A QUADRANT APPROACH TO LAND TENURE RIGHTS: WHAT ABOUT NON-LEGITIMATE BUT LEGAL RIGHTS?

JAAP ZEVENBERGEN
PEOPLE AND LAND

- People access land in many ways
  - For long and short times
  - By just ‘taking’ it (possession), within or without societal approval
- Land tenure forms emerge according to scarcity
  - People start to have opinion on others’ relation to land
  - Rules of ‘management’ as well as ‘access’
- Thus:
  - Land tenure is a **person-to-person**-to-land relationship
HISTORY OF LAND RIGHTS

- Formal land rights primarily to protect interests of the powerful
  - see way in which colonial governments declared much State land
  - codification of law in broader context (e.g. Code Napoleon 1804)
  - such codes or principles of ‘common law’ exported to areas under rule
HISTORY OF LAND RIGHTS

- Poor migrating to cities do not get ‘formal’ access to land:
  - they have to squat, invade, develop without permission → informal settlements/slums
  - enforcement absent or weak
  - because of lack of alternative and long time silence of government → legitimate land claim
  - location might be unsafe or inappropriate for organized urban fabric
  - relocation under strict conditions (participation, compensation, alternative livelihood)
HISTORY OF LAND RIGHTS

- Land reform
  - more equitable distribution (with/out all land owned by state in trust for the nation)
  - implementation not always easy
  - customary and/or informal realities often continue
  - information needed for fair (re)distribution
  - saves a lot of trouble later if (re)distribution leads to registered and updated right from day one (unlike much of Eastern Europe)
LAND TENURE

- Land tenure is the way in which interests are held in land.
- The legal or customary relationship among people with respect to land and natural resources.
- Land tenure rules and systems define how these interests are allocated and who can use them.
- These rules vary in their legal recognition.

- VGGT recognize all legitimate tenures
## LEGAL VS LEGITIMATE (SEE VGGT)

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<th>Legitimate</th>
<th>Non-legitimate</th>
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<tbody>
<tr>
<td>Legal</td>
<td>Law followed in letter and spirit; usually documented via titles</td>
<td>Law followed in letter but not in spirit; titles gotten via unethical processes</td>
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<tr>
<td>Extra-legal</td>
<td>Societal and/or historical accepted access to land; no (official) documents</td>
<td>Criminal land access</td>
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HISTORY OF LAND RIGHTS

- Existing documents base for ‘conversion’
- Verify against laws and regulations that existed when right and document came into being
- Might need ‘transitionary’ law to make fit a/o adapt to new land policy and legislation
- Boundaries might have ‘moved’ a bit

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HISTORY OF LAND RIGHTS

- ‘Rights’ are based on a poisonous root; and are likely not to be established purely legal
- If evidence of unethical processes can be given, the right and title should be ‘revoked’
- If sold to others who did not know, it becomes tricky; two ‘legitimate’ claims are competing

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HISTORY OF LAND RIGHTS

- Need to be accepted according to the VGGT
- Also need to be (officially) documented (VGGT)
- Multiple sources of evidence should be allowed
  - verbal (by local leadership, neighbours), documents linked to utilities/taxes, (aerial) photos proof presence
  - (informal) participatory maps might exist
- Adverse possession / prescription rules apply

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HISTORY OF LAND RIGHTS

- Should not be recognized
- Enforcement should be applied; if not for longer time than it becomes ‘legitimate’

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WAY AHEAD

- Good Land Administration
  - Availability of enough and updated land information
- Good Land Governance
  - See CFS/FAO Voluntary Guidelines on Governance of Tenure (VGGT) (2012)
  - ‘Principles of implementation’:
Principles of Implementation (VGGT)

- Human dignity;
- Non-discrimination;
- Equity and justice;
- Gender equality;
- Holistic and sustainable approach;
- Consultation and participation;
- Rule of law,
- Transparency,
- Accountability,
- Continuous improvement
THANK YOU FOR YOUR ATTENTION

Jaap Zevenbergen