is now becoming blurred in a number of countries, particularly in Africa, which provide formal legal recognition to customary rights.
- 3.13 Formal and informal rights may exist in the same holding. For example, in a country that forbids leasing or sharecropping, a person who holds

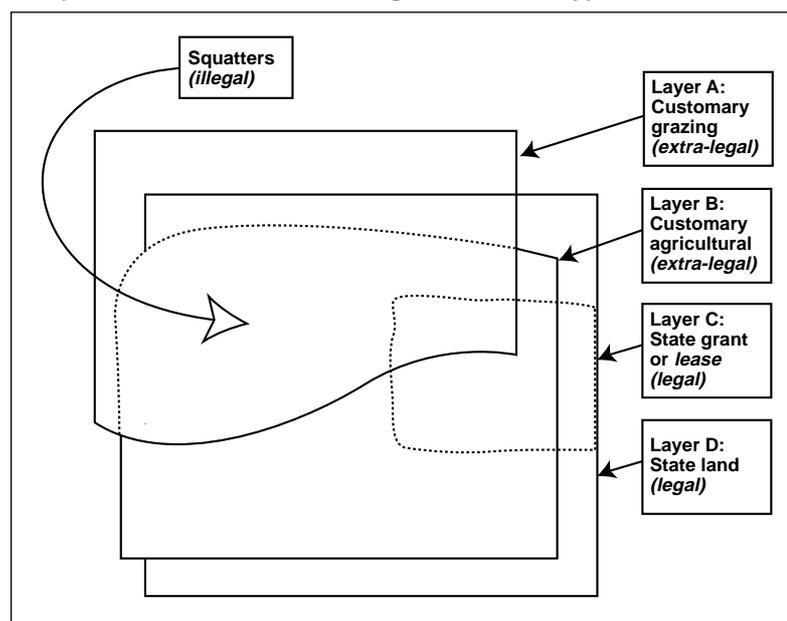
legally recognized ownership rights to a parcel may illegally lease out the land to someone who is landless.

- 3.14 These various forms of tenure can create a complex pattern of rights and other interests. A particularly complex situation arises when statutory rights are granted in a way that does not take into account existing customary rights (e.g., for agriculture and grazing). This clash of *de jure* rights (existing because of the formal law) and *de facto* rights (existing in reality) often occurs in already stressed marginal rainfed agriculture and pasture lands. Likewise in conflict and post-conflict areas, encounters between settled and displaced populations lead to great uncertainties as to who has, or should have, the control over which rights.
- 3.15 The layers of complexity and potential conflict are likely to be compounded, particularly where, for example, state ownership is statutorily declared and state grants or leases have been made without consultation with customary owners (who are not considered illegal), and where squatters move illegally onto the land, as in figure 2.

#### **LAND ADMINISTRATION**

- 3.16 Land administration is the way in which the rules of land tenure are applied and made operational. Land administration, whether formal or informal, comprises an extensive range of systems and processes to administer:
- ***land rights:*** the allocation of rights in land; the delimitation of boundaries of parcels for which the rights are allocated; the transfer from one party to another through sale, lease, loan, gift or inheritance; and the adjudication of doubts and disputes regarding rights and parcel boundaries.
  - ***land-use regulation:*** land-use planning and enforcement and the adjudication of land use conflicts.
  - ***land valuation and taxation:*** the gathering of revenues through forms of land valuation and taxation, and the adjudication of land valuation and taxation disputes.

**FIGURE 2**  
Complexities and conflicts resulting from different types of tenure



- 3.17 **Information** on land, people, and their rights is fundamental to effective land administration since rights to land do not exist in a physical form and they have to be represented in some way. In a formal legal setting, information on rights, whether held by individuals, families, communities, the state, or commercial and other organizations, is often recorded in some form of land registration and cadastre system. In a customary tenure environment, information may be held, unwritten, within a community through collective memory and the use of witnesses. In a number of communities, those holding informal rights may have “informal proofs” of rights, i.e., documents accepted by the community but not by the formal state administration.
- 3.18 An **enforcement or protection component** is essential to effective land administration since rights to land are valuable when claims to them can be enforced. Such a component allows a person’s recognized rights to be

protected against the acts of others. This protection may come from the state or the community through social consensus as described below in the section on “Tenure Security”. A stable land tenure regime is one in which the results of protective actions are relatively easy to forecast. In a formal legal setting, rights may be enforced through the system of courts, tribunals, etc. In a customary tenure environment, rights may be enforced through customary leaders. In both cases, people may be induced to recognise the rights of others through informal mechanisms such as community pressures. People who know their rights, and know what to do if those rights are infringed, are more able to protect their rights than those who are less knowledgeable.

3.19 Land administration is implemented through *sets of procedures* to manage information on rights and their protection, such as:

- Procedures for land rights include defining how rights can be transferred from one party to another through sale, lease, loan, gift and inheritance.
- Procedures for land use regulation include defining the way in which land use controls are to be planned and enforced.
- Procedures for land valuation and taxation include defining methodologies for valuing and taxing land.

Efficient procedures allow transactions to be completed quickly, inexpensively, and transparently. However, in many parts of the world, formal land administration procedures are time-consuming, bureaucratically cumbersome and expensive, and are frequently non-transparent, inaccessible to much of the rural population, and are handled in languages and forms that people do not understand. In such cases, high transaction costs may result in transfers and other dealings taking place off-the-record or informally.

3.20 Finally, land administration requires *actors* to implement the procedures. In customary tenure regimes, the customary leaders may play the principal role in land administration, for example in allocating rights and resolving disputes. In a more formal setting, land administration agencies may

include land registries, land surveying, urban and rural planning, and land valuation and taxation, as well as the court systems. Where customary tenure has been recognised by the State, functional linkages are being developed between government and customary land administration bodies.

