

For discussion with Inter American Development Bank staff
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Guidelines for Strengthening the Administration of Property Rights in Land

ABSTRACT

Conflicts over property rights in land rank as a prime source of political instability around the world. Without equitable, transparent land and resource management policies integrally built into governance and development strategies, individuals lose hope. Instability escalates to crisis, threatening business, government and individuals. This document proposes a three-part initiative of research-training, public consensus building and program implementation to deal with property rights issues for nations in crisis. The careful balancing of policies to encourage access to land by disadvantaged sectors, with policies to improve land markets and policies to protect land resources is essential to a stable world.

1. OBJECTIVE

This paper attempts to provide some guidelines for discussing at an Inter-American Development Bank (IDB) Workshop on the best-practices of execution of programs affecting the administration of property rights. Special emphasis is on discussing operational/practical lessons on how to achieve a higher level of socio-economic and environmental impact through investments in property rights administration.

The historical processes of population growth, urbanization, expansion of market economies, democratization and the attempt to create environmentally sustainable development are now the main drivers of change in the ways that people connect with the land

2. PROPERTY RIGHTS ADMINISTRATION

Property rights in land are critically important to the proper functioning of societies. Stability and certainty of property ownership and associate rights form the foundation of financial and political security. The successful administration of property rights manages to balance the three competing imperatives of providing access to land by the disadvantaged, improving security by which land is held, and protecting land and water resources.

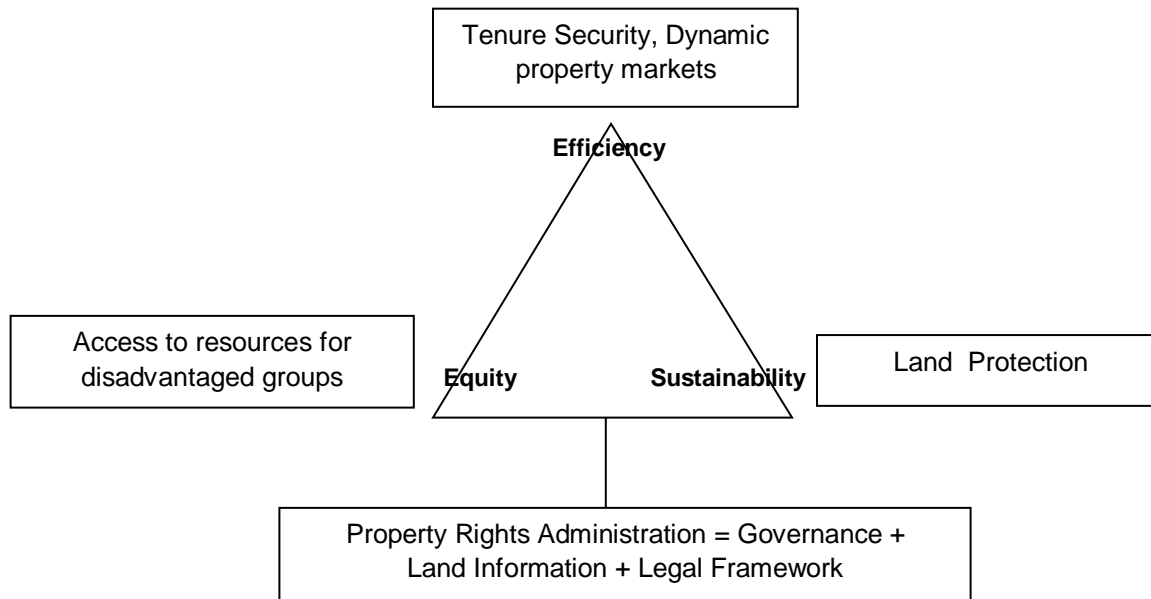
Changing and conflicting definitions of property rights in nations in crisis form a fertile ground for the roots of terror and war to sprout into violence and destruction. Property rights issues are emerging in response to rapid population growth, urbanization, distorted expansion of market economies, feeble democratization, and environmental crises as water shortages and land degradation spiral out of control. Policies and programs to deal with the property rights expressions of these trends often focus on a single element in the puzzle, when only a broader strategy can be successful.

