# Annex 5: Explanatory notes for Indicators and Dimensions

## Module 1: Land Tenure Recognition

Recognition and respect for existing rights to land, natural resources and property improves tenure security. Both legal frameworks and informal tenure systems can provide tenure security depending on the strength of and adherence to tenure systems and related institutions.

When property rights are not recognized legally or cannot be enforced with government support, (perceptions of) tenure insecurity may emerge. Examples are situations of increasing competition over land and land transactions, legal pluralism, challenges to customary forms of tenure, weakening of governance institutions. Ambiguous rights or ambiguity regarding who holds the rights can increase the potential for conflict, divert resources for the defense of property claims, and act as a disincentive for investments in land. It may also reduce transaction costs and improve the transferability of land, thus facilitating gains from trade and the allocation of land to more efficient uses.

The legal recognition of all existing rights to land and natural resources is a key element of land governance. However, providing legal backing to all existing rights requires sufficient flexibility in the legal and institutional framework to ensure the recognition of the range of rights held by individuals and groups, including secondary rights where relevant. For example, different tenure regimes can coexist (e.g. communal and individual rights; rights over land combined with rights over trees and access to pastures,), or different institutions (such as legal pluralism where for example customary, religious and formal institutions overlap). Tenure systems also can vary widely across the country (urban- rural, tenure systems changing from one region to another and across ethnic groups; official land use categories).

The legal framework also should be able to accommodate changes in tenure practices, thus avoiding that these changes result in the growth of informality. Formalization of collective tenure systems requires regulations on groups holding right to land (membership, internal organization and procedures, dispute resolution, possibilities for individualization of tenure etc.).

## Recognition of a continuum of rights: the law recognizes a range of rights held by individuals (incl. secondary rights of tenants. sharecroppers, women etc.)

The recognition of existing rights is important to the extent that it can be a way of improving tenure security for all land users. The concept “continuum of rights” acknowledges that within any given country or jurisdiction, different rights can coexist, and evolve over time. This indicator assesses the extent to which the full existing range of rights is recognized by the law.

*Dimensions to be measured:*

## Individuals' rural land tenure rights are legally recognized and protected in practice.

***Instructions for assessment***

Dimension (1.1) assesses the extent to which rights held by individuals in rural areas enjoy legal recognition. The assessment is based on the tenure typology, and which quantifies areas and populations.

* The first step is to ensure that all typologies for rural tenure are to be identified and described first in the tenure typology matrix.
* The second step is to identify key obstacles if any for the legal recognition of rural rights.
* This dimensions refers in particular to the rights of more vulnerable family and community members, such as younger male siblings, sisters; women and children living in a non-registered marriage; widows and orphans; elderly people, as well as households living in the community but having a different status affecting tenure rights (“migrants”, castes, “former slaves”, feudal systems etc.). Special mention needs to be made of (a) categories without rights to land in both informal and legal systems, and (b) categories with no rights in informal systems but with rights according to law.

Where needed a sub-division can be made, such as when there are explicit geographic differences.

## 1.1.2 Customary tenure rights are legally recognized and protected in practice.

***Instructions for assessment***

Dimension (1.2) assess whether customary tenure systems enjoy legal recognition. Customary rights, especially at the community level, are often ignored in the process of legalization and codification of rights and ownership to land, forest lands and resources.

The question should identify the major issues of this type, the problems emerging from them and what the position of the law is, as-well-as the actual resolution of the problems. This dimension includes tenure systems based on religion (e.g. Islamic tenure). Special mention has to be made of situation where legal recognition of customary systems results in contradiction with rights that are protected in the constitution.

## Indigenous rights to land and forest are legally recognized and protected in practice.

***Instructions for assessment***

Dimension (1.3) refers to ethnic groups (indigenous people, scheduled tribes and castes etc.) that are recognized by law. This legal recognition may be the product of international treaties with respect to indigenous people. Where there are several ethnic groups, but only for some rights to land and resources are explicitly legally recognized, than this should be discussed.

Make a difference in the assessment of the ethnic groups (indigenous people, scheduled tribes and castes etc.) having a special status (a) the basis for recognition (b) whether explicit reference is made to rights over land, forests, other resource and (c) whether this is enforced in practice.

## Urban land tenure rights are legally recognized.

***Instructions for assessment***

Dimension (1.4) assesses the extent of the legal recognition of the rights held by households in urban areas.

Describe the process of computation of the figure or basis for assessment.

# Respect for and enforcement of rights

Effective legal recognition of all existing rights to land and natural resources requires that the systems are in place to legally enforce the rights recognized by law, both for individual and group rights. This indicator assesses individual rights. Group rights to land are the subject of LGI-3.

Another step is the registration of individual tenure of land. A legal system for the registration of individual rights is only effective if it covers all individual properties in both rural and urban areas. This registration of individual tenure rights to land should be accessible to all right holders and not lead to the non-recognition of other existing rights related to the property. Registration should not exclude women and other disadvantaged individuals or groups, and also cover the legal recognition of existing tenancy and other forms of user rights over the land, rights to particular resources on the land (e.g. trees, pastures, water bodies) or other forms of existing rights (right of way etc.).

This indicator also assess the potentially harmful impact on land transactions and land markets as a result of land rights restrictions regarding rural land ownership and transferability. Restrictions that are not adhered to and cannot be enforced will result in illegal land leasing and illegal land sales.

*Dimensions to be measured:*

Dimension (1) assesses whether the law provides adequate mechanisms to accompany the transition of customary or collective tenure towards individualization if so desired by land users. This dimension is not assessing the effectiveness of customary mechanisms but only the ability under the law to seek legal recognition of ongoing individualization of tenure.

## Accessible opportunities for tenure individualization exist.

***Instructions for assessment***

This dimension explores transition situations where collective tenure systems are being replaced gradually by more individual forms of tenure, which is desired by individuals and broadly accepted and supported by the community or group. Individual tenure of land is the right to exclude others and/or the right to transfer, assign or encumber the land right or revenue arising from the land right.

A first step in enforcing individual rights is the recording of boundaries. Such recording is important also to prevent disputes between neighbors and indicate the limits of State land.

The assessment describes, assesses (table with checklist) and discuss procedures and mechanism available for those who want to increase tenure security by formalizing interests in property. The assessment also explores (using a table) is all or some rights may be registered with varying degrees of restrictions placed on the property. Finally, the assessment should refer to the tenure typology and how this tenure typology was used to compute your ranking.

|  |  |  |  |
| --- | --- | --- | --- |
| **Steps in procedure** | **Clearly specified (clear/ not clear)** | **Safeguard against abuse**  **(yes/ no)** | **Remarks** |
|  |  |  |  |
|  |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of formal rights** | **Yes/No** | **Restrictions** | **Remarks** |
| To exclude |  |  |  |
| To assign |  |  |  |
| To transfer |  |  |  |
| encumbrances |  |  |  |
| … |  |  |  |

## Individual land in rural areas is recorded and mapped.

***Instructions for assessment***

Dimension (2.2) assesses the extent to which individual properties in rural areas are registered in the formal system.

Describe the process of computation of the figure or basis for assessment for rural areas. This does not need to be a precise figure of registered parcels compared to total number of parcels (unless statistics are available).

## Individual land in urban areas is recorded and mapped.

***Instructions for assessment***

Dimension (2.3) assesses the extent to which individual properties in urban are registered in the formal system.

Describe the process of computation of the figure or basis for assessment for urban areas. This does not need to be a precise figure of registered parcels compared to total number of parcels (unless statistics are available).

## The number of illegal land sales is low.

***Instructions for assessment***

Dimension 2.4 looks into illegal sales.

This dimension starts with a description of what constitutes illegal sales of land, what mechanism are in place to identify such sales and whether there is ambiguity, following a description and ranking of practice. Some examples of illegality are when legal requirement of consent of spouses for any sale, lease or mortgage of matrimonial property are not monitored, or when land use categories imposing restriction on land sales are ignored (for examples land sales in tribal areas).

## The number of illegal lease transactions is low.

***Instructions for assessment***

Describe the existing legal restrictions on land leases and assess, justification given, agency in charge, if these are clearly identified, widely accepted. (please use table form if there are several restrictions. Assess how these restrictions are applied in practice and if fully complied with (data). Comment on their impacts. Describe where appropriate regional or other variations in the application of such restrictions.