- 3.21 Formalisation of the administration of land rights has been promoted as a pre-requisite for economic development. Perceived benefits include increased tenure security and improved access to credit, thereby providing the incentive and ability for farmers to invest in making improvements to the land. Formal administration is also proposed as a means to facilitate a land market, allowing land to move towards its “highest and best use”.
- 3.22 These claims are disputed by others who argue that too often, the flawed design and implementation of projects to formalise property rights have resulted in a reduction of security by concentrating rights to a parcel in the hands of an individual, and neglecting the claims of others, particularly women and other vulnerable groups, who hold partial or common rights. Similarly, it is argued by some that access to credit may not improve with formalisation since many banks are unlikely to accept agricultural land as collateral against loans.
- 3.23 As a result, it has been suggested that formal registration of individual property rights should be considered only in areas of high population density, where customary tenure systems and dispute resolution systems are weak or absent, or where there have been other major disruptions to customary land holdings. However, even where these conditions do not exist, there is growing interest in several countries to formalise the rights of communities to protect them against encroachment from outsiders (e.g., commercial farming operations and even the State). In such cases, the community boundaries are defined, and title to the land is registered in the name of the community. It is then left to the community to undertake its own land administration, including the allocation of rights to land within its boundaries.

- 3.24 In many countries, formal and informal land administration co-exist when legal records do not replace customary rights, or when newly created informal rights come into existence. Tensions can exist between *de jure* and *de facto* rights to land. Discrepancies between formal and informal or customary versions of tenure holdings create ambiguities to be exploited. In some countries where formal land administration systems do not function well, different titles may be issued by the State for the same parcel of land. This complicates the legal status of the land since it gives rise to competing claims. The mere act of establishing and documenting land boundaries and titles is not enough; it has to be done in a way that does not make the situation worse. The role of local communities in investigating claims is crucial as they have the knowledge of the local tenure arrangements.

#### **ACCESS TO LAND**

- 3.25 Access to land for the rural poor is often based on custom. Customary rights to land in indigenous societies, for example, are usually created following their traditions and through the ways in which community leaders assign land use rights to the community members. These rights of access may have their origin in the use of the land over a long period. They are often rights developed by ancestral occupation and by the use of land by ancestral societies. In such cases, it is through the act of original clearance of the land and settlement by ancestors that rights are claimed.
- 3.26 People also use a wide range of strategies to gain access to land. These include:
- Purchase, often using capital accumulated while working as migrants in urban areas.
  - Adverse possession or prescription (the acquisition of rights through possession for a prescribed period of time). In some countries, this may be the only method for small farmers to gain formal access to vacant or abandoned land and to bring it into productive use.
  - Leasing, or gaining access to land by paying rent to the owner.

- Sharecropping, or gaining access to land in return for paying the owner a percentage of the production.
- Inheritance, or gaining access to land as an heir.
- Squatting illegally on land.

- 3.27 In addition to such individual strategies, access to land can be provided systematically through land reform interventions by national governments, often as a result of policies to correct historic injustices and to distribute land more equitably. Such land reforms usually occur in situations where much of the land is owned by a relatively small number of land owners and the land is idle or under-utilised (although it should be noted that determining whether land is under-utilised depends on the criteria selected for the assessment). In some countries, land restitution has been an important type of land reform. Other land reform interventions include land redistribution programmes which aim at providing the rural poor with access to land and promoting efficiency and investment in agriculture. These programmes are often, but not always, accompanied by provision of subsidised agricultural services such as extension and credit. In some cases, the state has provided access to idle or under-utilised public land but most often private land holdings have been the source of land for resettlement purposes.
- 3.28 In imposed redistributive land reforms, land is taken from large land holders by the State and transferred to landless and land-poor farmers. Compensation has been paid to the original owners in some reforms but not in others. In some cases, the reforms have benefitted the tenants who worked the land. Such reforms change the structure of land ownership by transforming tenants into owners but do not change the operational holdings. In other cases, the reforms have involved the resettlement of beneficiaries on the expropriated lands and the creation of new farming operations.
- 3.29 Some recent land reform initiatives have been designed so that beneficiaries negotiate with land owners to purchase land using funds provided by the State in the form of grants and/or loans. Beneficiaries are usually required

to form a group which identifies suitable land, negotiates the purchase from the seller, formulates a project eligible for state grants and/or credit, and determines how the land will be allocated among the members of the group and what their corresponding payment obligations will be.

- 3.30 While there is broad consensus that land reform plays an important role in rural development where land concentration is high, great controversy surrounds the choice of mechanisms to transfer land from large land owners to the landless and land poor. However, this debate is well beyond the scope of this guide to address.

#### **TENURE SECURITY**

- 3.31 Security of tenure is the certainty that a person's rights to land will be recognized by others and protected in cases of specific challenges. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction. Without security of tenure, households are significantly impaired in their ability to secure sufficient food and to enjoy sustainable rural livelihoods.
- 3.32 Security of tenure cannot be measured directly and, to a large extent, it is what people perceive it to be. The attributes of security of tenure may change from context to context. For example, a person may have a right to use a parcel of land for a 6 month growing season, and if that person is safe from eviction during the season, the tenure is secure. By extension, tenure security can relate to the length of tenure, in the context of the time needed to recover the cost of investment. Thus the person with use rights for 6 months will not plant trees, or invest in irrigation works or take measures to prevent soil erosion as the time is too short for that person to benefit from the investment. The tenure is insecure for long-term investments even if it is secure for short-term ones.
- 3.33 The importance of long-term security has led some to argue that full security can arise only when there is full private ownership (e.g., freehold) as, under such tenure, the time for which the rights can be held

is not limited to a fixed period. It is argued that only an owner enjoys secure rights, and holders of lesser rights, such as tenants, have insecure tenure because they are dependent on the will of the owner. It is then implied that security of tenure comes only with holding transfer rights such as the rights to sell and mortgage. Equating security with transfer rights to sell and mortgage is true for some parts of the world but it is not true in many others. People in parts of the world where there are strong community-based tenure regimes may enjoy tenure security without wishing to sell their land, or without having the right to do so, or having 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).

3.34 The sources of security may also vary from context to context:

- An important source is the community and its specific groups such as local farmers' organizations and water users' associations. When neighbours recognise and enforce a person's rights, that person's security increases. In many customary tenure arrangements, people gain property rights through membership of social communities. Maintaining property rights validates membership in the group just as much as membership facilitates the acquisition and safeguarding of property rights.
- Governments represent another source of security as they may provide political recognition of some rights. For example, a government may accept the illegal encroachment and settlement of a community on state forest lands and undertake not to evict it. However, in doing so, a government usually recognises the right of the community to occupy the land, but does not go as far as recognising the rights of individual people within the community.
- Another source may be the administrative state and the formal legal system. The state may provide security in general by affirming the rights that people hold as well as through specific measures such as providing protection against trespass. Security is often seen to come

from protections provided through land registration and cadastral systems, with adjudication of disputes taking place in the formal court system.

