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Session GOV2, Towards better land governance: Lessons learned and way forward**

# **Using the land governance assessment framework (LGAF)**

## **Lessons and next steps**

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# Outline

1. Why do we need a land governance framework?
2. How is good governance being measured?
3. The challenges of addressing land governance
4. LGAF methodology
5. Lessons learned and next steps

# 1. Why do we need a land governance framework?

## ■ Governance

- 'The manner in which public officials and institutions acquire and exercise the authority to shape public policy and provide public goods and services' (World Bank, 2007)

## ■ Land is routinely found to be one of the most corrupt sectors

- Bribes in land administration in India amount to \$700 million annually (Transparency International India, 2005)
- Land grabbing

## ■ Good land governance is a pre-condition for economic development

- Land is a key asset to generate livelihoods, invest, accumulate and transfer wealth

- Bad land governance can disproportionately hurt the poor (access to land)
  - Insecure land tenure exacerbates poverty by diverting resources from consumption and investments, and raises transaction costs
  - Weak transferability of land may lead to suboptimal land allocation and hinder economic changes
  - Inefficiency and lack of transparency of land institutions act as a bottleneck on economic activity, contribute to conflicts, and the degradation of natural resources
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- Increasing recognition of the importance of land governance at the political level
    - Significant advances in the land sector
    - Emerging issues: food security, climate change and disaster management, REDD
    - Political recognition (FAO Voluntary Guidelines, AU Framework and Guidelines, EU Land Policy Guidelines, France's white paper on land governance, and other initiatives)

- Land policy debate not considered in relevant documents and fora (e.g. country strategies, CAADP roundtables, etc.)
  
- Need for
  - Diagnostic tool to put land sector in comprehensive view & identify areas for intervention
  - Indicators measuring progress that can assess effectiveness of interventions & specific operational guidance to policy

## 2. How is good governance being measured?

- Public spending most effective if governance is strong  
=> indicators
- Two types of complementary indicators (Kaufmann and Kraay 2008)
  - *Rule-based* indicators assess whether institutions generally presumed to be associated with governance are in place
  - *Outcome-based* indicators focus on either broad citizen perceptions, the extent to which (potential) users find public services to be easily accessed and responsive to their needs, or expert opinion about the de facto implementation of rules
- Sector-specific indicators are increasingly recognized as important for policy reform
  - UN-Habitat's Global Urban Observatory, Urban Indicators Initiative, Global City Indicators Program

## ■ Land policy in broader indicators

### ■ Examples

- WB's CPIA - Country Policy and Institutional Assessments – for the allocation of IDA resources includes a focus on “property rights and rule-based governance”
- IFAD's PBAS – Performance-Based Allocation System which includes a focus on access to land in rural areas)

## ■ Land policy indicators may rely on 3 approaches

### ■ *Expert opinion-based indicators*

- Cheap to collect and actionable, but may be subjective

### ■ *Representative surveys* (households or experts)

- Expensive and reduced focus

### ■ *Local observatories* that can monitor land governance

- Independent. Can build capacity and awareness

# 3. The challenges of addressing land governance

- Challenges specific to the land sector
  - *Technical complexity – need for wide range of technical expertise.*
    - The challenge is to make trade offs within integrated strategy (e.g. precision in surveying techniques)
  - *Institutional fragmentation – coordination problems.*
    - Need for a holistic view and focus on technical issues rather than political motivation
  - *Specificity of time and place – evolution of land laws context-specific.*
    - No one size fits all strategy (e.g. titling programs without a policy framework to secure rights based on local

# 4. LGAF Methodology

- Public institutions in the land sector to fulfill three roles
  - Legal & institutional framework to defines property rights to land & allow cost-effective enforcement, encouraging land-related investment
  - Reliable & complete information on land rights to allow low-cost verification of land ownership status, productive transfers & use as collateral
  - Regulatory function to avoid negative externalities that may arise from uncoordinated action by private parties

■ To fulfill these functions, five key areas of good land governance were identified

1. A **legal, institutional, and policy framework** that recognizes existing rights, enforces them at low cost, and allows users to exercise them in line with their aspirations and in a way that promotes the benefit of society as a whole
2. Arrangements for **land use planning and taxation** conducive to avoiding negative externalities and supporting effective decentralization
3. Clear **identification of state land and its management** in a way that provides public goods cost-effectively; use of expropriation as a last resort only to establish public infrastructure with quick payment of fair compensation and effective mechanisms for appeal; and mechanisms for divestiture of state lands that are transparent and maximize public revenue
4. **Public provision of land information** in a way that is broadly accessible, comprehensive, reliable, current, and cost-effective in the long run.
5. Accessible mechanisms to authoritatively **resolve dispute and manage conflict** with clearly defined mandates, and low cost of operation.

