STRENGTHENING LAND RIGHTS FOR MEN AND WOMEN

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SCIENCE FOR ACTION

Global LAND Programme

INTERNATIONAL LAND COALITION

STRENGTHENING
LAND RIGHTS FOR MEN AND WOMEN

The Science for Action Series is jointly coordinated by the International Land Coalition (ILC) and the Global Land Programme (GLP). It brings together key findings from research networks relevant to ILC's ten commitments to People-Centred Land Governance. The Series facilitates exchange of knowledge between scientists, civil society and grassroots organisations to strengthen efforts of land users, practitioners and policy-makers to bring about positive change in land governance.

This brief refers to Commitment One: 'Respect, protect and strengthen the land rights of women and men living in poverty, ensuring that no one is deprived of the use and control of the land on which their well-being and human dignity depend, including through eviction, expulsion or exclusion, and with compulsory changes to tenure undertaken only in line with international law and standards on human rights.'

It is based on the research of the Agricultural Research Centre for International Development (CIRAD), the National Research Institute for Sustainable Development (IRD), Universidad Autónoma Metropolitana, Mexico and the Professionals for Fair Development (GRET).

The International Land Coalition and the Global Land Programme are working with their partners to protect, respect and strengthen the land tenure rights of women and men of marginalised rural households.

DEFINING SECURE TENURE RIGHTS

Land tenure rights refer to organising the access to and use of land and resources, underlining their importance for control of access and use. Tenure rights in some cases can be vague and not well defined, whether in law or local practice. Local rules may be "customary" in the sense that they are built on local norms. Overlooked tenure rights can lead to exclusion of groups or persons, ultimately alienating specific social groups - indigenous people or marginalised local groups - from their lands and resources.

Secure tenure rights, for example in the case of farmers and herders, are essential to reducing poverty and to enabling indigenous people in rural areas to invest in their livelihoods.[1] The more secure are the rights, the more rights holders have protection to use their land without risk of forced eviction by the state, or by actors with more economic power. Secure land tenure rights confirm that the rights in question are legitimate according to socially accepted norms, and that they can be guaranteed and supported by relevant authorities in the event of a challenge.[2,3]

UNDERSTANDING THE CONTEXT

Securing land tenure rights is an attempt to legally formalise rights that are already held in other ways. Research has provided clear evidence that this security is necessary to ensure sustainability of resources.[4] Additionally, research has identified efforts in recent years to create more formal legitimate rights for indigenous peoples and communities to access resources that they are dependent upon.

If legally formalising customary rights will help to secure them against state or private eviction, this requires that the formalisation does not transform rights or create exclusion. Also, subsequent legalised rights must be supported by state administration and the judiciary. Tenure security can also be enhanced through:

- **Withdrawing of legal provisions** allowing illegitimate and uncompensated state evictions
- **Strengthening local authorities' capacity to control outsiders' access** to land on the territory they control, even without formalising peoples' rights

There is a clear distinction between land tenure security and land rights formalisation. The 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Food and Agriculture Organization of the United Nations (VGGT) sets out principles for **land tenure security** with a focus on customary or informal tenure rights, using the term "legitimate tenure rights." In practice, however, views and decisions continue to be contested regarding what rights should be granted, to whom and for which resources.[4]

Land rights formalisation refers to authorities recording and registering land ownership and/or transfers using certification.[5] But the systematic formalisation of land rights is not a condition that guarantees secure tenure; it is a tool for effective land management which can contribute to land tenure security.[2]

To ensure that small-scale landholders can capitalise on the labour and other investments they have made in the land, it is vital that tenure rights are secured. This is a critical step in giving landholders and their families the dependability of knowing that they have legitimate, enforceable claims on their harvests and livelihoods.

ENVIRONMENTAL AND SOCIAL OUTCOMES

Research shows that secure tenure rights are interconnected with positive environmental outcomes and climate change mitigation efforts, including steps outlined in agreements such as Reducing Deforestation and Forest Degradation (REDD+). There is a similar correlation between secure tenure rights and positive social and economic outcomes, including people's access to food security. Agreements for tenure rights that offer indigenous peoples secure and exclusive use rights, as well as rights to exclude outsiders, can also reduce competition for resources.[4]

FACING CHALLENGES

Given the clear evidence that land tenure security is a necessary cornerstone to so many positive outcomes, it is important to understand the obstacles.[4] There are many challenges to creating more formal legitimate rights for indigenous peoples and communities to access resources that they are dependent upon, especially related to the recognition and formalisation of customary, traditional or local land rights.

