

Legal Pathways for Supporting GLTN's Land Tools

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Definition of Key Terms	
Forced Eviction	The permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate form of legal or other protection (UN 2014).
Land administration	The process of determining, processing, and disseminating information regarding the ownership, value and use of land, when implementing land management (UN Habitat 2010)
Land registration	The process of recording rights and other interests in land and changes in these. The procedures used and legal effects can differ a lot. Registration of deeds and title registration are mentioned as two extremes of this. Registration of deeds allows for more flexibility and different sources of evidence, but does not have the notion of indefeasibility (that it cannot be disputed) that is often attributed to a registered title (UN Habitat 2010).
Land tenure	<p>The way in which individuals, groups and societal interests relate to land and its resources. It is about the relationships among individuals and their behaviour relative to one another, in relation to their interest in land, to spatial units and to the resources they contain. A land tenure system does not have to be formal and/or contain registered titles or be written (UN Habitat 2010).</p> <p>A variety of tenure rights, including formal, customary, religious, and informal rights, have both legal legitimacy (rights recognized by law) and social legitimacy (rights that have broad acceptance among society) (Palmer et. al 2009).</p>

<p>Land tenure security</p>	<p>The degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it (GLTN 2008).</p> <p>It can be defined in various ways:</p> <ul style="list-style-type: none"> • The degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it. • The certainty that an individual's rights to land will be recognized by others and protected in cases of specific challenges; or, more specifically: • The right of all individuals and groups to effective government protection against forced evictions (GLTN 2008 p. 5).
<p>Land Tools</p>	<p>Resources for understanding how to carry out and perform actions that enable the implementation of large-scale changes in the land arena (UN Habitat 2010).</p>
<p>Participatory enumeration</p>	<p>An enumeration process (a process of “counting”, “listing down” and/or “gathering data”), which is to a significant extent jointly designed and conducted by the people who are being surveyed (UN Habitat 2010).</p>

List of Acronyms	
CoFLAS	Costing and Financing Land Administration Services
CCRO	Certificate of Customary Right of Occupancy
FAO	Food and Agriculture Organization of the United Nations
FFP	Fit-for-Purpose
GLTN	Global Land Tool Network
LAS	Land Administration Services
LRF	Land Redistribution Fund
STDm	Social Tenure Domain Model
UN	United Nations

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Introduction

Objective of the Study

This report identifies legal and institutional criteria that would support the implementation of eight Global Land Tool Network (GLTN) Tools related to (1) Access to Land and Tenure Security and (2) Land Administration and Information. This report also highlights illustrative examples of domestic legal frameworks that are in congruence with eight Land Tools developed by GLTN. This study focuses on a range of country that either intentionally or unintentionally adopted the guidance provided by these Tools as opposed to only discussing countries in which GLTN has supported the implementation of its Land Tools. By identifying a menu of legal options for promoting access to land, tenure security, and effective land administration, this report provides a useful snapshot that can inform and influence law and policy makers to adopt GLTN Land Tool guidance in domestic legal frameworks.

Why was this study conducted?

If legal instruments adopt the guidance established by GLTN's Land Tools, and governments and private actors respect the law by implementing and enforcing those instruments, then the international land governance standards promoted by these Tools may be realized. Land governance standards established in the Land Tools help ensure access to land, tenure security, and effective land administration. Secure access to land is essential for human shelter, socioeconomic growth, food production, sustainable urbanization, peace and prosperity as well as access to public services and sources of credit (UN Habitat 2008). Without access to land and tenure security, landholders may become prone to income loss, poverty, displacement, food insecurity, discrimination, marginalization, and other negative impacts (UN Habitat 2008). With the rising presence of development challenges (e.g., population growth, climate change, resource scarcity, rapid urbanization), legal instruments that ensure access to land, tenure security, and responsible land management are of critical importance, especially given that millions of people continue to live in poverty and without secure tenure rights in rural and urban areas.

What are GLTN Land Tools?

GLTN is located within the Urban Legislation, Land and Governance Branch of UN-Habitat, and has the mandate to research, develop, test, and disseminate pro-poor and gender responsive approaches that support urban land administration systems, innovative residential tenure, affordable land management, and the implementation of land-related regulatory and legal frameworks. More broadly, GLTN and UN Habitat work to secure land rights for all in order to reverse: (1) gender discrimination; (2) social exclusion of vulnerable groups; and (3) wider social and economic inequalities linked to inequitable and insecure rights to land (UN Habitat 2008, p. 3).

UN Habitat's Urban Legislation Unit commissioned this study. The Urban Legislation Unit promotes the development of sound land laws and land governance systems as key measures that help foster tenure security and sustainable development. The Unit promotes the development of well-formulated law based on sound policy that supports effective implementation. A key objective of the Legislation Unit is to create a stable and predictable framework for both public and private sector action while guaranteeing the inclusion of vulnerable groups.

Although this report focuses on eight GLTN land tools, GLTN and its partners have identified 18 key Land Tools that address poverty and land issues at country level. These

Tools promote innovative land policies and laws designed to enable land systems to work for the poor, to be gender and youth responsive, and to address issues of customary and informal land. The Land Tools provide practical solutions for solving problems in land administration, land management, and other related areas. The Tools help put principles, policies, and legislation into effect. GLTN's Tools are designed to benefit all people, with special attention to the poor, women, and disadvantaged groups.

What constitutes a land-related legal framework?

In many countries, there are constitutional provisions protecting property rights subject to the government's authority to compulsorily acquire land and property for a public purpose or interest (Wily 2018; Tagliarino 2016). Statutes and regulations give teeth to constitution provisions related to land and property. Many countries have enacted comprehensive land or real property laws establishing how formal land governance systems must operate, though some countries still have not. Land and property laws, and implementing regulations, often classify the various types of legally recognized tenure, and the steps needed to register or otherwise formalize land rights. Land laws and regulations also describe land registration processes and the parameters of cadastral management. Land-related legal frameworks also often include instruments pertaining to land and property valuation and taxation as well as those governing land use planning in urban and in rural areas.

For purposes of this study, "legal instruments" is used broadly to refer to a broad range of legally binding instruments that apply to land governance, including national constitutions, planning acts, urban development laws, land acquisition acts, land acts, communal land acts, agricultural land acts, land use acts, and regulations. The terms of "legal frameworks" and "legal instruments" are used interchangeably throughout the report.

Why focus on whether legal frameworks support the implementation of the Land Tools?

Robust land-related legal frameworks lay the foundation for land tenure security and sound land administration. Such frameworks establish how formal land governance systems should operate within a given country or area. If laws adopt the Land Tool guidance and impose a set of legally binding obligations on private actors and the government, they can then impose obligations and influence actions that comply with the guidance provided by GLTN Land Tools. Laws provide landholders and the public with a set of rights and protections, ensuring government actors are held accountable for decisions affecting land tenure and property rights. Landholders can use legal instruments as a point of reference when they wish to challenge government and private actor decisions that infringe on recognized tenure rights, and seek redress in court if such rights are violated. Laws provide courts with guidance when ruling on whether government decisions affecting land tenure were made in a manner that violates the law. If legal frameworks adopt the guidance provided by GLTN's Tools, courts can follow the guidance established in laws to hold government and private actors accountable for decisions affecting land.

What are the limitations of this study?

The primary intention of this study is to highlight relevant criteria and illustrative legal frameworks that address the GLTN Land Tools. The analysis presented here is limited to codified law and does not examine whether such laws are implemented or enforced effectively on the ground. This report is merely a scoping study that provides a few illustrative country examples that suggest ways of implementing GLTN Tools within legal

frameworks. The study highlights a few key provisions that support the implementation of the GLTN Land Tools, but does not provide a comprehensive assessment of the entire legal framework applicable to land within a given country. Further research is needed to comprehensively assess legal frameworks against the Land Tools.

While this study highlights a variety of country frameworks, there are likely additional countries not covered in this study that incorporate elements of the GLTN Tools. Moreover, this study does not rank countries based on their compliance with the Tools. This study does not look at whether lawmakers intended to adopt the GLTN Tools, but instead whether laws (either intentionally or unintentionally) align with the principles established by the GLTN Tool.

The country examples were chosen based on a desk review of relevant legal databases online, including FAOLEX and UrbanLex. To conduct this analysis, a wide range of secondary sources were also reviewed, such as the World Bank Land Governance Assessment Framework reports, reports by UN Habitat on the GLTN Land Tools, reports by FAO, academic literature, among other sources. It is worth acknowledging that this legal analysis was not peer reviewed by country experts.

Who can benefit from this research?

- **Law and policy makers** can use this research to understand the various ways in which GLTN's Land Tools can be incorporated into legislation and regulation. Law and policy makers can use this study to check whether their countries' legal instruments are designed to implement the Tools, and, if not, what legal reforms are needed to ensure implementation of the Tools.
- **Landholders and land rights activists** can use this study to better understand their tenure rights in relation to the GLTN Tools. With increased knowledge on whether laws are designed to implement the Tools, landholders and activists can use this resource to influence legal reforms as well as hold governments and private actors accountable for decisions and actions related to land governance.
- **Land practitioners** working in various countries can use this study to design and implement land projects that support legal reforms and effective implementation of laws that address the GLTN Land Tools.
- **Donor agencies** can use this study to make more targeted investments in land projects that support legal reforms by obtaining a better understanding of whether country frameworks support the implementation of GLTN Tools and, if not, what types of investments in land reform projects can support implementation.

Roadmap

This report is organized into two main sections. The first section focuses on GLTN's four Access to Land and Tenure Security Tools. The second section focuses on GLTN's four Land Administration and Information Tools. Each section is organized into sub-sections on the various Land Tools. Each sub-section on the Land Tools provides: (1) a brief description of the GLTN Tool; (2) a brief description of the criteria that should be included in legal frameworks for the GLTN Tool to be implemented; and (3) examples of legal instruments that are designed to support the implementation of the GLTN Tool.