## Women's property rights are recorded.

***Instructions for assessment***

Dimension (2.6) assesses the extent to which the tenure rights of women are enforced through the registration of land in their names and this includes registration either individually or jointly:

Please describe details of the data or method used to estimate computation of the figure or basis of assessment, particularly if gender disaggregated data is not available. Discuss differences between urban and rural areas.

## Women's property rights to land are equal to those by men both in law and in practice.

***Instructions for assessment***

Dimension (2.7) addresses issues of inheritance (particularly from parents and from spouses), whether women can decide themselves on the transfer of property rights across generations and rights of women and men to matrimonial property in the case of divorce (including for situation of polygamous marriage or marriages that are not formally registered).

Please describe laws and practice in place. Discuss differences between urban and rural areas (and within rural areas if significant).

**Module 2: Rights to Forest and Common Lands & Rural Land Use Regulations**

## Rights to forest and common lands

Customary rights to forest and common lands, especially at the community level are often ignored in the process of legalization and codification of rights and ownership to forest lands and other resources. These indicators should identify the major issues of this type, the problems emerging from them and what the position of the law is, as-well-as the actual resolution of the problems.

Since customary tenure can come under pressure from settlers and outsiders encroaching on land held under customary tenure, an important step in enforcing customary tenure rights can be the mapping/survey of the boundaries of land held under customary tenure and the recording of rights holders. To the extent that registration implies formality, the approach can be complemented by a focus on the recording of tenure situations among the continuum of rights, which can involve simple and cost-effective means already practiced by local populations.

This indicator will start with an assessment of common lands, forest land and other lands that are collectively used, based on the tenure typology.

*Dimensions to be measured:*

## Forests and common lands are clearly identified in law and responsibility for use is clearly assigned.

***Instructions for assessment***

Justify how the tenure typology was used to compute your ranking.

## Rural group rights are formally recognized and can be enforced.

***Instructions for assessment***

Dimension (3.1) assesses the extent to which regulations concerning group rights in rural areas define how user groups can organize themselves, impose internal rules, interact with the outside, and call on external agencies to enforce rules:

Describe the criteria and procedures necessary to gain recognition for organizations and representation of rural groups. Describe specific rural groups that do not have formal recognition and why.

Justify how the tenure typology was used to compute your ranking.

## Even where ownership or trusteeship is legally with the state, arrangements to ensure users' rights to key natural resources on land (incl. Fisheries) are legally recognized and protected in practice.

***Instructions for assessment***

Common lands may be used by several groups, each for a specific purpose, and at different moments throughout the year. An example is a pastoralist who use grazing lands during specific periods – depending on rainfall- or migrant fisher folk. In customary systems these user rights are recognized and access to these resources is important for the production systems.

Describe these arrangements for the various important resources according to law and in practice. Take regional variations into account.

## Multiple rights over the same common land and natural resources on these lands can legally coexist.

***Instructions for assessment***

Natural resource management systems exists with groups having different rights over the same common area; one group, family or individual have rights over the land, while others have rights over the trees, water points and so on.

Describe these arrangements for the various important resources according to law and in practice. Take regional variations into account.

## Multiple rights over the same plot of land and natural resources on these lands can legally coexist (e.g. tree rights).

***Instructions for assessment***

For the same plot or parcel different rights can co-exist with for example one individual/ family having rights over tree, and others rights over the land; or rights of way, a water points and so on. Describe these arrangements for the various important resources according to law and in practice. Take regional variations into account.

## Multiple rights over land and mining/ other sub-soil resources located in the same plot can legally coexist.

**Instruction for assessment**: This dimension is about ownership arrangements for for sub-soil resources (mining in particular) vis-a vis the plot and any loss of rights/ disputes that may arise

## Accessible opportunities exist for mapping and recording of group rights.

**Instruction for assessment**: Builds on dimension 3.3. describe laws and policies that allow this registration and the process to be followed.

## Boundary demarcation of communal land

**Instruction for assessment**: This dimension refers to the area of groups land that is being demarcated (see also tenure typology) and discusses also why demarcation is not complete.

## Effectiveness and equity of rural land use regulations

This indicator assesses the extent to which land use and management regulations in rural areas (including zoning and land use planning mechanisms) are justified and transparent. In a well functioning system of land administration, land use and management regulations should generally be used only to prevent or limit undesirable externalities from land use activity (i.e. to limit the impact land use choices can have on those not directly involved with those choices or on public good aspects of land such as protection of biodiversity, watershed management, grazing lands management, forest management and so on ). They should be reasonable enough so as not to deprive large parts of the population of access to natural resources that are important for their livelihoods and they have used for long time. Land use and management regulations and zoning should thus be created with the public’s best interests in mind, making sure those individuals and groups play a participatory role when developing these policies.

In addition, changes in land-use zoning or restrictions can have a major impact on land values, positive or negative in rural areas – depending on the implications of restrictions on land use practices. Lifting restrictions can also make land available for concession and this can become a source of corruption. It is thus important to develop zoning regulations and land use plans in a participatory and transparent manner that can subject the process to public scrutiny, protect public good values of natural resources and prevent the abuse and rent-seeking behavior of those who could otherwise manipulate the procedures to their own benefit. There should also be appropriate mechanisms for capturing the gains from land use changes to be used in the public’s interest, as well as for local communities who either also benefit from new revenues generated from the land they used to exploit or compensated adequately for negative externalities, such as pollution.

This section also includes decisions and procedures that lead to land use changes as a result of mineral and petroleum explorations or mining.

*Dimensions to be measured:*

## Restrictions regarding rural land use are enforced.

***Instructions for assessment***

* List the restrictions on land use in rural areas, and the agencies in charge of applying them. Assess how these restrictions are applied in practice. Describe the restrictions and comment on their impacts.
* Describe where appropriate regional or other variations in the application of such restrictions.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Public Interest | Basis for restriction on land use by law? | Institution responsible | Type of Actions and their Effectiveness | Remarks |
| Biodiversity |  |  |  |  |
| Soil |  |  |  |  |
| Water |  |  |  |  |
| Cultural and Religious aspects (such as protection of sacred groves) |  |  |  |  |
| Others (specify) |  |  |  |  |

## Restrictions regarding rural land transferability serve public purpose.

***Instructions for assessment-*** assess each restriction (law and policy) compliance

## Rural land use plans and changes in these plans (incl. rezoning) are based on clear process for public input and burden sharing.

***Instructions for assessment***

Transparency in land use and management regulations can be achieved by seeking public input regarding land-use regulations and by informing the public of the implementation of land-use plans and changes in these plans. This will help to ensure potential restrictions on use serve a clear public good and are made public.

Assessment of the procedure in place (policy and practice) for seeking public input in preparing and changing land use plans, process is in place for approving these plans and the level of accountability and the extent to which plans are public.

## Rural land use changes to the assigned land use in a timely manner and into the destined use.

***Instructions for assessment***

Effective management of land also implies that the change in use to the destined use occurs rapidly. Land use changes are taking place also that either increase environmental protection ( parks, ramsar sites etc) but with restrictions for local resource use or result in less protection (degazetting) such as for concessions, mineral and petroleum explorations or mining.

Explain how data was collected and how the percentages were estimated.

## There is a clear public process for rezoning of land use classes that safeguards existing rights.

***Instructions for assessment:*** describe procedure and how rights are protected

## Use plans for specific rural land classes (forest, pastures, wetlands, national parks etc.) are in line with actual use.

***Instructions for assessment***

Explain how data was collected and how the percentages were estimated. Explain how data was collected and how the percentages were computed or estimated. Discuss geographic variations (if relevant).

|  |  |  |  |
| --- | --- | --- | --- |
| Land use class | Planned use | Actual use | Observations |
| Forest (types) |  |  |  |
| wetlands |  |  |  |
| parks |  |  |  |
| Etc. |  |  |  |

**Module 3: Urban Land Use, Planning, and Development**

## Restrictions on rights: land rights are not conditional on adherence to unrealistic standards

This indicator assesses the justifications of restrictions on land rights in urban areas. Following tenure regularization, restrictions may be imposed for an initial period on the transferability of certificates or other documents produced as a result of regularization. Restrictions can concern ownership, the way land is used, or the characteristics of the parcel (e.g. excluding foreign ownership, or making productive use compulsory, or imposing a minimum-lot size). Land rights may also be restricted with respect to their transferability (e.g. imposing restrictions on the size, price or type of land that can be transferred). If these restrictions also are imposed on subsequent transactions, it is important that these are understood and accepted by right holders to avoid the risk of tenure rights falling back into informality.

