

Natural Resource Tenure



PICTURES ON COVER:

YOUNG WOMAN AT HER WINDOW. ISALO MOUNTS,
RANOHIRA, MADAGASCAR

PHOTO: JEAN-LÉO DUGAST

FISHERMEN CROSSING A TIDAL WAVE IN ORDER TO
REACH THE OPEN SEA. PONDICHERY, INDIA

PHOTO: JEAN-LÉO DUGAST

CULTIVATED FIELDS. SHEWA REGION, ETHIOPIA.

PHOTO: PIETRO CENINI

1. Introduction

In many developing countries, poor and marginalised groups depend on natural resources for their livelihoods and shelter. Pro-poor natural resource tenure is therefore crucial to poverty reduction, achievement of the Millennium Development Goals and full realisation of human rights. Sida has an important role to play in supporting efforts to achieve these goals.

This paper outlines Sida's position on natural resource tenure and provides guidance for activities where tenure issues are at stake. Rather than providing solutions, the paper aims to support Sida staff and partners in their own analysis and dialogue, and in their development and implementation of policies and programmes.

The paper complements and adds value to a number of other Sida policy documents. It gives effect to the Swedish Policy for Global Development, which provides the overarching framework for Swedish development cooperation. It also complements a number of earlier Sida policy and position papers that cover access to productive resources.¹ In contrast to these earlier documents, this paper tackles tenure issues in an integrated fashion.

This paper also builds on the Paris Declaration on Aid Effectiveness – applying its key principles of ownership, harmonisation, alignment and accountability to resource tenure activities – and the European Union Land Policy Guidelines, which provide the framework for EU donor activities on land tenure. Compared to the EU Guidelines, this paper is broader in scope in that it comprises urban land, water, wetlands, coastal areas, forests, grasslands, protected areas, genetic resources and, to some extent, sub-soil resources.

This position paper is the outcome of both an internal and external Sida consultation process. It also draws on a more comprehensive background document reviewing major natural resource tenure issues.²

2. What is natural resource tenure?

Natural resource tenure is broadly defined as the arrangements through which people gain legitimate access to natural resources; the conditions under which they use those resources and participate in the benefits deriving from them; and the institutions and processes for the management of those resources.

Tenure is broader than ownership. It refers to a bundle of both rights and obligations – rights when it comes to owning, holding, using, managing or transferring resources, and obligations when it comes to using resources in such a way so as to not harm others, and paying taxes, fees and other duties. These rights and obligations are defined by national law, customary rules, or a combination of the two.

Natural resource tenure is broader than land tenure. Distinct tenure arrangements apply to agricultural and urban land, rangelands, water, wetlands, coastal areas, forests, biodiversity, petroleum and mineral resources. Rights to different resources pertaining to a piece of land may be held by multiple users, and at different times of the year. A forest, for instance, may provide resources as diverse as timber, firewood, fodder, medicinal plants and food. It may even serve as a source of enjoyment or recreation. Rights to these resources may be vested with different people. In addition, rights to a resource – for example, a mining concession – may conflict with other resource rights or uses, such as the land rights of local farmers. Increasing global demands, such as for biofuels, may enhance the competition for different land uses. This multiplicity of resources, resource rights, uses and users raises challenges for tenure policies and programmes.

Key message 9

Land, water and other natural resources have many different users and overlapping uses. Distinct tenure arrangements apply to different resources and uses.

3. Why does natural resource tenure matter?

Key message 1

Secure tenure for the poor is key to poverty reduction and the realisation of fundamental human rights.

Secure tenure is one of the most crucial issues for improving the living situation of the one billion slum dwellers in the world.

Secure access to natural resources is an essential catalyst for increasing food security, promoting sustainable development and reducing rural and urban poverty. By encouraging investment in the resource, secure tenure could lead to higher productivity, efficiency, and sustainability in both rural and urban areas. It may also reduce vulnerability on the part of households to shocks, by providing a valuable safety net and a source of shelter, water, food and income in times of hardship. A more equitable distribution of resources enables the poor to benefit from broad-based economic growth.