- In some countries, security can also be provided by coercive structures such as “warlords” that emerge in the absence of an effective state during periods of civil unrest. Of course, this is not a desirable source of security as these structures may in turn prevent the development of strong communities and legal systems necessary for good governance.

3.35 The total security enjoyed by a person is the cumulative security provided by all sources. In many cases, increasing security from one or more sources will result in an increase in total security. In many development projects, providing or improving legal security is considered the most important way of increasing security of tenure. Examples of land tenure reforms include the upgrading of informal rights to legally enforceable rights; the upgrading of state-issued permits to leases that provide greater protection to the land users; the introduction of provisions for communities to become the legal owners of their traditional land holdings instead of the rights being vested in the State; and better definition of property rights through improvements to formal land administration systems.

3.36 A person’s security of tenure may be threatened in many ways. Ironically, attempts to increase the legal security of some may result in others losing their rights. For example, titling and registration projects, if poorly designed, can reduce security of many rural residents by failing to recognise certain rights, often held by women and the poor, and allowing them to be merged into simplistically conceived “ownership” rights. The rights to important uses of the land, for example, to gather minor forest products or to obtain water, may not be recognised by the legal system and may be effectively destroyed as a result. Of course, other types of development projects can also result in the loss of rights to land.

3.37 Rights may also be reduced or eliminated if the state starts to enforce existing rules that prevent access to resources. For example, more rigid

enforcement of state policy on forest conservation may result in villagers being evicted from land which they have been using for agricultural and grazing purposes.

- 3.38 Tenure insecurity may be caused by social changes. HIV/AIDS, for example, is impacting the security of women in parts of Africa. Widows may lose access to land in a legal sense if they are unable to inherit rights from their husbands, and in a practical sense if they are forced off the farms by male relatives.
- 3.39 People may lose rights when others ignore land tenure rules. Exploitation of unequal power relationships within communities, for example, may result in some members fencing off portions of communal lands for their own exclusive use, thereby denying access by other members of the community to shared grazing lands.
- 3.40 Landlessness may occur, of course, for reasons other than insecure tenure. Some may sell their land through “distress sales” (forced sales) in order to survive in times of crises such as famine, sickness or other calamities. Other reasons for selling land may include the need to meet social pressures such as providing a dowry for daughters upon their marriage.

## 4. Why land tenure should be considered in design of projects

- 4.1 Projects to promote rural development often have land tenure implications. In some cases, the design of a project may include improvements to land tenure arrangements in order to support its development goals. In other cases, activities of a project may have an impact on land tenure arrangements. Such potential impacts may not be always apparent at the design phase. However, failure to consider land tenure implications from the start may result in unanticipated consequences. Such failure might result in no overall improvements if the land tenure effects cancel out gains made elsewhere in the project, or it could cause the situation to become even worse.
- 4.2 This chapter illustrates the importance of considering land tenure in at the design phase by illustrating some implications that projects to promote environmental sustainability, gender mainstreaming, and resolution of conflicts and displacement have on land tenure.

### **ENVIRONMENTAL ISSUES**

- 4.3 Land tenure and environmental conditions are closely related: land tenure can promote land use practices that harm the environment or it can serve to enhance the environment.
- 4.4 Unsuitable rules (either formal or informal) for acquiring access to land can lead to environmental degradation. In many parts of the world, clearing the land has become an effective way to lay claim to it. For example, forests have traditionally been used for slash-and-burn agriculture by local people who had customary rights to those resources. The ability of people who are not members of local communities to acquire land by cutting down trees has resulted in the clearing of land on an extensive scale leading to, for example, the fires and smoke that blanketed parts of Asia and South America in recent years.

- 4.5 Insecure land tenure is linked to poor land use which in turn leads to environmental degradation. Lack of clear rights can reduce the incentive to implement long-term resource measures. In the case of privately-held land, for example, tenant farmers with short-term leases may not undertake soil protection measures, plant trees, and improve pastures if they do not hold the land long enough to receive the benefits of their investments.
- 4.6 Inappropriate tenure arrangements on state lands can also lead to environmental degradation. In the case of arid or semi-arid grazing systems, some rangelands regarded officially as state property have been converted from traditional pastoralist production to commercial ranching or cultivation. Such policies have failed to recognise that the variability of rainfall requires pastoralists to have access to extensive rangelands. Removal of some of the lands for commercial ranching restricts the mobility of pastoralists. As a result, there is an over-concentration of pastoral livestock in those rangeland areas still accessible to the pastoralists.
- 4.7 The notion of unsustainable use of common property resources received considerable publicity through the “tragedy of the commons” described by Hardin. This analysis of over-exploitation has been faulted because it was based on the unrestrained ability to use open-access property systems rather than the community-controlled access of common property resources. However, at times common property tenure systems have been transformed into open access systems, for example, when a communal system becomes too weak to prevent the communal grazing lands from being used by people from outside the community.
- 4.8 In contrast, well-adapted land tenure rules can promote sustainable land use. Projects should ensure that existing, successful land tenure arrangements are strengthened, rather than threatened. For example, recognition of the strengths and complexities of traditional pastoralist land tenure systems may allow for the flexibility of resource use needed

to avoid degradation of the natural resources. Designers may also be able to improve tenure arrangements in order to strengthen natural resource projects. A project may be able to improve security of tenure of tenant farmers, for example, by ensuring that the conditions of their leases encourage them to adopt sustainable land use practices. For example, a lease agreement could encourage investment by providing compensation for unexhausted benefits at the end of the lease period, or by increasing the term of the lease and making it inheritable so that the disincentive effect becomes negligible.

- 4.9 In order to improve the sustainable use of natural resources, land tenure strategies should be linked with appropriate land management tools, such as agro-ecological zoning, to ensure that the land is put to a use that is suitable for its soil, land form and climatic characteristics. Increased participation and the empowerment of community structures are also required to ensure effective self-management of the natural resource base.