While some of these restrictions might be justified in specific or temporary contexts, having permanent restrictions that affect large shares of land owners or users is likely to drive users into informality and to undermine governance (because it may result in an inefficient allocation of land, or because it can provide incentives for land users to bribe officials). Even though unnecessary restrictions may give rise to high costs of evasion and discretionary enforcement, vested interests may oppose their removal.

*Dimensions to be measured:*

## Restrictions regarding urban land ownership and transferability effectively serve public purpose and are enforced.

Dimension (5.1) assesses the potentially harmful impact of land rights restrictions in urban areas. These restrictions can be regarding ownership, owner, size of holding, or transactions such as restrictions on transfer by sale, gift or exchange, lease, transfer price or rent, mortgage, etc.

***Instructions for assessment***

The assessment will be based on the result of the following table:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Restrictions on land ownership (for each one of the restrictions listed below, tick appropriate column and provide comment where relevant)** | **Non-existent** | **Exists, but not enforced** | **Exist & enforced** | **Brief description of restriction and comments** |
| Land transactions |  |  |  |  |
| Land ownership |  |  |  |  |
| Owner type |  |  |  |  |
| Size of holding |  |  |  |  |
| Price |  |  |  |  |
| Rent |  |  |  |  |
| Other (please specify: -------------------) |  |  |  |  |

## Restrictions regarding urban land use serve public purpose and are enforced (including risk prone and protected areas).

Dimension (5.2) assesses the potentially impact of land rights restrictions in urban areas regarding the nature of use, etc. This dimension concerns the existence of and respect for land use restrictions. An example is whether the selection of areas eligible for the regularization process is in compliance with land use restrictions (risk prone areas, urban development regulations, protected areas and archaeological sites etc.).

***Instructions for assessment***

Background information on the areas selected for regularization is compared with other existing spatial data and information sets (e.g. environmental regulations) and consistency is established.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Restrictions on urban land use** | **Source** | **Non-existent** | **Exists, but not enforced** | **Exist & enforced** | **Comments** |
| No building in risk prone areas (please specify) |  |  |  |  |  |
| No building in protected areas (please specify) |  |  |  |  |  |
| Others… |  |  |  |  |  |

## Transparency of land use restrictions: 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 groups.

This indicator assesses the extent to which land use and management regulations in urban areas (including zoning and land use planning mechanisms) are justified and transparent. In a well-functioning system of land administration, land use and management regulations should generally be used only to prevent or limit undesirable externalities from land use activity (i.e. to limit the impact land use choices can have on those not directly involved with those choices). They should be reasonable enough so as not to drive large parts of the population into residential informality. Land use and management regulations should thus be created with the public’s best interests in mind, making sure those individuals and groups play a participatory role when developing these policies. However, changes in land-use zoning or restrictions can have a major impact on land values and can thus be in many cases a source of corruption. It is thus important to develop zoning regulations and land use plans in a participatory and transparent manner that can subject the process to public scrutiny and prevent the abuse and rent-seeking behavior of those who could otherwise manipulate the procedures to their own benefit. There should also be appropriate mechanisms for capturing the gains from land use changes to be used in the public’s interest.

*Dimensions to be measured:*

## There is a clear process for expansion of urban land and infrastructure development that respects existing rights and information on land use change is public and easily accessible.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Steps in procedure | Organizations involved | Roles | Public information | Practice |
|  |  |  |  |  |
| 2. |  |  |  |  |

***Instructions for assessment***

The rating will be based on an assessment (in a table format ) of the procedures (and respective steps ) in place for expansion of urban land and also with respect to existing rights, public information for each step , the organizations to be involved, their respective roles, and observations on actual practice.

## In urban areas, land use plans and changes in these plans are based on a clear public process and on input of all relevant stakeholders.

***Instructions for assessment***

The transparency in land use and management regulations can be achieved by seeking public input regarding land-use regulations and by informing the public of the implementation of land-use plans and changes in these plans to ensure potential restrictions on use serve a clear public good and are made public.

Assessment of the procedure in place (policy and practice) for seeking public input in preparing and changing land use plans, process sin place for approving these plans and the level of accountability and the extent to which plans are public.

## Urban land use changes to the assigned land use in a timely manner.

***Instructions for assessment***

Again, effective management of land also implies that the change in use to the destined use occurs rapidly.

Explain how data was collected and how the percentages were computed or estimated.

## Efficiency in the urban land use 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.

This indicator assesses the adequacy of land use plans and regulations.

In urban and peri-urban areas, it is important that local governments have up-to-date land use plans that efficiently and timely accompany the process of urbanization, including provisions for infrastructure (roads, drainage, utilities etc.) and that these be not outpaced by city growth. Furthermore, to keep in line with actual demand, these plans and regulations should involve the participation of local stakeholders rather than being implemented in a discretionary manner. Distinguishing between the largest city in the country and the four other largest ones (where situations may differ

*Dimensions to be measured:*

## 3.3.1 Process of urban expansion/infrastructure development process is transparent and respects existing rights.

***Instructions for assessment***

Dimension (7.1) assesses whether a policy is in place to ensure that sufficient affordable housing for the urban poor is produced as well as the infrastructure required, alongside investment in high-end residential property, developed by private developers or in the form of public-private partnerships.

Assess whether a policy is exist, if this is informed by adequate projections of housing needs and the degree of implementation.

## 3.3.2 Land use planning effectively guides urban spatial expansion in the largest city.

***Instructions for assessment***

Describe and comment on the hierarchy of plans, their relevance and the evidence used for development, and implementation.

## 3.3.3 Land use planning effectively guides urban development in the four largest cities, excluding the largest city.

***Instructions for assessment***

Describe and comment on the hierarchy of plans, their relevance and the evidence used for development, and implementation.

## 3.3.4 Planning processes are able to cope with urban growth.

***Instructions for assessment***

Explain how the increase in demand for serviced units/land is estimated.

Indicate whether the situation is comparable in less populated cities.

## Speed and predictability of enforcement of restricted land uses: development permits are granted promptly and predictably.

This indicator assesses the transparency and efficiency in the process for the delivery of permissions for restricted land uses. This is a key issue since obstacles to obtain such permissions may not only lead to the arbitrary treatment of land users but can also lead to an inefficient allocation of land (if the users who would put the land to its best use do not obtain the permission to do so) and hinder investments and economic development given the uncertainty and costs associated with the procedure. Furthermore, an opaque and lengthy process may facilitate corruption and the rent seeking behavior of administration officers at the detriment of land users.

*Dimensions to be measured:*

## 3.4.1 Provisions in applications for building permits for residential dwellings are appropriate, affordable and effectively disseminated.

***Instructions for assessment***

The specific example of building permits is representative of a broader set of land use restrictions, as it is one of the documents most frequently needed by land users. This dimension assesses whether the requirements for application are justified, affordable and clearly disseminated (e.g. through leaflets, brochures, the internet).

Provide details concerning the process of obtaining a building permit.

Are there technical justifications for the key steps?

What is the cost of obtaining a building permit?

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Step** | **Government agency or private agent (surveyor, notary, architects)** | **Justification**  1 = Clearly justified;  2 = Somewhat justified;  3 = Not justified | **Efficiency**  1 = efficient  2 = mediocre  3 = inefficient | **transparency of process**  1 = transparent;  2 = Some discretion in implementation;  3 = Significant discretion | **Estimate of time (days) per step (on average)** | **Comments**  Provide comments on the appropriateness of the agency, justification |
| **Step 1..** |  |  |  |  |  |  |
| **Step2…** |  |  |  |  |  |  |

## 3.4.2 The process for obtaining a building permit for a residential dwelling is short.

***Instructions for assessment***

Discuss reasons for delays and the extent to which these may give rise to informal payments or ‘speed money’.

## Tenure regularization schemes in urban areas

Regularization of tenure implies that informal or illegal occupation of land is legalized by statute, giving occupiers the legal right to ownership, occupation or use of the land.