Secure resource tenure is also important for ensuring the realisation of fundamental human rights, particularly the right to an adequate standard of living, which includes access to water, food and housing. The poor are particularly dependent on secure access to resources for fulfilling their basic human needs. A human rights perspective to resource tenure entails seeing natural resource tenure in the context of international law and respecting fundamental principles, such as non-discrimination, accountability, transparency and participation. This includes giving special attention to marginalised or excluded groups – women, pastoralists, slum dwellers, indigenous and tribal people, and minorities.

A rights perspective also allows taking into consideration concerns other than merely economic – e.g. religious, cultural and political. It furthermore helps to identify power relations within a given society, which is crucial for understanding the social and political dynamics of natural resource tenure.

4. Key messages concerning natural resource tenure

1. Secure tenure for the poor is key to poverty reduction and the realisation of fundamental human rights.
2. Tenure interventions must build on local conditions and include a thorough understanding of local practices and customary tenure systems.
3. Women's tenure security needs special attention. Women responsible for household income, food and children often lack secure access to resources owing to discriminatory norms and practices.
4. Tenure security may be promoted through formalisation of rights, which may be done in different ways. What best serves the poor depends on the context. While individual titling is relevant in some cases, registering collective rights or long term use rights is more appropriate in other cases.
5. Control over natural resources is an important source of power. Establishing pro-poor tenure systems requires tackling power relations at all levels by applying principles of democratic governance.
6. Securing tenure requires tackling both technical and political issues. Enabling access to the resource tenure system on the part of the poor is key to avoiding elite capture and ensuring equitable benefit sharing.
7. Weak tenure systems and resource competition are root causes of conflict. Addressing tenure may be a key step towards consolidating peace in post-conflict societies.
8. Secure tenure promotes sustainable use of resources. Environmental degradation is often the result of inappropriate tenure systems.
9. Land, water and other natural resources have many different users and overlapping uses. Distinct tenure arrangements apply to different resources and uses.
10. Linkage of resources, such as between land and water or between urban and rural land, requires coordination and cooperation among authorities. Similarly, this applies to nations sharing trans-boundary resources, such as rivers and wetlands.

Key message 2

Tenure interventions must build on local conditions and include a thorough understanding of local practices and customary tenure systems.

Men and women acquire land in many ways – through property inheritance, purchases and transfers from the state [...] At each of these junctures, women face more obstacles than men (ICRW, 2005).

Building on local practice

Resource tenure interventions (e.g. policies, laws and programmes) must respond to local needs and build on local practice, rather than replicate one-size-fits-all solutions. Failure to do so may result in limited or undesired impacts.

The lack of financial resources, institutional capacity and legal awareness limits the outreach of resource tenure legislation in many countries. This is particularly true in rural areas. In addition, local tenure systems are often used even when inconsistent with legislation, as they tend to be more accessible to the local population. Inconsistencies in national and local systems result in overlapping rights, contradictory rules and competing authorities. This leads to confusion and fosters tenure insecurity, which in turn discourages investment, undermines incentives for sustainable resource use, and enables the elite to lay claim to common resources.

LOCAL TENURE SYSTEMS

Although many local tenure systems draw their legitimacy from “tradition” and are commonly referred to as “customary”, they are continually adapted as a result of social, economic, political and cultural changes. They are also extremely diverse, due to differences in geographic contexts, resources (e.g. land, forests) and forms of resource use (e.g. farming, herding). They often entail a complex blend of group and individual rights: while emphasizing the collective dimension of resource tenure, they may also grant individuals and households within the group various types of resource rights.

Important equity concerns have been raised in relation to many customary systems, particularly with respect to gender and more marginalised groups. While the position of women under customary tenure varies considerably, many such systems contain norms and practices that are gender-discriminatory.

