



Briefing Note

Securing Land Rights

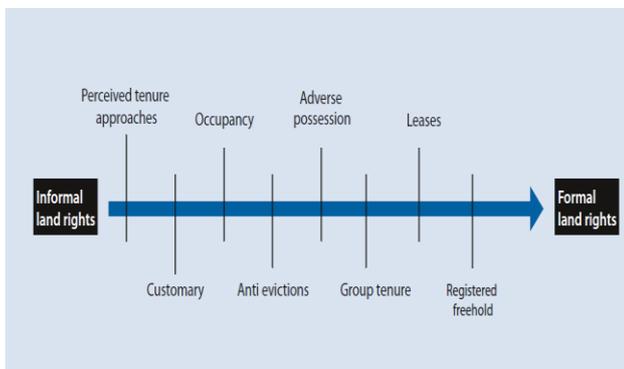
The background

For small farmers and their families, secure access to land is essential to their very livelihood. Yet, land is more than just a plot on which food and raw materials can be cultivated, livestock pastured, or plants and roots gathered. In all cultures, land is of fundamental traditional, religious and social value. For this reason land rights impact profoundly on the lives of families and their status within their community or group.

Secure land rights include not only individual private rights. They also encompass collective use rights, for example at the community or village level. Access and use rights to natural resources such as grazing land, water, forest or forage food are likewise linked to land rights. This means that a wide range of access and usage rights exists between the two poles of formal and informal land rights and systems.

In Africa for example, very little land is actually registered in an official legal system. Access to and use of most of the unregistered areas are regulated by traditional or customary systems. In most cases traditional authorities allot rights of access and use to individual groups. Nothing is documented in writing. The various legal systems usually exist in parallel; they are often either partially or wholly incompatible. Under state land law, for example, traditionally used land is often state land. As a consequence, traditional usage rights are frequently ignored in contract negotiations between investors and governments. This legal pluralism thus harbours major potential for conflict. Poor sections of the population in rural areas often have only very limited access to opportunities for officially registering land or receiving land titles. They lack the necessary information, resources and transportation. In conflict situations it is these population groups in particular who are disadvantaged, because their existing land rights are generally not verified by official documents. This uncertain legal situation encourages corruption that is already rampant in the land sector, further exacerbating the negative impacts on poor population groups.

Diagram: Continuum of land rights



Source: GLTN (2008) Secure Land Rights for All, p.8

A special situation exists in transition countries, where the restitution of previously expropriated land, widespread privatisation, and both restructuring and new structuring of property and ownership systems have often led to land right insecurity for the populations concerned. Without an appropriate legal and institutional framework, efforts to privatise and restructure large areas of state-owned land can disadvantage certain population groups, and conflict can follow. Besides corruption, outdated data and different data-processing systems can hamper efficient and effective management of land information and compromise legal certainty. In South Africa, for example, the lack of records documenting the original distribution of land posed considerable problems when efforts got underway for restitution of land expropriated under apartheid.

In many countries and regions, women are particularly disadvantaged, having access to only about 20 percent of land worldwide. In West and Central Africa as well as in the Middle East and North Africa, for example, less than ten per cent of landowners are women. Their land rights are often defined only indirectly through a male relative, such as their father, husband or brother. On the other hand, studies confirm that women in general invest more in food, education and health for their families than men do. Where women farmers have secure access and use rights to land, their families enjoy higher incomes and better living conditions, helping to drive economic development in rural areas.

There are many differing concepts and implementation mechanisms for securing land access and use rights. Securing land rights often translates into formalising those rights, which means integrating them into an official legal system. This lends these rights economic value, usable for example as collateral for credit, and can thereby help drive economic growth. This was the case in Cambodia, where GIZ supported the Cambodian government's land registration process. Awarding land titles to owners significantly improved their access to loans. Critics point out, however, that merely formalising ownership rights and allocating land titles does not automatically lead to increased economic productivity. Such land titles cannot be used for these purposes if functioning institutions are not in place. What is more, families run the risk of losing their land through pledging as security or through displacement by wealthier people. Socio-cultural factors as well must always be considered when awarding land titles. This is the only way of ensuring that the living conditions of all involved are sustainably improved.

By merely registering the existing status quo and allocating official rights on this basis, there is a danger of historical injustices becoming set in stone and marginalised groups continuing to be severely disadvantaged.

