

3. Land Tenure

3.1 The nature of property and rights in land

3.2 Tenure definition, property in the context of land tenure

3.3 Land law

3.4 Property regimes, rights, forms of tenure system

3.5 Tenure security

3.6 Categories of interest

3.7 Parcel definition and unit of record

3.8 Nepalese land tenure system

Land Tenure

- The relationship, whether **legally or customarily** defined, among people, as individuals or groups, with respect to land (FAO)
- The systems that determine **who can use which land for how long**, and under **what conditions** (FAO)
- The mode by which **rights to land are held**
- Land tenure is defined as **institutionalized relation** of people involved in the use of land and distribution of products (Luning, 1995).
- An **arrangement** of land holdings i.e. how land is held and used by institutions.

Land Tenure, e.g.

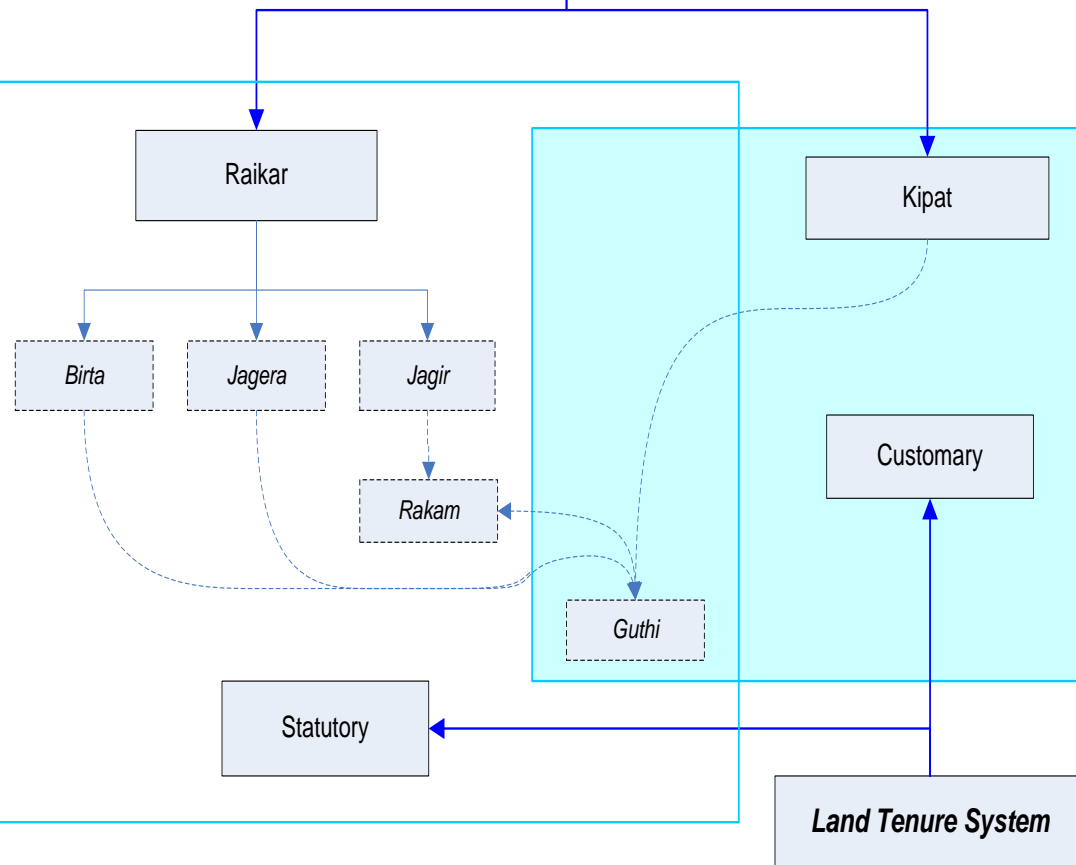
- **Private**: the assignment of rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization.
- **Communal**: a right of commons may exist within a community where each member has a right to use independently the holdings of the community. For example, members of a community may have the right to graze cattle on a common pasture.
- **Open access**: specific rights are not assigned to anyone and no-one can be excluded. e.g. forests, where there may be free access to the resources for all
- **State**: property rights are assigned to some authority in the public sector. For example, in some countries, forest lands may fall under the mandate of the state, whether at a central or decentralized level of government.