Besides customary rules, local tenure systems may be based on negotiated arrangements among local resource users. For instance, in parts of western Africa, “local conventions” – agreements negotiated among all local resource users – regulate access to and use of natural resources, such as forests, rangelands and fisheries.

Successful interventions require a good understanding of local tenure systems, as well as mechanisms for local participation in designing and implementing policies and programmes. It also requires tailoring tenure systems to local needs, and bridging the gap between national legislation and local practices; for example, through legally protecting local resource rights.

Experience in the forest sector illustrates the benefits of this approach. While in the past much forest legislation vested control with

the state, several countries have more recently granted households and groups stronger forest use rights, rights to harvest and sell non-timber forest products from state forests, as well as rights concerning co-management and benefit-sharing related to timber production. Experience suggests that such actions benefit poverty reduction and improved conservation.

Protecting local resource rights is also key with regard to genetic resources and related traditional knowledge. The main issue at hand is determining who should control these resources and who has the right to decide how they can be developed and utilised. This includes traditional rights on the part of farmers to save, re-use, exchange and sell seeds or livestock breed. It also includes benefit-sharing arrangements for products developed from genetic resources and traditional knowledge.

Different routes to tenure security

Promoting tenure security may be done by formalising rights in different ways. A combination or choices of approaches must be tailored to local contexts and needs.

Individual land titling may be an option for small-scale farmers if appropriate legal and institutional arrangements exist, land markets are active, and titles are already in use and in demand. In such cases, private ownership could enhance productivity as farmers can use land as collateral to obtain credit. Titling may also be pursued where resource competition is particularly strong, when customary tenure systems have collapsed, and in newly settled areas.

Secure tenure does not, however, necessarily require individual ownership. Recording collective rights may be adequate as a way to promote tenure security, particularly if the source of insecurity is linked to the relationships between local groups and outside players. Registering clear and long-term use rights, leases or customary rights may also provide adequate security. Where resource rights are complex and overlapping, particular attention must be paid to recording all existing rights, including “secondary” rights held by women, pastoralists and other vulnerable groups. For poorer and more marginalised groups, economic, geographic, linguistic and procedural access to these processes is key to achieving equitable outcomes.

Key message 4

Tenure security may be promoted through formalisation of rights, which may be done in different ways. What best serves the poor depends on the context. While individual titling is relevant in some cases, registering collective rights or long term use rights is more appropriate in other cases.

Key message 3

Women's tenure security needs special attention. Women responsible for household income, food and children often lack secure access to resources owing to discriminatory norms and practices.

Key message 10

Linkage of resources, such as between land and water or between urban and rural land, requires coordination and cooperation among authorities. Similarly, this applies to nations sharing trans-boundary resources, such as rivers and wetlands.

Two hundred and sixty-three major rivers cross international borders, which highlights the need for trans-boundary cooperation.

Securing resource rights for women

Women constitute a large part of the population that is engaged in agriculture, and play a key role in ensuring household food security. Male migration to cities and industrial zones, pandemics such as HIV/AIDS and other factors have further reinforced women's role as farmers and breadwinners. Yet, women's access to resources is undermined by discriminatory norms and socio-cultural practices in many contexts.

Securing women's resource rights is critical to the productivity of society as a whole, to household food security, and to women's social status, economic well-being and empowerment. Tailored resource tenure interventions, such as joint titling and resource access improvement programs for women's groups are required. Tackling issues beyond resource tenure per se, such as socio-cultural attitudes, inheritance practices and other aspects, is also required. As gender equality may challenge deep-seated power structures, legal reform must be accompanied by awareness raising, capacity building and improved access to legal services.

Linkages between resources require coordination

Linkages between resources (e.g. land and water) and between areas (e.g. rural and urban areas) require coherence in sector interventions. Allocating land rights, for instance, may achieve little if done without considering access to water sources. Similarly, water programmes raise issues as to the distribution of land rights prior and subsequent to programme interventions. In the past, failure to take these issues into account resulted in resource conflict and degradation.

