

Land tenure security as the holy grail – do mapping and registration bring what is often assumed?

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Key words: land administration, tenure security, assumptions, impact, mapping and registration

SUMMARY

Land tenure security is a key concept underlying many of the interventions in the field of land governance. Various projects within international programmes aim at increasing tenure security, in the first place as a desirable objective in land governance itself, providing security to people and their livelihoods. But it is also viewed as a contributing factor, even necessary condition, for the realization of downstream objectives such as conflict management and resolution, food security and economic development, and gender equality. While there is general support for the importance of land tenure security in fostering sustainable and just development, there is less unanimity on what it actually entails, or how it can and should be attained. Tenure security in practice is often viewed differently by different people, and attempts to promote it are often based on assumptions that are not made explicit – in some cases we may not even be aware of such implicit assumptions. This exposes interventions to certain risks that we should try to avoid.

This paper discusses land tenure security, as a concept and policy objective, and how it links to interventions on mapping and registration. It is clear that the large amount of literature on the topic is far from unanimous on the impact of, and conditions for, such interventions; reflecting the complexity of the subject. A key issue is whether the intervention is primarily aimed at protecting all those that currently have access to land (passive security) or primarily aims to improve the functioning and efficiency of the market of commodified land rights (active security). Other assumptions deal with the link to conflicts, gender, development agendas and the role of the different actors.

The paper will list some issues linked to these assumptions based on a recent Literature Review. An intervention only focusing on mapping and registration can rarely make any real impact, and always needs to be combined with an array of other activities. And when the overall land governance situation is very unstable or unequal, such an intervention will also not improve the livelihood of many of the vulnerable and marginalized people in the area. The recent trends in land administration may help, but it is yet to be seen if it is enough to reach true impact *for all*.

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1. INTRODUCTION

Land tenure security is a term used in many policy and project documents as well as in other professional and academic publications. What one considers tenure security and how it is defined differs among author groups; especially between disciplines and societal contexts. In some disciplines even different terms are used for largely the same concept. Often when ‘tenure security’ is used, it is considered as a clear parameter that could be measured, or even seen as a binary situation (one has or one does not have tenure security). But reality is much more complex, as tenure security is not absolute. It secures one’s tenure against threats, but not all threats come from the same actors. Studies that look for the impact on tenure security after certain land interventions often show that those are lower than expected or even absent (German 2022).

The term tenure security by itself is more inclusive than terms like land and property titles or land and property registration, that are often used in legal and economic discourses; terms that seem to focus on the so called active approach to tenure security (to support an efficient land market). A common description of tenure security as ‘a landholder has security of tenure if she/he perceives little or no likelihood of losing physical possession of the land within some future time period’ links more to the passive approach of tenure security (to protect landholders from being displaced from their land).

To increase tenure security in settings where it is (at least for many) low, interventions seem needed. Especially when landholders are at risk of being displaced. The choice which interventions to undertake, and how to design those, is clearly influenced by whether the prime focus is on reaching passive or active tenure security. Other assumptions also influence this a lot.

In most cases the land holder’s perception is an element of the description of tenure security (e.g. Prindex), although a lot of the projects and publications aim for a more ‘universal’ understanding. Reaching tenure security for all land holders is a widely shared ‘goal’ in theories as well as in policy documents (international, national (affected and donor governments; e.g. the Secure Tenure for All campaign of UN Habitat in the early 2000s, or SDG 1.4.2). In many situations a large part of the people suffer from tenure insecurity, but analyses on what causes this and how to turn it into tenure security differ a lot, and seem to heavily rely on (often strongly embedded) assumptions.

In general tenure security is influenced by a complex set of elements, which also differ between different contexts; and clearly also differ for people in different circumstances even within the same area. Overall this causes attribution issues when trying to analyze the impact

of interventions aiming at increasing tenure security, which is further complicated by the longitudinal approach that would be needed to test the (at least assumed) long-term effect of such interventions.

