

A STRATEGY FOR ADDRESSING PROPERTY RIGHTS ISSUES¹

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 provides an outline of a response to these crises in property rights. 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 for a successful future of humans on our planet earth.

1. PROPERTY RIGHTS IN CRISIS

Property rights in land are critically important for the functioning of societies. Stability and certainty of property ownership and associate rights form the foundation of financial and political security. In many countries, however, property rights are in crisis. As rights to land become 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 are often vague, undemocratic, and biased. It is often difficult if not impossible to find basic information about how land and natural resources are used, and by whom. Land records are often incomplete and/or inaccurate, boundaries are often disputed, and neighbor often 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. 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 issues, even where 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.

For nations struggling to return to stability, three of the key tasks in post-conflict reconstruction are land access, clarification of property rights, and the protection of the land and water resources.

2. PROPERTY RIGHTS ADMINISTRATION

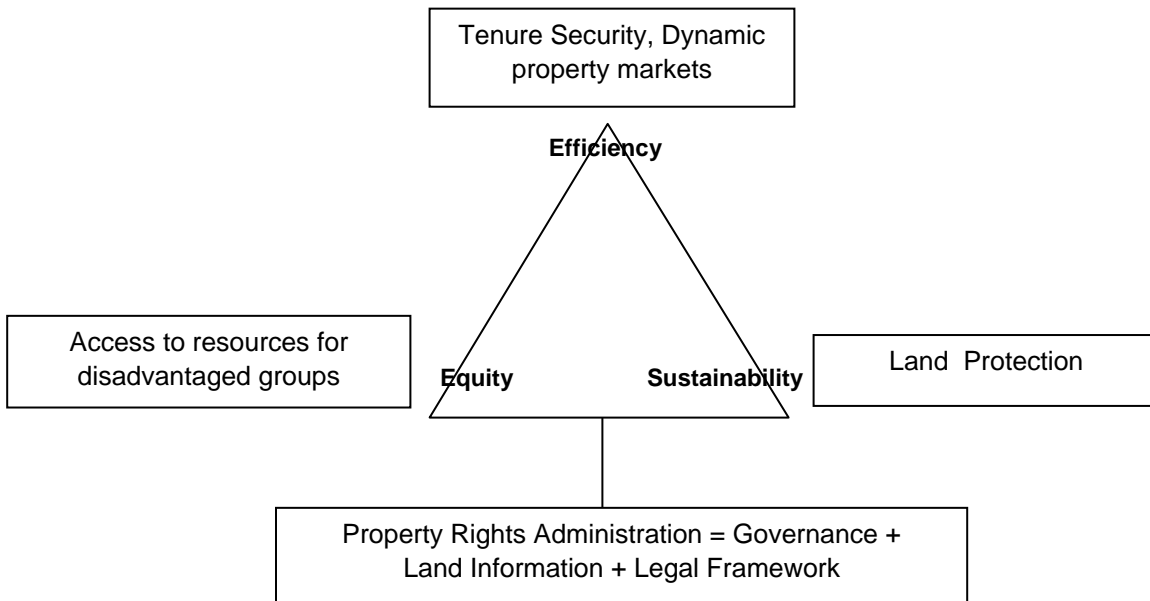
¹ This paper is a summary of discussions at the Land Tenure Center, University of Wisconsin, as well as experiences of Terra Institute projects.

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 in these conditions often focus on a single element in the puzzle, when only a broader strategy can be successful. Cases of successful administration of property rights somehow manage to balance the three competing imperatives of improving security by which land is held, protecting land and water resources, and providing access to land by the disadvantaged:

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 those benefiting from patriarchal social and legal structures and those desiring 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 programs 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 economic and political interests in dialogue and design of programs to resolve priority property rights 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. Illustrative Set of Objectives and Activities for Improving Property Rights Administration