There is a clear process to undertake regularization with defined parameters (resources, productivity, unit costs, etc.) to support implementation, the roles and responsibilities for regularization are clear for all structures involved (from community level to the agency in charge as well as for any other agencies necessary to put the regularization into effect such as the registry, cadastral office, or the local government authority) and the process and responsibilities are documented in a detailed manual supported by appropriate training material.

The right holders actively participate in the key stages of regularization (community meetings, provision of information and data, public displays of provisional regularization records and distribution of certificates). Right holders are adequately informed of regularization processes objectives, documentary requirements, timelines, and grievance mechanisms. Local organizations have opportunities to participate to facilitate communication, collection of evidence of tenure, solving conflicts and exercise social control of the adjudication process.

Following regularization, the approach and technology used can be managed by decentralized units in a sustainable manner (human capacities in place, financing of licenses and renew of equipment considered).

*Dimensions to be measured:*

## Formalization of urban residential housing is feasible and affordable.

***Instructions for assessment***

Formalization processes should be feasible and transparent. In urban areas particularly, the feasibility of formalizing residential dwellings should not be hindered by unclear, unaffordable and inconsistent requirements. This includes formalizing buildings, complying with planning norms and regulations, obtaining tax clearance certificates, obtaining building plans and construction permits, etc. Describe process for formalizing housing:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Steps | Agency/ operator private sector | Clarity requirements | Applicability | Affordability | Consistency of application | Ability applicant to satisfy requirements |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

## In cities with high levels of informal tenure, a clear, well-documented process to increase tenure security, infrastructure and housing, exists.

***Instructions for assessment***

Assess the policy in place for tenure regularization, describe the process and agencies involved and the risk for lapsing into informality.

## A condominium regime provides for appropriate management of common property (rules for common property for management of driveways, parking, gardens, stairways, etc.)

***Instructions for assessment***

A substantial part of the world’s population lives in urban areas, many in condominiums or apartments. An essential element of good governance regarding condominiums is not only that the rights of the dwelling itself are recognized but that there is recognition of, and clear arrangements to manage the common property areas (driveways, parking, gardens, stairwells etc.) that are necessary for the occupants of the condominium to enjoy the full use of the property. Describe legislation and assess application.

**Module 4: Public Land Management**

Good governance requires transparent and accountable management of public land for the public interest, including processes by which land is acquired and released by the State. It is important that the state ownership of land be justified on a public-good basis and that compulsory acquisition procedures are justified (e.g. where a comparable outcome cannot be achieved through private ownership or when private ownership is likely to lead to outcomes that have undesirable impacts on public welfare in general) and exercised only for clear public purposes and managed appropriately. It is also important that transfer of rights over State-owned land be transparent and monitored.

## Identification of public land and clear management: public land ownership is clearly defined, effectively serves the public purpose, is inventoried, under clear management responsibilities, and relevant information is publicly accessible.

Transparency, legitimacy and accountability of public land management is typically hampered by a severe lack of information or traceable information about what public land exists and what rights the state possesses to control and manage it. This is made more complex where management responsibilities are fragmented across different ministries and agencies as is often the case. Yet, effective public land management is critical for sustainable use, investment and management of large scale public resources and assets, In addition, the protection of public land is enhanced where there is broader public access to records.

*Dimensions to be measured:*

## Public land ownership is clearly defined, serves the public interest and is managed at the appropriate level of government.

***Instructions for assessment***

This dimension assesses the extent to which public land ownership is justified by the public good nature of the land, whether it is clearly identified and recorded, and if it is transparently managed by the appropriate level of government with adequate management capacities.

Assessment is based on the identification of Public land ownership in the tenure typology; management responsibilities for public land including overlapping mandates have been analyzed in the institutional mapping. Table is also used for 10.4 and 10.5.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of public land | Public good generated/ public interest | Management responsibility | Assessment of management capacity/ resources | Assessment of public good dimensions |
|  |  |  |  |  |
|  |  |  |  |  |

## There is a complete recording of publicly held land.

***Instructions for assessment***

Based on tenure typology. Explain how data was collected and how the percentages were computed or estimated.

## The inventory of public land is accessible to the public.

***Instructions for assessment***

See 10.2 : Is this inventory public

## The management responsibility for different types of public land is unambiguously assigned.

***Instructions for assessment***

Assessment is based on table developed for 10.1.

## Sufficient resources are available to fulfill land management responsibilities.

***Instructions for assessment***

Assessment is based on table developed for 10.1.

## All essential information on public land allocations to private interests is accessible to the public.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Recent Public land allocations | Locality is publicly known | Area is publicly known | Parties known | Financial transaction are known |
| 1. |  |  |  |  |
| 2. |  |  |  |  |

## Justification and time-efficiency of acquisition processes: the state expropriates land only for overall public interest and this is done efficiently

Expropriation is an important tool for governments to enhance social welfare by providing public goods such as roads, airports, shopping centers, irrigation infrastructure or by limiting negative externalities when private ownership is likely to lead to outcomes that have undesirable impacts on welfare. But expropriations should occur in the public’s general interest.

There are risks associated with expropriation. It is important that government exercise their authority for compulsory acquisition only with a well-defined and transparent procedure and by fairly compensating those adversely affected in a timely manner. This is require also for rezoning of land use, subsequently resulting in restrictions and even loss of rights for land users, Failure to do so, or excessive resort to expropriation, can produce tenure insecurity that undermines incentives for investment. Moreover, tracts of land end up being accumulated in the hands of the State.

In particular, when the State excessively resorts to expropriation, fails to transfer expropriated land to its destined use, or acts in the interest of specific groups, this can create a perception of unfairness and a climate of tenure insecurity throughout the country and encourage rent seeking and political meddling. Inappropriate treatment of land expropriation can also lead to social unrest and protests. Even in cases where expropriations may be justified, regulations for implementing expropriation can suffer from deficiencies (for example, lack of consultation or mechanisms for appeal). Where appropriate, expropriation procedures should thus be clear and transparent with fair compensation in kind or cash at market values made available expeditiously. The key principle is that transfers of land rights should be based on users’ voluntary and informed agreement, and provide them with a fair level of proceeds.

This indicator assesses whether expropriations occur in the public’s general interest and whether it is efficiently resorted to.

*Dimensions to be measured:*

## There is minimal transfer of expropriated land to private interests.

This Dimension assesses whether expropriation is not used for objectives other than in the public’s general interest (as measured by the transfer of State-owned land to the private sector. This implies that the percentage area of the land expropriated and then transferred to private investors is low, i.e. most of the land accessed by private investors is acquired via direct negotiation rather than use of eminent domain. This excludes expropriation benefiting individuals in situations where legal / legitimate processes are put in place to balance historical redress). Assessment of this dimension excludes situations where expropriate land is returned to previous owners partially or totally as part of a consolidation/regularization process.

***Instructions for assessment***

In some countries in the process of urban expansion privately land held maybe acquired before land use planning is implemented and then sold/returned to previous owners in a different form. This is not to be considered for ranking this dimension.

Explain how data was collected and how the percentages were estimated in the following table.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Recent cases of expropriation | Agency involved | Reason given for Public interest | Time it took to transfer to destined use | Transferred to private interest |
| *1* |  |  |  |  |
| *2* |  |  |  |  |

## Acquired land is transferred to destined use in a timely manner.

***Instructions for assessment***

Base assessment on table 10.1. Once a plot of land has been expropriated it is transferred to its destined use in a timely manner. This is measured by dimension (10.2) which assesses the amount of expropriated land that is transferred to its destined use within a period of 3 years.

Explain how data was collected and how the percentages were estimated.

## Transparency and fairness of expropriation procedures: expropriation procedures are clear and transparent and fair compensation is paid expeditiously.

This indicator assesses the transparency of expropriation procedures and fairness of associated compensation. If the procedure is not transparent, expropriation can favor specific groups of interest and disadvantage poorer or more fragile groups. An opaque procedure can also lead to the corruption of those in charge of expropriation decisions. It is thus important that individuals and groups who feel negatively affected by expropriation have access to institutions that enable them to contest the terms of their expropriation through independent and objective mechanisms.