Land tenure constitutes a web of intersecting interests: such as

- **Overriding interests**: when a sovereign power (e.g., a nation or community has the powers to allocate or reallocate land through expropriation, etc.)
- **Overlapping interests**: when several parties are allocated different rights to the same parcel of land (e.g., one party may have lease rights, another may have a right of way, etc.)
- **Complementary interests**: when different parties share the same interest in the same parcel of land (e.g., when members of a community share common rights to grazing land, etc.)
- **Competing interests**: when different parties contest the same interests in the same parcel (e.g., when two parties independently claim rights to exclusive use of a parcel of agricultural land. Land disputes arise from competing claims.)

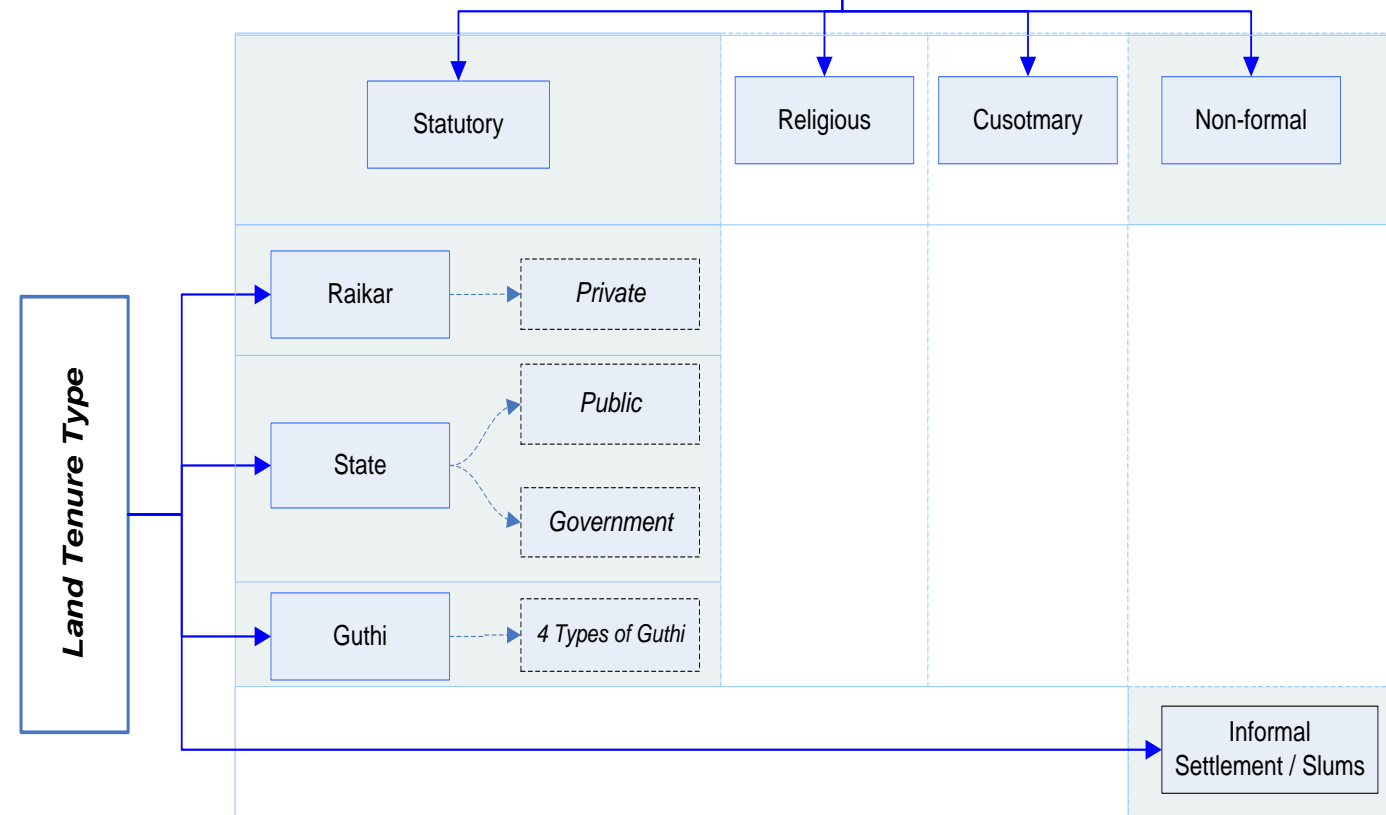
Land Tenure in Nepal

Land Tenure Type



Historical; Before 1964

Land Tenure System



Current: After 1964

Tenure system in Nepal

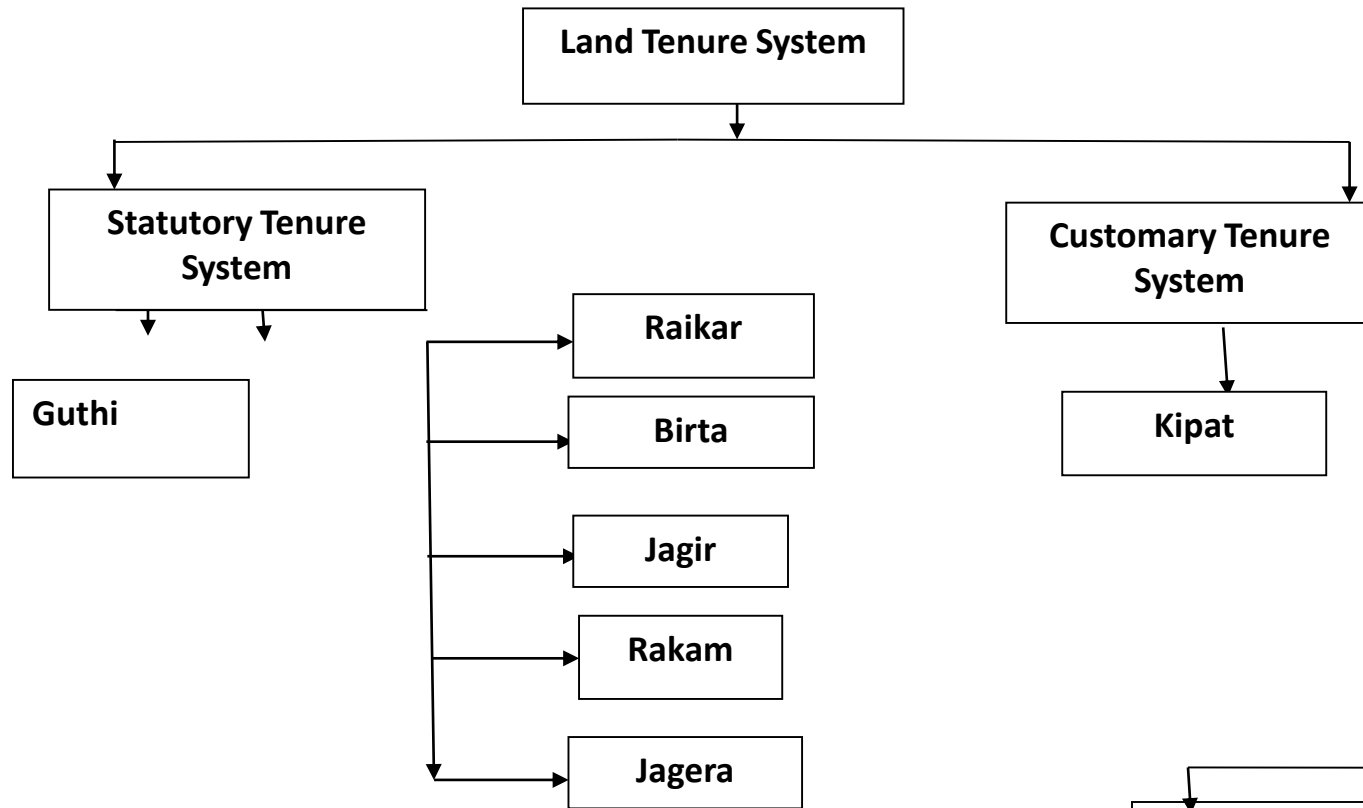


Figure: 1 Historical Form of land tenure of Nepal.