Although land tenure in rural and urban areas is normally regulated by different rules and institutions, important interdependence across rural and urban divides exists. This is linked to livelihood strategies (e.g. rural-to-urban migration), fluid boundaries between rural and urban areas (e.g. due to urban expansion and encroachment on agricultural land) and other factors. Coherence and coordination of rural and urban tenure systems are key to addressing this interdependence.

By their very nature, natural resources, such as rivers, wetlands and coastal fisheries require tenure agreements that transcend ordinary administrative boundaries. Cooperative transboundary management of natural resources can protect ecosystems, prevent conflict and improve the livelihoods of the poor. This includes applying international rules on shared natural resources – such as international watercourses – establishing or strengthening regional institutions that manage trans-boundary resources, as well as harmonising and coordinating national rules and institutions.

Ensuring environmental sustainability

Poverty reduction is long-lasting only if the resources on which people are dependent are managed in a sustainable manner. Secure tenure promotes sustainable resource use, whereas unclear or unsuitable tenure arrangements may lead to resource degradation. Open and unregulated access to coastal fisheries, for example, may encourage unsustainable resource use.

Environmental considerations must be borne in mind in the design and implementation of tenure systems. For instance, in arid and semi-arid grazing lands, arrangements that unduly restrict herd mobility may result in rangeland degradation. In areas scarce and erratic in rainfall and resources, flexible arrangements that enable livestock mobility are key to securing the livelihoods of pastoralists and to managing resources sustainably.

Key message 8

Secure tenure promotes sustainable use of resources. Environmental degradation is often the result of inappropriate tenure systems.

Addressing the roots of conflict

Resource competition and weak tenure systems may be among the root causes of conflict. Factors such as demographic growth, environmental degradation, socio-economic change and lack of off-farm livelihood opportunities tend to increase resource competition. Under such conditions, weak dispute settlement arrangements, manipulation along political or ethnic lines and other factors may cause tensions to escalate into conflict.

Conflict, in turn, may undermine resource tenure, for instance, by weakening state or customary resource management institutions, or fostering overlapping resource claims, caused by population displacement. In post-conflict societies, addressing resource tenure may be a key step towards the consolidation of peace. This may include securing resource access for demobilised soldiers and displaced populations, adjudicating among overlapping resource claims, and re-establishing effective resource management institutions.

Key message 7

Weak tenure systems and resource competition are root causes of conflict. Addressing tenure may be a key step towards consolidating peace in post-conflict societies.

Governance, power and local democracy

In many societies, control of natural resources is an important source of power. Conversely, power relations shape access to resources. Poor and marginalised groups, to secure their access to resources, must have a fair say in decision-making that affects resource rights. Corruption distorts decision-making, undermines human rights, directly and indirectly impacts poverty, and contributes to resource degradation. Examples of this are the distortion in the allocation of timber or mining concessions or non-compliance with forest, environmental and other regulations.

Key message 5

Control over natural resources is an important source of power. Establishing pro-poor tenure systems requires tackling power relations at all levels by applying principles of democratic governance.

Therefore, establishing effective and equitable tenure systems requires addressing power relations at all levels; from applying democratic governance principles such as participation, accountability, transparency, rule of law and respect for human rights, and fighting corruption, to ensuring access to the resource tenure system for those living in poverty.

Decentralisation may be effective for promoting a more equitable and sustainable natural resource management – that is, if the devolution of power is accompanied by the transfer of adequate financial resources and by capacity-building efforts at both local and central levels. Local authorities are normally better positioned to respond adequately to local needs and problems.

Securing tenure requires tackling both political and technical issues

Appropriate technical and legal instruments are key to effectively administering resource tenure. This requires developing and disseminating low-cost technical tools, and investing in technical skills such as surveying, planning, valuation and registration.

Technical aspects, however, are only part of the story. Access to the resource tenure system on the part of the poor (e.g. to the land registration process) is key to avoiding elite capture and ensuring equitable benefit sharing. This entails making sure that technology, procedures and legal requirements do not hinder access for poorer and more marginalised groups. Procedures and administrative systems should be transparent, inexpensive and easy to comprehend. Awareness-raising and capacity building at the local level is needed in order to make better use of existing opportunities to improve tenure security.