*Dimensions to be measured:*

## Compensation is paid for the expropriation of all rights regardless of the registration status.

For expropriation to be used as an effective and sustainable tool, it is necessary to offer fair compensation to displaced individuals, at least in the range of the incurred loss. Failure to do so would amount to distributing the land surplus to new land users at the detriment of those evicted (usually the poor). It is also important that compensation be offered for all types of rights (ownership, occupancy, use, access, grazing and extractive rights), even for those not formally registered. This is assessed by dimension (12.1):

***Instructions for assessment***

1. Comment on the extent and frequency of expropriation. Describe the types of expropriation and the affected population and Discuss fairness of compensation (see table as well as LG 11).
2. Identify the different types of land use change considered in legislation and occurring in practice, identify the public agencies in charge of them and assess whether compensation applies in the text of the law and in practice.

Describe where appropriate sector-relate, regional or other variations in the compensation paid.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Status** | **Agency in charge** | **Fairness of compensation** | **Compensated rights** | **Timeliness of compensation** | **Implementation** | **Comments** |
| **Unregistered urban property** |  |  |  |  |  |  |
| **Unregistered rural property** |  |  |  |  |  |  |
| **Common lands** |  |  |  |  |  |  |
| **Reserved lands** |  |  |  |  |  |  |
| **mining** |  |  |  |  |  |  |
| **Etc** |  |  |  |  |  |  |
| **Codes:** |  | **1 = Compensation enabling comparable assets and maintenance of social and economic status;**  **2 = Compensation enabling comparable assets but not maintenance of social and economic status;**  **3 = little or no compensation paid** | **1 = All secondary rights recognized;**  **2 = Some secondary rights recognized;**  **3 = No secondary rights recognized.** | **1 = Most receive compensation within 1 year;**  **2 = About half receive compensation within 1 year;**  **3 = Most do not receive compensation within 1 year.** | **1 = Consistently implemented;**  **2 = Implemented with some discretion;**  **3 = Implemented in highly discretionary manner** |  |

## There is adequate compensation if land use change results in loss of rights or restriction on land use.

Land use changes may result in a loss of rights (including the rights of holders of secondary rights such as access or grazing) that may or may not be compensated. With rural to urban use conversion, land users usually benefit from the more intense use but in some countries their rights are simply overlooked, which causes a loss of ownership without compensation. In other contexts, changes in land use may also cause a loss of rights as with the conversion of rangeland to reserved land, where the rights of nomadic pastoralists may not be recognized or compensated.

***Instructions for assessment***

* 1. Describe the types of rights that are compensated and the types that are not compensated and put in table.
  2. Identify cases of expropriation carried out on unregistered property in the last years, identify the public agencies in charge of them and assess how compensation was applied. Discuss fairness of compensation for those with unregistered rights
  3. Describe -where appropriate -sector-relate, regional or other variations in the requirements for compensation

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Process** | **Level of compensation** | **Compensated rights** | **Implementation** | **Comments** |
| **Rural-urban conversion** |  |  |  |  |
| **Establish reserved land** |  |  |  |  |
| **mining** |  |  |  |  |
| **Other (please specify:-----)** |  |  |  |  |
|  |  |  |  |  |
| **Codes:** | **1 = Compensation paid in cash or in kind on the same or similar basis as compulsory acquisition;**  **2 = compensation paid in cash or in kind but at significantly lower level than compulsory acquisition;**  **3 = little or no compensation paid.** | **1 = All secondary rights recognized;**  **2 = Some secondary rights recognized;**  **3 = No secondary rights recognized.** | **1 = Consistently implemented;**  **2 = Implemented with some discretion;**  **3 = Implemented in highly discretionary manner.** |  |

## Expropriated owners are compensated promptly.

***Instructions for assessment***

* 1. Explain how data was collected and how the percentages were computed or estimated.

Describe -where appropriate -sector-relate, regional or other variations in the requirements for compensation.

## There are independent and accessible avenues for appeal against expropriation.

***Instructions for assessment***

* 1. List the avenues that are available and comment on their independence, accessibility, and frequency of use.

## Timely decisions are made regarding complaints about expropriation.

***Instructions for assessment***

Explain how data was collected and how the percentages were estimated. Comment on reasons for length of procedure.

**Module 5: Transparent Process and Economic Benefit: Transfer of Public Land to Private Use Follows a Clear, Transparent, and Competitive Process**

Acquisition of use or ownership rights to large areas of land for mining, infrastructure, production of agricultural commodities and biofuel, forest, provision of environmental amenities by large investors has recently attracted considerable interest. This indicator aims to assess the context in which these investments or investment proposals take place. The exclusive focus is on the process used for the transfer of large tracts of public land to private investors.

Overall impacts of large-scale investments in land are likely to be more favorable, and the compensation received by those losing out more adequate, where there is good land governance. This implies that there is a legal framework that allows for sound practices regarding the recognition and inventory of land rights and uses, land use planning and management of public land, expropriation and conflict resolution. For instance, it is important that unused or underutilized land be clearly and unequivocally identified in order to minimize potential conflicts over land use, or that land be made available for investors according to a transparent procedure in order to minimize the possibility of side payments or squandering of land under adverse terms. From the investor’s point of view, it is important to have access to information on land, to be dealing with institutions with clearly defined mandates, or to face reasonable speed of land use changes.

## Transfer of public land to private use follows a clear, transparent, and competitive process and payments are collected and audited (with the exception of transfers to improve equity such as land distribution and land for social housing).

The transfer or lease of State-owned land can be an important tool to increase the supply of land or cash in on the value of land to increase public resources. But in the absence of transparent procedures to divest public land, these transactions can be the source of corruption (e.g. bribery of government officials to obtain public land at a fraction of market value), squandering of public wealth. Publicizing transactions involving State-owned land provides public scrutiny and limits the potential for bad governance and land speculation.

This indicator measures the extent to which the transfer of public land is carried out in a transparent manner, ensuring that the government collects the full value of its disposed asset.

*Dimensions to be measured:*

## Public land transactions are conducted in an open transparent manner.

***Instructions for assessment***

Dimension (13.1) checks that the mechanisms for the divestment of public land (sale or lease) ensure that land is disposed of at market price and those potential buyers are not excluded from the transaction. These requirements are met when public transactions occur through public auctions or open tenders:

Comment on whether the situation varies depending on the type of public land and the level of government that manages the public land. Use the following table.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Destined use of allocated land** | **Area leased out/sold in last 3 years (ha)** | **Transparent process** | **Consideration compared to market values** | **Percentage of allocated lands that were sold** |
| Residential |  |  |  |  |
| Agriculture |  |  |  |  |
| Forestry |  |  |  |  |
| Manufacturing |  |  |  |  |
| Commerce/building |  |  |  |  |
| Tourism |  |  |  |  |
| Mining |  |  |  |  |
| Parks |  |  |  |  |
| Others.. |  |  |  |  |
| **Codes:** |  | 1 = All open tender or auction;  2 = Most by open tender or auction;  3 = Most other than open tender or auction. | 1 = At market prices for similar land;  2 = A greater than 50% market prices;  3 = Less than 50% market prices. |  |

## Payments for public leases are collected.

***Instructions for assessment***

In practice, it is also important to verify that agreed payments are effectively collected by the government.

Explain how data was collected and how the percentages were estimated. Discuss whether the situation varies depending on the type of public land and the level of government that manages the public land.

## Public land is transacted at market prices (when not divested for equity purposes).

***Instructions for assessment***

In practice, it is also important to verify that agreed payments reflect market prices and public land is sold or leased in a transparent process at market values. These considerations are measured by this dimension.

* 1. Comment on whether the situation varies depending on the type of public land
  2. Discuss the status of the investor or the level of government that manages the public land.

## The public captures benefits arising from changes in permitted land use.

***Instructions for assessment***

Finally, this dimension assesses whether the public captures benefits arising from changes in permitted land use.

Describe mechanisms and discuss the relevance and implementation of these.

## Policy is in place to improve equity in access to and use of assets.

## Private investment strategy

## Policy and regulations are in place and applied to unambiguously and publicly identify land that can be made available to investors, in agreement with land rights holders.

***Instructions for assessment***

Describe and analyze process used for assessing land potential.

Describe policy process for consultation process, decision making.

|  |  |  |  |
| --- | --- | --- | --- |
| *Steps* | *Agency(s) involved* | *Role of investors* | *Involvement local right holders/ community* |
|  |  |  |  |
|  |  |  |  |

## Policy process is in place to identify and select economically, environmentally, and social-cultural beneficial investments and implement these effectively.