One of the leading types of interventions focuses on ‘documenting’ the land tenure situation. Different terms are used here as well, representing a different focus of the intervention. World-wide projects aim at increasing tenure security, in the first place as a desirable objective in land governance itself, providing security to people and increasing their livelihoods. But it is also viewed as a contributing factor, even necessary condition, for the realization of downstream objectives such as conflict management and resolution, food security and economic development, and gender equality. While there is general support for the importance of land tenure security in fostering sustainable and just development, there is less unanimity on what it actually entails, or how it can and should be attained. Tenure security in practice is often viewed differently by different people, and attempts to promote it are often based on assumptions that are not made explicit – in some cases we may not even be aware of such implicit assumptions. This exposes interventions to certain risks that we should try to avoid.

This paper makes a start at trying to disentangle some of different views on tenure security, with a focus on unraveling the (not always explicit) assumptions underlying the different interventions, esp. around ‘mapping and registration’. Assumptions also lead to risks of unintended (side-)effects, and call for actions to prevent or at least mitigate those. For many assumptions one can find both literature that relies or supports the assumptions, as well as literature that counters the assumption; the literature is far from unanimous. A Literature Review looking for such assumptions was recently conducted as part of the Knowledge Management component of the Dutch Government’s Land-at-scale programme (Hillenbrand et al 2022). In Table 1 a total of 11 assumptions are clustered along 5 themes. A short description of each theme is given in section 3 of this paper. The full Literature Review is planned to be published later this year as part of a larger paper that will aim at linking these assumptions and the related risk mitigation activities within the ongoing and planned Land-at-scale projects.

The remainder of the paper starts with a more elaborate description of tenure security as such in section 2, and then in section 3 gives a short exposé of the assumptions along the lines of five key themes:

1. Formalization or the objectives of tenure Security
2. Land and conflict
3. Gender and protection of the vulnerable groups
4. Economic development: Production and productivity
5. The role of the state and other actors

Section 4 closes with some final remarks, including how to increase our evidence based understanding for the future by having academics and practitioners cooperate more.

Table 1: Frequently made Assumptions on Land Tenure Security (Hillenbrand et al 2022)

1	<p>Formalization or the Objectives of Tenure Security</p> <p><i>Assumption 1.1: People feel tenure insecure and are willing to spend money on the formalization of their land.</i></p> <p><i>Assumption 1.2: People are informed about their rights and obligations/ rules surrounding land rights are clear to all.</i></p> <p><i>Assumption 1.3: The customary institutions provide insecure tenure that needs to be replaced with formalized and secure land systems.</i></p> <p><i>Assumption 1.4: Tenure security will contribute to a more sustainable use of resources.</i></p>
2	<p>Land and Conflict</p> <p><i>Assumption 2.1: Formalization of land rights will help to prevent conflicts and bring security.</i></p>
3	<p>Gender and Protection of Vulnerable Groups</p> <p><i>Assumption 3.1: Interventions are inclusive and benefit the vulnerable, marginalized groups.</i></p> <p><i>Assumption 3.2: Land formalization is desirable for all groups.</i></p>
4	<p>Economic Development: Production and Productivity</p> <p><i>Assumption 4.1: Tenure security is key to improve agricultural productivity and enhance agricultural investments.</i></p> <p><i>Assumption 4.2: Tenure security and titling will provide people with collateral and better access to credit.</i></p> <p><i>Assumption 4.3: Land security programmes can help fight further fragmentation.</i></p>
5	<p>Role of the State and other Actors</p> <p><i>Assumption 5.1: Land administration will create transparency and therefore tenure security</i></p>

2. WHAT IS LAND TENURE SECURITY?

While ‘tenure security’ is generally embraced as desirable and a necessary condition for a range of sustainable and just development objectives, there is no universally accepted definition of what it entails. In the Voluntary Guidelines on Responsible Governance of

Tenure of Land (VGGTs) (CFS/FAO 2012) security of tenure is used many times, but a definition is not included. Legal scholars will emphasize formalisation of tenure rights by inclusion in a legal registry. Others (e.g. Prindex) highlight the individuals' perceived tenure security; a measure of how an individual feels about the security of their land and property. Van Gelder (2010) in an urban context, mentions that tenure security 'is encountered in three distinct forms: tenure security as a *legal* construct, tenure security as *perceived* by dwellers, and *de facto* tenure security'. The first of these (legal) relies on the effective role of the state in enforcing rights; the second (perception) will guide people's behaviour, while the third (actual) may or may not align with either of the others. This distinction shows that notions of tenure security are based on assumptions, often not explicit, as to how security may be promoted or what effects it may yield. And whereas academics have recently focused on the latter two, Masuda et al 2020 show that practitioners seem to think primarily along the lines of *de jure*, legal titles.