To summarise, tenure reform is a long-term and complex process characterised by sensitive political choices. It requires strong political commitment on the part of the government driving it, and sustained, consistent and coordinated support from development agencies.

Key message 6

Securing tenure requires tackling both technical and political issues. Enabling access to the resource tenure system on the part of the poor is key to avoiding elite capture and ensuring equitable benefit sharing.

5. Sida's entry points

Sida has an important role to play in supporting efforts that reduce poverty by means of addressing natural resource tenure.

Poverty Reduction Strategies

Poverty Reduction Strategies (PRS) provide an opportunity for Sida to address natural resource tenure in its wider poverty reduction context,

and work with governments committed to poverty reduction in order to address resource tenure issues. This may involve budget support and coordinated sector-wide approaches. Decisions taken as to Sida's potential involvement in land tenure issues and other areas, and its modalities, scope and scale, occur through dialogue with governments, civil society and other donors. This is based on an analysis of the issues that are crucial for a specific country, and an assessment of the cases in which Sida could and should try to make a difference.

Donor coordination

Sida will continue its efforts to harmonise its support with other donors, multilateral agencies and development banks involved in natural resource tenure. The European Union Land Policy Guidelines provide one framework for this.

Programming

Sida tackles resource tenure issues through specifically targeted programmes and other programmes that, while not primarily tenure-related, offer entry points. This applies to programmes in both rural and urban areas and may take the form of technical support, training and other types of capacity building, support in policies and legal development, alternative dispute resolution, and other forms of support, based on the needs of each specific case.

Sida also supports non-governmental organisations and civil society organisations that provide checks and balances on government decision-making, build citizens' capacity to use the opportunities offered by the law to advocate for and acquire/secure resource rights, and contribute to tenure reform implementation.

Programming at the national level depends on country-specific needs and opportunities within the framework of Swedish policies and priorities, as formulated in country strategies and elsewhere. Programming is based on thorough discussions with Sida's partners.

Sida supports regional and global networks for debate and lesson sharing. It also facilitates south-south cooperation and sharing of experience, knowledge and information.

Within the broad concept of natural resource tenure, sector issues may emerge during discussions with partners, and should be considered in programme and policy work. Below are some examples.

Women produce between 50 and 90 percent of domestic food crops in Asia and between 80 and 90 percent in many Sub-Saharan countries.

1. Agricultural land

- In many parts of the developing world, secure access to land is fundamental to the livelihoods of the majority of the rural population. Secure land rights are also likely to increase productivity and promote sustainable land use. Reform efforts must secure tenure for the land user, while also securing access for the landless as well as secondary right holders.
- Securing women's land rights requires special attention. Women play a central role in food production and food security, yet they frequently lack secure access to the land they use. This is particularly the case in societies with patterns of gender discrimination – such as inheritance practices – or increased gender vulnerability, for instance, due to HIV/AIDS.
- Land and water are intimately linked when it comes to agricultural use. Secure access to both land and water is crucial to improving livelihoods in rural communities dependent on agriculture.

Several million forced evictions take place around the world every year – both in rural and urban areas.

2. Urban land

- Land-related tensions may be particularly strong in urban and peri-urban areas, characterised by high land values, competing land claims and a complex interface with rural lands.
- In most cases, gradual and sequenced approaches to increase security of tenure are more promising than systematic titling. Occupancy licenses and forms of registration that fall short of outright titling can still help increase property tax revenues for municipalities. Donor support to local authorities that increase the tax base should be linked to improved access to public services, such as water, sanitation and waste management for the urban poor.
- In many cases, economic and political interests in urban land lead to forced evictions. These violate human rights and undermine the livelihoods of the poor. It is therefore vital to support policies and laws that protect households from forced evictions – through, for example, provisions on consultation, compensation and affordable alternative housing.

