

RECOMMENDATIONS

- ✓ Use participatory, transparent and inclusive processes to develop a grounded understanding of tenure rights and responsibilities associated with livelihood strategies of vulnerable populations.
- ✓ Avoid undermining tenure security with inefficient bureaucratic land administration. Complicated laws on land titling; unclear jurisdiction of various agencies; and differing systems/processes of land measurement, mapping, valuation and titling can create conflict.
- ✓ Support procedural rights to uphold the capabilities and adaptive capacity of local communities.
- ✓ Acknowledge and redress the conflicts caused by historical dislocations and establish processes for restitution and compensation.
- ✓ Use current customary patterns as the basis for generating and reforming legal frameworks that are flexible and responsive to changing conditions. There is no need to codify the layers of customary rights only well understood by those local groups who exercise these rights under local institutions.

STRENGTHEN TENURE SECURITY

Strengthening tenure security to land and natural resources can help stabilize vulnerable populations and thus reduce conflicts during climate change adaptation as well as increase investments in the management of land-based resources, thereby building adaptive capacity. Formalizing tenure rights is an essential foundation for vulnerable populations and indigenous peoples to exercise their civil, social, cultural, political, and economic rights, to maintain and build adaptive capacity, and to contribute to local, national, and global sustainable development.

Land is strongly associated with the livelihoods and adaptation strategies of rural communities and peri-urban communities everywhere.

Insecurity of tenure contributes to the climate change vulnerability of hundreds of millions of people who lack official tenure protection under statutory law and titling. This constitutes significant land and resources in Latin America, Asia and the South Pacific, and as much as 90% of land in Africa. The associated negative social and environmental implications are immense:

- Insecurity reduces the kinds of choices, particularly the investments, people feel able to make. This has direct implications for the adaptation risks they take.
- The loss of access to land through adaptation activities, such as dam construction and conservation projects, can lead to deteriorating social relations and conflict.
- Women and children are a particularly vulnerable subset of these affected populations, who due to the 'informality' of their rights and lack of power are poorly compensated when they lose access to land resources.
- The rights of rural people to the natural resources on which their livelihoods depend are often vulnerable to outsider interests or practices.

Governments can improve the tenure situation that vulnerable communities find themselves in by protecting and fulfilling Human Rights conventions. This includes integrating the rights outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in development and adaptation activities to bolster legitimacy and create new opportunities for vulnerable people. This can help avoid creating tensions by privileging one group of people over another.

Tenure refers to relationships between people in relation to land and other natural resources. This is often described as ***bundles of rights*** to access and use resources. Tenure includes the right to exclude others.

Tenure is insecure when there is a perceived probability of losing specific rights in land such as the right to cultivate the land, graze, fallow, and transfer through sale, rent or inheritance. Rights at risk also include rights to access and manage sacred areas, traditional rights-of-way, forest products, fishing and hunting. In contrast, the lack of tenure security can lead to free-for-all competition to extract benefits over the short term.

Vulnerabilities often increase when a population lacks the rights to exclude powerful outsiders. Rural and peri-urban land and natural resource rights are at risk from:

- ✓ claims by other sectors of society including settlers, agro-industry, resource-extraction industry and biodiversity conservation
- ✓ insecurity from regional armed conflicts and economic uncertainty. Refugees, migrants and others swell the ranks of these vulnerable populations who are often already struggling to survive in stressed environments
- ✓ weak rights to exclude others and determine management and use priorities.