## ■ PEFA-type approach

- 5 thematic areas, 21 indicators, 80 dimensions of good governance
- Example of a dimension:

| LGI 5,<br>Dimension iii                              | Assessment   |
|--|--|
| <b>Administrative (vertical) overlap</b> is avoided. | A – Assignment of land-related responsibilities between the different levels of government is <b>clear and non-overlapping</b> .<br>B – Division of land-related responsibilities between the different levels of government is <b>clear with minor overlaps</b> .<br>C – Division of land-related responsibilities between the different levels of government is characterized by <b>large overlaps</b> .<br>D – Division of land-related responsibilities between the different levels of government is <b>unclear</b> . |

- Dimensions are consensually ranked by panels of experts

## ■ Panels of experts

- Workshops with experts from private, public, CSO sector
- 8 panels on topics of:
  - Land tenure
  - Institutional arrangements
  - Urban land use, planning and development
  - Rural land use and land policy
  - Land valuation & taxation
  - Public land management
  - Public provision of land information
  - Dispute resolution
- Score each dimension (A - D based on text), make justifications and recommendations. There is no intention to aggregate scores across indicators

## ■ Background information to be gathered by local experts

### ■ Tenure typology

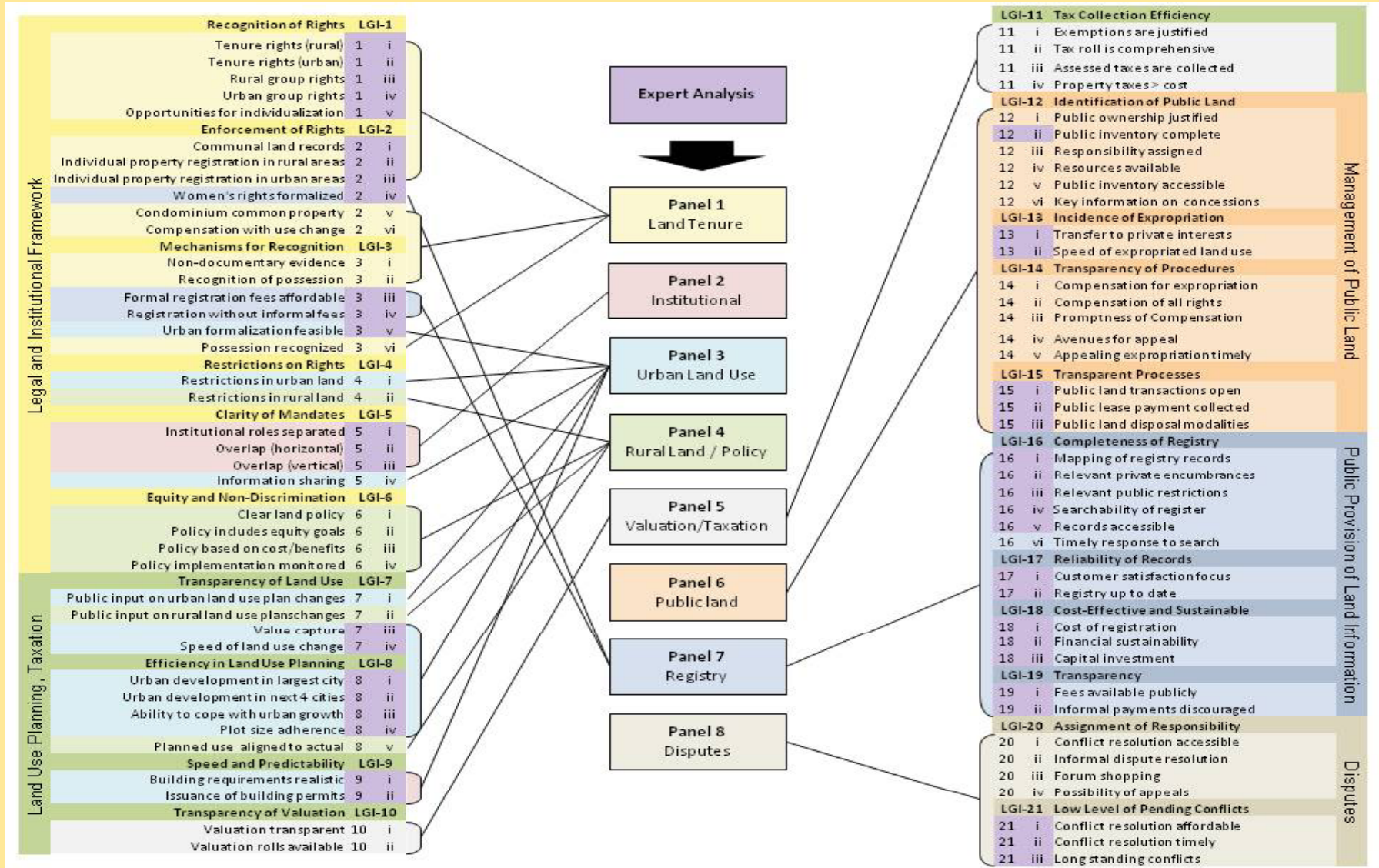
- Tenure types (with area and population estimates) in urban and rural
- Characteristics (legality, recording, transfer)
- Overlaps with other rights
- Current issues