3. Water

- Water resources should be managed at the most appropriate level. Water development and management should be based on a participatory approach that involves users, planners and policymakers at all levels.
- Empowering local institutions – for example, through decentralising irrigation facilities management or establishing basin committees with genuine decision-making power – can lead to greater participation and improved recognition of customary rights, including compensation when these rights are affected by water programmes.
- Coordination between land and water policies is key. Ongoing reform processes in the water sector create opportunities for integrating land tenure aspects in water policies and programmes.

Fish is the main “non-timber forest product” in South East Asia. Fish and seafood provide for a sixth of the animal protein consumed in the world.

4. Wetlands and coastal resources

- The significance of wetlands and coastal resources for the poor and their potential to alleviate poverty are rarely acknowledged in national policies. A stronger pro-poor focus of policies and programmes in these two sectors is necessary. Strengthening the capacity of national and regional institutions to enforce effective tenure policies for coastal fishery resources is also necessary.
- Customary tenure systems are relatively common along coasts and in wetlands. Systems perceived as legitimate by local resource users must be better understood by policymakers and recognized by national policy.
- In cases where wetlands are managed as common property resources, privatisation or state appropriation may lead to unsustainable utilisation, resource grabbing or undesirable changes in resource use.

Grazing areas constitute a fifth of the world's land surface, which is twice as much as the land area used for crops. In addition, a fourth of the world's croplands is used for growing livestock feed.

5. Rangelands

- Inappropriate tenure policies are major contributors to the degradation of arid and semi-arid grazing lands. In areas where rainfall and resources are scarce and fluctuating, the need for flexible arrangements that enable herd mobility and secure access to strategic resources, such as dry-season grazing, is apparent. These issues are seldom prioritised by donors or governments.
- In many societies, pastoralists and small-scale livestock keepers are marginalised in political and economic processes. As a result, farming has encroached on pastoral lands and corridors, which negatively affects the livelihoods of pastoral groups.

In developing countries, community reserves constitute 8 percent of the forest area and communities own about 14 percent. Much larger areas are actually managed by local groups, but without recognition by governments.

The world's officially protected areas cover about 13 percent of the land surface but only 1 percent of the sea surface. (WWF 2006)

6. Forests

- Recognising customary and/or collective rights to natural forests may improve access and secure livelihoods for the poor. Evidence shows that local communities can manage forests in a sustainable way if they have secure resource rights. In recent years, several countries have changed their legislation in order to strengthen local forest rights.
- Within this sphere, attention must be paid to intra-community relations, ensuring equal access for women and men, and promoting the development of forest enterprises.

7. Protected areas and wildlife

- The restrictions on resource access and use typically linked to protected areas mean that local communities often bear a high cost when such areas are established. Moreover, benefits are likely to be mainly captured by governments and tourist enterprises.
- Co-management or community-based management of protected areas is increasingly being used as a means to improve conservation and ensure greater equitable benefit-sharing.
- Recognising the resource rights of indigenous peoples, or their rights to control their ancestral territories – including protected areas – is a consistent demand of indigenous peoples in a number of international working groups, such as those of the Convention on Biological Diversity and the World Commission on Protected Areas.

8. Genetic resources

- Efficient and improved use of genetic resources through, for example, plant and livestock breeding is a key factor in the development of natural resource-based production. Countries need good systems to assure clear rules for tenure of such resources. An analysis of the local situation is crucial to understand how a good balance may be struck among the different norms and interests.
- In many countries, the public seed supply system has been weakened. This has underlined the importance of the traditional rights of farmers to save, re-use, exchange and sell seeds from their own harvests. The farmer's right to a choice among market-based and other alternatives should be reinforced based on the local situation. Public plant breeding schemes and public gene banks should be strengthened, and the on-going effort to develop an international regime on access and benefit sharing is important.