Addressing tenure matters to avoid exacerbating conflict and insecurity

Climate change and the responses to it can aggravate the existing vulnerabilities associated with inappropriate and insecure tenure regions, further magnifying conflict and insecurity.¹ The following stand out:

- ✓ **Water is increasingly associated with land conflicts and overarching political tensions.**² The Intergovernmental Panel on Climate Change (IPCC) estimated that in Africa by 2025, 50% of the population will live in areas of water scarcity or water stress.³ This will result in new governance challenges. Although most African states cooperate successfully around water, this has also been a point of conflict. This ranges from transboundary violent conflict in Cameroon and Nigeria over Lake Chad, legal action between Namibia and Botswana, and political tensions in the Nile Basin Initiative. Competition for water rights for agriculture and alternative energy lead to the development of dams and river deviation, often to the disadvantage of vulnerable groups such as pastoralists. These initiatives might be taken counter to environmental and social impact assessments as in the case of the Zimbabwe-Zambia Batoka Gorge.
- ✓ **Growing pressures for food and fuel production to meet increased market demand exacerbates climate change impacts by leading to increased demand for land.** Investors often take advantage of the lack of legal protection for local communities to force already vulnerable and indigenous populations off their lands. In many localities, including at the Chisumbanje biofuels initiative in Zimbabwe, this has fuelled conflict.
- ✓ **The rising economic value of minerals and petroleum is contributing to tenure insecurity,** conflict and related human rights abuses,⁴ reducing the capacity to cope with adverse climate changes.
- ✓ **Climate change mitigation policies that criminalize traditional resource management,** including slash-and-burn agriculture and other activities of vulnerable populations are increasing tenure insecurity.⁵
- ✓ **Incentives for tree plantations for carbon sequestration, biofuel schemes, forest carbon rights assigned to others, and financial mechanisms or transfers that provide incentives, subsidies or loans for biofuel production, and the creation of new protected areas for biodiversity increase the value of forested land to others and thereby increase the tenure insecurity of vulnerable populations who depend on those lands.** Estimates have placed the global number of people displaced by conservation at 130 million.⁶ If the people currently 'illegally' using protected area resources had their resource access restricted, the number of conservation refugees would run into the hundreds of millions.

Increasing tenure security reduces conflict over land, water, and other resources, enhancing chances that adaptation plans and investments will produce positive results. For example, indigenous territories with tenure security are more effective than other protected areas in preventing deforestation.⁷

Globally there have been important successes in promoting tenure security

1. The promotion of freedom of information has opened doors for reforming processes that enable vulnerable populations to exercise their legal rights after new policies are put in place, and has also improved transparency. The 2006 Forest Rights Act in India recognizes tribal rights to forested territories in contested regions. Hundreds of thousands of Right to Information applications have revolutionized transparency in the implementation of laws and yielded real changes in land rights and reduced conflicts for many vulnerable populations.⁸
2. Dialogue bridges differing interests and increases tenure security. With the Australian National Water Commission's support, the Indigenous Community Water Facilitator Network acts as a catalyst to ensure that indigenous interests are incorporated into water policy decisions, management plans and water allocations. This has strengthened tenure security to water and worked to reduce conflicts that were exacerbated by unbundling water rights and putting them onto the market.⁹
3. Collaboration among different vulnerable populations can increase tenure security and reduce the likelihood of conflict. When the Inter-American Commission on Human Rights mediated negotiations with the Argentine government to assign lands rights to indigenous peoples, Lhaka Honat, the indigenous organization, wanted to share the land awarded to them with their neighbours who are more vulnerable than they, in order to prevent conflicts. This was achieved by assisting non-indigenous settlers to develop a representative organization with which the indigenous organization could negotiate.¹⁰
4. Community registration of community title to use and manage rangelands can reduce conflict and set a basis for negotiation. In Afghanistan, where rangelands are public lands and pastures are the principal focus of conflict that affect people, community registration of records of communities' title has reduced conflict in several jurisdictions and enhanced investment in restoration of degraded areas.¹¹
7. Formalizing customary cattle corridors common in Africa, the Near East and South Asia can help reduce conflicts. Pastoralists face particular climate-related risks and conflicts that set them apart from agricultural communities; increasing their tenure security requires a strategy that bridges both sets of risks. They are also particularly vulnerable to land conversion. In Niger, the participatory mapping and legal recognition of a pastoralists' corridor has reduced conflicts and reduced the vulnerability of pastoralists.¹²
8. Constitutional recognition can create new opportunities. Across Latin America, indigenous peoples and Afro-descendants have won constitutional recognition of their rights and collective territories by incorporating ILO Convention No. 169, thereby reducing their tenure insecurity in the cases where administrative processes have not created barriers, and laws are enforced.¹³

