

Using Remedies to Regularise Access to Land

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Context

World Bank land policy development –

1975 Economic focus

2003 Land Policies for Growth and Poverty Reduction

Changes of policy new theories and new applications

Implications – change of focus from titling and LAS to land delivery through ground-up, participatory approaches

Relative titles

Examples

Legal, equitable and possessory.

Compare freehold, mining, forestry overlays.



Standard rights analysis

Property theory, tenures, land rights are for formalised systems.

Proposed model -

relies on pre-legal social formalisation of expectations through recognition repeat behaviour

Incorporates formalisation into minimal legal order permits adaptation to formal systems.

Tools for building relativity of title

Prioritisation system (system of order of interests)

Alert system (holders must disclose)

Transparency mechanisms (transaction disclosure)

Discovery systems (searching systems)

Removal systems (overreaching)

Possessory Titles Recognition

Reliance on behaviour not rights– simple policing of interference with land occupancy.

Provision of remedy – local access and enforcement system

Building of expectations – pre legal, socially based expectations

Transfer into formal system -

Derivative sources

English experience

Anti -eviction

Land management focus



Possessory Remedies Tool Box

Articulated and popular land policies

Remedies to reverse aberrant behaviour

Inclusion of customary, etc, tenures

Transaction and inheritance tracking

Overlaying occupation patterns

Focus on local behaviour and capacity

Betterment strategies

Anticipation of hard cases

Future Challenges

Incorporation of labour based land distribution

Integration of informal credit systems

Improved capture of transactions, inheritance and passive alteration of land use

Articulation of rights to water, servitudes, roads and services

Aspect	Support	Critique
Workable legal order	Order can be very immature.	However, minimum legal order is frequently insufficient in long term
Current position legitimated	The point of the model is to stabilize, not judge	However, many current possessors will lack moral or other validation. The neutrality of the model can validate terrorist, intrusive, or opportunist anterior behaviour. Platteau 2004
Colonial history	Capable of operating in Anglophone and Francophone Africa	Neutrality needs careful consideration in any context

Aspect	Support	Critique
Timing	Disruption of land management systems is a continual constant	Model assumes post conflict, high social and institutional disruption
Relationship with rights system	Focus on behavior of removal or of interference with possession is title neutral	However, sooner or later, rights focus must develop
Minimalist approach	Relies on regulating behaviour in relation to land, not land rights	Can regulate land access for growing period beyond harvest
Existing systems	Customary systems are reinforced	Inherent complexities in land distribution in customary systems is not accounted for

THANK YOU



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