## Public institutions involved in transfer of large tracts of land to private investors are clearly identified; without institutional and administrative overlap.

## Public institutions involved in transfer of large tracts of land to private investors share land information and effective coordination mechanisms are in place to timely identify and solve competing land use assignment (incl. sub-soil).

## Investors' compliance with agreed business plans is regularly and effectively monitored and remedial action is taken if needed.

## Safeguards (socio-economic, culturally and environmental) are established and applied to prevent that investments involving large tracts of land infringe on or extinguish existing tenure rights.

## Cases where resettlement and rehabilitation are required are clearly circumscribed and implementation follows uniform, transparent procedures.

## Policy implementation is effective, consistent and transparent and involves local stakeholders.

*Dimensions to be measured:*

## Sufficient information is required from investors for government to assess the effects of proposed investments.

## A clearly identified process is in place for approval of investment plans and the time required is reasonable and adhered to.

## There are free, direct and transparent negotiations between right holders and investors; rights holders have access to relevant information.

## Contractual provisions are publicly available and include benefit sharing mechanisms with right holders.

## Contracts are made public, easily accessible and agreements are monitored and enforced.

*Dimensions to be measured:*

## Accurate and easily understood information on spatial extent and duration of approved concessions is publicly available to minimize overlap and facilitate transfers.

## Compliance with safeguards on concessions is monitored and enforced effectively and consistently.

## Avenues exist for right holders to air complaints if investors do not meet contractual obligations and decisions are timely and fair.

**Instruction for assessment:** Transfers of large tracts of land can generate conflicts. There cannot be a fair and equitable resolution of these conflicts unless there exist accessible and recognized institutions, in particular at the local level, with clearly defined competences and the possibility to appeal rulings.

**Module 6: Public Provision of Land Information: Registry and Cadastre**

Good governance requires that land information systems provide relevant, accurate and affordable land-related information to the public.

Information provided by land registries has public good characteristics, providing a strong rationale for government involvement in the recording and maintenance of the registry, and allowing access to relevant land-related information to interested parties. In particular, the public availability of land-related information can inform the public about transaction possibilities and foster the development of a unified and more efficient land-market.

## Mechanisms for recognition of rights

This indicator aims to assess the consistency and affordability of rights recognition mechanisms (formalization) with existing tenure practices. To be effective, it is important that these processes hinge upon a consistent definition and interpretation of rights in line with existing practices, that they be affordable and accessible to the concerned population, and that they be transparent. If formalization processes are not consistent with practices, there may be increased ambiguity in land rights and increased tenure insecurity. If they are not affordable, they may benefit richer households at the expense of the poor. If they are not transparent enough, they may encourage corruption and capture by the privileged.

*Dimensions to be measured:*

## There is an efficient and transparent process to formalize unchallenged land possession by the poor that is in line with local practice and locally accepted.

***Instructions for assessment***

This dimension assesses whether there is an efficient and transparent process to formalize possession that is in line with local practice and understanding.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Formalization** | **Formalization process** | **Implementation** | **Growth in informality** | **Comments** |
| **1. Informal urban settlement on private land** |  |  |  |  |
| **2. Informal urban occupation on public land** |  |  |  |  |
| **3. Informal occupation of forest land or protected areas (national parks, wildlife reserves, etc.)** |  |  |  |  |
| **4. Other (please specify:--------)** |  |  |  |  |
| **Codes:** | **1 = Clearly defined rules that cover most cases;**  **2 = Clearly defined rules that cover about half the cases;**  **3 = Rules not clearly defined, and/or most cases not covered.** | **1 = Efficient & transparent;**  **2 = Some discretion in implementation;**  **3 = Significant discretion** | **1 = Very limited number of new informal settlers in the past year;**  **2 = Some new informal settlers in the past year;**  **3 = Many new informal settlers in the past year.** |  |

## Non-documentary evidence is effectively used to help establish rights.

***Instructions for assessment***

Adequate legal provisions should enable formalization mechanisms to effectively recognize existing tenure practices. This may involve the possibility to recognize long-term peaceful occupation as a legitimate claim for ownership and to base evidence of occupation on a range of evidence, including non-written proofs. The range of evidence may include documented forms of evidence, such as a state grant, certificate issued by customary or local official, or non-documentary, through oral witnesses of occupancy.

## Long-term unchallenged possession is formally recognized.

***Instructions for assessment***

Formalization processes should be affordable to ensure an equal access to land rights regardless of social or economic status. Formalization costs include the official fees in the registry and fees of other organizations that provide information or services necessary to complete registration, such as notaries, lawyers, surveyors, municipalities.

## First-time registration on demand includes proper safeguards and access is not restricted by high formal fees.

***Instructions for assessment***

This dimension analyses whether demand for first time registration is not restricted by the ability to pay the official fees in the registry or to the organizations that provide services such as notarization of documents, planning or surveying or information such as copies of building permits or tax clearance certificates to support registration.

* Describe a typical urban and/or rural property
* Provide details of how the cost and property value were calculated
* List the types of formal fees and costs that are incurred by applicants for first registration

Comment on the circumstances that may impact on the cost and time of first time registration (such as the requirements to formalize changed use or where the claim is disputed), and the frequency of such occurrences.

|  |  |  |
| --- | --- | --- |
| List the actions or documentation required and associated costs for formal registration:  1.  2. … | **Administrative Activity Cost** | **Judicial Costs / Taxes Incurred** |
|  |  |

## First-time registration does not entail significant informal fees.

## Completeness of the land registry

This indicator assesses the extent to which the registry provides a complete geographic coverage of land parcels and its accessibility to land users. These are two main characteristics that determine its value as a public good. Indeed, if the information contained within the registry is incomplete, or if accessing specific data is difficult and time consuming, the utility of the registry will be limited.

*Dimensions to be measured:*

## The total cost of registering a property transfer is low.

***Instructions for assessment***

This dimension verifies that the fees charged for registering property transfers are not exceedingly high in view of property values but that they are enough to cover operating costs. The transfer costs considers all the official fees in the registry and other organizations that provide information or services necessary to register the transfer, such as notaries, lawyers, surveyors, municipalities, tax authorities etc.

|  |  |
| --- | --- |
| **List the procedures or documentation required for registering a property transfer for property valued at  [\_\_\_\_\_\_\_]** | **Transfer Related Costs**  **[cost or % of value]** |
| 1. |  |
| 2 |  |

## The information held in records is incorporated in maps and reflects reality.

***Instructions for assessment***

Explain how data was collected and how the percentages were estimated.

## All relevant private encumbrances are recorded.

***Instructions for assessment***

This dimension assesses the recording of the economic relevance of the information that is contained in the registry. Economically relevant private encumbrances may include mortgages or liens.

List the types of encumbrances that are recorded and the cost for accessing these.

## All relevant public restrictions or charges are recorded.

## There is a timely response to requests for accessing registry records.

***Instructions for assessment***

This dimension’s focus is on the registry’s land records management.

Explain how data was collected and how the percentages were estimated.

## The registry is searchable.

***Instructions for assessment***

Registry (or other sources of land ownership) information is searchable by parcel and right holder and extracts or copies of records can be provided within a **reasonable time.**

Explain how data was collected and how the percentages were estimated.

## Land information records are easily accessed.

***Instructions for assessment***

Information in the registry (or other sources of land ownership records) can be accessed readily by all interested parties.

Explain how data was collected and how the percentages were estimated.

## *Reliability: Registry information is updated and sufficient to make meaningful inferences on ownership*

This indicator assesses the reliability of the information contained in the registry. The reliability of the information held by the registry (including the frequency at which it is updated) is an important factor when considering the public good value of the registry. Outdated ownership information, inconsistencies between what is recorded in the registry and reality, all decrease the value of the services that are provided by the registry and may cause interested parties to cease to use it altogether.

*Dimensions to be measured:*

## Information regarding land rights maintained in different public registries is routinely synchronized so as to reduce transaction cost for users and ensure integrity of information.