#### **GENDER ISSUES**

- 4.10 In most societies, women have unequal access to rural land and associated natural resources. In many cases, societies may have protected the interests of women through customary law, religious law, and legislation in the past, but changing socio-economic conditions often result in the old rules failing to ensure that women have access to the resources needed to raise and care for families. Communities that now experience land shortages or rapidly increasing land values may be unable or reluctant to prevent male relatives from claiming land over which women, particularly widowed or single women, have rights.
- 4.11 Migration to urban centres has resulted in a rapid rise in the number of rural families that have women as the de facto or de jure heads of households. Many of these women are those with the least social power (i.e., single parents, widows, divorcees, wives of migrant workers, the aged and the infirm). They are largely without effective decision-making powers, often without a voice in community governance, and increasingly

without security as individuals under traditional law. Attempts to assert their rights can cause conflicts at the community or even national levels. Too often, women are left holding whatever rights they have at the will of male relatives. Single, divorced or widowed women can end up dependent on the goodwill of distant family members. In an increasing number of countries, the HIV/AIDS pandemic is a major cause of female-headed households.

- 4.12 Yet increasingly, female-headed households are faced with the responsibility for food production necessary to feed growing populations. Even in male-headed households, women often have prime responsibility for food production while men commonly concentrate more on cash crops. Rural women in particular are responsible for half of the world's food production and produce between 60 and 80 percent of the food in most developing countries. In sub-Saharan Africa and the Caribbean, they produce up to 80 percent of basic foodstuffs. In Asia, between 50 and 90 percent of the work in the rice fields is done by women. After the harvest, rural women in developing countries are almost entirely responsible for storage, handling, stocking, marketing and processing.
- 4.13 The introduction of formal legal rules, through land reform and titling and registration projects, often failed to recognise the rights of women. The involvement of men in such projects was considered sufficient and land titles tended to be vested in men on the assumption that women and children would benefit as dependants. Low literacy levels of women in some countries further impede their ability to deal with bureaucratic requirements of formal legal ownership.
- 4.14 In many societies, improving access and security for women will require changes in policy and legislation, for example specifically recognizing the rights of a woman to hold land, and allowing a legal title to be issued in her name, either individually or jointly with her spouse. More importantly, it may require changes in cultural norms and practices. A country's laws may declare that men and women have equal rights to hold

property and to inherit it, but if cultural norms and practices are in conflict with such laws, the rights of women are likely to be ignored.

- 4.15 The UN Commission on the Status of Women noted in 1998 that land rights discrimination against women is a violation of human rights. It urged states to design and revise laws to ensure that women are accorded full and equal rights to own land and other property, including through the right to inheritance. The range of laws that affect tenure and gender is broad and includes national constitutions and legislation pertaining to family, inheritance, privatization, agrarian reform, land titling and registration, and resource management. While language and wording of statutory laws are usually gender neutral, the laws themselves may be gender biased, for example, by orienting ownership programmes and regulations towards the male head of the household.
- 4.16 Dissemination programmes are needed to complement legal reforms. Programmes can vary widely from educational or informational programs that inform women of their rights to land and other resources, through programmes that support women's groups in protecting their tenure rights, to those that raise community consciousness about women's tenure rights. The State has a responsibility to ensure effective communication with citizens in such matters. At the same time, civil society organizations often play valuable roles in informing people of their rights.
- 4.17 Within development projects, the design of land tenure components should incorporate gender analysis from the start to ensure that particular constraints faced by women are not overlooked. Attempting to incorporate gender considerations once the project objectives and design are in place often results in unproductively forcing gender issues into an inappropriate framework.

#### **CONFLICT, MIGRATION AND RESOLUTION PROCESSES**

- 4.18 There is typically a close link between tenure and conflict over land. Within a society, competing claims for control and use of land may provoke

conflicts. Population growth and changing economic factors can in turn increase competition for access to land. Competition is usually regulated by a society's tenure rules which are developed in response to dynamic social, economic and political relationships. When these tenure rules are unable to adjust sufficiently rapidly to changing circumstances, the chance of conflict arising is increased. For example, customary tenure systems usually originated in areas where resources were extensive compared with the population and, importantly, where there was a shared social consensus between the various holders of rights. When this social consensus breaks down, the door is open for possible conflicts.

- 4.19 The impacts of changes and uncertainties increase when there is confusion and conflict between customary rules and modern laws. Discrepancies provide ambiguities to be exploited. Parties in a "sale" of customary land may have differing views as to whether the transfer is permanent or temporary, or whether the "buyer" has the right to sell the land to another person. Such situations can become complicated when personal interests, arising for example through the "personalization" of power in a society, interact with competing group interests. Conflicts may arise because of the potential for an owner to "sell" the same piece of land to more than one buyer through duplicate sales. There may be conflicts between members of a family if the family head sells part of the lineage's patrimony without the agreement of other entitled members. State interventions can also increase insecurity and generate conflicts in some circumstances. Inadequate registration procedures, or abusive expropriation may, for example, increase the risk of an owner being dispossessed of rights.
- 4.20 In other cases, conflicts in a society may involve external actors. Very often, societies accept migrants who then enjoy security provided they honour the conditions of their tenure agreements and other social contracts. Their access to land may have no finite time limit even though they might be considered temporary residents. Conflicts may emerge subsequently when circumstances change. For example, in periods of

economic downturns or land shortages, the acceptance given to migrants by local communities may be withdrawn. Conflicts may also arise when “outsiders” gain access to a community’s land in a manner that does not follow customary rules. The most violent and serious conflicts derive from an explosive mixture of political manipulation of competition for land and challenging of national affiliations against a background of ethnic divisions. As access to land is often related to social identity, the land rights of certain social groups may be contested in relation to national and ethnic identity, providing a breeding ground for the potential political exploitation of tension. Tenure issues are essentially political and the object of political discourse, and tenure relationships are imbedded in and affected by inter-ethnic relationships. Put simply, tenure issues are liable to be politicised and political issues are liable to ethnicised.

- 4.21 Conflicts can also arise when development projects cause problems rather than solving them. External interventions have the potential to change existing relationships and balances. They may, for example, result in relative changes in land values. In such cases, the redefinition of the local political power equilibrium may create uncertainty over “the rules of the game” which define use and control of the resources thus leading to potential for conflict. Ironically, some projects to assist people displaced because of war have placed those victims in the midst of new conflicts by resettling them on land that was incorrectly identified as vacant just because no-one appeared to be using it at the time of inspection. Failure to negotiate with existing rights-holders put the victims of conflict in an insecure situation. The situation can become even more problematic when those holding existing rights are also displaced and return after new settlers have moved into the area.
- 4.22 A problem in many countries is that formal conflict resolution mechanisms are weak or effectively non-existent. Many formal court systems are severely overburdened, with insufficient capacity in terms of personnel and expertise to handle the huge number of cases that come before them. And in some countries, it is precisely land-related disputes

that make up the majority of the cases that come before courts and that are frequently the most difficult to resolve quickly – land cases can languish in courts for many years. For many ordinary people, courts are seen as expensive, time-consuming, unpredictable and sometimes even corrupt. The language of lawyers and judges appears alien and complex.

