

FIG WORKING WEEK 2019

22–26 April, Hanoi, Vietnam



"Geospatial Information for a Smarter Life
and Environmental Resilience"



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Initial insights on land adjudication in a fit-for-purpose land administration

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Contents

- Land adjudication
- About the study
- Theory of collaborative governance
- Results: Adjudication in a Fit-for-purpose (FFP) and pro-poor land administration (LA)
- Implications & points for future considerations

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LAND ADJUDICATION

- Land adjudication is a process by which all existing rights in an area are finally and authoritatively ascertained
- Legal frameworks for adjudication define actors, roles and procedures prior and during the adjudication activities
- The processes involved in the determination and definition of legal rights for registration must be understood because once registered, the right normally becomes valid

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Land adjudication does not create rights, it only establishes existing rights

- However, legal frameworks on adjudication process tend to be restricted to land tenure that is based on individual/Western parcel-based statutory tenures, and thus has difficulties catering for other forms of land tenure
- Why? in many countries rights to land are often:
 - complementary (e.g. when different parties share the same interest in the same parcel of land (e.g., when members of a community share common rights to grazing land, etc.), or
 - overlapping (e.g. when several parties have different rights to the same parcel of land e.g., one party may have lease rights, another may have a right of way, etc.)

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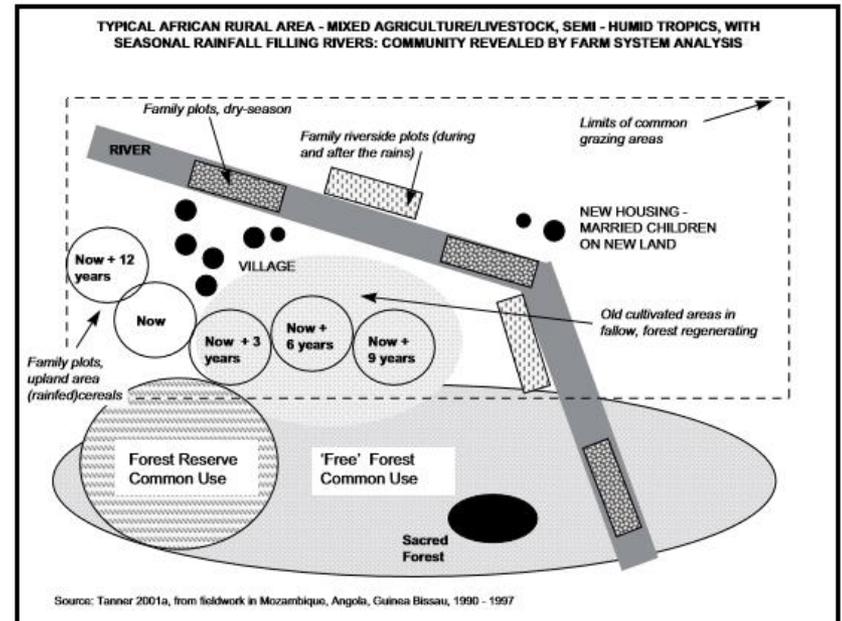
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A complex set of tenure arrangements out there

- A typical customary setting consists of a complex set of tenure arrangements/land rights, which may coexist and also shift from time to time



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Research problem

- New approaches for documenting land tenure have emerged in recent years, with emphasis on using participatory approaches for recording not only legal but also social tenures using quick and affordable approaches
- New approaches for tenure documentation facilitated by organizations outside government i.e. NGOs, iNGOs, CBOs etc.
- As of yet it is unclear how these organizations capture social tenures, including the multitude of land rights that may exist in an area – for example where land rights overlap or complement each other.

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Research objective

- This is a preliminary study aiming to find out how the adjudication process is conducted in the context of FFP (and pro-poor) LA, giving special attention to how overlapping land rights are documented

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Methodology

- Exploratory method, helped examine and gain insights on the nature of adjudication in a FFP and pro-poor LA context.
- Executed in 3 phases
 - develop a framework for land adjudication in FFP and pro-poor land recordation setting;
 - **describe the processes** used by organizations to achieve those components
 - develop initial ideas on how the idea of land tenure is framed (ownership and non-ownership) and how this influences the outcomes (what is eventually recorded). Factors that enable or hinder the framing or the adjudication process and their implications are also discussed.
- Theory of Collaborative Governance used to explain results.