Most interventions take, or at least include, a 'mapping and registration' approach, which is closest to the legal view. It has to be realised that the outcomes are only as good as the ability and willingness of institutions and actors to uphold the documented rights; be it the arms of national government, the local authorities, the courts, traditional authorities or society at large.

Moreover, legal approaches tend to consider tenure security as a clear parameter that can be measured, or even seen as a binary situation (one has or one does not have tenure security). This is a gross oversimplification, as tenure security is not absolute. It secures one's tenure against certain threats, but not all threats derive from the same actors, and not all actors abide by (or are even bound by) the rules and documents that are given with the intention to increase tenure security. Also, many areas are characterised by legal pluralism, where the formal system and so-called informal systems (either customary or within informal settlements) are both present. While this may offer practical solutions for those with limited access to the formal system, it also opens opportunities for those with money and, or connections to forum shop as it suits them. And as said, studies that look for the impact on tenure security after interventions often show that those are lower than expected or even absent (German 2022).

The implication is that interventions need to be based on an explicit notion of tenure security: what it is and what does it need to achieve in a particular context, and being aware of the risks for certain groups, and how to mitigate those. Moreover, a realistic assessment of the assumptions underpinning projects, and their fit, or lack thereof, with the contextual circumstances should be made and weighed during preparation and also during the implementation of projects.

3. ASSUMPTIONS

3.1 Formalisation or the objectives of Tenure Security

Designing an effective instrument to enhance tenure security generally focuses on a mapping and registration approach. This encompasses the delineation ('mapping') of a piece of land, its

registration in a recognized system of records and the issuing of a document specifying the land, rights and beneficiary/ies in question. A complication in selecting an appropriate instrument is in questions underlying tenure security such as: secure for what (use objective), and secure from what (threat)? Broadly, two main objectives of tenure security prevail. The first is about protecting people from the risk of losing physical possession of the land when confronted with claims by other, more powerful actors. One regularly used definition is ‘a landholder has security of tenure if she/he perceives little or no likelihood of losing physical possession of the land within some future time period’ (Abdillah et al 2022). We can also call this *passive* tenure security; with the focus on not being evicted. The alternative objective is a focus on economic development by facilitating transactions, including mortgaging, which can be seen as *active* tenure security¹. Converting land into a ‘liquid’ asset, that is, making it possible to transfer rights to others, in the ‘active thinking’, supports the most efficient use of land. Such projects tend to rely on written evidence over the land tenure of those that have so far remained undocumented. And often interventions aim at ‘formalisation’ which usually means changing the diverse reality on the ground into a limited set of tenure types (‘land rights’) described in the law, undervaluing the ‘secondary rights’². This is often called land titling. A critical reflection on this can also be found in the recent work within the Office of the High Commissioner on Human Rights on how land needs to be seen in the human rights sphere, as the broad statement of ‘right to property’ in the Universal Declaration was not translated into either of the two covenants that detailed it. General Comment 26 (2022) on ‘Land and Economic, Social and Cultural Rights’³, includes the following text: “In recent years, ‘titling’ has been encouraged to protect land users from eviction by the State and encroachment by private actors, particularly large landowners, or investors. That process, sometimes referred as “formalization,” consists of demarcating the land effectively occupied and used by each land user (and generally recognized under customary law), increasingly using digital techniques, and attributing a deed protecting land users from expropriation while at the same time enabling them to sell the land. The impact of titling has been ambiguous. Clarification of property rights was intended to provide security of tenure, to allow dwellers in informal settlements to be recognized as owners or to protect small farmers from being evicted from their land. It was also justified by the need to establish a market for land rights, allowing for more fluid transfer of property rights and a lowering of transaction costs in those markets. Those two objectives may be contradictory since commodification of property rights can be a source of exclusion and increase insecurity of tenure...” (C.31)

Power imbalances and scarcity mean that around land issues many people experience tenure insecurity and even land conflicts. In more traditional literature on land registration and land administration a lens that roots more in New Institutional Economics is used (e.g. Zevenbergen 2002). Starting from assumed stable land tenure relations, this theory focuses on making land institutional arrangements as efficient as possible to reduce the transactions costs, allowing for among others a smooth flow of land to those who can make the ‘best’

¹ Active and passive tenure security was inspired by the terms ‘dynamic and static’ security of tenure in Mostert 2011.