Access to Land and Tenure Security Tools

Land tenure is a critical component of social, political and economic structures. It is multi-dimensional, bringing into play social, technical, economic, institutional, legal and political aspects that are often ignored but must be considered. Land tenure relationships may be well defined and enforceable in a formal court of law or through customary structures in a community. Alternatively, they may be relatively poorly defined, ambiguous and open to exploitation. GLTN develops Tools to render access to land and tenure security more equitable and accessible to all, with special attention to the poor, women and the disadvantaged group. The four Tools developed by GLTN that promote access to land and tenure security are:

- the Continuum of Land Rights Tool,
- the Participatory Enumeration for Tenure Security Tool,
- the Land Records System for the Poor Tool, and
- the Customary Land Tenure Tool.

After discussing the criteria that should be adopted in legal frameworks to support the implementation of each of the four Access to Land and Tenure Security Tools, a few illustrative country examples are described to show the extent to which the Land Tools have been adopted in domestic legal frameworks. It is worth acknowledging that this study does not measure whether country frameworks fully or partially adopt the GLTN Land Tools. Instead, the analysis shines a light on some aspects of country legal frameworks that, at least in some ways, adopt the principles established by the GLTN Land Tools. Additional analysis is needed to fully understand (1) the full extent to which legal frameworks adopt the Tools and (2) the presence of legal gaps that need to be filled for the Tools to be fully implemented.

Continuum of Land Rights

Tool	Concept Behind the Tool
Continuum of Land Rights (UN Habitat 2016)	The Continuum of Land Rights is a concept for understanding and administering the rich complexity of land rights on the ground. The rights along the continuum may be documented or undocumented, formal as well as informal, for individuals and groups, including pastoralists and residents of slums and other settlements that may be legal or not legal. The rights do not lie along a single line and they may overlap.

The Continuum of Land Rights refers to the diversity of tenure arrangements in practice, encompassing both *de facto* (in fact) and *de jure* (in law) rights (Enemark et al. 2015, p. 73). While not all tenure rights enjoy the benefits of legal recognition, levels of social recognition may be high, providing *de facto* rights with local legitimacy. A Continuum of Land Rights can function when a land administration system includes information that caters to the whole spectrum of formal, informal, and customary rights. Each continuum provides different sets of rights and degrees of security and responsibility and enables different degrees of

enforcement.

According to the Continuum of Land Rights concept, land rights may be recognized as legitimate whether they are documented or undocumented, formal and informal, collective or individual. Tenure rights may be freehold, leasehold, public and private rent, customary, or religious (GLTN 2016 ; UN Habitat 2008). Tenure rights include possession, use, freehold, lease, customary, and collective rights. The bundle of tenure rights can include the rights of access, withdrawal, management, exclusion, and alienation. According to the United Nations Committee on Economic, Social and Cultural Rights,

“Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure, which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups” (CESCR 119).

To promote the Continuum of Land Rights Tool, legal instruments should:

- Promote flexibility in tenure, allowing the full spectrum of formal, informal, and customary rights to be accounted for within land information management systems and to constitute legally enforceable claims (i.e., claims that can be asserted and defended in court, before tribunals, and against the government and outsiders in case of challenges of threats of forced eviction).
- Make it clear what are the steps by which legal recognition can be achieved, and how claims to various tenure forms can be proven through documentary and non-documentary forms of evidence.
- Acknowledge tenure systems in which different tenure forms that incorporate a range of interests in land exist simultaneously (GLTN 2016). The Continuum of Land Rights concept allows for land tenure arrangements to be continually changing and transforming, and for landholders shift between tenure forms over time. The Continuum of Land Rights concept emphasizes recognition of the legitimate tenure rights held by poor and vulnerable groups, including pastoralists and residents of informal settlements residents of slums, regardless of whether these settlements are legal or illegal.
- Recognize legitimate regardless of whether they are recorded in land registers and other record systems.
- Protect the rights to bequeath land to heirs, and to lease, lend or grant land to others on a temporary or long-term basis with reasonable guarantees of being able to recover the land (UN Habitat 2008).
- Allow for long-term rental contracts, and other methods for ensuring formal recognition of customary rights and informal settlements. Private ownership rights conveyed through land titles in urban areas can be problematic in some contexts, such as where large portions of land in cities are held under private ownership for speculation with informal tenure rights holders migrating and forming settlements on urban and peri-urban fringes (UN Habitat 2003). Instead of promoting land titling as the only means by which legal recognition of tenure can be achieved, laws should support the recognition of occupancy rights through certificates as well as leases and other intermediate forms of tenure. In 2003, UN Habitat published a set of best practices for providing access to land and securing tenure; these best practices

included the promotion of leases as an effective means of providing intermediate forms of tenure security (UN Habitat 2003).

Country Examples: Legal instruments enacted in Namibia, Brazil, and South Africa promote the Continuum of Land Rights

Namibia

Namibia's Flexible Land Tenure Act 2012 provides for the creation of a simple land tenure form that is registrable in a public registry (Government of Namibia 2012). Moreover, this Act promotes a Flexible Land Tenure System designed to provide affordable security of tenure to inhabitants of informal settlements. The System aims to create upgradeable alternative land tenure options in informal settlements. The System establishes an interchangeable tenure registration system that parallels and complements the formal system of freehold tenure. The objectives of the Act are (1) to create alternative forms of land title that are simpler and cheaper to administer than existing forms of land title; (2) to provide security of tenure of title for persons who live in informal settlements or who are provided with low income housing; to empower the persons to concerned economically by means of these rights (Government of Namibia 2012, Sec. 2). Under the law, holders of title rights are permitted to erect and occupy dwellings in perpetuity, access public services, and bequeath or lease dwellings to heirs and other persons (Government of Namibia 2012, Sec. 9). Holders of the title rights have "all the rights in the plot concerned that an owner that an owner has in respect of his or her erf [i.e. land plot] under common law" (Government of Namibia 2012, Sec. 10). With support from GLTN, Namibia is in the process of passing regulations and making institutional arrangements to implement this Act and recognize a broad spectrum of land rights in urban areas.

Brazil

Approved in 2001, Brazil's City Statute is an innovative national legal framework directed to strengthen local planning and land management, provide greater tenure security to informal occupants of urban areas, and promote more equitable and sustainable urban development (Rolnick 2013; Furbina et al. 2010). In addition to combating property speculation in urban areas, the City Statute was designed to give teeth to several principles established the Constitution of Brazil (1988), including the social right to housing, the right to regularization of consolidated informal settlements, the social function of property, among others (Furbina et al. 2010, p. 58). Under Brazil's Constitution, urban property is recognized as a fundamental right, provided that it fulfills social functions determined by municipal master plans as well as urban planning and environmental laws (Furbina et al. 2010, p. 59). The City Statute, the 1988 Constitution, and other legal instruments fostered "not only normative regulation of land use processes, development and occupation of urban land... [but also reversed] the pattern and dynamic of formal, informal and above all speculative property activities which have expanded social exclusion and spatial segregation in Brazil's cities" (Furbina et al. 2010, p. 62).

Another important aspect of the City Statute is that establishes legal instruments to be utilized by municipal authorities to launch programs aimed at the regularization of informal settlements following the guidance of the 1998 Constitution (Furbina et al. 2010, p. 64). The Statute also establishes the conditions by which municipal authorities may transfer occupiers of public land to more suitable areas when necessary. Local authorities must make joint legal, political and administrative decisions that respond appropriately to existing occupancy

situations and ensure that relocations account for social and environmental interests (Furbina et al. 2010, p. 64).

Article 9 of Brazil's City Statute is designed to ensure recognition of a broad range of urban tenure rights along the Continuum. This provision states that

“an individual possessing an area or urban construction measuring up to 250 square metres for a period of five years, uninterruptedly and unopposed, using it as a place for him and his family to live, acquires dominion of such a place providing the individual does not own another urban or rural property” (Government of Brazil 2001, Art. 9).

The City Statute reinforces the role of the municipality as a body that regulates the right to urban land ownership while minimizing conflicts and legal problems arising from the use of urban planning instruments by local governments (Furbina et al. 2010). Participatory management is key to fulfilling the objectives of the City Statute. Although the City Statute and urban master plans have improved access to urban land, they have not resolved all of Brazil's urbanland governance challenges. For example, increased funding and capacity support is needed to address Brazil's housing deficit.

South Africa

A group of laws enacted in South Africa are designed to provide access to land in rural and urban areas along with increased tenure security. For example, South Africa's Extension of Security of Tenure Act 1997 provides for measures with State assistance to facilitate long-term security of land tenure (Government of South Africa 1997). This Act regulates the conditions of residence on certain land as well as the conditions and circumstances under which persons may be evicted from land (Government of South Africa 1997). The Prevention from and Illegal Eviction and Unlawful Occupation Act prohibits unlawful eviction yet establishes procedures for the eviction of unlawful occupiers (Government of South Africa 1998). The Interim Protection of Informal Land Rights Act provides temporary protection of certain rights to and interests in land that are not otherwise adequately protected by law (Government of South Africa, 1996).

While the enactment of these legal instruments signals a step in the right direction, several key challenges stand in the way of the Continuum of Land Rights concept being fully implemented in South Africa. According to the Land Governance Assessment Framework report for South Africa, the existing legal framework recognizes rights held by 70% - 90% of both the urban and the rural population, either through customary or statutory tenure regimes; however, group tenure in informal urban areas is not formally recognized (Kitchin and Ovens 2013, p. 13). Although the law provides opportunities for those holding land under customary or collective tenure to achieve individual land ownership rights, the procedures for doing so are neither affordable nor clear (Kitchin and Ovens 2013, p. 13). Furthermore, non-documentary forms of evidence can be used to obtain recognition of a claim to property along with other documents when other forms of evidence are not available (Kitchin and Ovens 2013, p. 13). Yet they have less credibility than the required documents, according to the LGAF report (Kitchin and Ovens 2013). Legislation exists to formally recognize long-term, unchallenged possession, but due to insufficient implementation, formal recognition has only been granted to a few applicants (Kitchin and Ovens 2013, p. 13). Less than 10% of communal or indigenous land has boundaries that are demarcated, surveyed, and registered (Kitchin and Ovens 2013, p. 13). Aside from the Interim Protection of Informal Land

Rights Act, South Africa has not yet enacted robust and coherent legal framework governing the process of formalizing communal and other rural tenure rights.

