International Agricultural Development Policy
AGEC 689
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Module 4
Land Tenure Policies
Land tenure objectives and issues
For land tenure, more than other fields of agricultural development policy, viable approaches have to be developed in the historical and social context of each country.

Nevertheless, there are some land tenure concerns that commonly arise throughout the world.
Typical objectives of land tenure policy

- Achieve economically **efficient** allocations of land and conditions of tenure.
- Ensure **equity** (fairness) in allocations of land or access to it.
- Help **reduce rural poverty** by providing poor families with a productive asset.
- Promote **sustainable environmental management** of the land resource.
Broad issues in land tenure

- How can **access** to farmland be provided for rural families, especially lower income families?
- How can farmers be provided long-term **security of rights** to use farmland, to give them **incentives** to invest in the land?
- How can **grazing rights** be made secure and, in cases of transhumance, made compatible with cultivation rights?
- What is the role for **land markets**, or land rights markets, in allocating land?
Additional land tenure issues

- What is an appropriate role for **customary village land rights** and allocation systems?
- How can land access and **land rights for women** be promoted?
- What is the long-term role for **State-owned land**?
- What is an appropriate way to make the transition from **collective lands** to individually farmed lands?
Additional land tenure issues (2)

- At what level of decentralization should land tenure be regulated and administered?
- How can a land tenure regime influence the maintenance of forest cover and protection of soils?
- What kinds of fees or rates should be paid for access to or use of land?
An example of how land rights can affect the environment is found in Panama, which has titled private property.

Forested lands belong to the State and by definition cannot become private property. Therefore some small producers go into the forest and cut the trees down, and then apply for title because the land is not forested.
The nature of land rights
Basic forms of property rights

- Open access lands (usually rangelands, forests).
- Communal lands in customary tenure.
- Collective farm lands.
- Individual rights within associative tenure systems.
- Private land rights, including ownership, leasing, and rental.
- State-owned lands.
Forms of land tenure can overlap, e.g., State lands can be given out in long-term tradable leases.

Land rights, including private ownership, are rarely absolute. Restrictions and conditions are usually placed on land rights, and different governmental jurisdictions may oversee aspects of land rights.
Examples of facets of land rights

- A right to use land and prevent others from using it.
- A right to transmit land to heirs.
- A right to control how land is used (e.g., community zoning restrictions).
- A right to transfer all or part of land rights to others, at a freely negotiated price.
- A right to derive income from a piece of land.
Immunity from expropriation.

Residuary rights that take effect when other rights lapse (e.g., recovering land rented out).

Contingent rights to land (e.g., claims of a creditor).

Rights in perpetuity or rights delimited in time.
Statistical studies show that secure land title or secure use rights help promote:

- Access to credit (India, Thailand, South Korea).
- Investment in the land (Costa Rica, Thailand).
- Higher intensity of land use (Jamaica).
- Higher land values (Nicaragua).

(See references in the text.)
Formalizing and transforming land rights
Experience has shown that when land rights are formalized:

It is important to take measures to ensure that traditional, unwritten rights of small producers are respected. Otherwise, they may lose their access to land to informed outsiders who are better able to manage modern registry systems.
It also is important to ensure that traditional, unwritten secondary rights are respected, such as recognized rights of elderly or handicapped persons to collect harvests from fruit trees, or long-standing verbal land rental arrangements, or grazing rights on fallow cropland.
Some countries now have laws that formally recognize customary, unwritten land rights.

These cases include Mozambique, Uganda, Tanzania, and also the 1994 Eritrean land law.
In cases of traditional communal lands, sometimes formal group titles to the land are issued (Honduras). For other traditional lands, a village’s right to adjudicate land rights may be formally recognized (Tanzania, Mozambique).
Land registry systems are an important component of security of land tenure.

However, they are expensive and slow to develop. Therefore it can be effective to give recognition to traditional (village) land rights for a possibly very long transition period to “modern” land registry systems.
For State-owned lands, it may be worthwhile to seek tenure systems that give producers stability of usufruct rights, so they will have more incentive to invest in land improvements and manage the land in ways that protect the soils.
Trinidad and Guyana, for example, have adopted the model of long-term leases on State lands.

These leases are tradable at freely negotiated prices, and therefore they can serve as collateral for bank loans, as well as giving farmers incentives to invest their own funds.
State farms and collective farms often show initiative in introducing new agricultural technology.

But in many experiences they have been financial failures and they often have difficulties in motivating their labor force.

Therefore many countries have decided to change that model.
A common approach has been to convert them legally into corporations.

In effect, the workers on the farm become its shareholders, and part of their remuneration depends directly on the financial success of the operation. They can also hire and dismiss managers.
There are variants of the shareholding model:

- To avoid the hazard of possible “outside takeovers,” the corporation can be given (by law) a first right of refusal, so that any member who decides to leave must first offer his/her shares to the corporation, before seeking an outside buyer for them.

- Some former collective farms have broken up the land partly into individual titled plots and other assets into joint property owned by the new corporation.
There are three basic options for transforming a State farm or collective farm:

- Entirely into individual plots.
- Entirely as a corporation.
- An intermediate model with individual plots plus jointly owned assets.
The concept of a “first right of refusal” can also be applied to lands administered by villages.

If individual, transferable land rights are recognized by the village, it can be required that a member who wishes to sell those rights must first give the village the right to match any outside offer.
Greater access to land for the poor
When land has a cost to the user, it tends to be put to more productive uses.