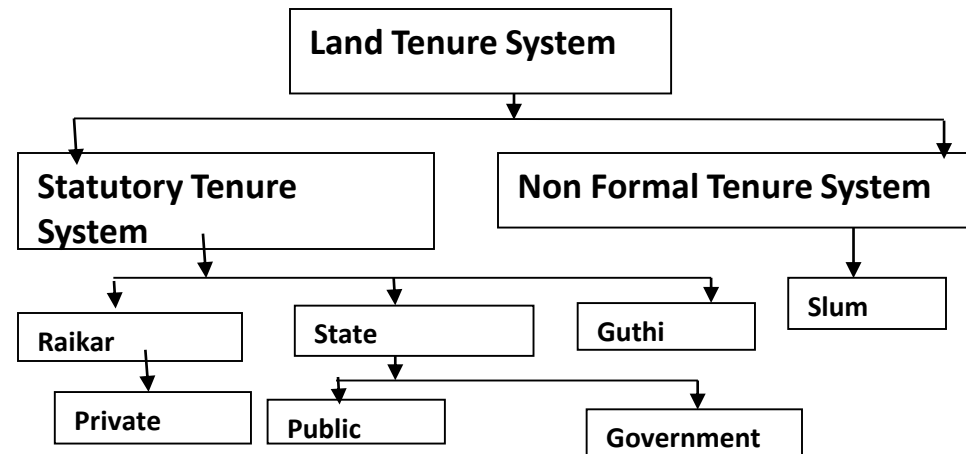


Figure:2 Current Form of land tenure of Nepal.

Tenure system in Nepal

□ Raikar refers to land that the state retains under its ownership while taxing the individuals who operate it.

- It also means the land on which taxes are payable by the land holders to the official record (Tuladhar,2004).

□ Birta meant an assignment of income from the land by the state in favor of individuals in order to provide them with a livelihood (Regmi,1974).

- Birta land grants were made primarily because religious, economic, and political considerations made it necessary for the state to provide means of subsistence or enrichment to certain individuals
- Religious grants to brahmans
- Earlier , it was stated that any person who bequeathed (pass to a person or other beneficiary by a will.) land to Brahmans would dwell in heaven for 60000 years, while who confiscated land grants would become a worm living in the excrement for the same period.
- In some cases Birta grants were made in order to extend the cultivated area , residential purpose with objective of encouraging settlements.
- Political consideration to member of the ruling classes

Contd.....

- **Jagir** lands alienated (*transferred to the ownership of another person*) as emoluments (*money paid for work they have done*) to government employees were called Jagir lands (Tuladhar,2004).
- **Jagera**: The term *Jagera* means **reserved**. The *Raikar* land not assigned to any body in any form was called *Jagera* land.
- **Trust Land** (Guthi) is a form of institutional landownership on a land allocated for religious and charitable purposes. Such type of land was allocated for temples or charitable organizations.
- **Rakam** was similar to Jagir land but it was assigned as remuneration for the performance of a specific function, mostly manual in character (Tuladhar,2004).
- **Kipat** was essentially a form of communal tenure in the eastern hills of the country. Only members of certain ethnic groups were permitted to hold land under this system. (Tuladhar, 2004).

Definitions of Historical Land Tenure Types	
<i>Raikar</i>	<i>Raikar</i> refers to land that the state retains under its ownership while taxing the individuals who operate it. It also means the land on which taxes are payable by the land holders to the official record
<i>Birta</i>	<i>Birta</i> meant an assignment of income from the land by the state in favor of individuals in order to provide them with a livelihood
<i>Jagera</i>	The term <i>Jagera</i> means reserved. The <i>Raikar</i> land not assigned to any body in any form was called <i>Jagera</i> land.
<i>Jagir</i>	<i>Raikar</i> lands alienated as emoluments of office to government employees were called <i>Jagir</i> lands
<i>Guthi</i>	It is a form of institutional landownership on a land allocated for religious and charitable purposes. Such type of land was allocated for temples or charitable organisations.
<i>Rakam</i>	<i>Rakam</i> was similar to <i>Jagir</i> land but it was assigned as remuneration for the performance of a specific function, mostly manual in character
<i>Kipat</i>	A form of communal tenure in the eastern hills of the country. Only members of certain ethnic groups were permitted to hold land under

For more detail
see book
written by
Mahesh Regmi
Landownership
in Nepal

Tenure Security

- Security of tenure is the certainty that a **person's rights** to land will be **recognized** by others and protected in cases of specific challenges.
- People with **insecure tenure** face the risk that their rights to land will be threatened by **competing claims**, and even lost as a result of eviction (*the action of expelling someone from a property*)
- Without security of tenure, households are significantly impaired in their ability **to secure sufficient food** and to enjoy **sustainable rural livelihoods**.