The LGAF report further notes that, in urban areas in South Africa, the registration status of properties does not necessarily reflect the rights of the people residing on them; large tracts of registered land are informally occupied; and registration processes are often slow, signaling that relevant legal instruments need improvement (Kitchin and Ovens 2013, p. 23).

Participatory Enumeration for Tenure Security

Tool	Concept Behind the Tool
The Participatory Enumeration for Tenure Security	Enumerations are a fundamental part of the slum upgrading process. It is intended to establish information on the population size, ownership patterns and the state of infrastructure. Enumerations provide how not only data is gathered to allow for local planning, but also the process by which consensus is built and the inclusion of all residents negotiated. Enumerations are means to federate and organize communities and involve them in large-scale slum-upgrading projects.

To support the implementation of this Tool, legal frameworks should clearly categorize and define various forms of tenure. To help promote tenure security for residents of informal settlements, for example, laws aimed at adopting the Participatory Enumeration of Tenure Security Tool should:

- Establish responsive, flexible procedures for land regularization, and clear processes for achieving recognized tenure rights while reducing the risk of conflicting rules and regulation for legal claims.
- Allow for participatory land audit to be undertaken to assess the legal status of tenure rights holders;
- Impose legal requirements for land audits to be conducted in a manner that accounts for the Continuum of Land Rights while also promoting participatory enumerations as a key method for gathering information and evidence on tenure;
- Acknowledge that, with respect to local forms of legal evidence (both documentary and non-documentary evidence), communities are the repositories of local knowledge about the range of tenure rights, including secondary, overlapping, and temporary rights. Communities are often able to explain the evolving nature of tenure (Zevenbergen, J.A. et al. 2012);
- Promote traditional land dispute resolution mechanisms, including customary and community-based mechanisms, to resolve conflicts that arise over competing claims.

Incorporating these five criteria within legal instruments can further the incremental process of improving land management frameworks, promoting sustainable urban land management while ensuring tenure holders can submit and prove land claims.

The design and implementation of laws aimed at reducing homelessness, forced evictions, displacement, and other negative outcomes should provide access to land through a variety of tenure arrangements; this process should entail reforms of the overall statutory legislation related to property rights as well as laws applicable to rental contracts and land use (UN Habitat 2003). Specific legislation on land and housing should give attention to the protection of different levels of rights and interests such as ownership, long- and short-term leaseholds, easements, shares in real properties, collective rights, rights to apartments, rights to jointly owned property, and community titles/deeds (UN Habitat 2003, p. 63).

To support the implementation of these GLTN Tools, legal instruments should facilitate the social and territorial inclusion of informal settlements into the city, and address the historic injustices caused by that discriminatory rules that have increased the social inequality of cities and conflicted with the needs and interests of people living in the informal city (UN Habitat 2003, p. 63). Historically, legal instruments that enabled governments to acquire and regularize tenure in informal settlements often failed to fully achieve settlement upgrading and formalization objectives (UN Habitat 2003). Country contexts should be used to inform the design of land legislation, regulations, and policies that support effective land administration and information infrastructure. Lastly, establishing a clear and effective hierarchy of relationships between various legal instruments, including constitutions, statutes, regulations, policies, administrative decrees, and other instruments, can support the delivery and sustainability of responsive land governance and administration across various jurisdictions (e.g. jurisdictions at the national, state, district levels).

Country Example: Kenya's legal framework supports the implementation of the Participatory Enumeration for Tenure Security Tool

Several of Kenya's laws and policies are designed to promote the implementation of the Participatory Enumeration for Tenure Security Tool. Although Kenya's National Land Policy (2007) is not legally binding, it has had an influence on the national land reform process. Section 3.6.9 of the Policy states that "to deal with the difficulties experienced and caused by squatters and informal settlements, the Government shall...develop, in consultation with affected communities, a slum upgrading and resettlement programme under specified flexible tenure systems" (Government of Kenya 2007, Sec. 3.6.9). Section 66(a) of the National Land Policy calls for the government to "document and map existing forms of communal tenure, whether customary or contemporary, rural or urban, in consultation with the affected groups, and incorporate them into broad principles that will facilitate the orderly evolution of community land law" (Government of Kenya 2007, Section 66(a))

Section 4 of the Eviction and Resettlement Guidelines 2009, a non-binding yet influential legal instrument, defines "consultation" as the process whereby the affected persons, on their own or through their organizations, are provided an opportunity to be heard and to participate in the decision-making process on matters involving the protection and promotion of their legitimate collective interests, which shall include appropriate documentation and feedback mechanisms."

In terms of legally binding instruments, Kenya's Community Land Act 2016 is designed to support participatory enumerations, establishing community consultation and stakeholder

engagement as part of community land management and administration processes (Government of Kenya 2016, Sec. 15). Section 15 of the Act states

“A registered community shall have a community assembly... the community assembly shall elect between seven and fifteen members of the community assembly to constitute the community land management committee...the function of the community land management committee shall be to...promote the co-operation and participation among community members in dealing with matters pertaining to the respective registered community land” (Government of Kenya 2016, Sec. 15).

Additionally, section 8 of the Community Land Act states “the Cabinet Secretary shall, in consultation with the county governments ensure that the process of documenting, mapping and developing of the inventory of community land shall be transparent, cost effective and participatory” (Government of Kenya 2016, Section 8(2)). Section 36 of the Act states “an agreement relating to investment in community land shall be made after a free, open consultative process and shall contain provisions on the following aspects....stakeholder consultations and involvement of the community” (Government of Kenya 2016, Section 26). The Act also complies with the Tool by recognizing a broad range of tenure rights holders as eligible for recognition; for instance, Section 14 of the Act states,

“a person, a family unit, a group of persons recognized as such under any customary law or who have formed or organized themselves as an association, a cooperative society or any other body recognized by any written law, who are members of a community may apply to the registered community for customary right of occupancy” (Government of Kenya 2016, Sec. 14).

Under Sections 1 of the Second Schedule of the Urban Areas and Cities Act 2011, residents of city or urban areas have the right to “contribute to the decision-making processes of the city or urban area by submitting written or oral complaints to a board or town committee through the city or municipal manager or town administrator” (Government of Kenya 2011, Second Schedule, Section 1). Furthermore, section 2 of the Second Schedule states “a city or urban area shall develop a system of government that encourages participation by residents in its affairs, and shall for that purpose... establish appropriate mechanisms, processes, and procedures for...consultative sessions with locally recognized resident organizations.”

Overall, these legal instruments indicate that Kenya to some extent established legal and institutional structures that support the adoption of the Participatory Enumeration for Tenure Security Tool. Yet there remains ample room for progress in terms of implementation on the ground.

Customary Land Tenure

Tool	Concept Behind the Tool
Customary Land Tenure Tool	Customary tenure, including communal tenure, is critical in both rural and urban areas. It is a form of holding land that follows the customary norms and practices of a community or group. In many settlements, a grassroots land management body can mediate and arbitrate land disputes and make

	requests for services and development to public authorities.
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International standards on land governance as established in the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security* (VGGT), call for states to recognize legitimate tenure rights of indigenous peoples and other communities with customary tenure (FAO 2012, Sec. 9). According to the VGGT, states should recognize and respect these rights whether or not they were formally recorded (FAO 2012, Sec. 3.1). Consistent with the VGGT principles, GLTN's Customary Land Tool is designed to enable governments to recognize customary tenure systems using low-cost, efficient, and effective methods. In addition to the VGGT and the Customary Land Tenure Tool, several studies have identified agreed upon best practices for statutory recognition of customary tenure that should be incorporated into legal frameworks in order to support the effective implementation of this Tool (Knight 2010; Wily et al. 2017; Wily 2018). These "best practices" call for legal instruments that:

- Make customary land rights equal in weight and stature to "formal", certified land rights;
- Ensure customary lands, whether held by individuals, families, groups, or the community as a whole, are protected property, irrespective of whether or not these lands have been formally identified, mapped and registered;
- Enable communities to acquire formal collective titles over all or part of their lands without this formalization extinguishing customary incidents of the land or community jurisdiction over it;
- Allow communities to govern the distribution of rights of occupancy and use to lands within the property in accordance with their own rules including traditional norms, so long as all community land rules comply with requirements of inclusion, transparency and accountability, and other constitutionally established requirements;
- Define customary/community lands as lawfully including traditionally owned and shared off-farm forests, grazing, swampy lands, and collective title may encompass these properties;
- Promote overlap between customary and formal law;
- Establish genuine tenure security by placing land ownership in the people themselves, and create enforceable fiduciary duties between local land management bodies and landholders;
- Explicitly protect women's right to hold, use, or own land;
- Define "custom" very flexibly so as to be non-exclusionary and to allow for evolution, flexibility and adaptability over time;
- Establish procedures for documenting and protecting community lands as a whole first to protect the meta-unit from encroachment, then slowly, over time with landholder consent, allow for documentation of family and individual lands.
- Align legal proof of land claims with customary practice by formalizing landscape-based evidence and allowing oral testimony as proof of land rights; and
- Make customary land transactions legal and enforceable or voidable under contract law.

Recognition of customary tenure rights in the legal frameworks of Liberia, Kenya, Tanzania, India, and Mexico

In terms of legal recognition of customary tenure rights and implementation of the Customary Land Tenure Tool, several countries in Africa, Asia, and other regions provide good examples of how to enact laws that support the implementation of this Tool. For instance, several notable laws recognize customary tenure rights regardless of whether those rights are titled or formally registered, including laws enacted in Kenya, Liberia, Mozambique, Philippines, South Africa, South Sudan, Tanzania, Uganda, among others (Wily et al. 2017). This section provides a few illustrative examples of legal instruments designed to effectively provide customary tenure rights holders with access to land rights and tenure security. These frameworks support the implementation of GLTN's Customary Land Tenure Tool.