- Access to livestock genetic diversity on the part of small-scale farmers and pastoralists, as well as opportunities to develop their own breeds, calls for increased attention by governments and other development actors.
- Bio-piracy is a major issue. It refers to the appropriation of the traditional knowledge and genetic resources (plants, animals) of local communities by individuals or institutions seeking exclusive control over these resources through intellectual property, without the agreement of local communities or without the consent of relevant government authorities.

9. Petroleum and minerals

- These are high-value commodities characterised by political sensitivities and very large investments. In most countries, ownership of these resources is vested with the state. Resource development is usually undertaken by private operators – often foreign multinational companies – on the basis of agreements or licences with the state. In some cases, the state has ceded important power and economic rights to private operators, virtually creating a state within a state.
- Extracting operations are often associated with social and environmental impacts, including taking over land and other resource rights. Appropriate arrangements that maximise the benefits and minimise the costs of these operations to local resource users need to be made.
- Extracting operations often lack transparency in the flow of revenues. This can hide gross corruption, squander resources and contribute to political instability and violence. Initiatives such as the Kimberley Process, the aim of which was to prevent diamond resources from being used to fund conflict activities, is an example of a recent positive development. The Extractive Industries Transparency Initiative (EITI) is another good example.

Sida policies and position papers

Goals, perspectives and central component elements – complement to perspectives on poverty, Sida, 2005

Fighting Poverty in an Urban World – support to urban development, Sida Policy, 2006

Improving Incomes for the Rural Poor, Strategic guidelines for Sida support to market-based rural poverty reduction, Sida position paper, 2004

Justice and Peace. Sida's programme for Peace, Democracy and Human Rights, Part 1 and 2, Sida policy, 1997

Making Markets Work for the Poor, Sida's policy guidelines, Sida, 2003

Perspectives on Poverty, Sida, 2002

Policy Guidelines for Sida's Support to Private Sector development, Sida policy, 2004

Promoting Gender Equality in Development Cooperation, Sida Policy, 2005

Promoting Peace and Security, Sida Policy, 2005

Pure Water - Strategy for water supply and sanitation, Sida, 2004

Sida's Policy for Management and Use of Water Resources, (Forthcoming)

Other relevant documents

Current thinking on the two perspectives of the PGD, POM working paper 2006: 4, Sida, 2006

European Union Land Policy Guidelines – Guidelines for support to land policy design and land policy reform processes in developing countries, EU Task Force on Land Tenure, 2004

Natural Resource Tenure – a background paper for Sida, Sida, 2007
(to be published)

Land ownership and titling and its effect on the poor, Issues Paper, European Commission, 2001

Sida at Work – A guide to principles, procedures and working methods, Sida, 2005

Sustainable Development? Guidelines for the review of Environmental Impact Assessments, Sida, 2003

Water Rights and Land Tenure – Two sides of the same coin?
Discussion paper, Sida, 2005

More urban less poor - an introduction to urban development and management.
Göran Tannerfeldt and Per Ljung. Sida and Earthscan. 2006.

**Definitions based on the “Multilingual thesaurus on land tenure”,
FAO, Rome 2003**

Tenure is the relationship, whether legally or customarily defined, among people as individuals or groups, with respect to land and its associated natural resources. The rules of tenure define how property rights regarding land are to be allocated within societies. Land tenure systems determine who can use which resources, for how long, and under what conditions.

Private property is property that is held privately, whether individually, jointly or corporately. Private property and the associated rights of ownership are keystones of market economies. In countries that have written constitutions, the right to hold private property is usually enshrined as a fundamental human right.

Rights are defined by the legal framework and provisions under a given regime. In a national or sub-national context, different societies have different attitudes, thus varying the nature of the rights. Under international law, human rights are regulated and are applicable to states that have ratified specific international instruments or conventions, such as the Universal Declaration of Human Rights.

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

Custom results from practice since time immemorial. A custom is not regulated by the state or other authority outside the social group. A custom is reinforced by customary use. Use rights can be created for land on the basis of custom. They are often the rights created by ancestral occupation and use of land by traditional societies. The creation and recognition of boundaries, where these exist for such land, will often use natural features, or planted trees or hedges.