² See on secondary rights and how they are (not) taken into account, e.g. Lengoiboni et al 2019.

³ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/000/35/PDF/G2300035.pdf?OpenElement>

(economic) use of it. Obviously this does not necessarily lead to ensuring the livelihoods of more vulnerable groups or the preservation of the natural environment.

Mapping and registration of the access to land and land use at any given moment is part of the ongoing struggle for land and other resources and influenced by the power imbalances and greed. And even those that get their land tenure mapped and registered, might still risk losing them when the power game around the institutional arrangements shift.

Although increasingly the contextual situation is analysed and interventions are primarily motivated to bring passive tenure security, i.e. the protection of existing users, at the same time, contributing to economic development is often mentioned as another objective to be served by the intervention as well. ‘Mapping and registration’ exercises often appear to start as initiatives serving in the first place the protection objective, but can gradually evolve more towards the transferability objective (creating a land market, ‘commodification’) in the face of increasing commercial pressures or aspirational policies. This goes as far as several larger land titling projects being more focused on making land and credit markets of already rather tenure secure landholders easier and more efficient, than on solving tenure insecurity of vulnerable groups (Flower et al 2023).

Thus, interventions should in the first place have a clear understanding of which interest they are to serve. Then, they should consider how best to achieve this, taking into consideration what the risks are of producing undesirable side effects, and what can be done to mitigate those.

3.2 Land and conflict

There are arguments in favour of targeting fragile and conflict affected areas (as well as zones of increasing investment pressures) on a priority basis in initiatives for tenure security. It is here that risks of displacement and dispossession are most intense. A basic assumption under tenure security interventions in (post-) conflict areas is that mapping and registration of prevailing land rights can help avoid land disputes, and thus may prevent conflict as unresolved land disputes are potential sources of larger-scale violent conflict (Veldman 2020). While this may be the case, the evidence in support of this assumption is actually rather weak. Literature shows that outcomes vary (see Annex 1: Assumption 1), and this begs the question what the flow of causality is in the relationship between formal tenure rights and (violent) conflict. On the one hand, transparent records of land rights may reduce the scope for conflict, but on the other hand tenure registration programmes may well bring to the surface a wave of dormant land-related conflicts, especially in a context of tension between different population groups and high levels of inequality. Often in such areas the intervention is ‘too late’, as the stakes have already risen to a level that more cooperative and peaceful ‘sharing options’ are getting out of reach.

In practice, the effect of land tenure mapping and registration will depend on the presence of effective land governance institutions, not only nationally, but also locally, whose decisions are widely viewed as legitimate by populations. Inclusive and functioning ‘access to justice’ mechanisms open to all are a key requirement for land governance to positively counter land-related conflicts. Both these conditions are clearly lacking in many fragile and conflict

affected areas, as the institutions and actors themselves, and those running them, are likely to belong to one or the other side of the conflict, and thus the trust in the institution itself is lacking.

At a minimum, tenure security initiatives in conflict affected areas should (1) assess the risk of mapping and registration taking place in a way that excludes or marginalizes certain population groups. If so, this could prepare the way for future conflicts. Moreover (2), the capacity of institutions to effectively and justly administer land governance should be considered and improved, as well as the mechanisms through which people can get access to justice.

Based on experiences from the north of Sri Lanka, Flower et al (2023) suggest that rather than providing full legal titles, a fit-for-purpose model espouses a pluralistic approach that builds on local knowledge to provide intermediate tenure documents at low cost and scale in combination with clear dispute resolution mechanisms. Formalizing land rights by e.g. IDPs (in Sri Lanka) is out of reach for most of them due to the lack of formal evidence and high costs of process (Flower et al 2023). In general, the burden of proof asked for land market-oriented land titling projects is not reachable for most of the more informal landholders. This may cause the project to expose them to risk of loss, even while they had not necessarily been insecure under the earlier (informal or customary) system. In Sri Lanka they used a pre-existing legal tool of land permits (from colonial days), and invested in the dispute resolution mechanisms. The full understanding of the context helped find the appropriate interventions (first) needed for the specific actor group.

