

COLLECTIVE ACTION AND PROPERTY RIGHTS FOR SUSTAINABLE DEVELOPMENT

Strengthening Property Rights for the Poor

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WHO ARE THE LANDED POOR?

Although many of the poor in the developing world are landless, most of the rural poor have some access to land. These “landed poor” remain poor not simply because their holdings are small, but also because their land rights are weak and insecure. The uncertainty they experience undermines their incentives to make long-term investments in their land or use it sustainably. Their land has limited economic value because it cannot legally be transferred. The land users’ weak tenure also limits their political empowerment. To the extent that land users must rely on the goodwill of authorities or landlords for continued access to the land that supports them, their political participation is inhibited by the threats of those who hold power over them.

The landed poor have many faces:

- They may hold the land in tenancy passed from father to son, in which landlordism is a class, caste, or ethnic phenomenon. Tenancy may have its roots in conquest that created subjects as well as tenants of the original owners of the land.
- They may be farmers under a system of leaseholds from the state or a collective and may be deprived of any long-term interest in their improvements on the land, even the homes they have built. Their leases may be full of “development conditions,” opportunities for land administrators to extract bribes by threatening to find violations and terminate the leases.
- They may be land reform beneficiaries whose landholdings, because of neglect, paternalism, or political change, have never been legally regularized. They may be prohibited from leasing out the land even if they are ill or have no oxen to plow, or they may be barred from supplementing their income by working as hired labor. Without documentation, they may be forgotten and, after the settlement scheme authority has gone, vulnerable to land grabs by the powerful.
- They may be users of forestlands that their families have occupied and cultivated for a generation but who are barred from acquiring secure property rights because of its classification as a forest.
- They may hold land under customary tenure systems unrecognized by the state, with no legal basis for resisting the claim of the official or merchant who one day appears on their land with a title document granted by the national government.
- They may be women in societies where land passes from generation to generation in the male line and who only have access to land as daughters and wives. When land allocation decisions are made by men, a widow or divorcee is at the mercy of her husband’s relatives and may be forced off the land or required to marry her brother-in-law to protect the rights to the land she farms.

STRENGTHENING THE PROPERTY RIGHTS OF THE POOR

Despite these different situations, guidelines can help direct efforts to strengthen property rights.

- *Trust land users with stronger property rights.* It may be argued they are not ready, they will abuse it, or they need supervision. But a half-century of experience has shown that owners, responding to the incentives implicit in ownership, produce better land husbandry than paternalistic schemes, which soon sour and often become corrupt.
- *Legislate for stronger property rights.* The state must provide a robust legal framework of rights for land users. Although in weak states the law often has little impact on the ground, an adequate legal framework is a first and essential step.
- *Improved property rights means different things in different contexts.* It may mean co-ownership of land for husbands and wives; empowerment of tenants to buy out their landlords; provision of unconditional, inheritable land rights to settlers; or state recognition that customary, community-based rights stand on a par with land rights created by national statute.
- *Adopt local definitions of tenure security when appropriate.* Adequate tenure security does not necessarily mean ownership in the Western sense. The question should always be: What do rural people need? Modest increases in tenure security can be transformative. Though some systems need greater transparency and accountability, many customary or community-based tenure systems can provide adequate tenure security.
- *Always ask, “Security of tenure for whom?”* Consider which beneficiary is most likely to use the land effectively. Titles are commonly awarded to male household heads, but others may be more likely to undertake investments in the land.
- *Protect common property rights.* The poor often depend disproportionately on common property resources. Some resources used in common, such as wetlands, forests, and pastures, may be secured only by strengthening community property rights. Tenure security is not only about individual property rights, but also about legitimate common property and state rights in some categories of land.
- *Provide for adequate proof of property rights.* In urban and periurban contexts and where rural land is highly valued, adequate proof may entail formal surveys, titling, and registration of holdings. Elsewhere, where land rights are of lower value and transferred largely within the community, adequate proof may involve demarcating community boundaries and empowering local communities to maintain simple but reliable records of individual and family landholdings and transactions.

