

Securing Tenure and enabling policies: Introduction

LAND TENURE

- a. the terms and conditions under which rights to land and land-based resources are acquired, held, transferred, or transmitted.
- b. It is the quantum of property rights that a country has decided to allow individuals or groups thereof to hold, and the conditions under which those rights are to be enjoyed.
- c. Because it determines access to land and land-based resources, land tenure is a critical variable in the management and conservation of the environment .
- d. This also explains why the state retains powers to regulate private land use or entirely abrogate property rights in land in the interests of environmental conservation.

Property rights and categorization

CATEGORIES	PROPERTY RIGHTS
Private land: rights held by an individual, a legal person, right to exclude anyone else. Land considered a commodity that can be owned. Difficulty of access by lower income groups	User rights: Constitution of Kenya talks of access to land. Right to use the land for housing, grazing, subsistence farming etc
Community land: each member has a right to use independently the holdings of the community	Control: decision making on how the land should be used including deciding what crops should be planted, planning regulations, etc
Public land: property rights are assigned to some authority in the public sector. Eg forests-KFS. Public land is associated with higher levels of equity but has challenges in efficiency, management costs and investment constraints. See turf wars, NLC demands for a share from the public etc	Transfer rights: right to sell/charge/lease the land

Why secure land tenure?

- a. To develop and/or improve property taxation [emphasize devolution]
- b. To unify land markets
- c. To provide access to finance [loans/mortgages]
- d. To guarantee investments
- e. Provision of public services [water, sewerage etc]
- f. Insurance of property

Insecurity

Caused by informal arrangements such as squatting, unapproved and un-surveyed subdivisions, unofficial leases and certificates of ownership, double allocation and fraud

Marginalization of women, youth, the disabled, uneducated etc

Urban sprawl, unsustainable sub divisions

Capacity limitations eg on concessioning

Conflicts between “settlers” and “indigenous” land holders

Security of tenure

- Security of tenure implies that the right of access to and use of land and property is underwritten by a known set of rules, and that this right is justifiable.
- The tenure can be effected through constitutional and legal frameworks, social norms, cultural values and individual preference.
- A secure expectation that your land rights will be respected e.g. from eviction
- Associated with duration of right; the longer the better?

Security of tenure

- **Freehold:** The freeholder of a property owns it outright. Benefits include that you don't have to worry about the lease running out, you can make long term investments, you don't have to deal with a landlord and you don't have to pay ground rent, service charge and any other landlord charges.
- Formalization of ownership through **titling** either by grant or by recognition of a pre-existing right
- **Registration:** the state makes an official record of the right or the document creating the right

Leasehold

- Provides equity to disadvantaged groups
- Prices are lower
- More planning and control both by governments and landlords

How to secure land tenure

- Land law reform including land regularization and harmonization of tenure systems
- Reform of land administration and Public land management reform
- Redistributive land reform –From private holders, or the state –compulsory acquisition or the Market
- Community-based land reform and Tenancy reform
- Land use planning reform /zoning laws

Participants

- Community members , community forest associations, group representatives, water users' associations etc. n.
- Governments provide legal recognition of some rights.
- They affirm the rights that people hold and keep away trespassers
- Also through land registration and cadastral systems, with adjudication of disputes taking place in the formal court system.
- Illegal organizations eg mungiki, kisungusungu . Note that these are a threat to good governance.

Need for reform

- Changes in land use and the increase in human population has led to increased the demand for land especially in and around the major urban centers.
- Increased urbanization requires more land for settlements, industries and commerce, etc., on the one hand vis a vis the need to preserve valuable agricultural land on the other, has increased the pressure on the limited stock of land.
- Increasing awareness amongst the population of the value of land and property
- For many people in Africa, land remains the core of their existence since the majority are totally dependent on the produce from the soil for subsistence
- The current categories of land, i.e., Public [Government] Land, Community [Trust] land and Private Land came about as a direct result of the colonial history when land was categorized on racial grounds and that these categories of land have contributed partly to the problems in the management and administration of land