- 4.23 The creation of specialised tribunals, with special expertise in land matters and in applying alternative dispute resolution techniques is increasingly being explored. There is a growing appreciation of the importance of recognising and strengthening non-state mechanisms for resolving disputes. This may involve building upon existing community-based models, some of which may have been operating for a long time in parallel with government court systems, some of which may be of more recent origin. Exploring and creatively building upon such civil society alternatives may prove the most promising route to reducing the burden on court systems and to ensuring accessible dispute resolution mechanisms that are synchronised with the norms, customs and language of the disputants.

#### **THE INTER-RELATIONSHIP BETWEEN ISSUES**

- 4.24 Land tenure issues related to the environment are not isolated from tenure issues associated with gender or conflicts. Instead, they co-exist in societies. For example, designing a project to promote community forestry or to improve the livelihoods of pastoralists raises the need to incorporate land tenure practices that promote environmentally sustainable land uses, that ensure access to resources by disadvantaged groups, and that address conflict over the rights to use the land.
- 4.25 Promoting changes, such as gender equity in land ownership, might require not only changes in land policy and land legislation, but also in the attitudes of much of the population. Because land tenure is a relationship among people, the rules defining the rights of access to land reflect the balance, or imbalance, of power as much as anything else. Changing the rules is not simply a matter of increasing access to some; it

may result in a fundamental shift in existing power structures. Increased gender sensitivity has resulted in several countries enacting legislation that provides for women to hold legal rights to land. However, in the absence of effective mechanisms of governance and administration to implement such legislation, traditional practices are likely to continue. Advocacy is important, but it should be understood that many changes being advocated might not be implemented in the short-term.

- 4.26 While strengthening or adapting land tenure arrangements can play a significant role in the outcome of development projects, the effects, of course, are impacted by other factors. Providing more equitable access to land and increased tenure security is often an important part of rural development, but secure access to land itself is not enough. People also need access to complementary productive and institutional resources, including financing, training, open and effective markets, technology, and rural infrastructure if the potential benefits of improved access to land are to be achieved. And when increasing population pressures result in the size of family holdings decreasing with each generation, the creation of opportunities for off-farm income becomes increasingly important to reduce pressures on the land.
- 4.27 One of the best ways to address these issues is through the development of a comprehensive rural development strategy which focuses on rural infrastructure, creating off-farm rural employment opportunities, reducing labour mobility costs, and increasing education and skills in combination with measures to improve land tenure arrangements and land management. This cross-sectoral approach is more likely to contribute successfully to farm development and to an increase in rural household welfare.

## 5. How land tenure can be considered in project design

- 5.1 Land tenure analysis should be programmed at an early stage in the design of rural development projects and programmes. This will help to ensure that existing rights are made more secure, and that conflicts are avoided. Giving due consideration to the relationship of tenure to rural development and food security will aid the sustainability of projects. Identifying the range of possible situations where land tenure may be a relevant issue, and where the potential for conflict may be substantial, is a critical part of any project identification. This is particularly the case where dynamic changes, particularly of population movements, affect the existing rights of populations already in occupation, irrespective of whether that occupation is permanent or intermittent. Disputes over land rights have typically been some of the most intractable problems throughout time and through all of the continents.
- 5.2 This chapter therefore looks at how appropriate expertise can be built into project design and implementation, and at what skills and experience are required by people to deal with these issues.

### **ANALYSIS OF LAND TENURE**

- 5.3 The most appropriate approach to identifying whether a land tenure issue is likely to exist, and particularly at whether it is likely to give rise to conflict, is to seek answers to two questions: “What is the existing tenure?”; and “What could be the possible likely effects or impacts of the project?” The two questions are discussed below.
- 5.4 **What is the existing tenure?** This question requires the identification of the existing tenure arrangements in the “pre-project” or “pre-change” situation. This is likely to involve an assessment of what the tenure situation is:

- Under the formal, legally defined framework, usually as laid down by statute law, and what formal legal interests actually exist in the area.
  - Under the communal or customarily defined frameworks, usually as administered by the relevant customary authority, and what informal or customarily defined interests actually exist.
- 5.5 It is very easy to fall into the trap of thinking that just because no-one is seen to be in current physical occupation of an area of land that no rights exist in relation to it. It is common, for example, for some rights to be enjoyed periodically, whether on a regular or irregular basis. In some cases, an area may be subject to seasonal rights, such as grazing, which are typically used on an annual basis. In other situations, rights may be recognised over land that is only irregularly occupied over periods of years. Examples of these include semi-arid areas where the precise location of rainfall may determine where pastoralists move their herds, or slash and burn systems where specific areas of land may only be cleared for cultivation for three years in twenty.
- 5.6 **What are the likely effects or impacts of the project?** The second question requires an assessment of those circumstances that will change as a result of the project. This assessment should take into account changes arising from external influences such as population movements, etc. Examples range from the most obvious, where Internally Displaced Persons (IDPs) are resettled as a result of the initial phases of emergency food provision, to situations where the changing balance of access to resources between the existing settled populations and the assisted incoming settler populations may lead to friction. Policies in relation to gender and access to land and other resources is a further example of the introduction of a new dynamic.
- 5.7 Identifying likely impacts of these new dynamics in all their dimensions is a complex task. Taken in conjunction with the analysis resulting from the first question, it will result in a set of strategies in the short, medium and long terms. These will introduce the developments that will be

necessary to facilitate equitable access to resources to ensure food security and alleviate poverty, whilst recognising existing rights. These developments may range from short term negotiated agreements on access, through medium term legal changes, to longer term cultural change, for example as will be necessary in many cases in relation to gender issues.

#### **TIMING OF LAND TENURE INPUTS**

- 5.8 Timing and time scale for land tenure interventions are important aspects of designing projects. Where the analysis indicates that there are likely to be land related conflicts, it is important to make *adequate provision at an early stage* in project design for support in relation to land tenure.
- 5.9 In the short term, land tenure inputs are likely to focus on project design. Examples of target areas of input may be in ensuring that appropriate and accepted mechanisms exist for the protection and maintenance of existing rights. Another target area may be in advocacy roles that promote the ability of people to look after their own interests, and that encourage the respect of those interests. Advocacy roles can be played in relation to specific issues such as the unauthorised fencing of communal lands, thereby depriving the food insecure from access to a critical resource.
- 5.10 In the medium to long term, land tenure inputs are likely to address the major institutional level problems raised by land tenure changes. These may range from changes required in the legal framework, for example, to instituting appropriate forms of registration of land ownership.