- *Educate people about their rights in land.* Government agencies, nongovernmental organizations (NGOs), and the private sector, through campaigns and media initiatives, can all help educate people about their land rights. Rights not understood will not be defended, and rights must be defended every day or they will be lost to the powerful.
- *Establish adequate dispute settlement mechanisms.* Rights that cannot be defended against challenges provide no incentives and no security. Adequate mechanisms to settle disputes include adjudication or alternative dispute resolution, in courts or alternative fora, and must be accessible and affordable.

INSTITUTIONALIZING PROPERTY RIGHTS REFORMS

The steps identified here will not be achieved overnight. For most countries it takes 10 years to put successful tenure reform programs in place and another 20 to implement them satisfactorily. There are numerous pitfalls to be avoided in the process.

- *Be politically astute.* Whatever “experts” may see as the advantages of strengthening property rights, politicians often respond to other signals: new revenues from property taxes on rapidly appreciating land values, new political constituencies developed by empowering the previously neglected with property rights, or accommodation of the market-dominant classes by making land a commodity for raising capital. Painful compromises among divergent interests and objectives are needed to achieve reform.
- *Embody new property rights in law.* In times of real sea changes in the political economies of nations, legal reform can be forgotten and reforms processed administratively, without firm legal basis. This approach only invites challenges to new rights later, once the reform is achieved and the political impetus behind it wanes.
- *Exploit all possibilities for legal change.* All avenues, from national legislation to judicial reform through court decision to community-based reform of customs, can be effective on the ground.
- *Constraints in capacity and finance can undermine implementation.* Strengthened property rights systems are costly—they often require substantial state or community investment in systems for survey, adjudication, and titling, for registration of transactions and inheritances, and for dispute resolution. Many a property rights reform has stalled for lack of financial support.
- *NGOs can play positive roles in the reform process.* Nonstate organizations of the marginalized can voice the demands of the poor and press for reforms. Such organizations have skills in areas like rights education and dispute settlement that are vital to implementing reforms.

- *Replacing inadequate property rights systems needs care.* Where an existing system of property rights is judged inadequate, one must be careful in replacing it, particularly where it is culturally embedded. Attempts at reform of customary systems that do not succeed in changing behavior can create confusion and conflict between claims based on custom and others based in national law.
- *Equitable strengthening of property rights is the goal.* The rights of all stakeholders should be considered together. Reforms to strengthen the property rights of one individual or group, especially in customary tenure contexts, should not inadvertently weaken the property rights of others.
- *Be alert for unintended consequences.* Even well-conceived reforms can be hijacked by the powerful. A classic case is the appropriation of common areas by the powerful as land titling approaches, depriving the poor of a resource upon which they rely. Vulnerable groups are often unrepresented in local implementation authorities, and mechanisms must be built into the implementation process to ensure their participation in reform processes and reform benefits. And enactment of reforms of tenancy systems can, if enforcement is weak, lead to the expulsion of tenants from their holdings by angry landlords.
- *New property rights alone are insufficient.* Property rights reforms, particularly those seeking to strengthen the marketability of land rights, may be unable to achieve their goal when credit markets are badly distorted and the credit supply system is in its infancy.

CONCLUSION

Strengthening the property rights of the poor is a complex project. The landed poor are a heterogeneous group who hold rights to their landed assets in diverse and complicated ways. Efforts to increase the security of their tenure need to be sensitive to the specific circumstances that characterize each case, the existing legal conditions, the strength or weakness of available financial and property registration systems, the needs of each group of stakeholders, and the possibilities of unintended consequences. Common property rights must also be protected. ■

For further reading see **World Bank, *Land Policies for Growth and Poverty Reduction, Policy Research Report* (Washington, DC: World Bank, 2003); Krishna B. Ghimire, ed., *Whose Land? Civil Society Perspectives on Land Reform and Rural Poverty Reduction* (Rome: Popular Coalition to Reduce Hunger and Poverty, International Fund for Agricultural Development, and United Nations Research Institute for Social Development, 2003); Camilla Toulmin and Julian Quan, eds., *Evolving Land Rights, Policy, and Tenure in Africa* (London: Department for International Development, Natural Resources Institute, and International Institute for Environment and Development, 2000).**

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