



Co-Design of innovative contract models for agri-environment and climate measures and the valorisation of environmental public goods

Key concepts in Contracts2.0

Extract from [Deliverable 1 / 1.1](#)

Author/s: Erling Andersen (UCPH), Rena Barghusen (ZALF), Eszter Kelemen (ESSRG Kft), Claudia Sattler (ZALF),
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Concept Note 3: Land Tenure and Property Rights

Introduction

In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions (FAO, 2002). As such, all agri-environmental commitments fixed by contracts are an integral component of land tenure. Land tenure determines how property rights to land are to be allocated to different parties within a given society. Land tenure typically is differentiated into private, communal, open access and state land tenure, specifying who holds different land-related property rights. Property rights thereby include bundles of rights, which can be categorised into access, withdrawal, management, alteration, exclusion and alienation rights, where the single rights within the bundle can either be assigned to an individual or distributed among several parties.

Key components of the concept

Land covers about 30% of the surface of the earth and is subject to a wide range of different land uses, which include use for forests, arable and grassland, amongst others (Vatn 2015). Rules of tenure then define how property rights to land are to be allocated to different parties within a given society. They are either defined legally or customarily among people and determine who can use land along with the responsibilities and constraints. Due to the multiple interests that different stakeholders may have, land tenure can evolve within a context of intersecting interests, which can be typified as overriding, overlapping, complementary or competing (FAO 2002). In this context well defined land tenure and property rights are useful to avoid such kinds of conflicts in case of converging interest, while ambiguous or ill-defined land tenure and property rights can spur conflict among parties.

For land tenure usually four forms are differentiated which specify WHO holds the related property rights (cf. FAO 2002, Vatn 2015: 135ff):

- **Private land tenure:** assignment of rights to an individual private party, such as a single individual, a household, a corporate business, or similar (e.g. private ownership of agricultural land, tenancies)
- **Communal land tenure:** assignment of rights to a community where each member holds the rights and non-members are excluded (e.g. community ownership of land, commons land)
- **Open access land tenure:** assignment of rights to anyone and no-one can be excluded (e.g. marine tenure of the high seas or other global commons)
- **State land tenure:** assignment of rights to some authority of the public sector, either regarding a centralised or decentralised level of the government (e.g. state forests in some EU member states)

Typically, all four forms can be present in a given society. Furthermore, special forms can be present in single countries, such as 'trusts' entitled to hold land tenure over customary lands on behalf of the citizens (e.g. in the United Kingdom).

In regard to single property rights to land tenure, which specify WHICH rights are held by a certain party, the following distinctions can be made (Galik and Jagger 2015, see also Schlager and Ostrom 1992):

1. **Access:** right to enter a defined unit of land
2. **Withdrawal:** right to obtain goods and services from a defined unit of land
3. **Management:** right to regulate land use and transform a defined unit of land, e.g. by making improvements
4. **Alteration:** right to change the set of goods and services obtained from a defined unit of land
5. **Exclusion:** right to determine who will have an access and how such right may be transferred to others (e.g. through purchase, lease, or inheritance)
6. **Alienation:** right to sell or lease some or all management, alteration and exclusion rights

The above listed property rights are also called ‘bundles’ of rights which can all be held by one individual party or distributed among several parties (e.g. Galik and Jagger 2015).

Furthermore, ‘formal’ and ‘informal’ rights can be differentiated. Formal property rights are explicitly acknowledged in formal laws, while informal property rights often lack official recognition, but are exercised based on customary rights. In this context, also ‘de jure’, and ‘de facto’ rights are referred to, where de jure property rights are the ones codified on paper (legal documents) and de facto property rights are the rights actually exercised in reality (FAO 2002, see also Schlager and Ostrom 1992, Vatn 2015).

Land tenure and property rights are often recorded in some form of register and/or cadaster system (different forms exist across EU member states). In the absence of such a system, information may be held ‘unwritten’ within a community through collective memory, which is often the case for customary rights (FAO 2002). Unwritten documentation can cause uncertainty over land tenure and property rights and thus can lead to conflict and difficulties in the enforcement of rights for involved parties. Land tenure and property rights can be changed through land reforms and other administrative procedures by authority of the national governments or decentralised government bodies.

How has the concept been applied?