Liberia

Liberia's Land Rights Act 2018 is noteworthy because it provides a broad definition of customary tenure that accounts for a wide range of rights held and used by indigenous and rural communities based on customary norms and practices. According to the Act, the categorization of Customary Land must be based on customary practices and long period of use, as well as consensus reached by members of the Community, provided that Customary Land may be re-categorized based on changed conditions (Government of Liberia, 2018, Sec. 38(2)). The Act clearly defines Ownership of Customary Land as including (1) the right to possess; (2) the right to use; (3) the right to include or exclude; and (4) the right to transfer singly or jointly by sale, devise gift or otherwise (Government of Liberia 2018, Art. 5). Article 5 further states that land ownership may be held singly or jointly by individuals, or collectively by a Community as communal property.

The Act also recognizes the right of individuals and groups that do not have land titles, and states these may enjoy the right to possess or use the land under a lease, easement or license (Government of Liberia 2018, Art.6). Article 9 establishes requirements for proof of ownership or rights to land, and states that proof of ownership of private land may be evidenced by a deed. However, the "proof of ownership" requirements for Customary Land are flexible and allow for non-documentary evidence. The Act stipulates that legal proof of Customary Land Ownership can consist of any competent evidence including oral testimony showing a verifiable longstanding relationship with or ties to Community (Government of Liberia 2019, Art. 9). Under no circumstances shall the ownership of Customary Land be denied because of a failure by the Community to produce documentary evidence in support to the claim. The Act further stipulates "a Community may, in lieu of a Confirmatory Survey, enter into stipulations with one or more Communities or Private Persons in determining the boundaries of its Customary Land" (Government of Liberia 2019, Art. 9).

Proof that a particular tract of land should be considered "customary land" can be achieved by "common and longstanding understanding among members of the Community [and].... through historical activities and ties that are acknowledged by some or all neighboring communities and recognized by rules of customary practice" (Government of Liberia 2018, Art. 32). Ownership of Customary Land shall be communal property and should include the (1) right to exclude others; (2) the right possess and use the land and non-mineral resources thereon; (3) the right to manage and improve the land by planting crops and harvesting forest produces; and (4) the right to transfer portions of the land through lease (Government of Liberia 2018, Art. 32). The Act also provides for demarcation and categorization of

customary land (Government of Liberia 2018, Art. 32). According to the Act, all tenure rights and interest in Land are provided constitutional protection (Government of Liberia 2018, Art. 10).

Kenya

Under Kenya's legal framework, customary rights held by communities are recognized as and given a level of protection that is equal to freehold and leasehold rights (Government of Kenya 2010, Art. 61; Government of Kenya 2016, Art. 5(3)). Article 61 of Kenya's Constitution stipulates that all land (1) belongs to the nation, communities or individuals and (2) is classified as public, community, or private land (Government of Kenya 2010, Art. 61). Registration is compulsory under the National Land Commission Act, 2012 and the Community Land Act 2016 (Government of Kenya 2012, Art. 5(3); Government of Kenya 2016, Art. 7). All unregistered community land is held in trust by county governments on behalf of communities until the registration process is complete (Government of Kenya 2010, Art. 61; Government of 2016, Art. 6). Kenya's Community Land Act 2016 rights to land are vested in the community and community land may be held under customary, freehold, and leasehold (Government of Kenya 2016, Section 4(3)). The law defines "community" broadly as including a group of land users who share any of the following attributes: common ancestry; similar culture or unique mode of livelihood; socioeconomic or other similar interest; geographic space; ecological space; or ethnicity (Government of Kenya 2016, Article 2). While the Community Land Act has the potential to secure tenure for six to ten million Kenyans, implementation remains a key challenge and certain aspects of the law contain loopholes that put communities at risk of losing their lands during the formalization process (Wily 2018). For instance, the Act allows the government to withhold communal lands or lay claim to some communal land areas since the law states that "any land which has been used communally, for public purpose, before the commencement of this Act...shall be deemed to be public land vested in the national or county governments" (Government of Kenya 2016, Sec. 13).

Tanzania

In Tanzania, all land is public land and vested in the President of the Republic who acts as a trustee (Government of Tanzania, 1999a, section 4). Land is subdivided into three categories, general land, reserved land and village land. Whereas general and reserved land is managed by central government authorities (i.e., the Ministry of Lands, Housing and Human Settlement and Commissioner for Lands, village authorities (i.e., Village Council, Village Assembly, Village Executive Officer, Village Chairman) are in charge of the administration of village land (more than 50% of the Tanzanian territory). The Tanzanian land tenure system does not provide freehold titles. Claims of land ownership can be formalized through a Certificate of Right of Occupancy for general land, granted by the Commissioner for Lands (Government of Tanzania, 1999a, Section 29) or through a Certificate of Customary Right of Occupancy (CCRO), granted by village councils (Government of Tanzania, 1999b, section 25). Both forms of rights of occupancy are granted for a maximum duration of 99 years.

The statutory recognition of customary claims for land rights was confirmed by the adoption of the Village Land Act in 1999. Pursuant to the Act, customary rights are considered as private property rights and are registerable. They have the same legal status and effect than granted rights (Wily, 2003: 19). Village authorities can, under the supervision of the responsible district council, grant rights of occupancies to villagers, a family or a group of residents in a village, but not to non-citizens (who can only acquire a derivative right of

occupancy for general land). The allocation of CCROs does not require a formal survey and is based on “customary law.” While the Village Land Act does not clearly define the term “customary law”, the Land Act 1999 defines customary law broadly as “any rule that is established by usage and accepted as having the force of law by the community” (Alden Wily 2003, p. 23).

India

Pursuant to India’s Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Scheduled Tribes and other traditional forest dwellers are granted the right to hold and live in forest areas (Government of India 2006). The law defines “forest dwelling Scheduled Tribes” as “members or communities of Scheduled Tribes who primarily reside in and who depend on the forest or forest land for bonafide livelihoods” (Government of India 2006, Sec. 2). However, recognition of customary tenure rights mostly does not extend beyond the forestlands of India. The law establishes a Forest Rights Committee to assist the Gram Sabha in its functions to receive claims, prepare the record of claims and evidence including maps, prepare a list of claimants, and physically verify claims by visiting sites (Government of India 2006; Government of India 2007) The Forest Rights Committee must prepare a map. The Rules include an Annexure with a Claim Form where the names, address, and info of each forest rights claimant must be filled in. The rules provide for assistance to the Gram Sabhas and there are no registration costs.

Mexico

In 1992, Mexico adopted fundamental changes to its land governance system, allowing the privatization and market transfers of ejidal land rights (USAID 2017, p. 5). The LandMark global platform estimates that 55.6% of Mexico’s land is held as indigenous and community land (see LandMarkmap.org).

The Constitution of Mexico’s key article regarding land tenure, Article 27, was amended in 1992 to reflect a new tenure regime, which allows the certification, transfer, and privatization of *ejidal* and *comunidad* land. The Agrarian Law (Ley Agraria) (1992) implements Article 27 of the Constitution. The Agrarian Law aims to (1) end land redistribution from private farms to ejidos; (2) privatize the housing plots of ejidatarios; (3) allow for leasing of ejidal land to parties both within and outside of the ejido; (4) allow for sales of ejidal land within the ejido; and (5) allow for the full privatization of ejidal land (disincorporation of the ejido) through a two-thirds vote of the General Assembly (Government of Mexico 1992; USAID 2017, p. 10).

Regulations issued pursuant to the 1992 Agrarian Law also contain important provisions regarding ejido relations and land tenure. These include:

- the Regulations of the Agrarian Law on Matters of the Certification of Ejido Rights and Title to Plots of Land;
- the Regulations of the Agrarian Law on the Code of Rural Lands; and
- the Regulations of the Agrarian Law for the Promotion of the Organization and Development of Peasant Women (USAID 2017, p. 10).

Ejidos and comunidades are owned by the state, but managed communally by their residents. Many ejidos and comunidades contain a mix of some individually parceled and communally parceled land (USAID 2017, p. 11). Ejidal land can be freely leased and sold to other ejido members; however, comunidades cannot sell or lease land, but do have the option of converting into ejidos (USAID 2017, p.11-12).

The land registration process for ejidos and comunidades is as follows. A program of voluntary land regularization clarifies property rights for individual ejidos in a 12- to 18-month process (Byamugisha 2013, p. 61). The law establishes that the Registro Agrario Nacional (RAN) must register and provide documentary evidence of ejido and comunidad land. Mexico's program on land registration, called Procede (established in 1993), was voluntary and free for beneficiaries (Barnes et al. 2015). Ejido/ comunidad assemblies vote on boundaries and the Instituto Estadística Geografía Informática demarcates and maps ejido/comunidad land. The PROCURADURÍA AGRARIA is a federal agency charged with assisting ejidos and comunidades in registering their lands. REGLAMENTO INTERIOR DE LA PROCURADURÍA AGRARIA provides that the Procuraduría Agraria must ensure the prompt, speedy, and effective delivery of agrarian justice, seeking to guarantee the legal security of tenure for ejido and comunidad landholders. The process involves boundary assessment, demarcation, and conflict resolution through an independent review of legal documents (Byamugisha 2013, p. 61). Information on each ejido is registered in an Agrarian File (Folio Agrario). Under the Reglamento Interior del Registro Agrario Nacional, all records documenting the formation, modification, transfer, extinction and obligations of land rights within ejidos are recorded in this file. It also reflects the social and economic organization of ejido and all individual rights within it. When the Assembly deals with the delimitation of land rights within an ejido or with a change in tenure regime, the minutes of the meeting must be legalized by a Commissioner of Oaths, signed by a representative of the Agrarian Attorney's Office (Procuraduría Agraria) and recorded in the RAN (Art. 31). All contracts between an ejido and a third party allowing that party to use ejido land must be legalized and registered in the RAN under Article 46 of Reglamento Interior del Registro Agrario Nacional (Barnes et al. 2015, p. 7).

Once external boundaries are determined, the Office of the Ombudsman launches a dissemination campaign to explain the nature and procedures of the program. Next, a formal decision of the assembly (with a 50 percent quorum) must be reached regarding whether to participate in the land registration program. If the assembly votes yes, a committee of ejidatarios identifies the boundaries of different types of land (that is, urban plots, parcels, and common lands), prepares sketch maps, and establishes a complete inventory of rights, after pending conflicts have been resolved (or registered separately). A second assembly then must approve the formal demarcation of lands and a public display of the results for at least two weeks. A third assembly, with a quorum of at least 75 percent of all community members, a public notary, and a representative of the Office of the Ombudsman, then must work to publish results in the registry and distribute the certificates.