#### **REQUIRED SKILLS AND EXPERIENCE**

- 5.11 The skills and experience required for undertaking work in land tenure include both appropriate *academic training* and *field experience*. Although these may cover a range of skills, the academic background is likely to include specialisation in one or more land-related disciplines. Several recognised professional backgrounds provide a helpful

background in land tenure, and fully qualified professionals usually will have been required to undertake a period of supervised and approved professional practice in order to achieve professional status. Such land-related disciplines include:

- Land economy
- Land law
- Land/cadastral surveying
- Land use/spatial planning

5.12 Other broader academic disciplines, particularly in the social sciences, are valuable when supplemented by studies and research into specifically land tenure related areas. Such broader academic backgrounds may include:

- Agricultural, natural resource, and development economics
- Anthropology
- Geography
- Political science
- Regional development
- Sociology

5.13 The requirement for appropriate experience is a combination of duration, period and levels of work. Typically, it is desirable for someone to have ten years of progressively responsible experience in land tenure related work. While all projects may require a common set of core tenure-related skills, the exact combination of skills will be determined by the nature of the proposed rural development intervention, and the context within which it is to take place. Because land tenure is multi-dimensional, designers of rural development projects should aim at benefitting from a fertile collaboration of tenure specialists who bring complementary sets of tenure skills to the project.

#### **INFORMATION AREAS IN PROJECT DESIGN AND MONITORING**

5.14 It is not practical to generate a detailed check list of issues that should be considered in project design and monitoring when dealing with projects

that may have land tenure related implications. However, areas that should be analyzed include the legal framework, institutional framework, customary framework, and monitoring and evaluation indicators:

5.15 **Legal framework.** The legislation and areas of law that will be important to check in relation to tenure rights include, but are not necessarily restricted to:

- The Constitution
- State land management laws – dealing with activities of state agencies in land tenure
- Other land management laws
- Land transactions including conveyancing and mortgaging
- Land use planning and subdivision control
- Leasing laws
- Family laws
- Inheritance laws
- Privatization laws
- Land Registration laws
- Resource management laws
- Property taxation laws
- Local government laws
- Customary tenure laws

It is important to assess how effectively the formal legal framework, defined by this set of laws and any others that may be relevant, is applied in practice. Such an assessment should include discussions with the responsible agencies, private sector property professions (surveyors, lawyers, real estate brokers, etc) and with people on the ground.

5.16 **Institutional framework.** The land agencies responsible for administering different components of the legal framework are an important source of information. Such agencies include those responsible for land allocation and resettlement, land registration and cadastre, land valuation and taxation, land management, rural development, agriculture, environment,

etc. The levels at which the agencies operate should be identified, e.g., central government, regional, district, village, etc. It is important to identify gaps and overlaps in institutional arrangements and the capacity (or lack of it) for providing land tenure and land administration services in the project area.

- 5.17 **Customary framework.** Identifying the situation regarding the customary framework, both in principle and on the ground, requires a more field-based approach to information gathering and analysis. It is important to determine if the existence of formally recognized rights to a parcel precludes the legal recognition of the existence of customary rights over the same area of land. The focus in a customary context will include any codification of customary tenure that may have been included in relevant legislation, but will primarily address the way in which customary tenure operates within the project area.
- 5.18 **Monitoring and evaluation indicators.** The monitoring and evaluation of the impacts of interventions in rural development that may have an impact on land tenure should be an important part of project design and should be oriented towards ongoing project refinement and development. The appropriate approach is to undertake a baseline study against which change will be measured by subsequent data gathering. The land tenure related elements that should be recorded and monitored will vary according to the nature of the project, but should be based on a range of indicators in the social and economic areas in order to identify what, if any, changes result. It should be noted, however, that information is rarely neutral. Land is a scarce resource over which there are competing interests and changes to land tenure arrangements may result in some people gaining while others lose.

#### **POSSIBLE LOCAL PARTNERS**

- 5.19 Local knowledge of land tenure issues is essential because land tenure arrangements are affected by local social, cultural, economic and political practices, which are, in turn, impacted by local history and geography.

Although the level of expertise can vary considerably from country to country, it should be possible to identify sources of knowledge using the following approach:

- 5.20 **Government.** Relevant government offices, including ministries related specifically to lands, ministries of agriculture, ministries of regional development and others such as environment are likely to be able to provide information about the legal framework for land tenure and land use within the jurisdiction. Specific information on formal land ownership in defined areas may be found in the relevant land registers or cadastres where they exist and where they are adequately maintained. This is commonly not the case in many parts of the developing world and transitional countries. Moreover, statutory law may not require the registration of some formal legal interests such as short to medium term leases, etc.
- 5.21 **Customary authorities and community associations.** The communal or customary interests are likely to be best identified by discussions with the appropriate persons in the social hierarchy that are responsible for making decisions about land allocations. Considerable care is required in identifying this, however, because there may be different perspectives – and vested interests – from different stakeholders. Moreover, those involved may wish to obscure the situation regarding interests in land for a variety of reasons, for example, to reduce liability of paying taxes if a property taxation system is introduced later.
- 5.22 **Universities.** In many cases it is very helpful to secure the views of those without vested interests, and it is often useful to seek the knowledge of the relevant departments of local universities dealing with land issues. Typically such information may be found in applied departments including those of surveying, land economy, estate management and law (although such departments are rare in many situations) as well as departments such as anthropology, geography, and sociology.

- 5.23 *Non-Governmental Organizations (NGOs)* working in the land sector can be useful in bringing forward information and priorities that are different from those of Government land administrators. In addition to local NGOs, external NGOs have sometimes undertaken land tenure analyses.