***Instructions for assessment***

* List the different agencies/ registries in place and the type of data collected
* List the systems in place to ensure synchronization
* Assess effectiveness

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | *Agency* | *Type of data* | *Frequency* | *System for synchronization* |
| *Tax records* |  |  |  |  |
| *Cadastre* |  |  |  |  |
| *Registry* |  |  |  |  |

## Registries information is up-to-date and reflects ground reality.

## Cost-effectiveness and sustainability: land administration services are provided in a cost-effective manner.

This indicator assesses the cost-effectiveness and financial sustainability of land administration services. As a land administration needs to find resources to finance its operations, charging user costs is justified. But if users cannot afford the services available from the registry there will be a tendency to avoid the registry completely. This type of environment can encourage informality and failure to record transactions through formal channels, which will erode the quality and credibility of the information held by the registry.

*Dimensions to be measured:*

## The registry is financially sustainable through fee collection.

## Investment is sufficient to cope with demand and provide high quality services that are clearly defined and adhered to (reliable, accessible and affordable land information).

**Instructions for assessment:** To ensure that the registry will continue to operate in the long term, dimension (20.2) checks whether capital investments are sufficient (as a percentage of expenditures).

## Fees are determined transparently to cover the cost of service provision

This indicator assesses whether fees are determined and collected in a transparent manner. This is a key governance issue to avoid unpredictability and corruption that could jeopardize the credibility of the land administration system and cause land administration reforms to fail.

*Dimensions to be measured:*

## The rational for the determination of fees is clear, the schedule of fees is publicly accessible and payment is accounted for.

**Instructions for assessment:** This dimension checks whether a clear schedule of fees for different services exists and is publicly accessible with receipts being issued for all transactions.

## Informal payments are discouraged.

***Instructions for assessment***

Because the sustainability of the registry is dependent on customer satisfaction, this dimension checks the enforcement of mechanisms to detect and punish bribes.

* Comment on what standards exist and the meaningfulness of these standards.
* Comment on geographic variations if any.

## Service standards are published and regularly monitored.

***Instructions for assessment***

This dimension checks whether service standards of processing times and user charges are published and regularly monitored throughout the system.

**Module 7: Land Valuation and Taxation**

In areas where land values are high (e.g. urban areas), taxation of land can generate significant revenues for local government and generate important incentives against land speculation. However, land taxation is politically controversial and as a result there is great variety in the ways that property taxes are assessed and collected. In many countries, the lack of revenue from property tax impacts on the ability of local governments to provide the needed services and in some cases the lack of realistic taxation on capital gains contribute to speculative bubbles in the land market. Allowing for a more uniform implementation of land taxation will require attention to both technical issues (clear principles for valuation to avoid arbitrariness, regular updating of valuation rolls, capacity for efficient collection) and policies in order to generate appropriate incentives (retention by local governments, tax exemptions).

## Transparency of valuations: valuations for tax and compensation purposes are based on clear principles, applied uniformly, updated regularly, and publicly accessible.

This indicator assesses the transparency, accuracy, and public availability of land and property valuations, a key issue to avoid treating taxpayers unequally, to prevent the collusion of taxpayers and officials involved in tax collection (as this may lead to reduced public financial resources), and to establish the credibility in the institution of property and land taxation. Opaque or outdated valuations can also introduce distortions in taxation levels across areas and lead to an inefficient allocation of land, land use and investments.

*Dimensions to be measured:*

## There is a clear process of property valuation.

***Instructions for assessment***

This dimension assesses whether the process of property valuation for tax purposes is clear, transparent, and comprehensive, based largely on market prices (or transaction value when markets are not present) and regularly updated.

To avoid distortions and guarantee fair treatment, it is important that taxation authorities base their valuation of land and property on market prices.

## Valuation rolls are publicly accessible.

***Instructions for assessment***

Dimension (22.2) concerns the effectiveness of the policy for public accessibility of valuation for all properties that are considered for taxation.

Are the valuations regularly and frequently updated and made publicly accessible?

## Collection efficiency: resources from land and property taxes are collected and the yield from land taxes exceeds the cost of collection

This indicator assesses the extent to which authorities effectively implement tax collection. Even if valuations are transparent and accurate, land and property taxation may not be an effective revenue generation tool for local governments if the latter are unable to follow through on collections, if their costs of collections exceed the amount collected, or if their retention of taxes is at a level that is not compatible with the objective of an adequate provision level of local public goods.

*Dimensions to be measured:*

## Exemptions from property taxes payment are justified and transparent.

**Instructions for assessment:** Dimension (23.1) checks that tax proceeds are not significantly reduced by a high number of exemptions to the payment of land and property taxes as the latter should be limited, only based on equity or efficiency grounds, and applied non-arbitrarily:

## Property holders liable to pay property tax are listed on the tax roll.

**Instructions for assessment** It is also important that tax authorities manage to collect the assessed taxes while incurring reasonable collection costs in view of the amount that is collected.

## Assessed property taxes are collected.

**Instructions for assessment** This dimension assesses whether the amount of tax revenue collected is close to the potential.

## Receipts from property taxes exceed the cost of collection.

**Instructions for assessment**: This dimension assesses if the amount of property taxes collected is significantly above the variable cost of collection (as proxied by the remuneration of required staff).

**Module 8: Dispute Resolution**

It is important that affordable, clearly assigned, transparent, and objective dispute resolution mechanisms exist and that these mechanisms are sufficiently efficient to maintain the level of unresolved disputes low enough not to affect the productivity of land use or threaten social stability.

In many developing countries, property rights systems are changing rapidly, often creating significant tensions among different value sets and the individuals whose access to resources is affected by these changes. To prevent either large-scale opportunistic behavior and the erosion of authority or a high level of persistent conflict that can easily escalate into social unrest with very negative consequences, it is important to have institutions for conflict resolution that are legitimate, legally recognized, and accessible to the majority of the population. Such institutions facilitate the management of conflicts and their authoritative resolution. This requires the existence of an independent forum with transparency and limited political discretion, and effective and affordable rules and mechanisms for appeal and dispute resolution through formal and informal mechanisms.

Continuing dispute that cannot be resolved authoritatively can impose huge costs not only on individuals but also on society as a whole as it will deter land investments and further development. The main sources of such disputes are often either large scale social shifts due to factors such as internal migration and urbanization or difficulties arising from attempts to implement inappropriate policies.

## Assignment of responsibility: 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.

This indicator assesses the accessibility and adequacy of existing conflict resolution mechanisms. It is important that the legal responsibility of the institutions responsible for conflict resolution be clearly assigned. Unclear rules would increase transactions costs as disputes may be pursued through multiple channels, diverting resources from productive uses. Incompetence among judicial authorities resulting in inconsistent application of laws and interpretation of legal definition would reduce confidence in legal institutions and do little to resolve deep-rooted land disputes.

*Dimensions to be measured:*

It should be checked whether there are institutions with a formal mandate to resolve conflicts, and whether these institutions are accessible at the local level and if their decisions can be appealed against. Both the process and appeal mechanisms (e.g. appeals court) should involve a reasonable cost and time. It is also important to check whether the types of land conflicts that can be resolved by informal rather than judicial means are clearly defined, and that there are no parallel avenues for conflict resolutions. Parallel avenues that may exist in the country include community-based systems which may have formal recognition, administrative dispute resolution systems and judicial dispute resolution systems.

## There is clear assignment of responsibility for conflict resolution.

**Instructions for assessment** Dimension (24.1) assesses whether possibilities for so-called forum shopping (i.e. pursuit of cases through parallel formal channels) are minimized.

## Conflict resolution mechanisms are accessible to the public.

**Instructions for assessment** This dimension analyzes whether institutions with a formal mandate to mediate land-related conflicts can be accessed at low cost by the majority of the population.

## Mutually accepted agreements reached through informal dispute resolution systems are encouraged.

## There is an accessible, affordable and timely process for appealing disputed rulings.

## The share of land affected by pending conflicts is low and decreasing.

This indicator assesses whether an efficient institutional framework can limit the opportunity for costly disputes to arise before they have a chance to become established, or where there are legitimate disputes, if the institutional framework can deal with those disputes in a reasonable time.

*Dimensions to be measured:*

## Land disputes constitute a small proportion of cases in the formal legal system.

***Instructions for assessment***

It is important to check that land disputes do not represent a disproportionate share of court cases, and that land conflicts are resolved resolve in a reasonable amount of time at a reasonable cost.

Where administrative records are available, use them to complete the table below. Where such records are not available conduct a semi-structured interview with the First Instance Court Judge/clerk (refer to suggested interview questions below). Explain how percentages were estimated.