Tenure security

Non formal (de facto) Tenure

- This is the occupation and use of land **without the permission of real owner.**
- It is some time known as “informal settlement” or “**squatting**”.
- It is prominent in and around major cities in many developing countries.
- Land law **does not officially recognize** such tenure, but under certain circumstances and conditions the tenure **can be converted and become formal** under the **guiding principle of legislative** and spatial planning frameworks.

Land tenure security

Tri partite model of tenure Security

- Legal
- de facto and
- Perceived

Influence each other

Tenure Security=Legal + de facto + perceived

- Fear of being evicted

Land Tenure security

Tenure security

A landowner has tenure security **if she/he perceives little or no likelihood of losing physical possession** of the land within some future time period.

Why Tenure Security?

Tenure security is important for

- Greater **incentive** to undertake investments
- Ability to **transfer**
- Protection **against eviction** (removal of a tenant from property)
- Access to **credit**
- More **sustainable management** of land resources.

Land Rights

- **use rights**: rights to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc.
- **control rights**: rights to make decisions how the land should be used including deciding what crops should be planted, and to benefit financially from the sale of crops, etc.
- **transfer rights**: right to sell or mortgage the land, to convey the land to others through intra-community reallocations, to transmit the land to heirs through inheritance, and to reallocate use and control rights.
- **Rights to**
 - gift or grant
 - Buy and sell
 - Mortgage land
 - Right to use the land

Examples of Land Rights

- A right to use the land.
- A right to exclude unauthorized people from using the land.
- A right to control how land will be used.
- A right to derive income from the land.
- A right to protection from **illegal expropriation** of the land.
- A right to **transmit the rights to the land to one's successors**, (i.e., a right held by descendants to inherit the land).
- A right to **alienate** (*transferred to the ownership of another person*) **all rights** to the entire holding (e.g., through sale), or to a portion of the holding (e.g., by subdividing it).

Examples of Land Rights ...

- A right **to alienate only a portion** of the rights, e.g., through a lease.
- A **residuary right** to the land, i.e., **when partially alienated rights** lapse (such as when a lease expires), those rights **revert to the person** who alienated them.
- A right to enjoy the property rights for an **indeterminate** (*not exactly known*) length of time, i.e., rights might not terminate at a specific date but can last in **perpetuity** (*the state or quality of lasting forever*).
- A **duty not to use the land in a way that is harmful** to other members of society, (i.e., the right is held by those who hold the right to use the land).
- A duty to surrender the rights to the land when they are taken away through a **lawful action**, (e.g., in a case of insolvency (*state of financial distress in which a person or business is unable to pay their debts.*) where the right is held by the creditors, or in the case of default on tax payments where the right is held by the state).

Land Tenure and land law

- Land law
 - ✓ Statutory Law (written down and codified)
 - ✓ Common Law (Judgment as precedent)
 - ✓ Customary law (assumed that code is well known by all members of society)

Usually a mix exists in the country

Forms of Land Tenure system

Private Freehold and Leasehold

Private freehold

- A Private **individual and corporation** owns the land outright and market forces dictate land use and disposition.
- There are exceptions in instances where the state reserves for public use or control according to its land policies

Private leasehold

- A **private owner** (known as the **lessor**) leases(gives legal rights) to **private individual** or firm(known as the **lessee**) for a fixed term
- possibly with **restrictions on certain uses** or activities on the land

Forms of Land Tenure system

Public Freehold and Leasehold

Public freehold

- Public freehold exists when the **state or government agency** is the full owner of the land.
- It is normally applied to land for public purpose such as **parks, roadways and sites for public building.**

Public leasehold

- When a **public agency owns land** and decides to lease to **private form or private individual** for specified period of time.