Property rights administration institutions have to find ways to balance the often-competing demands of three policy imperatives:

1. Where market oriented economies are weak or just emerging, one imperative of land administration is: make the exercise of land rights more secure, by improving formal titles and the tradability through such efforts as the massive privatization programs of the former socialist countries and the titling, registry-cadastre modernization, and land market programs of nearly all market-oriented countries. These efforts support the goal of economic efficiency of use of land and buildings and the linking of capital to these assets through mortgage markets. Political movements deriving from concerns with the environment and from the demands of disadvantaged frequently challenge these programs.
2. Where the land and water resources are degraded or are being dangerously degraded, a second land policy imperative is to improve the environmental management and protection of land resources. Improving environmental conditions through restrictions on the use of the land resources, however, has often run into ethnic conflicts at the local level and the economic interests pressuring for more exploitative uses of the land. The fundamental task is to help populations work out agreements over natural resource exploitation which are sustainable through a mixture of community resource management, alternative income sources, enforcement mechanisms and conflict resolution techniques. Such programs often restrict the rights of land owners, limiting the scope of their “ownership”. Such programs also often restrict the access of disadvantaged and privileged groups to land and water resources.
3. Where the gap between rich and poor, or between one ethnic group and another, or between patriarchal social structures and those desiring greater gender equity, the third imperative is to improve the access to land by disadvantaged groups (the poor, women in some regions, ethnic groups, refugees). Agrarian reforms and land banks have been used to shift the management of land from “latifundistas”) to peasant farmers. Affordable housing program are directed toward the poor. Women’s rights in land are secured through education and legal programs. Such programs tend to support the goal of social equity in land management. However, this trend has encountered strong resistance from the ethnic and economic groups that could be obliged to share some of their privileges with the disadvantaged groups to be favored. Also, where political opposition to asset redistribution is strong, opening up forests and other fragile eco-systems for human settlement in order to provide access to land for the landless is very tempting, and in conflict with conservation programs.

Balancing these imperatives is mediated by the capacities of local and central government and civil society for defining and resolving property rights issues, the availability of information about land use and property rights and the legal framework (formal and informal) that brings some predictability into the ways people react to the implementation of the often competing property right’s imperatives. See Figure 1.

Figure 1. Triangle of imperatives in property rights administration



This trio of policy imperatives revolving around property rights creates compelling new challenges for land administration institutions at the national and local levels to mediate among the diverse interests in land. The nature of the challenge varies from place to place.

The foundation of property rights administration is comprised of three elements:

- 1) the capacity to govern, to incorporate diverse interests in dialogue and design of programs to resolve priority issues,
- 2) the availability of suitable information about the capabilities and use land and the holders of rights to the land, and
- 3) the legal framework, the rules which the society devises to handle the competing property rights imperatives, including formal expression of these rules in laws and regulations, as well as the customs which people devise about the exercise of property rights and the responsibilities of the holders of these rights.

3. Regional Differences

The character of the challenges to land administration and management varies from region to region:

- In Latin America, the state-led agrarian reform policies of the 1960s and 1970s aimed to re-structure the management of agricultural land by increasing the medium and small scale private holding of agricultural land through state acquisition of large estates and the re-distribution of land to the peasant sector. These programs have largely been abandoned, with the notable exception of Brazil. In their wake an enormous amount of activity is occurring around land administration programs, such as tenure regularization, land titling and property registry modernization. Indigenous land claims in

some countries have re-surfaced where the historic claims of indigenous communities conflict directly with the claims of the present holders of the land. Parallel efforts in Latin America to establish environmental zoning, manage urban expansion and control deforestation, however, have meshed poorly with the trend toward marketization of individual rights to land and the adjudication of indigenous land claims.

- In the Caribbean, to support the stimulation of the land market, the governments of these countries are embracing legal, institutional and technical reforms which seek to make the land administration systems more market responsive and efficient. In some countries the substantial public ownership of land and the inefficient leasing institutions clash with the increasing demands for land for housing, tourism and for organically produced food. In most countries the land development and control laws and institutions are under substantial pressures as the population grows and combines with the interests of land developers to overwhelm the efforts to protect fragile environments and water resources. The ultimate purpose of these reforms is to build and diversify the economy while addressing social and environmental issues; primarily the need for low income housing and to protect environmentally sensitive and reserve areas. Each of the countries presented has turned to the international donor community for assistance to complete projects that aim to improve land administration.
- In the U.S., these trends are seen in the rise and impact of the “Wise Use”/private property rights movement and increased conflicts over urban sprawl, the establishment of environmental greenbelts around cities, and resource management decisions for public lands. Tension between the goals of environmental sustainability and land access are seen in the clashes between anti-sprawl activists and affordable housing advocates. The assertion of indigenous land rights in North America is another area of controversy among competing goals in land administration.