Customary tenure patterns can be used to generate legal frameworks, in which local institutions guide the internal division of property within the groups' territories, including family rights to agricultural fields and rights to grazing, fishing, and forest areas. Often it is recognized that rights to access of a particular place or resource may be overlapping, depending on season and/or other factors such as age, gender, lineage, and ritual knowledge.

There is no need to codify the layers of customary rights only well understood by those local groups who exercise these rights under local institutions. The titling and sale of land on which customary rightsholders live or have claim can result in their forced removal and loss of their tenure rights, increasing their vulnerability to climate change.

Over 100 national constitutions have provisions recognizing customary law as a basis for taking action.¹⁴

Characteristics of recommended approaches include:

- Informed participation and transparent information
- Non-discriminatory
- Respect culture and traditional processes for management and transfer of rights
- Acknowledge history, including colonial displacement, open to restitution
- Open to diverse approaches united under coherent umbrella
- Build and sustain broad public support for the long road, sustaining political will.

Policy Pointers

A key factor to consider is racism, an often unspoken factor that can seriously hinder or undermine efforts to improve the tenure security of vulnerable populations vis à vis more powerful sectors. In many regions, racism maintains those power imbalances that create vulnerability, with former slave populations, indigenous people and minorities bearing the brunt. Tenure insecurity enhances the power of those who benefit from unfettered access to the unsecured resources of vulnerable peoples.

Land tenure reform can create more conflict if not done with careful attention to issues and local limiting factors, including those identified by local people when they produce their own long-term plans for development. Indigenous and tribal peoples are among the most vulnerable groups and they can be negatively impacted by land-titling and property-rights projects if their issues and interests are not appropriately addressed in the design and implementation of projects, laws, and policies. When land redistribution and registration programmes fail to take into account pre-existing indigenous rights, agrarian reform pushes poor farmers into indigenous lands, and farmers and indigenous peoples are left to fight over weak rights.

Additional complications arise if 'uncontacted' indigenous peoples are living in areas over which private titles have been issued, because their ability to represent themselves does not fit established processes for resolving claims and compensating private holders whose lands are returned to indigenous peoples in accord with established domestic laws, norms, and regulations.

Imposition of statutory law and inappropriate devolution may threaten indigenous peoples. If legal rights are devolved or created without taking customary systems into account, or those rights fail to embrace legal pluralism in appropriate ways, conflict ensues. When statutory rules are imposed over customary law and practice, existing customary systems are undermined, creating a tragedy of open access that marginalizes indigenous peoples and other vulnerable populations.

It often takes a generation to make change. For example, ten years after the passage of the 1997 Indigenous Peoples' Rights Act (IPRA) in the Philippines recognizing indigenous land and sea rights, only 20% of the eligible area had been awarded to indigenous communities and very limited development activities in support of the Ancestral Domain Management Plans had been undertaken.¹⁵

End Notes

1 Alcorn 2012

2 Boelens 2009

3 Boko et al 2007

4 RRI 2012

5 Colfer et al 2014

6 Brockington and Igoe 2006

7 Hayes and Ostrom 2005

8 Singh 2010

9 Strang 2012

10 Alcorn et al 2010

11 Stanfield et al 2010

12 ILC 2012

13 OAS 2009

14 Cuskelly 2011

15 ANGOC 2010

Author: Janis Bristol Alcorn is Chair of the IUCN CEESP Theme on Governance, Environment and Rights (TGER), and Director Country and Regional Programmes at the Rights and Resources Initiative (RRI) in Washington DC.

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