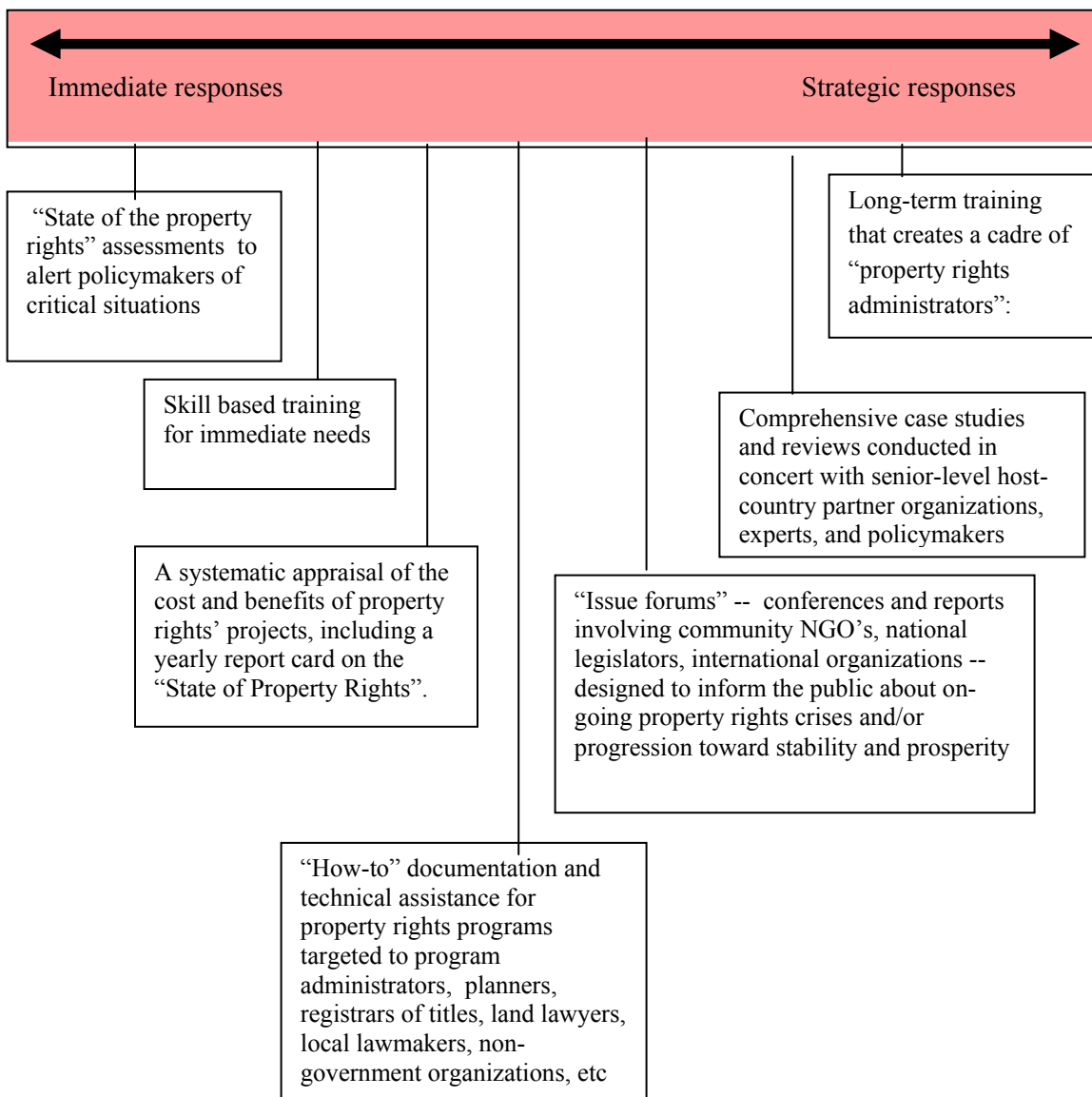
Allocating millions of dollars of emergency aid is not the solution for the property rights crisis. Thoughtful, comprehensive and well adapted programs to local conditions are needed that contain both immediate response and long term solutions so that nations and people in crisis become secure and prosperous.

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?

There is no single formula to answer this question. Countries engage in programs to deal with the property rights crisis in a variety of ways, with a variety of objectives, such as:

- ▶ clear and formalized land rights;
- ▶ robust and more marketable land tenure instruments;
- ▶ practical and enforceable regulations on land use land rights;
- ▶ modern, affordable and accessible public land administration services, especially the legal recording of rights to land;
- ▶ affordable access by the disadvantaged to land for housing and food production;
- ▶ reasonable and achievable building regulations for low-income housing;
- ▶ protection of fragile environments.

People have to identify the roots of the property rights crisis in their countries, and then devise solutions and implement them. People have to have the capacity for such actions. 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 is fundamental to a vibrant, just and sustainable global economic and political system. Continual strengthening of the capacity for this successful balancing competing property rights imperatives in particular places and times is an investment of crucial importance.