LACK OF AWARENESS AND FLEXIBILITY

Existing customary rights are a legitimate and recognised system at a local level. However, they are not legally recognised and therefore cannot be regulated. Land tenure policies are generally not flexible enough to recognise and accommodate such traditional practices.[5] Notable exceptions include hybrid forms, for instance in the Comoros, where the different legal regimes are made complementary, a "local land law" that is neither the custom, or state law, but a set of legitimate local rules taking stock of social change and statutory law.[6] ▶

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ABSENCE OF BOUNDARIES BETWEEN ROLES

Conflicts over land access occur between all types of actors: among state officials themselves, between the state and local elites, and among the different local elites. This confusion and conflict over rights emerges in the ambiguous area between state and traditional local authorities' roles in distributing and recording land rights.[7]

LACK OF RECOGNITION OF DIVERSITY

The diversity of landowners and land users must also be recognised. Beyond what is often named by the state - such as an individual or a company - are whole families, communities and even migratory groups that have traditionally claimed ownership or rights of use over land.

WEAKER WOMEN'S LAND RIGHTS

Women's security is not the same as men's, and their tenure rights tend to be weaker than men's. Securing women's participation in decision-making - from increasing their understanding of rights to supporting shifts in social norms that exclude them - is seen as integrally related to securing women's resource rights.

CONFLICTING CLAIMS

Land tenure rights security for local landowners can also be challenging due to conflicting claims from family members and more powerful local actors. Processes for resolving land conflicts are often inefficient and unequal to the task.

FINDING SOLUTIONS

Finding solutions to these issues requires an approach that addresses each of these major challenges. In particular, they must distinguish between two issues:

- The recognition within overall land policy of local land rights; and
- Local-level land governance

Additionally, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest (VGGT) serve as a reference and provide guidance to improve the governance of tenure. However, to move beyond mere guidelines requires corresponding practices of enforcement.

CHALLENGES TO SECURING LAND TENURE RIGHTS IN WEST AFRICA[9]

Land tenure in West Africa is complex, with a mix of systems in place. The distribution of land rights is socio-politically based, with social recognition forming the primary means for acknowledgement and security of people's rights to land, systems that are more procedural and not codified.

1980s reforms aimed to incorporate existing land rights into the national legal frameworks. Legislation was designed to consider private ownership and registration models without considering the principles that form the foundation of traditional local systems. Thus, rural people's land rights are often poorly recognised and protected by the state, or even considered technically illegal.

State legislation for control of land and resources was based in ignorance and often rejection of existing local systems. French-speaking regions sought to replace the influence of customary authorities with state-managed authorities, while English-speaking regions allowed more room for customary authorities to continue. This has equated to a formal abolition of socially-based systems in French-speaking areas. Land law legislation in these areas has been imposed without regard to customary land holding principles in rural areas, leading to an ambiguous legal pluralism where conflicting rules overlap. Despite having legitimate customary claims, rural people often hold land in ways that are not legal, but also not clearly against the law.

Thus, state agents or outsiders may claim rights following legal procedures, even at the expense of local people's procedures. In case of conflict, those who find that local rules are not in their favour may refer to state law, while other actors may want local rules to be enforced. This contributes to tenure insecurity and leaves small producers open to fines, loss of tenure and exploitation by politically powerful local actors able to manipulate state rules to suit their own agendas.

INCREASING AWARENESS

Increasing people's awareness of the definition of land tenure security would be a major step towards supporting secure tenure. Clear acknowledgement of the validity of local rights and their integration within legal frameworks is critical in upholding the security of existing local rights holders. And offering legitimacy and security to rights transfers is vital to ensuring that all stakeholders have confidence in the systems put in place to protect their rights in the event of a challenge.

MECHANISMS TO IMPROVE FLEXIBILITY AND CLARITY OF BOUNDARIES BETWEEN ROLES

When land rights are complex and overlapping, formalisation will create conflicts. Systematically formalising them "is not a condition for secure tenure. It is a tool for more effective land management institutions that can only contribute to tenure security if these institutions are reliable."[2] It is important that new and existing methods of recording and authorising rights transfers are able to work together without creating further discord, to reduce confusion and conflict over roles.[7]

Similarly, where conflicts do arise, efficient support mechanisms must be identified, such as existing and effective institutions in which several sets of norms already co-exist, as well as realistic strategies that will reduce risks and increase the effectiveness of arbitration mechanisms.[2]

RECOGNISING DIVERSITY OF LAND HOLDINGS AND ROLES

Careful consideration of methods being utilised to protect land rights is needed, with an in-depth analysis of not only the different modes of protection that are currently in place, but also how effective they are for rights holders and how each method can be given due legal recognition. For example, research on land-policy negotiations in Burkina Faso identified that if a group is made up of strategic sub-groups, "it is essential that this is reflected in any discussions so that this diversity is recognised and each sub-group has the opportunity to make its voice heard."[9]

Stakeholders from key constituencies - including producer groups, co-opted independent resource individuals and other private sector