PROCEDE ended in 2006, but RAN and CORETT, a government agency responsible for addressing tenure issues in informal settlements within ejidos and comunidades, thereafter conducted land registration activities. Overall, the program was successful in regularizing land rights across rural Mexico, with 94% of rural ejidos had being certified by 2012 (Barnes, et al. 2015).

Land Record Systems for the Poor

Tool	Concept Behind the Tool
Land Record Systems for the Poor	Conventional land administration systems rarely improve tenure security for the poor. Land registration is not a neutral process. It usually aims to create “active” tenure security so that documented (“titled”) land can be managed in a formalized system. For poor people, the priority is “passive” tenure security so that they may avoid eviction or losing their right to the land. A “continuum of land recording” approach can develop into one that also increasingly supports “active” tenure security, but which begins the process from the more protective “passive” side.

In order to support implement the Land Records System for the Poor Tool, local contexts should be used to inform the design of an agreed-upon legal instruments, land policies, land administration functions, and land information infrastructure that implements pro-poor land record systems (Williamson et al. 2010). Pro-poor tools aim to reduce poverty and take the situation and needs of poor people into account while giving them a voice in decisions. Many legal and land recordation systems contain historical anti-poor biases that need to be addressed when designing a pro-poor land recordation system. Such biases include barriers to formal recognition, costly and cumbersome land registration processes, and inadequate legal protections against forced eviction. How to incorporate the Land Records System for the Poor within the existing legal framework of the country, and the areas in which the system might be implemented, will need to be assessed on a case-by case basis (Zevenbergen et al. 2012). To support the implementation of this Tool, legal instruments should promote design elements for a pro-poor recordation system, including:

- **An assessment of national and local conditions.** This concerns ascertaining government buy-in to the idea of a pro-poor land recordation system; assessment and with regard to accommodating a pro-poor approach to tenure security.
- **Sources of evidence.** These should be built on community social tenure practices. Community rules for identifying leaders should be followed; leaders who have knowledge and can act as witness should actively engage in the recordation process.
- **An introduction of a formalization process and a land officer.** The use of standardized forms should accommodate diversity and overlap in tenure arrangements and family relations. The land officer could also act as the land secretary to the communities’ leaders.
- **Recordation.** This is only possible if a land officer operating uses standardized forms. The filled-in forms would be presented to the local records office at community level.
- **Land recording, indexing and assigning a record keeper.** The record keeper will keep indexes of the forms and store them in an orderly fashion.
- **Inspection.** The system should have buy-in from both the community and the state. The state should have regional or national inspection mobile units, which travel to all the pro-poor systems to make inspections.
- **Pro-poor land governance structures.** Such structures promote co-ownership of

land administration systems by state and local communities. It is essential that the land recordation system be owned both by the local community and by the state through a co-management arrangement.

- **Pro-poor system requirements.** These requirements should enable a wide range of evidence to be used to prove the legal or social legitimacy rights and support structures that ensure the poor are able to access and complete relevant forms when recording their tenure rights in the record system.
- **Use of multiple sources of evidence.** Over time recorded information may be perceived as more credible relative to verbal information, yet legal instruments should allow for both forms of evidence to be used to legitimize land claims.
- **Dispute resolution.** Dispute resolution mechanisms based on customary norms and practices need to be protected and strengthened. Many communities have traditional, local or alternative dispute resolution mechanisms that have been effective in resolving long-standing and deep-seated land disputes that arise during land recordation processes.
- **Recordation of the Continuum of Land Rights,** including formal, customary, informal, occupancy, tenancy, use, among others.
- **Affordable processes and fees** that enable poor landholders to record their tenure. Legal instruments should ensure that financial and other barriers to the recordation system are reduced. The recordation system should be affordable for the state and its citizens particularly the poor to enable the country to scale up the system.

Legal instruments should ensure recordation processes are transparent, accessible and equitable to ensure adequate delivery to the poor. This means these instruments should establish clear, simple, accessible and affordable procedures for landholders to apply for and receive formal entitlement for their tenure and properties, and to receive documentary evidence in the form a title, deed, certificate of occupancy, or other recognized right; with a detailed map which leaves no dispute as to the location of the boundaries.

The Land Recordation System should be capable of dealing with complex, layered rights. In addition to formal tenure, the System needs to take care of customary and informal systems, as well as secondary rights. The System should incorporate social tenures. It is important that the System is simple, quick, and inexpensive. The STDM conceptual model meets those criteria (see discussion of STDM below). At the same time, land recordation should be voluntary, ensuring tenure rights are recognized even where landholders have not yet decided to participate in the recordation process.

Other legal issues that need to be assessed prior to implementing a pro-poor land record system are:

- The extent and forms of legal pluralism;
- The extent to which the law is flexible;
- Whether the law prohibits pro-poor land record systems;
- Whether prescription is available, existing forms of legal evidence and tenure types;
- Family law and practice;
- How administrative law could possibly be used; and
- Customary practice reviewed through a human rights lens (UN Habitat 2012b, p. 20).

To establish a Pro-Poor Land Recordation System, several important components need to be embedded within applicable legal instruments, such as possession and prescription, an

inventory of rights and/or claims, and a simple map showing the boundaries of land and property claims within a given municipality (UN Habitat 2012b, p. 4). Also, the System should be designed to improve participatory adjudication approaches to accommodate social land tenures, including complex layered rights, and legitimize (using various documentary and non-documentary forms of evidence) parcel data and maps (UN Habitat 2012b, p. 4). Land recordation processes should be established at the community level to improve the accuracy of the records and their accessibility. Other key pro-poor design elements include affordability and delivery of preventive justice (UN Habitat 2012b, p. 4). This Tool also recommends the adoption and implementation of a co-management system whereby the state and communities share responsibility over the land records, limiting injustice to the poor and giving them a voice in decision-making processes (UN Habitat 2012b, p. 4).

Country Examples: Legal instruments promote pro-poor land recordation in Rwanda and Ethiopia

Rwanda

Rwanda has made substantial progress in recognizing, recording and mapping individual land rights, including women's land rights, through a Land Tenure Regularization Program that was applied to the entire country (Hoza 2015, p. 40). The land laws governing land in Rwanda provide for recognition of individual land rights for both rural and urban land (whether acquired from customary or from formal law) (Hoza 2015, p. 38). Law No. 43/2013 of 16/06/2013 governing land in Rwanda states "every person who is in possession of land, acquired either in accordance with custom, or granted by a competent authority, or by purchase, is the recognized proprietor under a long term lease" (Government of Rwanda 2013). Land registration in Rwanda is mandatory; all customary rights have been converted into written rights in a form of long-term lease (Government of Rwanda 2013, Art. 20; Hoza 2015). Customary tenure and governance systems are extinguished on issue of formal title in favor of statutory terms and administration (Government of Rwanda 2013; Wily 2017 et al.). The Organic Land Law 2013 stipulates that all customary land rights and land use rights must be legally granted and documented by the competent authority with the beneficiary receiving rights of ownership through a long lease, which guarantees the security of land tenure and increases land values for the benefit of both landholders and the state (Hoza 2015, p. 38; Government of Rwanda 2004).

Article 18 of Ministerial Order No. 002/2008 of 01/4/2008 states that, "the Registrar or the Deputy Registrar must order the design and preparation of a registry index map or series of registry index maps" based on provisional demarcation records or other reliable sources (Government of Rwanda 2008, Art. 18). This Decree provides for two types of land registration: systematic registration and mandatory registration. Article 22 provides that "the Register of Titles and the Alphabetical Index are public documents. Anyone may consult them under the supervision of the Registrar or the Deputy Registrar, after paying the fee determined by the regulations" (Government of Rwanda 2008, Art. 22). Rwanda has a digital land register (LAIS) which makes land related records easily searchable by both right holder name and parcel. They can also be searchable by identification number (ID) or passport number of the right holder. The digital land register has now been decentralized for 29 out of 30 districts across the country, so applicants can access this system more easily.

According to the World Bank LGAF report on Rwanda, the cost of registering property through systematic registration is generally low even though some people in rural areas are

unable to afford fees and need government subsidies (Hoza 2015). According the LGAF report, “registration of land rights is affordable in relative terms, but it is deemed expensive by some landowners, especially since registration (and issuance of lease) results in the start of an annual payment, instead of a one-time payment” (Hoza 2015, p. 40). Fees are also difficult for poor urban and rural residents to afford (Hoza 2015).

Ethiopia

Ethiopia’s land registration procedures applicable to rural areas provide citizens with the right to access affordable land registration processes (Government of Ethiopia 2005, Articles 5 and 6; Wily et al. 2017). Article 5 of the Rural Land Administration and Land Use Proclamation (RLAALUP) states “peasant farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge” (Government of Ethiopia 2005, Art. 5). The RLAALUP provides for acknowledged or allocated parcels to be measured and recorded with issue of Holding Certificates and cadastral maps showing boundaries (Government of Ethiopia 2006, Art. 6). The Law promotes low-cost procedures rooted in community-based adjudication; however, there has been gaps in information that have been perceived as weakening tenure security due to permissive reallocations to investors (Wily et al. 2017). Between 2003 and 2005, Ethiopia issued certificates for 20 million parcels of land at less than US\$1 per parcel (with positive impacts on investment and gender equity) and piloted a cadastral index map that costs less than US\$5 per parcel, a cost well below that in comparable countries (US\$20 per parcel) (Byamugisha, 2013, 3).

According to the World Bank Land Governance Assessment Framework for Ethiopia, formalization of urban residential housing is feasible and affordable (Hailu 2016). Pursuant to Ethiopia’s Urban Land Leasehold Proclamation No. 721/2011, unauthorized possessions of land that do not contravene urban planning and parceling standards are often regularized and administered under leasehold systems, which ensures some level of tenure security for many urban landholders (Hailu 2016 p. 78). A directive has been developed to guide the formalization and regularization process and the overall land administration system (Hailu 2016 p. 78). The directive establishes several steps to follow that include identification of informal settlements for regularization as per directives, field survey and adjudication, checking whether parcels and properties contravene urban planning and sub division standards, among others (Hailu 2016 p. 78). However, in Addis Ababa and other urban areas, the requirements of regularization for urban planning have had disparate impact on properties affected by urban planning and development; many poor landholders remain vulnerable to demolitions and forced eviction without compensation and the only right they retain is to replacement land with a restricted parcel size (Hailu 2016 p. 78; Alemu 2013).