## 6. Final comments

- 6.1 As a result of recent experiences and research, the means of achieving sustainable management of land and its resources are becoming clearer than they were a decade or two ago. A primary trend at present is to reconcile legality provided by the State with the legitimacy provided by local institutions for the administration of land tenure. The decentralization of land administration often means acknowledging existing rights of access and recognizing local forms of arbitration. However, the State must still play a role by providing the framework necessary to regulate land tenure arrangements, and by promoting secure access to land and more secure transactions.
- 6.2 Regardless of which legal and institutional forms are chosen, the state should involve local communities and local governments in the administration and management of land and other natural resources. Rather than implying loss of sovereignty, such genuine subsidiarity provides an opportunity to restore the legitimacy of the state as arbiter. In this way, land tenure becomes one of the areas in which a new social contract between the state and the population may be constructed, a matter of necessity in countries where governance is in crisis.
- 6.3 The politically sensitive nature of land tenure, the strategies pursued by the parties involved, and the specific features of the evolution of developing states compound the complexity of drawing up and implementing land tenure policies. Short-term interventions must take into account this complexity, both in terms of the specific nature of the tenure and of the inter-relationships over time, space and resources that may exist between different rights. Unless they do so they will not lead to long-term improvements nor will they avoid the situation of inadvertently dispossessing people of their rights to land.

- 6.4 Adjustments to land tenure frameworks can be made in the short term to reduce problems in the existing system and to clarify the issues. It may also be possible to improve matters by enforcing provisions which have previously been applied poorly or not at all, and by establishing an appropriate hierarchy of soundly established arbitration bodies. These positive adjustments may well be appropriate and possible in a project context without waiting for the social and political circumstances and the mobilisation of large scale partnerships necessary for fundamental reform to materialise.
- 6.5 It should always be remembered, however, that changing land tenure arrangements to improve environmental conditions, to promote gender equity, to resolve conflicts, or to facilitate economic development is more than changing laws or procedures. Such changes may result in fundamental shifts in the power structure within a family, within a community, or within a nation. They may redefine many relationships ranging from that between husband and wife, to that between State and citizen. Those who hold land rights often have power over those who do not. Project designers should remain aware that interventions they propose may have widespread impacts.

## Glossary of terms

**Access**

the ability to use land and other natural resources (e.g., use rights for grazing, growing subsistence crops, gathering minor forestry products, etc.), to control the resources (e.g., control rights for making decisions on how the resources should be used, and for benefiting financially from the sale of crops, etc.), and to transfer rights to the land to take advantage of other opportunities (e.g., transfer rights for selling the land or using it as collateral for loans, conveying the land through intra-communal reallocations, transmitting the land to heirs through inheritance, etc.)

**Adjudication**

the process of authoritatively determining the existing rights and claims of people to land. Adjudication should not alter existing rights or create new ones but instead should establish what rights exist, by whom they are exercised, and to what limitation.

**Adverse possession**

gaining access to land by acquiring legal rights through possession for a prescribed period of time.

**Agrarian structure**

the structure of farming units in a society, including the pattern of land distribution among rural landholders. Reforms are often promoted in countries which have an agrarian structure of very large farming units operating with a labour force of landless or land poor peasants and very small family-operated farms. Examples of these are the “latifundia” and “minifundia” of Latin America.

**Alienate**

to alienate land is to transfer rights to that land to another person. Alienation can be full (e.g., the sale of ownership of that land) or partial (e.g., the transfer of use rights through a lease).

**Allocation**

the process of assigning rights to land to a person (individual or corporate) within the rules defined by the land tenure system. Rights can be assigned by the sovereign power (nation state or indigenous) through original grants or through reallocations following expropriation, purchase, or reversion. Rights

can also be allocated by private persons to others through sales, leases, inheritance, etc.

**Bundle of rights**

the analogy that the collection of rights associated with a land parcel can be likened to a bundle of sticks: very often separate “sticks” of the bundle are held by different people; “sticks” can be acquired in different ways and held for different periods.

**Cadastre**

a parcel-based land information system that includes a geometric description of land parcels, usually represented on a cadastral map. In some jurisdictions it is considered separate from, but linked to, the register of land rights and holders of those rights (land register), while in other jurisdictions the cadastre and land register are fully integrated.

**Common property**

rights held by members of a community to land and other natural resources (e.g., pastures) that members can use independently of one another. The community controls the use of the common pool resources and can exclude non-members from using it.

**Control rights**

a right to control the management of the property. It may include rights to make decisions about how the land should be used including what crops should be planted, and to benefit financially from the sale of crops, etc.

**Customary tenure**

the tenure usually associated with indigenous communities and administered in accordance with their customs as opposed to statutory tenure usually introduced during the colonial periods. However, some countries in Africa are giving legal status to customary tenure. It often includes communal rights to pastures and exclusive private rights to agricultural and residential parcels.

**De facto rights**

rights that exist in reality or “on the ground”. They may be different from de jure rights.

**De jure rights**

rights that exist because of formal law, which may be different from de facto rights.

**Eminent domain**

the expression identifying the state's position as having ultimate, sovereign power over the land. The term is used in some jurisdictions to describe the power held by the state to acquire land by expropriation or compulsory acquisition.

**Encroachment**

the illegal occupation or use of portion of the land holdings of another.

**Externalities**

an externality is an outcome outside the desired outcome resulting from an intervention. In the context of the introduction of a new land registration system, for example, an externality resulting from a particular approach adopted may be that certain types of informal rights are not capable of registration, and are therefore jeopardised.

**Formal property**

rights that are explicitly acknowledged by the state and which may be protected using legal means.

**Freehold**

the everyday expression for what is usually regarded as "ownership" providing the holder with use rights, control rights, and transfer rights and otherwise enjoyment of the land parcel to the extent permitted by law. The term derives from a particular type of tenure found under English common law, i.e. the land holder was free from the obligation of providing feudal services.

**Indigenous tenure system**

tenure system of local origin, see customary tenure.

**Informal property**

rights that lack formal, official recognition and protection. In some cases, informal property rights are illegal, i.e., held in direct violation of the law. In other cases, informal property may be "extra-legal", i.e., not against the law, but not recognised by the law.

**Inheritance**

the right to transfer property to one's heirs. In many societies, property descends to males, and females have no or little right to inherit. In some societies, tenure rules may provide for females to inherit but, in practice, daughters are expected to give up this right on the basis that they will, upon

marriage, gain access to the lands of their husbands. In matrilineal societies, upon the death of the wife, property descends through the line of the matrilineal uncle, and the surviving husband may lose rights previously enjoyed. In patrilineal societies, the widow may lose rights and be evicted.