4. PROPOSED PROGRAM APPROACH

In many countries, the administration of property rights has broken down, while in others the capacities for managing the contradictions of competing imperatives need strengthening. Rights to land can be uncertain and insecure, society becomes polarized into the propertied and the property-less, and land resources spiral downward into degradation and waste. Laws related to private and public property can be vague, undemocratic, and biased and it is difficult if not impossible to receive basic information about how land and natural resources are used, and by whom. Land records are incomplete and/or inaccurate, boundaries are disputed, and neighbor challenges neighbor for access to land, water, and other natural resources. Disadvantaged groups lack rights to property depriving them of the fundamental source of economic and political power in a democratic society.

Lack of land access for the disadvantaged, insecure property rights (for both private and common property resources), and the degradation of land resources are fundamental factors in perpetuating underdevelopment and poverty which lead to social conflict and foster extremist movements. Conflicting and unclear property rights to natural resources contribute to the viscous circle of environmental degradation and under-development. Neglect of the social agreement over property rights creates flash-points for tribal, ethnic, class and religious tensions to ignite. Governments are often unable to resolve these property disputes, much less address their root causes. For many people, these conflicts are not settled in courts but with violence that frequently expands internationally.

These conflicts while latent create disincentives for investments and pressures for the more capable people to migrate in search of opportunities. When conflicts erupt they create violence which may lead to internal destabilization and sometimes civil war. These conflicts can spill over international borders and destabilize regions.

Countries affected by ethnic violence, civil war, and post-conflict instability such as El Salvador, Nicaragua, Honduras, Guatemala, Colombia, and Haiti are the more extreme cases of collapsed property rights administration. Tensions around property rights issues are mounting in Brazil, Ecuador, Peru, Panama, Jamaica, Trinidad and Tobago, Belize, Suriname, and Argentina. Past conflicts and new challenges around property rights continue to weigh on the social contract in Chile, Costa Rica, Mexico, and the US. All countries have to continually respond to challenges of changing economic, political and environmental conditions to re-define the ways to provide land access to the disadvantaged, security of property rights and resource sustainable. In some countries these issues are extremely salient, especially in post conflict situations, in reconstruction/reconciliation in order to manage the needs for shelter and livelihood for demobilizing fighters, internally displaced persons, repatriated refugees, vulnerable minorities and the general population. Failure to do so risks the creation of "failed states" which permit arms trafficking, the drug trade, kidnapping and terrorism to flourish, or the perpetuation of the conditions which created the initial conflict. Yet resources are rarely deployed to resolve such disputes until problems balloon into a crisis.