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Phase 2: describe the processes used by organizations to achieve those components

- Study drew lessons from organizations implementing tenure recordation activities in their various contexts. Criteria for selecting the organizations responding to this study are:
 1. They are non-state actors e.g. NGO, iNGO, CBO or other
 2. They support or conduct tenure recordation activities with communities
 3. They use participatory approaches when conducting land recordation activities
- Questionnaires were sent to 11 organizations. Five (5) responded.
- Results from the 5 organizations were combined, categorized and discussed based on the theory of collaborative governance i.e.
 1. Participants arena
 2. Process for collaboration arena
 3. Content of collaboration arena

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Theory of Collaborative Governance

- This theory describes the **process of collaborations** between **public actors** and non-state, semi-state or other state **stakeholders** in a collective **decision-making** that is formal, consensus-oriented, and deliberative when implementing new public policy or manage public programs.
- In describing the kinds of power held by participants in collaborative processes, Purdy (2012) reveals that power can be exercised structurally and relationally and suggests that **'3 arenas' of power** come into play, which influence process design for collaboration:

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Three arenas of Power in collaborative governance

- **Participants arena:** Participants describe who is involved in a collaborative process and who leads it.
- **Process for collaboration arena:** describes the where, when, and how of collaborative governance, influencing the **nature of interaction** and the **modes of communication** and **decision making**.
- **Content of collaboration arena:** this is about **setting the agenda** and **establishing expectations regarding outcome of the process**. Agreements in this phase will reflect in the outcomes, as the interpretations that people use to identify issues and understand alternatives are closely linked to the success of the process

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Results: Adjudication in a FFP and pro-poor LA

- Five 5 components of adjudication were identified
 - **Mobilization**: Using participatory community based procedures
 - **Adjudication of rights to land**: unpacking the varieties of tenures
 - **Adjudication of boundaries**: identification & mapping of boundaries
 - **Recordation**: documentation of the adjudication tenures and their spatial areas
 - **Monitoring**: Following up on the impacts of the recordation of tenures

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2) Adjudication of rights component:

The land law is the basis for the types of tenures (ownership and non-ownership) to be recorded

- Informal and traditional land tenures and land rights are **converted directly** to 'their equivalent' in the legal perspective
- The **criteria for assessing and converting** the communities' perspectives of land rights to their equivalent in the legal perspective unclear
- This implies that **legal framework of FFP LA**, which is concerned with recognition of all forms of tenures and give room for upgrading to legal might not be getting enough attention

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3) Adjudication of boundaries component:

- The role of the mapping boundaries are to **indicate the limits within** which the adjudicated interests in land apply.
- **Innovative approaches and technologies for mapping** the boundaries using participatory ways, fast and affordably are used.
- This implies that the **Spatial framework of FFP LA**, which is concerned with mapping the areas where interests in land apply receives enough attention

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4) Recordation component:

- All organizations use digital approaches to record the tenures that have been identified, their accompanying attributes as well as the boundaries identified.
- Tenure types identified and mapped are subsequently forwarded to the registration unit, where they are entered in the cadastral database.
- Thereafter a public display of the tenure information is placed to give room for objection or correction.
- This also suggests that the [Institutional Framework](#) of the FFP LA receives attention

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Implications & points for future considerations

- What ontologies of land tenures are likely to emerge, or **how many dimensions of ownership** and non-ownership interests to land are likely to exist if they were framed from the **perspectives of the communities**?
- Based on their understanding of land rights, how would **communities describe** what constitutes the dimensions of rights to attach to specific tenure types, - or **what bundles of land rights** are attached to what specific tenure types?
- What would be the **interaction between different types of land tenures** and land rights (e.g. when overlapping, complementing each other) as defined from the perspective of the communities themselves?

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- To what extent would the **perspectives of land tenures** and land rights from the **communities interrelate with the legal** statutory, or vary? Where would they complement or clash? Such knowledge could help assess which rights and their attributes – from the community perspective – may be equated to specific rights - in the legal perspective, with minimal conflicts.
- Under which circumstances should registration have priority;
- When/**why do land holders want to register** their land and why, and what kind of rights do they want to register?

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Observation and looking ahead..

Spatial and Institutional Frameworks of FFP LA receive more attention than the Legal framework.

Understanding complementary and variability between land rights in both community and the legal perspectives will offer multiple lines or strategies for integration or conciliation when documenting land interests.

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