**Land administration**

the set of systems and processes for making land tenure rules operational. It includes the administration of land rights, land use regulations, and land valuation and taxation. Land administration may be carried out by agencies of the formal state, or informally through customary leaders.

**Land dispute**

a disagreement over land rights, boundaries or uses. A land dispute occurs where specific individual or collective interests relating to land are in conflict.

**Land information system (LIS)**

a system for acquiring, managing, processing, storing and distributing information about land. It is usually parcel-based.

**Land reform**

the redistribution of land to the rural poor for equity and agricultural efficiency purposes.

**Land registration**

the recording of rights to land in some form of public register. It includes information on the rights, their location, and their holders. Registration can be parcel-oriented (sometimes referred to as title registration) or based on the holders or transfer documents (sometimes referred to as deed registration). In title registration, ownership is transferred upon registration rather than on execution of the contract; the state may also provide a guarantee on the validity of the title.

**Land rights**

rights held to land and other natural resources. More than one person may hold rights to a parcel of land which gives rise to the concept of a “bundle of rights”.

**Land tenure**

the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land and associated natural resources (water, trees, minerals, wildlife, etc.). 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 reform**

changes to the rules of tenure. It can include the legal recognition of customary tenure rights, strengthening the rights of tenants, etc.

**Lease**

the contractual agreement (which may be formal or informal) for the temporary use of land.

**Negotiated land reform**

reforms that use the land market as a vehicle for redistributing land, but in which the state plays an important role in providing funds (e.g., through grants and/or loans) for poor farmers to purchase land.

**Open access**

tenure where there is no control on access to resources: specific rights are not assigned to anyone and no-one can be excluded. It may include rangelands, forests, etc, where there is free access to the resources for all.

**Ownership**

the rights to land that are, in everyday language, associated with the ability to use, control, transfer, or otherwise enjoy a land parcel as long as those activities are allowed by law. In statutory tenure it is often associated with freehold. However, land law does not tend to define explicitly what is meant by “ownership”.

**Parcel**

a portion of land for which distinct rights exist.

**Possession/possessory rights**

the rights that accrue, in everyday language, from physically occupying a land parcel. A legal owner does not have to possess the land to be the owner; the person possessing it may have a legal claim or none at all. Legal recognition of possessory rights vary around the world; in some cases, possession can give rise to ownership claims through adverse possession.

**Private property**

rights held a private party who may be an individual person, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization.

**Regularisation**

the process of bringing informal property rights into a formal, legal system of land administration. It usually includes the steps of adjudication, titling and land registration.

**Reversion**

the process used by some states to recover property from a holder for reasons such as the failure to pay property taxes or to use rural land for agricultural purposes within a stipulated time. Such property may be allocated to new parties by the state. It is also used to describe a lessor's interest in the land after the term of a lease has expired.

**Sharecropping**

a tenure where a land owner allows a person ("share cropper") to use the land in return for a share of the crop produced on the land.

**Slash and burn**

an example of a sequential system of shifting cultivation where an area of forest is cleared by burning to allow the ash to enrich nutrient-poor soils. Cropping may then take place on the cleared land for two or three cycles, subsequently letting the forest lie fallow for 15-30 years until the cycle is restarted. Societies that use this technique may have traditional access to large areas of forested land to support them in a sustainable manner.

**State property**

rights held by the state, often by assignment to a public agency.

**Tenure security**

the certainty that a person's rights to land will be protected. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction. The attributes of security of tenure may change from context to context: investments that require a long time before benefits are realized require secure tenure for a commensurately long time.

**Title**

the evidence of a person's right to land, or "entitlement".

**Use right, usufruct**

the right to use the land. A holder of a use right may not have the right to sell the property, etc.

## Useful literature

This listing is not intended to provide a comprehensive selection of literature relevant to land tenure issues. It cites useful examples of the most accessible literature of core interest for further reading.

- Bromley, D.** ed. 1992. *Making the commons work*. San Francisco, Institute for Contemporary Studies.
- Bruce, J. & Migot-Adholla, S.** eds. 1993. *Searching for land tenure security in Africa*. Dubuque, IA, Kendall Hunt Publishing Company.
- Dale, P. & McLaughlin, J.** 1988. *Land information management*. Oxford, Clarendon Press.
- Dale, P. & McLaughlin, J.** 2000. *Land administration*. Oxford, Oxford University Press.
- De Soto, H.** 2000. *The mystery of capital*. New York, Basic Books.
- Dorner, P.** 1992. *Latin American land reforms in theory and practice*. Madison, WI, University of Wisconsin Press.
- Feder, G. & Feeny, D.** 1991. *Land tenure and property rights: theory and implications for development policy*. The World Bank Economic Review 5(1): pp. 135-153.
- Feder, G., Onchan, T., Chalamwong, Y. & Hongladarom, C.** 1988. *Land policies and farm productivity in Thailand*. Baltimore, MD, Johns Hopkins University Press.
- FAO.** 1999. *Thésaurus multilingue du foncier: version française*. Rome.
- Ghonemy, M.R.** 1993. *Land, food and rural development in North Africa*. London, IT and Westview Press.
- Ghonemy, M.R.** 1998. *Affluence and poverty in the Near East*. London and New York, Routledge.
- GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit).** 1998. *Land tenure in Development Cooperation: Guiding Principles*. Wiesbaden, Universum Verlagsanstalt.
- Hardin, G.** 1968. *The tragedy of the commons*. Science 162: 1343-1348.
- Herrera, A.** 2000. *New approaches to land reform*. Rome, FAO.

- Macpherson, C.B.** ed. 1981. *Property: mainstream and critical positions*. Toronto, University of Toronto.
- Norton, R.D.** Forthcoming. *Agricultural Development Policy: Concepts and Experiences*. Rome, FAO.
- Palmer, D.** 1999. *Making land registration more effective*. SD-Dimensions. Rome, FAO.
- Prosterman, R. & Riedinger, J.** 1987. *Land reform and democratic development*. Baltimore, Johns Hopkins University Press.
- Riddell, J.** 2000. *Contemporary thinking on land reform*. SD-Dimensions. Rome, FAO.
- Simpson, S.R.** 1976. *Land law and registration*. Cambridge, Cambridge University Press.
- Thiesenhusen, W.** 1995. *Broken promises: agrarian reform and the Latin American campesino*. Boulder, Co., Westview Press.
- UNECE (United Nations Economic Commission for Europe).** 1996. *Land Administration Guidelines*. New York and Geneva: United Nations.