3.3 Gender and protection of vulnerable groups

Protection of the rights of vulnerable groups in society is one of two main objectives of land tenure interventions. A major issue here is that of gender equality. Many societies assign very different roles and rights to men and women. Formalisation with - at least on paper - gender equality in law is then seen as a way out of this inequality. In practice this is not always easy to implement, as the societal practices tend to change much slower, and in some cases the intervention is even said to have deteriorated the position of women. Formalization of land tenure may well entrench existing gender bias in land access and use. Conversion of collective lands into private holdings often results in registration of rights in the name of the men. Also, success in terms of encouraging productive investment by means of land governance measures tends to open commercial opportunities for men rather than women (Archambault & Zoomers 2015). Incidentally, also within the European Union only 13.3 % of farm land held by people under 40 years has a female owner (Korthals Altes 2022).

Customary systems may be used in the best (local) interest, but are overall not gender neutral, or even counterproductive from the point of view of gender equality. In some cases, gender bias has even induced indigenous women to favour liberalization of land markets in order to overcome 'traditional' restrictions on their access to land (Deere 2005).

While gender equality in laws and regulations is a necessary condition for the objective of gender equality in land tenure, it is generally not a sufficient one. Genuine success requires

active participation by women in decision making bodies; hence a more encompassing inclusion of women across the board. Gender equality in land rights as a stand-alone item on the policy agenda is less likely to succeed.

3.4 Economic Development: Production and productivity

Improved tenure security is often pursued in support of encouraging economic growth through higher land-based investment. There is some broad evidence that tenure security has positive effects on investments in production and environmental management, as well as female empowerment (Higgins et al. 2018). Yet the evidence is checkered as there is no clear support for the assumption that strengthened tenure security has positive effects on productivity (in terms of output per unit of land, labour), access to credit, and income (Higgins et al. 2018). As a result, the impact on ‘downstream’ objectives such as food security (through the productivity and income pathways) is likely also limited. This matters, because such secondary outcomes are often mentioned in policy documents supporting interventions. Note also that the assumption that improving tenure security by means of expanding formal private ownership is not supported by much evidence in practice (Lund 2000).

It is probably more accurate to say that tenure *insecurity* is an obstacle to productive investment, and that removing such insecurities is a necessary, but not sufficient, condition for realizing the intended objectives.

Interventions need to have those with tenure insecurity in sight to be able to help them. This is unlike the tendency for land titling to focus on easing transactions for those already heaving relative secure tenure (Flower et al 2023). Mere interventions like mapping and registration do not reduce the inequality in economic power, access to land and livelihood levels; they tend to strengthen the status quo or even enhance inequality (see e.g. Greiner 2017 and Lavigne Delville 2020, who conclude in traditionally customary areas especially large-scale formalization drives can create new uncertainties and inequality). The mapping and registration projects can only marginally handle this; broader intervention in governmental and socio-economic systems need to happen simultaneously to reach tenure security *for all*.

3.5 Role of the state and other actors

Whereas tenure security setups in most cases assume the state to take a key role in increasing the tenure security via mapping and registration and other interventions, in practice the State (or at least some of its arms) is among the largest threats. Strong focus on economic development or an aspiration-driven agenda tends to push the local community's livelihoods to the side for the ‘larger good’. Bottom-up initiatives to document people’s land rights are a possible way to compensate for this, but in the end, it is not realistic to reach real tenure security without government buy in (see also Hendriks et al 2019). The local context makes a large difference on who has to start the interventions, and tenure security is neither absolute nor a binary state, but something that develops over time; often via a bumpy road. Van Gelder (2010) also indicates that his three angles, legal, perception and actual, should improve at comparable speeds; they cannot be too far apart in level of accomplishment.

Mapping and registration is generally believed to need a clear legal framework as a base, but even a good legal framework will not work without civil servants that are able and willing to truly implement it, and who get the space to operate as such without political or commercial (read corrupt) meddling. Also, society at large needs to accept the setup as legitimate, otherwise many will ignore or contravene the system and effectively sabotage it.