- Panel-relevant background information (some of which can be based on small surveys if necessary and feasible within budget and time allocated)

## ■ Panel aide-mémoires → country reports

## ■ Implementation lasts about 3 to 4 months

# Allocation of dimensions to expert panels



## Area 1 – Legal and institutional framework

- **Recognition of rights.** The law recognizes a range of rights held by individuals as well as groups (including secondary rights as well as rights held by minorities and women)
- **Enforcement.** The rights recognized by law are enforced
- **Mechanisms for formalization.** The formal definition and assignment of rights, and process of recording of rights accords with actual practice or, where it does not, provides affordable avenues for establishing such consistency in a non-discriminatory manner
- **Restrictions on rights.** There are no restrictions on land rights that are grossly out of range with reality
- **Clear institutional mandates.** Institutional mandates concerning the regulation and management of the land sector are clearly defined, duplication of responsibilities is avoided and information is shared as needed
- **Participatory policy framework.** Policies are formulated through a legitimate decision-making process that draws on inputs from all concerned. The legal framework is non-discriminatory and institutions to enforce property rights are equally accessible to all

## Area 2 – Land use planning and taxation

- ***Existence of justified and transparent plans.*** Changes in land use and management regulations are made in a transparent fashion and provide significant benefits for society in general rather than just for specific group
- ***Effective planning process.*** Land use plans and regulations are justified, effectively implemented, do not drive large parts of the population into informality, and are able to cope with population growth
- ***Permit processing and allocation.*** Development permits are granted promptly and predictably
- ***Land taxation.*** Tax valuations are based on clear principles, applied uniformly, updated regularly, and publicly accessible. Resources from land and property taxes are collected and the yield from land taxes exceeds the cost of collection

## Area 3 – Public land management

- ***Inventory of public land.*** Public land ownership is justified, inventoried, under clear management responsibilities, and relevant information is publicly accessible
- ***Expropriation.*** The state expropriates land only for overall public interest and this is done efficiently. Expropriation procedures are clear and transparent and compensation in kind or at market values is paid fairly and expeditiously
- ***Divestment of state land.*** Transfer of public land to private use follows a clear, transparent, and competitive process and payments are collected and audited

## Area 4 – Public provision of land information

- ***Completeness and reliability.*** The land registry provides information on different private tenure categories in a way that is geographically complete and searchable by parcel as well as by right holder and can be obtained expeditiously by all interested parties. Registry information is updated, sufficient to make meaningful inferences on ownership
- ***Cost-effectiveness, accessibility and sustainability.*** Land administration services are provided in a cost-effective manner. Fees are determined and collected in a transparent manner.

## Area 5 – Dispute resolution and conflict management

- ***Clarity of assignment.*** Responsibility for conflict management at different levels is clearly assigned, in line with actual practice, relevant bodies are competent in applicable legal matters, and decisions can be appealed against
- ***Effectiveness.*** The share of land affected by pending conflicts is low and decreasing

# 5. Lessons learned and next steps

## ■ Lessons from pilots

- The involvement of local experts is crucial to generate buy-in
- Assessment can be done without imposing value judgments (the framework is translated /adapted and specific concepts discussed and can be refined with country coordinator)
- The relevance of ranking is mostly to guide policy analysis and recommendations (which matter more than actual A, B, C or D)
- Effective tool to identify areas for intervention

## ■ Possible areas for improvement

- Agreements for data accessibility could be obtained beforehand
- Officials unwilling to admit shortcomings can make consensus difficult
- Sharing of implementation experience of country coordinators (methodological workshops or supervision by a global coordinator)

## ■ To go further

- Opportunities for a broad-based coalition of actors to monitor implementation of recommendations (it could build on land observatories where they exist)
- The LGAF points towards the use of quantitative indicators that can routinely be collected by land administrations. For instance:
  - Coverage of land administration system (of the types of rights, types of transfers and particular focus on women)
  - Tax revenue raised
  - Amount of public and private land area mapped with publicly available information
  - No. of expropriation cases and modalities of compensation
  - No. of conflicts of different types entering the formal system