Forms of Land Tenure system

Communal ownership

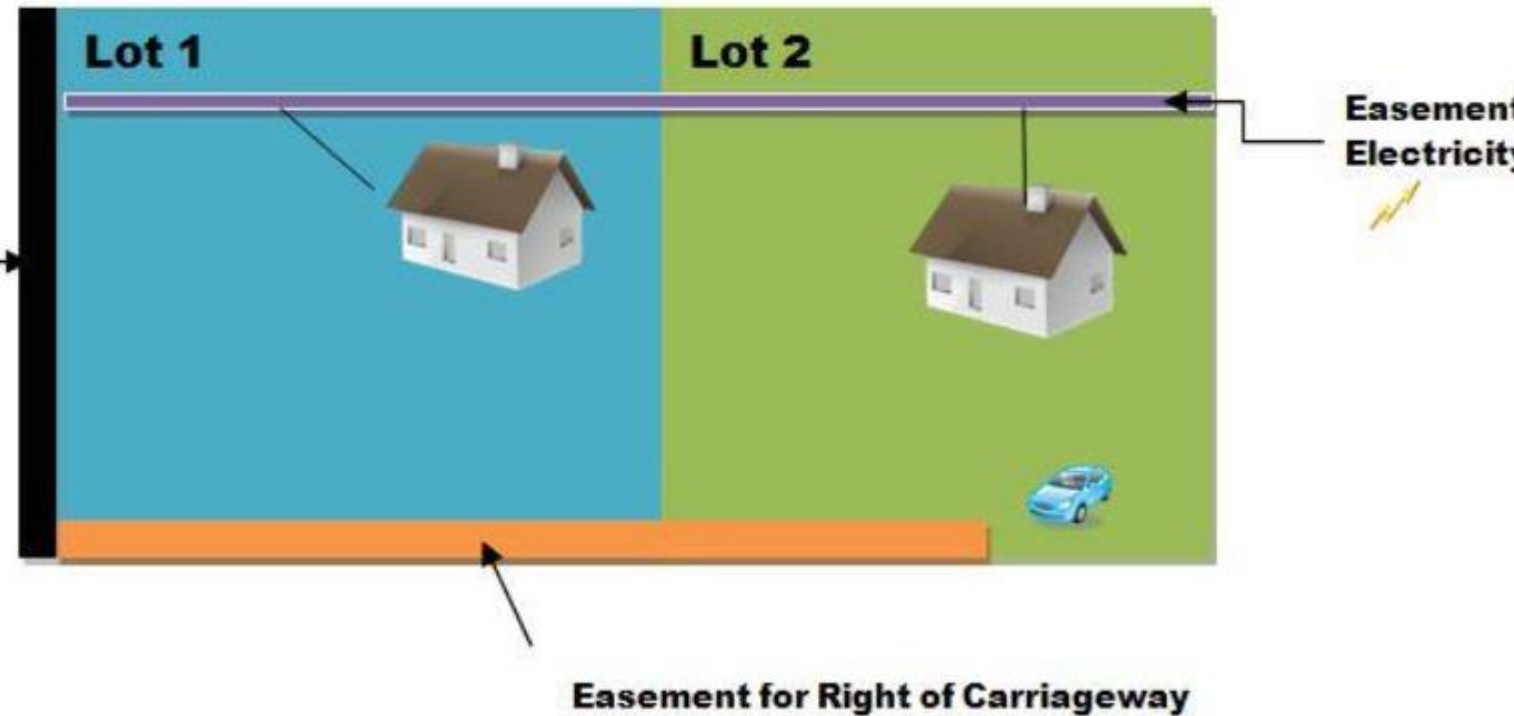
- In an area of **land controlled by tribes**, land is considered as the **personal property** of the tribe as the group or as a society and not a family or firm.
- The **tribal chief**, being the guardian, **allocates land** to his people for various uses such as **agriculture production** and housing buildings.
- This system of communal ownership controls and keeps alive a **sense of responsibility** to both society and land as the common heritage to be preserved for future generations.

Constitutional /legal protection of land tenure

- According to constitution of Nepal 2072, every citizen **have right to acquire, own, sell and dispose of the property** ; the property of any person is protected from requisition, acquire, or create any encumbrance and compensation, as prescribed by law, will be provided for any property requisitioned, acquired or encumbered by the state in implementing scientific land reform program or in public interest in accordance with law .
- Moreover, the daughter also will have equal right to son over their ancestral property.

Contd...

- The occupation over **public or government** land is prohibited by the **Article 24 of Land Revenue Act, 1977**. According to Article 4 of Jagga Abad Garneko Chapter of Muluki Ain, exclusion from the right of open **access to public places is restricted**.
- **Trust Corporation Act, 1976**: It regulates administration trust (guthi) lands to protect from encroachment.
- **Civil Code, 1963**: This code ensures access to a parcel, if it does not have access for exit and/or enter, through the **boundary of adjacent parcel(s)** (Easement), **restricts exclusion from the right of open access to public places** and restricts encroachment of public and government lands



Customary Land

- The customary land has been developed based on **various religions, beliefs** and law of ethics that developed laws relating to use of land (Larsson,1991).
- Most growing African cities have been developed on customary lands.