Land Administration and Information Tools

Land administration is the process of determining, processing and disseminating information regarding the ownership, value and use of land, when implementing land management (UN Habitat 2010). Land administration is usually carried out by responsible government entities at the national and local levels. The production, dissemination, and use of land information is necessary to inform different land administration aspects, such as the provision of tenure security, the regulation of property markets, and the promotion of effective land use planning and taxation. Land administration systems provide governments with an infrastructure for securing land tenure rights so they can determine valuation and taxation of land, and manage the use of land and land development (Enemark et al. 2015, p. 14).

GLTN develops and promotes innovative, fit-for-purpose land administration Tools and approaches that support governments and other stakeholders. GLTN's Land Administration and Information Tools, include:

- The Social Tenure Domain Model;
- Costing and Financing of Land Administration Services (CoFLAS);
- Transparency in Land Administration; and
- Fit-For-Purpose Land Administration.

In addition to discussing the criteria that should be incorporated into legal frameworks to support the implementation of each of these four Land Administration and Information Tools, this section provides a few country examples. The analysis presented in this chapter shines a light on aspects of country legal frameworks that to some extent adopt the principles established by the GLTN Land Administration and Information Tools. Additional analysis is needed to comprehensively assess the legal gaps that need to be filled for the Tools to be implemented.

The Social Tenure Domain Model

Tool	Concept Behind the Tool
The Social Tenure Domain Model (STDM)	The STDM is a pro-poor, gender responsive and participatory land information system. It has been developed to bridge the gap between formally registered land and land that is not registered. It also represents a person-to-land relationship along the land rights continuum by recognising the need for legal pluralism.

The STDM introduces the social element into land administration systems. It describes relationships between people and land while addressing the land administration needs of the poor and vulnerable, such as occupants in informal settlements and rural areas held under customary tenure. The STDM supports the development and maintenance of records in areas where regular or formal registration of land rights is not the norm. It focuses on unregistered land rights as well as overlapping claims that may have to be adjudicated to determine the

‘who’, the ‘where’ and the ‘what’. In other words, the emphasis is on social tenure relationships as embedded in the Continuum of Land Rights. This means informal rights such as occupancy, tenancy, use rights, customary rights, indigenous tenure as well as formal rights can be recognized and supported (with regard to information management) in a STDM-enabled land administration system. The STDM combines the use of technology (GPS units and satellite images) with elements of participatory approaches: public hearings, field visits, and public displays.

The focus of STDM is on all relationships between people and land, independently from the level of formalization, or legality of those relationships (Lemmen 2010, p. 10). The flexible nature of the STDM recognizes that parties, spatial units, and social tenure relationships may appear in various arrangements ways, depending on local tradition, culture, religion and behavior. Recordation in STDM may be based on observations in reality, resulting in recordation of informal land use rights.

The STDM is a concept that makes it possible to bring the social element into land administration by:

- Recognizing informal tenure arrangements based on the Continuum of Land Rights;
- Unpacking existing social tenures, by means of classifications and coding of land rights and inclusion of those tenure types in data collection and maintenance;
- Opening options for innovative and incremental approaches to improving tenure security by means of conversions;
- Bridging the gap between informal systems and formal systems that emphasize titles by means of standardized approaches allowing legal and technical interoperability between basic land recordation and formal registrations;
- Giving a snap-shot of the ‘people-land‘ relationships at any given time; and
- Informing the land administration activities about the actual situation on the ground (Enemark et al. 2015, p. 74).

To support the implementation of this Tool, legal provisions should:

- Recognize the Continuum of Land Rights concept;
- Require the facilitation of community consultations to ascertain rights and interests;
- Provide possibilities to record informal land use and tenure rights; and
- Recognize communities’ roles in ascertaining, recording, and maintaining land information systems.

Country Examples: Legal Instruments support the STDM Implementation in Mozambique and the Philippines

Mozambique

Article 13 of Mozambique’s Land Law Regulations (Decree 66/98), which implement the Land Act 1997, provides an example of how to incorporate aspects of the STDM into land legislation; this provision states,

“the application for a title for the right of land use and benefit shall include a statement by the local administrative authorities, preceded by consultation with the respective communities, for the purpose of confirming that the area is free and has no occupants” (Government of Mozambique 1998, Art. 13).

Furthermore, Article 27 of the Land Law Regulations indicates that the District Administrator’s opinion on whether to formally recognize rights to land use and benefit must be based on the findings of a “joint operation” aimed at gathering information pertaining to the land area in question; this operation must involve the Cadaster Services, the District Administrator or his representative, and local communities (Government of Mozambique 1998, Art. 27). The results of consultations with communities must be included in all applications for rights of land use and benefit (Government of Mozambique 1998). By integrating a community consultation process into the process of land registration and administration, Mozambique’s Land Act provides a foundation for implementing the STDM at country-level.

Philippines

The Philippines also adopted legal and institutional structures that facilitated the implementation of STDM elements (GLTN 2012). Article IV Section 8 of the Urban Development and Housing Act (RA 7279) directs the government to make idle, government-owned lands that has been unutilized for ten years prior to the law’s enactment, available as social housing sites. This provision in RA 7279 was the justification for the issuance of President Arroyo’s Memorandum Order 74. This Order directed the Housing and Urban Development Coordinating Council to confer and coordinate with the local government to plan and expedite the disposition of the proclaimed site to bona fide occupants and to grant titles, and to formulate post-proclamation guidelines (GLTN 2012, p. 26). These guidelines stipulate that the government must carry out several post-proclamation activities, including community consultations, census data gather, and tagging of properties (GLTN 2012, p. 26). The tenure arrangements allowed by the guidelines includes: 1) ownership through sale; 2) lease with the option to purchase; and 3) usufruct, with an explicit preference for the first two. Section 16 of guidelines state that “in certain justifiable cases that are mutually acceptable to the concerned parties, the government may resort to usufruct as an alternative mode of tenure arrangement” (GLTN 2012, p. 26).

Costing and Financing of Land Administration Services (CoFLAS)

Tool	Concept Behind the Tool
Costing and Financing of Land Administration Services (CoFLAS)	CoFLAS is a set of guidelines and a tabular framework that allows for exploring, identifying and prioritizing land administration services delivery options based on costs of developing and running the services, financial resources available to pay for them, and other considerations such as human capacity and strategic decisions, such as service coverage. CoFLAS does not focus on land value, land use or land development, but does assess the readiness of the country and the agencies responsible for the provision of land administration services for significant investment in land administration services’ reform.

CoFLAS is a decision-support Tool for land administration. It prompts discussion on a country's readiness for land reform and provides a series of templates to assist public agencies to identify the core needs and necessary investment for land reform processes. The outcome of a CoFLAS assessment is a series of reports that guide decision making related to land reform, identify the cost-implications of decisions, and support fit-for-purpose approaches. The CoFLAS assessment includes:

1. The policy context that drives land administration services (LAS) reform (core needs assessment);
2. Options for implementation that identify decision-impacts (such as immediate and ongoing cost, particularly to acknowledge that "best is not necessarily optimal");
3. The costs of Land Administrative Services reform, based on selected optimal implementation methods; and
4. Potential revenue from LAS reform implementation. CoFLAS is primarily a Tool that supports government staff with the following:
 - a. Preparing proposals for LAS reform (land sector staff);
 - b. Assessing such proposals and making a case for support within government and from development partners (policy makers); and
 - c. Reviewing LAS reform proposals and ensuring that such proposals provide value for money (ministry staff and development partners).

In order to support the effective implementation of CoFLAS, legal frameworks should be flexible enough to promote the completion of four stage assessment: (1) the Readiness Assessment; (2) Establishing Cost Assessment; (3) Operational Cost Assessment; and (4) Likely Revenue from LAS implementation. Overall, legal instruments should support land administrators' adoption of an FFP approach, ensuring the LAS are created in a cost-effective manner that focuses on service-delivery for all.

Country Example: South Africa's legal framework supports the implementation of CoFLAS

South Africa's Spatial Planning and Land Use Management Act to some extent supports the implementation of CoFLAS because it aims to provide for a uniform and comprehensive system of spatial planning and land use management (Government of South Africa 2013). It also seeks to redress past imbalances and ensure equity in the application of spatial development planning. This Act contains the development principles which include the principle of spatial sustainability, whereby spatial planning and land use management systems must promote land development in locations that are sustainable and limit urban sprawl so as to engender communities that are viable. Section 7 of the Act states that the following principles should apply to spatial planning, land development and land use management: the principle of spatial justice; the principle of spatial sustainability; the principle of efficiency; the principle of spatial resilience; the principle of good land administration (Government of South Africa 2013). According to the Act, "spatial justice" refers, among other things, to:

- spatial planning mechanisms, including land use schemes, must incorporate provisions that enable redress in access to land by disadvantaged communities and persons;
- land use management systems must include all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas and informal settlements (Government of South Africa 2013,

Section 7).

Section 7 of the Act further states that

“spatial planning and land use management systems must...promote land development that is within fiscal, institutional and administrative means of the Republic...consider all current and future costs to all parties for the provision of infrastructure and social services in land developments...promote land development in locations that are sustainable and limit urban sprawl...” (Government of South Africa 2013, Section 7).

According to the Act, the principles of efficiency means that “land development optimises the use of existing resources and infrastructure; decision-making procedures are designed to minimise negative financial, social, economic or environmental impacts; and development application procedures and efficient and streamlined and timeframes are adhered to by all parties.” (Government of South Africa 2013, Section 7). Lastly, under the Act, the principle of good land administration means that “all spheres of government ensure an integrated approach to land use and land development that is guided by the spatial planning and land use management systems as embodied in this Act” ((Government of South Africa 2013, Section 7).