This cost can take the form of payments on long-term leases, a purchase price, or payment of short-term rental.
However, poor rural families may not be able to gain access to land if they must pay for it.

In fact, there is a consensus among land tenure experts that poor farmers in developing countries generally cannot afford to pay a market price for land.
The market price of land often is higher than its productivity because:

- Land investment is used as a hedge against inflation
- Owning land confers social prestige
- Owning land may be a tax shelter
- Owning land may be a way to get access to subsidized credit
- Owning land may be insurance against economic misfortune or political instability
- Regressive subsidies increase land prices
Some or all these factors may be capitalized into land values

Reference:
In some countries, such as Brazil and Guatemala, land funds have been established to offer land mortgages to small farmers at subsidized prices. Such funds can operate as second-storey institutions, lending through intermediaries.
When a land fund is established to encourage market-driven redistribution of land to landless families or smallholders, it is important that the purchase price for large plots be freely negotiated with a willing seller, by a non-governmental intermediary; and that after the land is divided into smaller plots, that the recipients make payments on a (subsidized) mortgage. The loss to the intermediary can be compensated by government transfers for this purpose.
Land funds are an example of a market-driven land reform.

Another instrument for market-driven land reform is a land tax at a flat rate per acre (varying only for the presence of irrigation or other productive infrastructure), with the first x acres exempted.
It should not be attempted to tax only “idle” land because inevitably subjective judgments enter into whether land is idle (e.g., is it fallow?). The tax alone will discourage leaving land idle, and encourage selling part or all of large, unproductive holdings.
In developing countries, why not tax rural land according to its value (like the property tax in richer countries)?

Two reasons:

- It would discourage investment in the land because improvements would raise the tax burden

- Land assessments are always out of date and with weak institutions they provide opportunities for corruption
Land rental is another valuable mechanism for putting land in the hands of the poor.

It is not an optimal solution in the long run, but it enables them to farm while they work toward a purchase or long-term lease.

The renting-out option also saves farm families from losing their land during periods of illness.
Bangladesh developed an option so small farmers do not have to risk losing their land by using land titles as collateral for loans. Called antichresis in legal terms, it consists of pledging the right to work the land for a specified period (1 year, 2 years) as collateral.
Women often suffer discrimination in access to land or the ability to become owners of land or leases.

It is important that land laws and inheritance laws and family laws be improved so that women have equal rights to land as men do.
There are many possible variations in land tenure systems.

It is important to review land tenure options with an eye to fulfilling the objectives of efficient land use, equity in access to land, poverty reduction, and promotion of environmentally responsible land use patterns.
A case study in land tenure systems and reform: Eritrea
Land tenure decisions in Eritrea traditionally have been made at the village level, but governments from the Italian colonial regime have tried to introduce new rules for land allocation and tenure rights. Traditional systems vary by region of the country.

The traditional agricultural systems consist of the following: dessa (community land); tsilmi and risti (inherited land); gultsi (priesthood land); meriet worki (purchased land); quah mahtse (temporarily idle land); dessa within the tsilmi or inherited land; and dominale, or demaniale, a form of State land.
Constraints and Issues

**Issue:** Land fragmentation is caused by the practice of allocating multiple plots of differing soil quality to a family.

**Recommendation:** Establish equivalences among different agricultural classes of land and when land is allocated offer farmers a choice of more land of lower quality or less land of higher quality, in one plot.
**Constraints and Issues**

**Issue:** The obligatory rotation of usufruct rights under the dessa system, at intervals usually of seven years, undermines incentives to invest in land and protect soils.

(continued)
Recommendation: Work with villages for a consensus on converting dessa usufruct rights into lifetime rights, with the provision that land must be tilled or its right will revert to the village. Propose alternative mechanisms for providing access to land for young families, such as rental and purchase of long-term rights from families in the village who are no longer farming, or access to land in other locations. Consider the option of establishing village funds to help poor young families pay for the rights when existing rights holders do not wish to enter into sharecropping agreements. The aim is that land reallocation would become voluntary, not forced.
Constraints and Issues

**Issue:** Farmers holding land rights under the tsilmi system strongly feel those rights are their own. They have invested in the land in some cases (e.g., dairying) and would be reluctant to give up their rights in any land reallocation.

**Recommendation:** Declare tsilmi rights legal, permanent rights, except if there are landless persons in a village who desire land then existing tsilmi rights holders will give up, once only, *portions* of their lands (in equal proportions adjusted for land quality) to satisfy the applicants. Women would be given priority in such reallocations and inheritance rights equal to men’s. Future reallocations of usufruct rights (as for new families) would occur, as above, via land rental, sharecropping, and purchase of rights within the same village, with the support of a village fund.
Constraints and Issues

**Issue**: Deforestation continues on village common land, mainly because of demand for fuel wood and livestock grazing.

**Recommendation**: Expand the area of forest enclosures and provide villages more definitive forest tenure rights, while undertaking programs to educate villagers on the benefits of better forest management, and promote alternative energy sources including subsidized cooking gas.
Issue: Commercial land concession (lease) lengths vary according to the agricultural activity. This does not encourage productive use of concession land and could require entrepreneurs to re-negotiate the concession length if the activity is changed. Concessions can vary from 10 to 60 years in length.

Recommendation: Standardize concession lengths, at either 50 or 60 years or more.
**Issue**: Herders complain that some commercial land concessions exclude their livestock from lands they formerly grazed on.

**Recommendation**: Formally establish corridors for livestock grazing and access to water in land concession agreements, and develop means to compensate herders for loss of forage rights.