Property rights and the rules used to enforce them are, for instance, used by political economists to analyse resource degradation problems. In this context it is important to note that for every right, rules exist that require actions that can be seen as complementary duties. However, rights are also the product of rules that create authorisation. Schlager and Ostrom (1992) distinguish between operational rules that are in use, and collective-choice actions that can change operational rules. Access and withdrawal are operational level rights in a resource system. Rights to management, exclusion and alienation belong to the collective-choice level. The authors developed a scheme to define property rights regimes that array collective-choice rights to users of a resource system ranging from authorised user, to claimant, to proprietor to owner (Table 4).

In view of the distinction between de jure (formal) rights that are enforced by a government and de facto (informal) rights that were established by cooperation among resource users themselves, Schlager and Ostrom (1992) claim the importance of de facto rights because *‘self-organized collective-choice arrangements can produce operational rules closely matched to the physical and economic conditions of a particular site’*. Moreover, such arrangements tend to internalise the costs of monitoring and exclusion among beneficiaries which could reduce inefficiencies (ibid.).

Table 1: Bundles of rights associated with positions (adapted from Schlager and Ostrom 1992)

Type of right	Owner	Proprietor	Authorised Claimant	Authorised User	Authorised Entrant
Access	x	x	x	x	x
Withdrawal	x	x	x	x	
Management	x	x	x		
Exclusion	x	x			
Alienation	x				

Land tenure and property rights can also be applied to promote sustainable land use. For example, in a context of communal land, flexibility of resource use allows to match operational rules to the local physical conditions of the site (corresponding to the right to change management rules). Moreover, incentives to adopt conditions of sustainable land use practices can be provided by offering a long-term lease agreement, for example.

Application in Contracts2.0

Since land tenure rights define an important framework condition for all contract-based approaches, including the contract types considered in Contracts2.0, different land tenure systems and linked property rights will be considered as an important element of institutional context settings in the analysis of existing contracts in WP2. In Contracts2.0 we focus on three aspects:

1. In cases where the manager does not own the farmland¹:
 - a. Can environmental objectives be integrated in the contract between the owner and the manager of the farmland?
 - b. Do agri-environmental contracts cater for all farmers regardless of land ownership?
2. In cases where farmland is traded:
 - a. Can environmental objectives be integrated in the contract between the seller and the buyer of the farmland?
3. In cases where the specific land tenure system supports specific environmental services
 - a. Can specific contracts be designed to support the land tenure systems
 - b. Do agri-environmental contracts cater for these land tenure systems

Methods applied to analyse land tenure and property rights in WP2 include, for instance, reviewing and analysing literature on the topic as well as institutional analysis, transaction cost analysis and multi-criteria analysis in WP2. Land tenure and property rights will also be a crucial element for developing and testing new contractual models on the ground in the contract and policy innovation labs (CILs and PILs) of Contracts2.0. Existing expertise of the action partners on land tenure and

¹ Important aspect given that about half of the agricultural area of the European Union is not managed by the owner, with a current trend of a decline in the share of the agricultural area managed by the owner.

property rights within the different European member states will be included through the CILs and PILs in WP3 and WP4.

In some cases, there will be specific land tenure contracts where land managers or owners receive economic benefits through e.g. the lease of benefits for the direct provision of ecosystem services and biodiversity (result-based contract) or indirect provision of these services (land management likely to provide ES = action-based contract). In addition, there are situations where there is no formal contract established (public access to the countryside, common land). The use of explicit land tenure contracts does not appear to be widespread but Contracts2.0 will consider examples from partner countries to understand how land tenure and property rights come into play. Examples of contracts applying the land tenure approach include:

- Denmark
 - The Nature Agency under the Ministry of Environment and Food rents out farmland under the condition that it is managed extensively.
 - Support for afforestation is given under the condition that the forest is placed under protection eternally
- Germany
 - Schemes on extensive farmland management are linked to biodiversity off-setting.
 - MoorFutures scheme on storage of carbon in peatlands. The permanence is secured by prescribed water levels under the Water Law, entries in the land register to secure permanence of the required water levels, and/or the purchase of land for restoration.

References

Extract from the Deliverable “Shared conceptual Framework” (C20_WP1_D01_D1.1_UNIABDN)
For references see [Original Document](#)