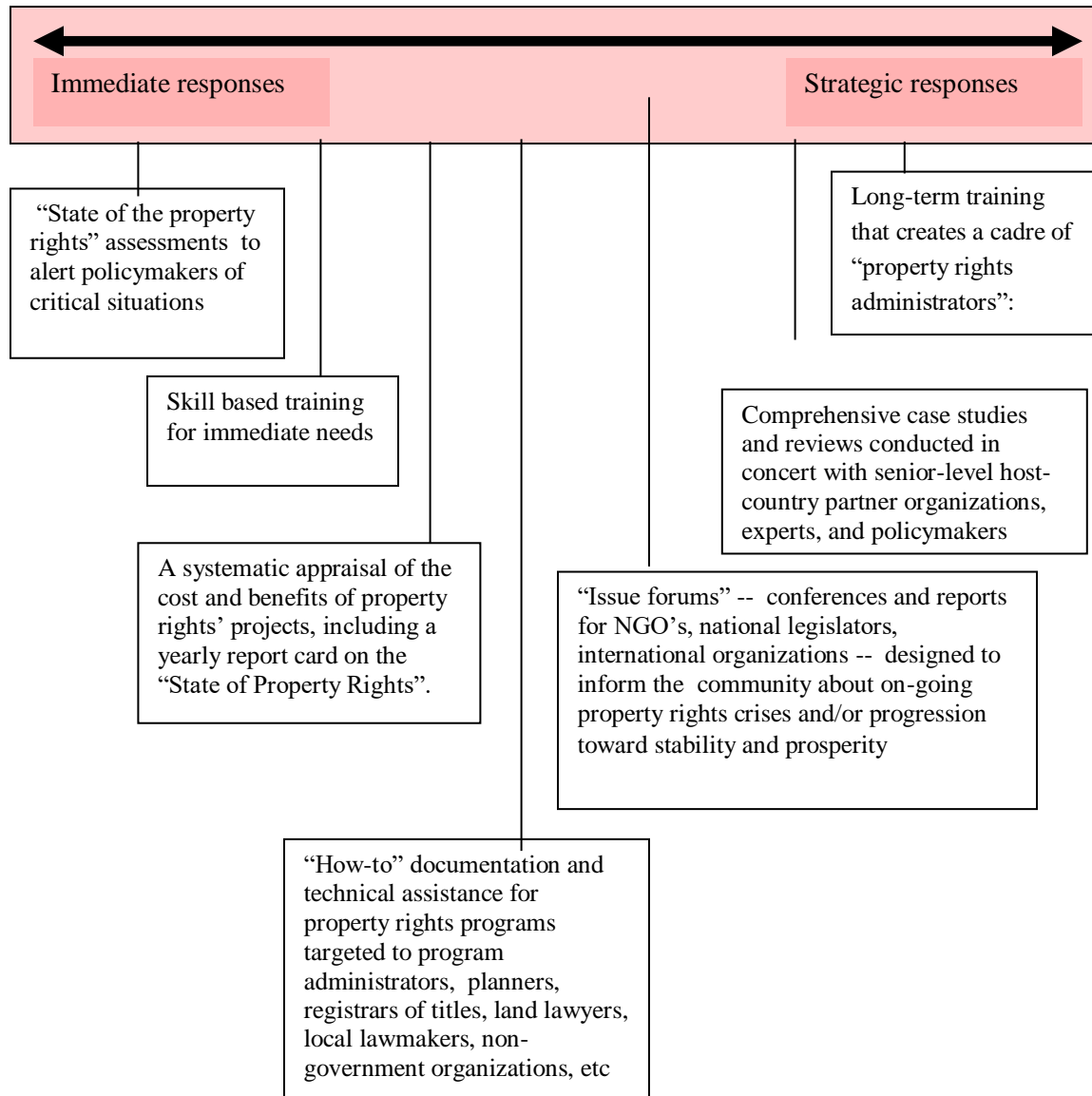
In the context of today's globalism, such property rights crises are almost always costly to citizens of countries where such crises are being managed relatively successfully. Now is the time for a thoughtful and strategic approach to investigating the precise causes of seemingly insoluble property rights issues, and then the fashioning of programs for a new equilibrium among the competing property rights imperatives.

Essentially, what is needed is a commitment to work cooperatively on the "human capital" side of international development. By this term we mean the systematic improvement of knowledge about complex property rights issues, the preparation of new generations of people capable of dealing with these issues.

5. Illustrative Set of Objectives and Activities for Improving Property Rights Administration

Millions of dollars of emergency aid is not the solution for the property rights crisis. A thoughtful, comprehensive and well adapted programs to local conditions are needed the contains both immediate response and long term solutions so that nations and people in crisis become secure and prosperous.

The building blocks of a capacity building program for improving property rights administration can include:



A stable balancing of property right’s imperatives in particular places at specific times that leads to prosperity – whether in the US or Europe, or in any one of hundreds of countries across the globe – is fundamental to a global stable economic and political system. This comprehensive and adaptable approach, with integrated elements of immediate and strategic responses, provides a way that ever-

changing property rights issues can be addressed, understood and balanced for the benefit of all peoples and all nations in crisis.

The broad question is: how can countries effectively re-orient property rights administration institutions to achieve broad goals of economic development, social equity and environmentally sustainable development under the pressure of competing agendas and policy imperatives to property rights in land?