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representatives - should be allowed to play an active role in consultation groups. If their role, or their numbers, sufficiently affect the power balance, this inclusion will allow a well supervised and managed participatory group with space for all voices to be heard. The role of civil society organisations (CSO) is also key. Ensuring that actors in the participatory process are granted autonomy to properly supervise, monitor and advise on the outcomes will greatly contribute to the development of equitable policies.[9]

INCREASING TRANSPARENCY

Conflict is greatly reduced by the legal recognition of customary land rights processes, and tenure security is furthered by implementing new methods that work in conjunction with existing traditional processes. However, it is critical that transparency and accessible information is put in place, together with a system of controls and monitoring, to ensure the systems are effective.[10] Transparency about rights and effective modes of land rights protection can also aid in supporting the decentralisation of land management, making these forms of support more accessible to local landowners.[10] ▶

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LOOKING TO THE FUTURE

Policies implemented by governments to support land tenure security must cater to the needs of the local users and effectively acknowledge and work with existing local institutions. However, such institutions are not necessarily inclusive. The priorities for putting in place effective landowner-protection mechanisms are threefold:

- **Enact legal reform** to remove loopholes that allow land to be taken from legitimate holders
- **Ensure different authorities work together** and outline a clear dispute process
- **Formalise and record land transactions** of all kinds and at all scales

CONFLICT RESOLUTION

Authorities should also identify and address the sources of land-rights insecurity, applying real-istic strategies to improve conflict-resolution effectiveness and to implement policies that reduce the risk of conflict.[2] CSOs can help increase land-rights security by offering mediation and providing networks that can connect local individuals and communities to NGOs and other groups that aid in mediation.

LOCALLY-APPROPRIATE CERTIFICATION

Another vital tool for increasing land tenure security is the use of written documents. Written contracts are used more and more to secure land sales on customary land, for instance in West Africa. When reliable, these papers bestow security, and are recognised as proof by local and state authorities. This allows the papers to support a contested claim.

However, written documents can also contribute to insecurity and conflict, depending on the documentation's suitability for the task and accessibility to those it is meant to serve. The usefulness of these systems is also negatively impacted by corruption, fraud and the exploitation of illiterate, poor land owners by more educated stakeholders.

CERTIFICATION OF LAND RIGHTS THROUGH LOCAL OFFICES IN MADAGASCAR[10]

As a result of land reform in Madagascar, land offices are used for certification, which enables land management to be dealt with at a local level. Land offices now combine systematic property tax registration with group certification, which not only improves local development, but also makes these local offices more financially sustainable in the long term. This, following land rights reform, has resulted in a system that offers certification to formalise private property that is based on socially validated ownership rights, while also registering and issuing land titles.

Certification, like the traditional 'petits papiers' method, offers holders a greater feeling of tenure security and is believed to be more effective at securing these rights for future generations than petits papiers. However, many people feel happy with their petits papiers documenting land transfers.

People apply for certificates for two main reasons: to proactively reaffirm their ownership rights and in response to educational campaigns in villages that promote the benefits of certification. Feelings of insecurity of tenure in rural areas in Madagascar were found to be much lower than had been believed by drivers of the reform process, with the social recognition locally being the most popular means of securing tenure.

Finally, administrative efficiency and ease of use are also critical factors, as these written records are not useful if they are not kept up to date.[2]

FORMALISING RIGHTS

In the example of Madagascar, local customary procedures for securing land rights follow a formalised and standardised process. This extra layer of formalisation to land rights increases costs, however, which can be avoided by developing legal standards to recognise existing methods of rights protection.[5] CSOs can also support this adaptation by promoting simple tools that work with existing methods while avoiding complex and expensive processes that are unlikely to be used. ●

BURKINA RURAL LAND RIGHTS RECOGNITION AND PARTICIPATORY APPROACH

Burkina Faso's 2009 Rural Land Law recognised customary land rights and supported their formalisation. Subsequently, several significant revisions (Réorganisation Agraire et Foncière (RAF) were implemented.[11] The revised RAF upholds and reinforces some of the systems implemented because of the 2009 Rural Land Law and serves as an overarching land tenure law.

The requirement for secure land tenure was recognised, as was the ideal that the rights needed to be recognised in different ways to acknowledge the differing needs and situations of the key stakeholders.[9] Burkina Faso utilised a participatory process to develop and implement its rural land policy. Its relative success is seen as being due to:
- The inclusion of various key stakeholders, from experts to representatives from government and local rural community groups
- Sustained support from the national government
- The implementation of a steering mechanism that allocated roles to key actors and allowed them authority to carry out their allotted task

This process has been viewed by external international observers as one of the most successful examples of multi-actor consultation in public policy formulation in West Africa.

REFERENCES

For a full list of references please refer to the Annex - <u>End Notes</u>

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