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of Dispute** | **Number of conflicts (in sample or dataset)** | **Average Time to Resolve (months)** | **Average Cost to Resolve** |
| **Total cases in sample/dataset** |  |  |  |
| **Total Land Disputes** |  |  |  |
| Inheritance/family dispute |  |  |  |
| Property transaction/contract |  |  |  |
| Challenge to ownership |  |  |  |
| Expropriation |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Boundary dispute |  |  |  |
| Dispute over use |  |  |  |
| Trespass |  |  |  |
| Right of access/passage |  |  |  |
| Mortgage/loan |  |  |  |
| Other (Please specify) |  |  |  |

* In addition to quantitative statistics of court records, interview a judge or clerk from the first instance courts. The following semi-structured interview can be followed to gather data supporting data for answering all dimensions of LGI 21. Where possible, 3 judges/clerks should be interviewed from different jurisdictions .It is necessary for Judges/Interviewees to estimate percentages if real data is not available, and note how this judgment was made.
  + How many cases were resolved in the past year?
    - How many of these are land related?
  + How many new cases lodged in the past year?
    - How many of these are land related?
  + How many outstanding cases at the current time?
    - How many of these are land related?
  + How many long standing land dispute cases are in the court system (cases lasting >5 years)
    - How many of these are land related?
  + What is the average time to reach a first instance decision in the court in the past year?
    - Overall
    - For land case specifically
  + Are land disputes considered a major problem that the judicial system has to deal with?
  + In your opinion is there an adequate supply of lawyers to assist claimants in their land dispute cases?
  + Are the lawyers available familiar with the intricacies of the land law?
  + Describe a typical land-related conflict that is presented to the courts?
  + In a typical case (as you described), how long would it take to resolve?
  + What are the main causes of delay in the first hearing of a land dispute case?
  + What are some key reasons why these cases are not resolved?
  + Who are the main stakeholders involved in long standing unresolved dispute cases?

What alternatives are to using the judicial system are available to resolve land disputes?

## Conflicts in the formal system are resolved in a timely manner.

***Instructions for assessment***

Dimension (25.2) deals with the time it takes before a decision in a land-related conflict is reached in the first instance court.

Use administrative court record data where possible. If none are available, consider this dimension when conducting semi-structured interview, refer to LGI 25.1 Explain how statistics were estimated and data collected.

## There are few long-standing land conflicts (greater than 5 years).

***Instructions for assessment***

Dimension (25.3) explores the long-standing conflicts in the formal court system.Use administrative court record data where possible. If none are available, consider this dimension when conducting semi-structured interview, refer to LGI 25.1. Explain how statistics were estimated and data collected.

**Module 9: Review of Institutional Arrangements and Policies**

Overlaps or gaps in mandates or actual functions performed by land administration institutions (either horizontally or vertically) allow for discretion, which may cause ambiguity and increase transaction costs for those who need to use these institutions, thereby pushing potential users into informality. They can also create confusion or parallel structures that can threaten the integrity and reliability of documents and information provided by land sector institutions, thus undermining confidence in property rights and creating threats to good governance.

Land policies are the key drivers of land governance. To avoid capture by special interest groups, policies need to be developed in an open and transparent process and should take into account the availability of other policy instruments to achieve similar goals. Moreover, policy goals and responsibilities by the different institutions in the land sector should be clearly articulated, mechanisms to regularly assess the extent to which these goals are achieved should be available, and policy adjustments should be made in case the overall goals are not being achieved as planned.

## Clarity of mandates and practice: 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.

This indicator assesses the clarity of mandates of land institutions, the effectiveness of the land administration system in avoiding horizontal and vertical overlaps, and the ability to share land-related information.

*Dimensions to be measured:*

## Processes of policy formulation, implementation, and arbitration affecting land rights and land use are properly separated.

## The responsibilities of the ministries and agencies dealing with land do not overlap (horizontal overlap).

**Instruction for assessment:** The horizontal (institutional) overlap can be avoided by assigning clear and non-overlapping responsibilities to institutions from different sectors but dealing with land administration issues i.e. there is a clear delineation of institutional responsibilities with respect to the spectrum of land related issues (e.g. urban, rural, and environmental or forest, mining, water/irrigation, natural resources).

## Administrative (vertical) overlap is avoided.

**Instruction for assessment:** Vertical overlap considers whether central, regional, and local institutions dealing with land have clearly assigned functions and responsibilities across the different geographic levels of governments.

## Information on land ownership and use is shared among responsible institutions and relevant parts are freely accessible to the public.

**Instruction for assessment:** Dimension (26.4) assesses whether land-related information, both textual and spatial, is maintained in a uniform way that is accessible at reasonable cost by all the institutions that might have an interest in land issues and need this information. Such public institutions may include land use planning agencies, local authorities, courts, disaster management agency, etc.

## Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute.

**Instruction for assessment:** The issues identified in the tenure legal framework and procedures for land-related matters (incl. renewable and subsoil resources) are fully consistent and a unified mechanism for complaint and grievance redress is available in case of overlap.

## Ambiguity in institutional mandates (based on institutional map) does not cause problems.

**Instruction for assessment:** Indicator 26.6 explores whether the processes applied by public institutions dealing with land are fully integrated and consistent, and if different public institutions that deal with land-related matters have functioning mechanisms for coordination in place that are regularly used. This assessment is based on the institutional mapping (see inception report).

## Equity and non-discrimination in the decision-making process: policies are formulated through a 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.

This indicator assesses the equity and transparency of land policy formulation and implementation. Because there is a risk that land policies could serve the interest of well-established groups at the expense of others (e.g. to the detriment of women, ethnic minorities, the landless, migrants, or the indigenous population), it is important that the interests of all relevant stakeholders are taken into account when the policy is designed and when it is implemented. This can be achieved through the participation and consultation of all stakeholder groups in the decision-making process and the incorporation of clearly articulated equity goals as policy objectives. Progress towards these goals should be monitored and evaluated, leading to regular and publicly accessible reporting of the results.

*Dimensions to be measured:*

## Land policies and regulations exist and are developed in a participatory manner involving all relevant stakeholders.

**Instruction for assessment:** An important issue is whether or not the legislation has produced a comprehensive doctrine or statement that can provide the main justifications and orientations of a land policy and the legal basis for the tools that can be implemented in practice. It is also desirable that impacts of land policies on equity issues are considered are monitored. Dimension (27.1) assesses whether a comprehensive policy exists or can be inferred by the existing legislation and if land policy decisions that affect sections of the community are based on consultation with those affected and their feedback on the resulting policy is sought and incorporated in the resulting policy.

## There is meaningful incorporation and monitoring of equity and poverty reduction goals in land policy.

**Instruction for assessment:** Dimension (27.2) is about equity and assesses whether land policies incorporate equity objectives and if these are regularly and meaningfully monitored and their impact on equity issues is compared to that of other policy instruments.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Rights of …** | **Considered in policy** | **Meaningfully monitored** | **Impact compared to other policy instruments** | **Comments** |
| Indigenous |  |  |  |  |
| Migrants |  |  |  |  |
| Landless |  |  |  |  |
| Women |  |  |  |  |
| Other (please specify) |  |  |  |  |
| **Codes:** | **1 = Well considered;**  **2 = Considered but could be improved;**  **3 = Not considered;**  **N/A = Not applicable.** | **1 = Well monitored;**  **2 = Monitored but could be improved;**  **3 = Not monitored;**  **N/A = Not applicable** | **1 = Impact compared;**  **2 = Impact not compared;**  **N/A = Not applicable.** |  |

## There is meaningful incorporation and monitoring of environmental and sustainability goals in land policy.

**Instruction for assessment:** To ensure efficiency and transparency, expected benefits of land policies should be compared to the corresponding costs and adequate resources should be available.

## The implementation of land policy is costed, matched with benefits and adequately resourced.

## There is regular and public reporting indicating progress in policy implementation.

**Instruction for assessment:** Publicly accessible reports should provide indication of progresses in policy implementation. The last dimension (27.4) analyses monitoring and assesses whether formal land institutions report on land policy implementation in a regular, meaningful, and comprehensive way with reports being publicly accessible.

## Land policy is effective in ensuring that suitable land is available for smallholder farming and housing for low-income groups.

## Land policy is effective in preventing settlements in high risk areas and prepare for future disasters risk