Customary land law regulates rights to enjoy some use of the land arising from customary, unwritten practice rather than through written or codified law.

The **land tenure system** in a given jurisdiction comprises the set of possible bases under which land may be used. As such, this range encompasses both rural and urban tenure and includes ownership, tenancy and other arrangements for the use of land.

Land consolidation is a sequence of operations designed to reorganise land parcels in an area, re-grouping them into consolidated holdings of more regular form and with improved access. Land consolidation operates on the basis of assessing the quality of the land and providing owners with equivalent land in exchange.

Land reform is the generic term for modifications in the legal and institutional framework governing land policy. Land reform is intended to implement changes in land policy that are designed to realise desired changes in a changing political, economic and social environment. The most common types of land reform are probably those dealing with re-allocations of land and those redistributing legal rights of ownership.

Secure tenure is related to the degree of recognition and guarantee of real estate rights. Improving security of tenure is seen as necessary:

- to encourage investments to improve the productivity of agriculture
- to conserve and use natural resources soundly
- to encourage the use of temporary rights for the use of the land, including leasing
- to reduce the number and intensity of conflicts related to the use and transaction of real estate.

Conversely, insecurity of tenure is characterised when the users and holders of land, whether rural or urban, consider that their rights to the land are at risk to other actors, and the duration of their rights is uncertain.

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

The process of adjudication should simply reveal what rights already exist, by whom they are held and any restrictions or limitations bound to them. In practice, of course, the mere fact of a final and definitive recording of these rights is a significant change in those jurisdictions where previously there had been uncertainty.

The **cadastre** is an official and up-to-date record of land parcels or other objects, for the purpose of recording information on tenure, value, land use, etc. The cadastre itself holds the unique identification of the parcel or object, its location, geometry and size, and usually consists of a register and a map. Some countries have a wider definition of the term “cadastre” and include tenure and/or value information as part of the cadastre.

Land registration is the official recording of legally recognised interests in land and is usually (or may be, note by Sida) part of a cadastral system. From a legal perspective, a distinction can be made between deeds registration, where the documents filed in the registry are the evidence of title, and registration of title, in which the register itself serves as the primary evidence (FIG, 1991).

A **title** is a right of ownership in real property. The title deeds of a property are the documents which evidence or prove ownership of the property. Title registration is a system for improving the quality of ownership and proof of title.

Property used as **collateral** is pledged as a guarantee for the repayment of a loan. The most common form of collateral is the mortgage. A **mortgage** of land is a transfer of an interest in the land as security for a debt.

Share cropping is a system of agricultural production where a landowner allows a share cropper to use the land in return for a share of the crop produced by the land.

Definitions from EU land policy guidelines 2004:

Land tenure should be defined broadly as the “*system of access to and control over land and related resources*”. It defines the rules and rights which govern the appropriation, cultivation and use of natural resources on a given space or piece of land. Strictly speaking, it is not land itself that is owned, but rights and duties over it. **Land rights** are not limited to private ownership in the strict sense, but can be a very diverse balance between individual rights and duties, and collective regulations, at different levels (different levels of family organisation, communities, local governments or state), private or family ownership being one possible case. The rights and duties that individuals or a family hold are themselves embedded in a set of rules and norms, defined and enforced by authorities and institutions which may be those of rural communities and/or the state. No system of land tenure can work without a body with the power and authority to define and enforce rules, and provide arbitration in case of conflict. Thus a **land tenure system** is made up of rules, authorities, institutions and rights. **Land administration** itself (maps, deeds, registers and so on) is only one part of a land tenure system.

Notes

¹ See Appendix 2 for a list of relevant policy documents

² Natural Resource Tenure – a background paper for Sida. 2007.

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Halving poverty by 2015 is one of the greatest challenges of our time, requiring cooperation and sustainability. The partner countries are responsible for their own development. Sida provides resources and develops knowledge and expertise, making the world a richer place.



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