Conflicts can arise within the scope of registration and formalisation if several people or groups hold different rights to the same piece of land, for example if one person or group has the right to farm on the land, while others are permitted to collect fire wood there, and a third group to collect animal feed. Documenting and registering these complex systems and situations in formal titles and a legal system represent major challenges. Yet a number of international norms and guidelines for dealing with these situations are available, such as the FAO Voluntary Guidelines for the Right to Food, the EU Land Policy Guidelines, the Framework and Guidelines on Land Policy in Africa (AU/UNECA), the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, the Responsible Agricultural Investment Principles (RAI), the Kothari Guidelines (on protection against forced displacement), and ILO Convention No. 169 (on the rights of indigenous peoples and other communities with customary tenure systems). Thorough and consistent application of these norms and guidelines can contribute significantly to securing land rights.

Our position

Secure tenure rights along with fair access to land are essential prerequisites for sustainable economic, ecological and social development as well as for food security.

In this context, GIZ takes the following positions:

1. Sustainable development of rural areas cannot be achieved without secure land rights

Legal certainty and long-term prospects for land tenure are important prerequisites for investment and economic development as well as for sustainable and productive agriculture. Securing land rights is thus a highly important issue in the pursuit of sustainable development in rural areas.

2. Secure land rights serve to prevent conflicts

Securing land rights also helps prevent conflict. A large number of conflicts arise from disputes over land and natural resources linked to land. Clearly regulated rights of access and use can help prevent or resolve conflicts.

3. Integration of women ensures sustainable success

International cooperation can promote legal security in the land sector. Promotion concepts, however, must be tailored to the given situation in the partner country. It is important that user interests among the various sections of the population involved be considered and that marginalised groups such as indigenous peoples and pastoralists be integrated as equal partners into the process. Consideration of women is particularly important to ensuring sustainable success. This means that women should enjoy equal rights of access to land and its use. In addition, use rights to other natural resources contained within the land - not legally formalised in most cases - must be integrated into modern land law.

4. Acceptance and sanctions are important elements

Land titles and certificates alone are not enough to secure land rights. They must also be accepted by the responsible institutions and the population involved. Appropriate sanctions are also needed to enable authorities to take action against any violations of the new land law system. Alternative approaches as well, such as local usage agreements between all participating groups, can help securing land rights. This particularly applies to areas in which instruments such as cadastral or land registration systems are not compatible with local usage systems and are therefore difficult if not impossible to implement. In these cases, land use planning assumes a sort of substitute function.

Our recommended actions

The complex system of land ownership and property rights demands initiatives and development approaches targeting every level of society and government – local, national, regional and international.

GIZ considers the following the most important recommendations for action:

1. Develop and implement international guidelines and policies

Guidelines and policies support governments in shaping sustainable access rights to land and other natural resources and establishing the corresponding institutional structures. In this way, they also help curtail corruption in the land sector while securing land rights. As a result human rights, the needs of local people, environmental considerations and principles of good governance gain in importance, and investments such as large-scale acquisitions and leases of land must harmonise with these factors.

2. Develop and implement national land policies and laws

Responsible governance in these areas is crucial to securing land rights in a sustainable manner. It is also important to consider the access and use rights of marginalised and disadvantaged population groups. Securing their rights must be firmly anchored in these policies.

3. Register land rights

Legal certainty is enhanced by clarifying, documenting and formalising land rights at national and decentralised level. Village land registers, individual and communal certificates and titles, and land use agreements, for example, provide feasible means for doing so. Appropriate use of these instruments and attentive consideration of the individual situations will significantly enhance legal certainty. Particular emphasis should be devoted to securing the usage rights of indigenous communities and marginalised groups.



4. Develop and support land administration

The rights to land and its use and the valuation of land must be recorded and administered and this information made publicly available, thereby mainstreaming and anchoring efforts to secure land rights. The rules and measures needed to achieve this must be appropriately designed.

5. Strive for conflict prevention and establish dispute resolution mechanisms

Different claims on the same piece of land increase uncertainty of access and use to land and its use, and harbour serious potential for conflict. This is why establishing and supporting appropriate conflict resolution mechanisms are an important aspect of securing land rights. In addition, securing access and usage rights is an effective means of conflict prevention. Many sources of conflict can be identified and eliminated early simply by clarifying the legal situation.

6. Empower women to gain access to land

Women are severely disadvantaged in many land rights systems. It is therefore imperative that special consideration be given to women in all initiatives and measures, whether in the formulation of international and national policies and strategies, or in concrete actions at local level such as targeted granting of land titles to women, or modified rules of inheritance.

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