The Act also provides for the creation of land use schemes, and requires that land use schemes must

- (1) include provisions that permit the incremental introduction of land use management and regulations in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme; and
- (2) include provisions to promote the inclusion of affordable housing in residential land development” (Government of South Africa 2013, Section 24).

Overall, the various principles and requirements established in the Spatial Planning and Land Use Management Act support the implementation of the CoFLAS Tool.

Transparency in Land Administration

Tool	Concept Behind the Tool
Transparency in Land Administration	The Transparency in Land Administration training package (Toolkit and trainer’s guide) aims at ‘sensitizing’ ‘up-stream change agents’ about land administration, develop their capacity to address issues of corruption and to enhance transparency in the land sector. It focuses specifically on land administration with a view to filling the capacity development gap in the land administration sector

To support the implementation of this Land Tool, land administration systems must be transparent, operate on principles of fairness and equity, include accountability and monitoring processes, and reflect the needs of the public (UN Habitat 2013, p. 29).

Transparency necessitates acting openly, understandably, and predictably. It refers to the

openness, consistency, and accountability of administrative systems (UN Habitat 2013, p. 39). To ensure this Land Tool is effectively implemented, land administration laws should be publicly available and comprehensible land records. Such laws should ensure there is transparency in the various land administration structures (e.g., the land ministries and other governing bodies charged with land-related decision-making and administration), their functions and roles (UN Habitat 2013, p. 40-41). Legal instruments should also provide for transparency regarding processes and procedures; for example, the process and steps that need to be taken, the time required to complete processes, the documents required, and means of access including routes of appeal (UN Habitat 2013, p. 41). They should also require that land administration authorities provide understandable and accessible information presented in a way that can reach a wide range of stakeholders, ensuring that land data and information is systematically collected and processed.

Country Example: Transparency in land administration promoted by Scotland Land Reform Act 2016

Section 1(1) of the Land Registration (Scotland) Act 2012 describes Scotland's Land Register as a "public register of rights in land in Scotland" (Government of Scotland 2012, Section 1(1)). The Registers of Scotland (Information and Access) Order 2014 (secondary legislation) is a short statutory instrument describing what information the Keeper must make available to the public, subject to fees (which are provided in Schedule 1 Part 7 of the Registers of Scotland (Fees) Order 2014). There is a presumption of public access: citizens do not have to prove a 'legitimate interest' in a particular piece of land to access information about it. Under the law, citizens cannot be denied access to land ownership information (Daniel 2016).

Section 39 of the Land Reform (Scotland) Act 2016 requires Scottish Ministers to make regulations requiring that information must be provided about persons holding a controlled interest in land and for that information to be recorded in a public register, kept by the Keeper of Registers of Scotland (Government of Scotland 2016, Section 39). This provision arose from concerns that the current system of land ownership was not sufficiently transparent and that, even if the owner or tenant of a piece of land were known, persons holding a controlled interest in that land may be more difficult to trace. In 2018, Scottish Parliament issued Draft Regulations, which had an overarching purpose of increasing public transparency in relation to individuals who have control over decision-making related to land. The Parliament intended to ensure there are longer be hidden or obscured categories of landowners or tenants (Government of Scotland 2018).

Pursuant to a requirement imposed by the Land Reform Act 2016, Scottish government published the Scottish Land Rights and Responsibilities Statement in 2017. Principle 5 of this Statement stipulates, "there should be improved transparency of information about the ownership, use and management of land, and this should be publicly available, clear and contain relevant detail" (Government of Scotland 2017). It further states "in relation to land use and management, the aim of this principle is to ensure that reasonable and helpful information is made available in a clear and accessible fashion; that is, information that is helpful and relevant to local people and communities in dealing with problems..." (Government of Scotland 2017). Overall, Scotland has taken significant steps towards establishing appropriate legal and institutional architecture that promotes transparency and accountability within Scotland's land administration system.

Fit-For-Purpose Land Administration (FFP)

Tool	Concept Behind the Tool
Fit-For-Purpose Land Administration (FFP)	The FFP concept has three interrelated core components: the spatial, the legal and the institutional frameworks. The spatial framework supports recording the way in which land is occupied and used. The scale and accuracy of this representation should be sufficient to secure the various kinds of legal rights and tenure forms recognized through the legal framework. The institutional framework is designed to manage these rights and the use of land and natural resources, and to deliver inclusive and accessible services. The process entails recognizing, recording and reviewing land rights; this means balancing the financial cost against speed of delivery against quality, such as levels of accuracy to meet the needs; in short, finding a suitable solution for the purpose.

The FFP approach provides new, innovative, and pragmatic solutions to land administration that are context-specific and focused primarily on developing countries where current land administration solutions are not delivering. FFP land administration aims to directly align with country specific needs in a affordable and flexible manner to accommodate different types of land tenure. FFP land administration systems can also be upgraded when economic opportunities or social requirements arise (Enemark et. al 2015).

The following are overarching principles supporting FFP approaches as outlined in Enemark at al. 2015:

- **Focus on the purpose.** The FFP approach is focused mainly on the “what” in terms of the end outcome of security of tenure for all and then, secondly, it looks at the design of “how” this can be achieved. The “how” should be designed to be the most “fit” for achieving the purpose (“the what”). In this regard, the phrase “As little as possible – as much as necessary” perfectly reflects the FFP approach.
- **Flexibility.** The FFP approach is about flexibility in terms of demands for accuracy. It focuses on shaping the legal and institutional frameworks to best accommodate societal needs while securing different kinds of tenure types that range from more social or customary tenure types to formal types, such as private ownership and leasehold.
- **Incremental improvement.** The systems should be designed for initially meeting the basic needs of society today. This will identify the optimal way of achieving this by balancing the costs, accuracy and time involved. This creates what is termed a “Minimum Viable Product”. Incremental upgrading and improvement can then be undertaken over time in response to social and legal needs and emerging economic opportunities.

Keeping these principles in mind, legal instruments should incorporate the following features in order to effectively support the implementation of FFP:

- Land administration systems that are highly participatory, capability of being implemented quickly, and effective in providing security of tenure for all.
- Flexible land registration processes designed along administrative rather than judicial lines. The FFP approach recommends that administrative institutions under delegated authority should conduct the activities of recording and registering rights, wherever possible (Enemark et al. 2015, p. 16). This will allow the amount of court time involved in recording and registering rights to be minimized, freeing up court time to focus on resolving land disputes.
- A continuum of tenure rather than individual ownership. Rights other than ownership can also include the rights to enter the spatial unit for a specific purpose, and rights to take something from the spatial unit (e.g. easements and servitudes). The legal system must be adapted to accommodate the various kinds of land rights and social tenures that do exist rather than just focusing on land titling, ownership and leasehold (Enemark et al. p. 60).
- Flexible recordation systems rather than only one register. Countries with dual tenure systems should enact legal frameworks that allow for a uniform titling process or a fit-for-purpose system that will be accepted by every stakeholder. Legal frameworks should incorporate regulations that are flexible to accommodate a range of methods to measure and record spatial unit boundaries as well as visible boundaries on imagery (Enemark et al. 2015, p. 16). The various land administration institutions involved in implementation of the FFP approach should be integrated, coordinated, and provide harmonized land management (Enemark et al. 2015, p. 16).
- Promotion of gender equity principles for land and property rights.
- Incorporation of the STDN, which provides a standard for representing the people to land relationships independent of the level of formality, legality and technical accuracy (Lemmen 2010). Such flexibility also relates to the recordation that should be organized at various levels rather than through one central register. Importantly, the principles of gender equity as a human right should apply

Given the incremental nature of FFP, lawmakers and land governance institutions should follow these steps when implementing the FFP approach:

- Pass an overarching law to provide legal status to legitimate rights covered by the FFP land administration program. The detailed land laws can then be updated at a later stage;
- Schedule the recording of legitimate rights to be recorded and legalized later in the program;
- Issue provisional land certificates in areas of legitimate rights; and
- Incrementally provide legal status for legitimate rights through experience with bottom-up pro-poor recordation initiatives.

Legal Instruments promote FFP land administration in Rwanda and the Kyrgyz Republic

Rwanda

Rwanda's legal framework allows for the implementation of a nationwide systematic land registration project that started in 2009 and was completed in only four years. According to the LGAF report for Rwanda, the legal frameworks established "... a clear, practical process for the formal recognition of possession and this process is implemented effectively, consistently, and transparently" (Hoza 2015, p. 81). The Continuum of Land Rights concept is incorporated in Law N° 43/2013 of 16/06/2013, which states that "every person who is in possession of land, acquired either in accordance with custom, or granted by a competent authority, or by purchase, is the recognized proprietor under a long term lease" (Government of Rwanda 2013, Art. 5)

The Ministerial decree of N°002/2008 of 01/4/2008 provides two modalities of land registration, which are systematic registration and Mandatory registration. Article 22 of the Decree provides that "the Register of Titles and the Alphabetical Index are public documents. Anyone may consult them under the supervision of the Registrar or the Deputy Registrar, after paying the fee determined by the regulations" (Government of Rwanda 2008, Art. 22). To some extent, the law adopts the Continuum of Land Rights concept because it provides landholders with the option of obtaining a Certificate of Registration of a Full Title and a Certificate of Registration of an Emphyteutic Lease (Government of Rwanda 2008, Art. 15). Article 16 further provides that a Certificate of Registration has three components: (1) a "Parcel Section" that includes the location, description, and approximate surface area, a sketch map, and a reference to the Registry Index Map; (2) a "Proprietorship Section" which includes the full details of the owner of the immovable property; and (3) a "Charges Section" which includes recorded annotations of real charges on the immovable property (Government of Rwanda 2008, Art. 16). Rwanda has developed digital land register (LAIS) which makes land related records easily searchable by both right holder name and parcel. They can also be searchable by identification number (ID) or passport number of the right holder. The digital land register has now been decentralized for 29 out of 30 districts across the country, so this system can be accessed more easily as applications are being processed at this level.