4. FINAL REMARKS

Five key themes linked to tenure security which rely on assumptions were shortly introduced in the above, but obviously more assumptions and different themes can be added. Clearly the above points show how underlying, often implicit, assumptions are used when we design an intervention, even though in many local contexts the assumption may not hold at all for this area or at least not for certain groups within this area. The Literature Review (Hillenbrand et al 2022) underpinning this paper lists a selection of sources on widely held, yet often implicit assumptions about tenure security that correspond with the ones identified here (see Table 1). With increasing pressure on land and other resources issues around land tenure (in)security seem to be on the rise. An often-mentioned reason for this is population growth and increasing wealth, both of which continuously increase the pressure on available land resources. However, access to the use of specific plots of land has always been contested, and some level of scarcity of specific types of land or of specific locations goes back a long time. Traditional arrangements how to access and use land may become more tense when the amount of available land per person (or family unit) drops below a certain size. The competition increases, both within, but especially between different communities. Platteau (1996) sees this resulting in increasing land tenure insecurity and land use conflict. Traditional and more modern economic differences in power between (groups of) people create imbalances whose impacts increase with increasing pressure on the land and greed among those with power. Next to population and economic growth it is the power imbalances present in many societies and economies that impact on land tenure issues, and this increases even more when the land is commodified and the pressure on land mounts (both due to local intensification of land use, or outside investments). This leads to all kinds of land grabbing, when those having the least to lose often ending up losing the most. Vulnerable groups differ between contexts, but women, youth and minorities are usually among them. As Flower et al (2023) mention, elites will be reluctant to redistribute economic assets and political power via land reform, particularly in cases where land values are high, such as urban informal settlements. Worse, titling can increase tenure insecurity for the most vulnerable by effecting large scale shifts that ‘undermine traditional institutions without putting in place a viable alternative’ (Deininger 2008).

To really increase tenure security, a lot more needs to be put in place than mapping and registration. Some of the implications drawn from the current review involve these conditions that should be met for successfully addressing tenure insecurity, including the need to have an inclusive land policy and regulatory system in place that relates to specific context(s), to allow for diverse land tenure relations on the same piece of land, to make sure people are aware of their rights, to understand the power (im)balances and to have the needed human and financial resources in place to deliver the services to all.

In general, we can see that tenure security is influenced by a complex set of elements, which also differ between concrete settings; and clearly also differ for people in different circumstances even within the same area. Overall, this causes attribution issues when trying to analyse the impact of interventions aiming at increasing tenure security, which is further complicated by the (at least assumed) long-term effect of such interventions. In other words, it is difficult to pinpoint what really works and what is of secondary importance when promoting tenure security.

Masuda et al (2020) interviewed 54 practitioners on how they see LTS (land tenure security), and it shows nearly all of them focus on the ‘*de jure*’ elements, esp. land titling. The paper shows that in the more recent academic literature the focus is on perception and *de facto* tenure security. They conclude that this ‘indicates that the latest concepts and research examining the causes and consequences of LTS may not be informing, or being informed by, practitioners.’ They call for a closer cooperation between researchers and practitioners to overcome the current incongruency to also help the policymakers who are increasingly looking for evidence-based policies (Masuda et al 2020, p 8). Moreover, they call for researchers to ‘establish the relevance of research projects with practitioners who are targeted as the primary collaborator and consumer of the research project.’ (Masuda et al 2020, p 7). The Knowledge Management component of Land-at-scale is set up to contribute to this and will be successful when both sides are able and willing to engage in doing so. This paper is the first part of a first step in having us researchers work more closely with the practitioners to jointly increase our understanding of both the latest concepts as well as the lessons to be learned from practical solutions implemented in interventions.

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BIOGRAPHICAL NOTES

Jaap Zevenbergen is professor of land administration and management at the University of Twente, faculty ITC. He teaches and delivers trainings to students from all over the world on responsible land administration, and has been and is involved with dozens of PhD candidates in the field, both as (co) supervisor and as external examiner. He has acted as consultant and researcher linked to land interventions at national and global scales.

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