Customary land tenure differs from

- country to country
- district to district
- community to community

Formal and Informal Property

Formal property

- ✓ Protected by law

Statutory Laws: Statutory (constitutional) law is written law as **decided by the legislature** or other government agency. Statutory laws are those made by the government of a country

- ✓ Interest explicit (*stated clearly and in detail*) acknowledged

Contd...

Common Laws: Common law is based on **precedent** (najir), or case law. The term common law can also refer to the precedent-based element within the legal system, as opposed to statutory law and legislation.

Informal property

- ✓ Interest recognized by **local, informal community** but not formally acknowledged by the state.
- ✓ Exists in most developing countries.
- ✓ Exist outside law because law is inadequate, bureaucratic etc.

Property Formalization

Property formalizations

How ?

Land reform, Land titling

Land titling

- **Land titling** is a form of land reform in which **private individuals and families** are given formal **property rights for land** which they have **previously occupied informally** or used on the basis of customary land tenure
- In today's developing world, a pervasive (*spreading widely*) manifestation of feeble (*weak*) property rights are the millions of people living in urban dwellings without possessing formal titles of the plots of land they occupy
- The absence of **formal property** rights constitutes a severe limitation for the poor.
- In addition to its investment effects, the lack of formal titles impedes (*prevents*) the use of land as **collateral to access the credit markets**
- also affects the transferability of the parcel making investments in untitled parcels highly illiquid (*not easily converted into cash*)

Contd....

- Proper titling could allow the poor to collateralize the land
- In turn, this credit could be invested as capital in productive projects, promptly increasing labor productivity and income

Contd....

- Why Land Titling
 - providing formal titles increases security of land tenure
 - allows better access to credit
 - supports development of markets in land
 - poverty alleviation efforts
 - Reduce social unrest
 - favourable for long-term capital investment

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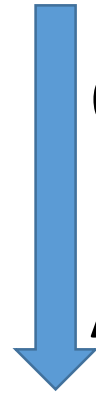
- Several international finance institutions, especially the **World Bank** and many **international donors** and **national governments**, recognized the importance of secure tenure in promoting economic development and had extensively promoted **land titling programmes** as a means of increasing **tenure security**, **protecting property rights**, **securing investments**, **unifying land markets**, **improving access to formal credit** and **reducing poverty**.
- However, **Buckley and Kalarickal** argue that “...*it would be dangerous to promote formal titling programmes as the **sole solution** necessary to solve the problems of the urban poor ... titling alone will not ‘unlock’ capital*”
 - it is often a **costly process**
 - access to mortgage credit is difficult when there is no effective formal financial system

Contd....

- The prospect of obtaining full ownership of a parcel of land may be popular, especially if it is **free or inexpensive**. However, examples suggest that land titling programmes are often proposed or implemented in countries or cities where **residents in unauthorized settlements already enjoy a degree of de facto tenure security**, such as Egypt, India, Mexico, Peru, South Africa and Tanzania.
- Some authors argue that one outcome of titling programmes is a reduction in security of tenure. Experiences of titling reducing security of tenure are reported from **Afghanistan and India**, where protection from forced evictions is not necessarily guaranteed by the possession of a land title. Similar cases of the poor benefiting from the allocation of titles, but then being **vulnerable to either forced evictions or market-driven displacement**, are reported in Kolkata, Egypt, Cambodia and Rwanda.

Formalizations

Informal



Occupy Land

Build House

Acquire services

- Receive title

Formal

Services: Electricity line, water,
telephone etc.

Formalization

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Other links

भूमि सम्बन्धी समस्या समाधान आयोग <http://lirc.gov.np/download>

Formalizing land right in developing countries :

<https://www.diplomatie.gouv.fr/IMG/pdf/Formalising-land-rights.pdf>

Property right for the poor :Effect of Land Titling <https://sci-hub.se/https://doi.org/10.1016/j.jpubeco.2010.06.002>

Google scholar : <https://scholar.google.com/>

Sci-hub : <https://sci-hub.se/>