Rwanda's legal framework related to land registration laid the foundation for the Land Tenure Regularization Programme, involving the development of a well-functioning land information system and nationwide systematic land registration started after piloting in 2009 (UN Habitat 2016, p. 20). The Programme provided legally valid land documents to all rightful landholders. The Programme was completed in 2013 (UN Habitat 2016, p. 20). To develop Rwanda's land registration system, boundaries of spatial units (plots of land) were identified on prints of orthophotos in a highly participatory approach using locally trained land officers acting as trusted intermediaries (UN Habitat 2016, p. 3). This reduced the need for conventional surveying techniques to a minimum. The highly efficient approach resulted in 10.4 million parcels being registered and 8.8 million land lease certificates being issued (Enemark et al. 2015, p. 15). The average unit cost was around US\$ 6 per spatial unit.

Overall, the Land Tenure Regularisation Programme revealed that FFP solutions can provide countrywide registration encompassing all tenure types within a reasonable time frame using

solutions shaped by country contexts (Enemark et al. 2015, p. 15). Rwanda's legal framework on rights provided opportunities for raising property based taxes, improved state land management, greater inward investment and better stewardship of land (Enemark et al. 2015, p. 15). Prior to the Program, only 40,000 of Rwanda's spatial units had been registered (Enemark et al. 2015, p. 15). A key lesson learned from the success of the land reform process in Rwanda is that regulations should establish provisions that are flexible to accommodate a Continuum of Land Rights and a range of methods to measure and record spatial unit boundaries, including identifying visible boundaries using satellite imagery (Enemark et al. 2015, p. 16).

Kyrgyz Republic

Prior to the implementation of a series of land reforms in the 1990s, tenure security in the Kyrgyz Republic was "virtually non-existent" (Independent Evaluation Group 2016, p. 11). Yet beginning in the 1990s, the country implemented a series of land reforms that resulted in the passage of the following pieces of legislation:

- Regulation on Process of Allocating Land Shares to Citizens (1994), establishing the process for redistributing collective farm land to citizens via land shares;
- Regulation on Reorganization of Agricultural Enterprises (1994), setting out the process for reorganizing collective farms; Law on Peasant Farms (1997), establishing procedures for registering and operating a peasant farm, and procedures for combining land shares to form an association and other types of farming organizations (1997);
- Law on State Registration of Rights to Immovable Property and Transactions, creating a single land registration system and requires registration of all transactions (1998);
- Law on Administration of Agricultural Land (2001), governing procedures for the administration of land transferred through sale, purchase, pledge, inheritance and gifts;
- Regulation on Sale and Purchase of Agricultural Land Parcels (2001), setting out the process for the purchase and sale of agricultural land and lifting the 5-year moratorium on the sale of land;
- Law on Local Self Government (2002), providing procedures for leasing out land of the Land Redistribution Fund (LRF) and certain pasture lands;
- Regulation on Lease and Use of Pasture Land (2002), establishing the procedure for lease and use of pasture land (repealed by the 2009 Law on Pastures);
- Model Regulation on LRF (2002), setting out the procedures and requirements for leasing and use of LRF land;
- Model Regulation on Allocation of Ownership and Lease Rights to Urban Land, establishing the procedures to allocate urban land for lease or into private ownership (2004); and
- the Law on Pastures (2009), transferring responsibility for pastures management of all near, intensive and distant pastures from the provincial government and regional government to the local government and local pasture users through the establishment of pasture user associations (USAID 2011, p. 7)

In 1998, the Kyrgyz Republic amended its constitution to allow for private landownership and passed the Law No. 153 on State Registration of Rights to Immovable Property and Transactions (1998) (Government of Kyrgyzstan 1998). This Law establishes legal framework and the modalities of functioning of the unified state registration system of rights to immovable property and transactions therewith. Under the Law, the following rights and real burdens are subject to compulsory registration: (a) ownership; (b) right of economic management; (c) right of operational management; (d) open-ended land tenure; (e) mortgage; (f) lease and sub-lease for the period over three years; (g) servitude; (h) rights originating from court decisions; and (i) rights of nature management. Under the Land Code, documents proving ownership as well as documents certifying temporary land use rights may be used to grant rights to land plots (Art. 31).

This Law created single land registration system and requires registration of all land transactions. The Law required the creation of a single agency charged with registering property rights: the State Agency for Registration of Immovable Property Rights, widely referred to as Gosregister. The Law further stated that the government would not officially recognize or protect any ownership right until a valid claim had been registered with the agency (Gainer 2017). This Law provided a foundation that enabled the Kyrgyz Republic to implement principles of FFP land administration across the country.

According to the LGAF study on the Kyrgyz Republic, the law provides a clear and practical process for formal recognition of long-term unchallenged possession that is implemented effectively, consistently, and transparently, with the possibility of relying on non-documentary forms of evidence where needed (Government of Kyrgyzstan 1998, Art. 18-20; Deininger et al. 2012, p. 69). The country's legal framework recognizes and protects use rights to individual parcels, and a low-cost process of systematic and sporadic titling has covered at least 92 percent of the country's land area (Deininger et al. 2012, p. 69). The LGAF study further states,

“though access to records is limited to intermediaries with demonstrated interest, there are few limits on the number of searches that intermediaries can undertake other than the need to demonstrate an interest and the obligation to pay the necessary fee. Independent surveys have shown that updating of the registry is satisfactory, fee schedules and meaningful service standards are published, receipts are used to discourage informal payments, and the registry operates in a sustainable and self-financing manner with reasonably high levels of customer satisfaction as verified through independent surveys.”

In 2009, GosRegister became part of a consolidated State Registration Service. Operating through a central office in Bishkek and 50 regional offices, the State Registration Service is the hub for land-administration services, including cadastral surveying and mapping, land valuation and land registration (USAID 2011, p. 11). Since 2000, data systems have been digitized, procedures have been streamlined and technical expertise expanded (USAID 2011, p. 11). Close to three million rural and urban landholdings have been registered. The registration is very affordable: as of April 30, 2009, a uniform fee for conducting a registration (less than US\$4) has been adopted (Deininger et al. 2012, p. 76). Price lists and service standards for operation of all registration services are publicly displayed in each of the offices. Information on individual land is available within the registry; however, not all information has been made publicly available (Deininger et al. 2012, p 76). For example, inventories of municipal land are not available, making it difficult to effectively monitor land use (Deininger et al. 2012, p 76).

Conclusion and Recommendations

Access to land, tenure security, and effective land administration play critical roles in supporting balanced and sustainable economic growth, encouraging investment, diminishing conflict and instability, promoting women's empower, fostering good governance, protecting human rights, and improving environmental management. Robust and inclusive land-related statutes, regulations, and other legal instruments applicable to land can foster transparent, accessible, and accountable land governance systems. Such systems ensure land is managed responsibly and the land rights of poor and vulnerable groups are recognized and respected. Assuming the rule of law is essential for the promotion of responsible land governance, then the passage of robust statutes and regulations that adopt the standards and guidance established by the GLTN land tools should be given priority by law and policy makers as well as other stakeholders involved in land reform processes. While tracking the law on the books is necessary to measure progress, sufficiently measuring whether the GLTN Land Tools are being fully implemented at country level requires a more in-depth understanding of how the rule of law differs from country to country.

Although this study does not provide such an in-depth analysis, it does provide a useful snapshot that functions as an effective awareness-raising mechanism that informs and influences lawmakers to adopt GLTN Land Tool guidance in domestic laws. It is also important to bear in mind that focusing solely on legal frameworks is insufficient. In many of contexts, respect for the rule of law may be limited or even non-existent. In these countries, there are likely significant gaps between what is written in law and what is practiced on the ground. Therefore, targeted, incremental approaches to adopting the GLTN Land Tools will need to be designed and tailored to specific country contexts on a case-by-case basis. The drivers of legal reform vary depending on the country and context. Nevertheless, lawmakers can use this study to strengthen legal frameworks so they comply law with and provide clear guidance on implementing the GLTN land tools.

While the recommendations for legal reforms will need to be adjusted based on country contexts, there are several noteworthy components that can be distilled from the various GLTN Land Tools discussed in this report. Legal instruments should promote these components so as to effectively support the implementation of the GLTN land tools. To summarize the main points made in this report, legal instruments should promote:

- The full spectrum of formal, informal and customary rights within the land information management system; the full range of rights should constitute legally enforceable claims that can be asserted and defended in a forum such as a court.
- Participatory enumerations as fundamental components of land recordation processes, establishing key information on the population size, ownership patterns and the status of infrastructure. Laws should acknowledge how enumerations provide the means by which not only data is gathered to allow for local planning, but also the process by which consensus is built and the inclusion of all residents negotiate. Laws that promote participatory enumerations should be designed to ensure the situations and needs of poor people are taken into account, giving them a voice in decision-making processes related to land management.
- Pro-poor land recordation system as a possible solution to the problems of conventional land registration systems. Pro-poor land record systems should be useable and affordable for both the poor and the government or other body that manages the system.

- Customary land tenure systems, ensuring such systems are recognized, respected, and strengthened. Laws should be designed to harness the capacity of customary institutions to deliver affordable and inclusive access to land areas and effective land management (e.g. customary decision-making and dispute resolution mechanisms that have been in place and functioned effectively for centuries).
- The STDM as a pro-poor, participatory and affordable land tool for representing a person-to-land relationship along the land rights continuum. Through promoting the STDM within legal frameworks, governments can make progress towards bridging the gap between formally registered land and land that is not registered.
- The CoFLAS tool as a decision-support tool. It assists policy-makers and land administrators to adopt appropriate technologies and methodologies that make land administration services more efficient, cost effective using options that are appropriately tailored to national and sub-national contexts.
- Transparency as a critical component of a functioning land administration particularly in view of the scarcity of clear and credible information on land laws and policies, land availability, land prices, and transactions.
- FFP land administration that is directly aligned with country-specific needs, is affordable, is flexible to accommodate different types of tenure, and can be upgraded when economic opportunities or social requirements arise.

Through the promotion of these GLTN Land Tools, legal instruments can help ensure that land administration systems are affordable, equitable, gender-responsive, pro-poor, systematic, flexible, and replicable at minimal cost. Robust legal provisions that promote equitable access to land, tenure security, and effective land administration lay the foundation for the adoption of GLTN Land Tools in countries' legal and institutional systems, ensuring that such systems benefit all people, especially the poor, women, and marginalized groups.

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