



Addressing disputes and conflicts over the tenure of natural resources

Options for Policy and Legal Reform

Options for policy and legal reform

LEARNING OBJECTIVES



At the end of this lesson, you will be able to:

- identify concrete options in policy, law and practice for addressing tenure-related disputes and conflicts.

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INTRODUCTION

Different options **exist in policy, law and practice** for reducing tenure-related tensions and preventing escalation to violence.

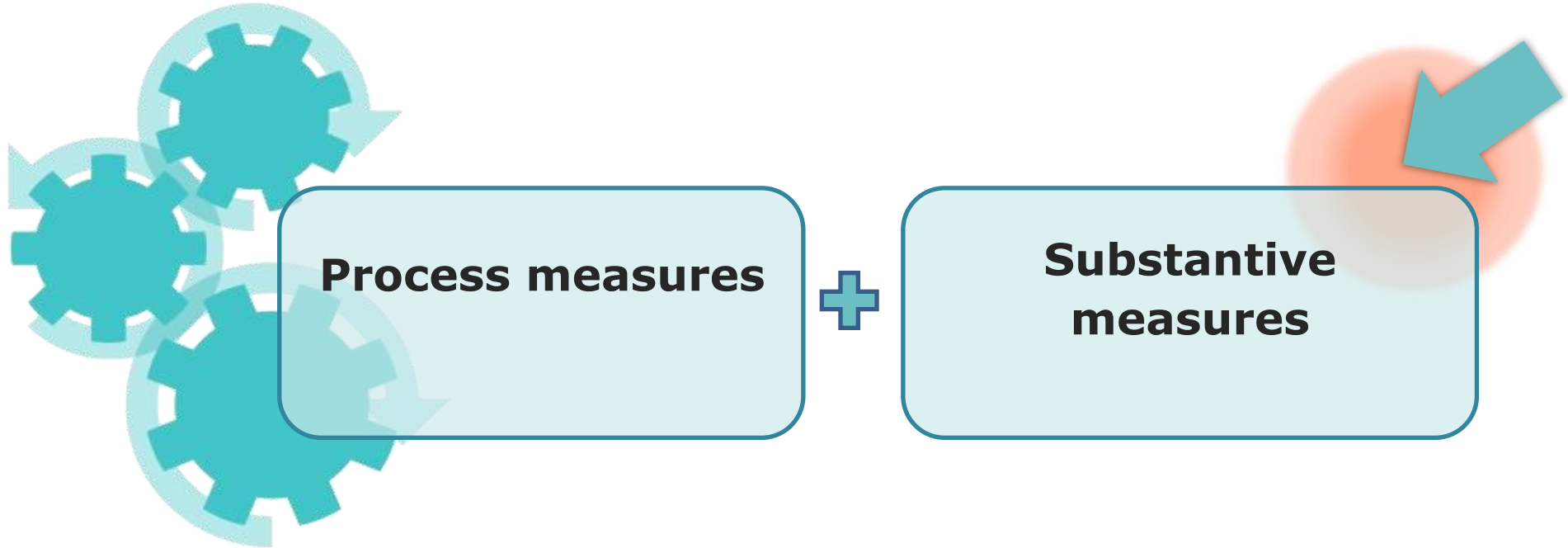


This lesson will set out a range of options for addressing disputes and conflicts over land, forests and fisheries. It will examine their advantages and risks and how they might play out in the situation at hand.

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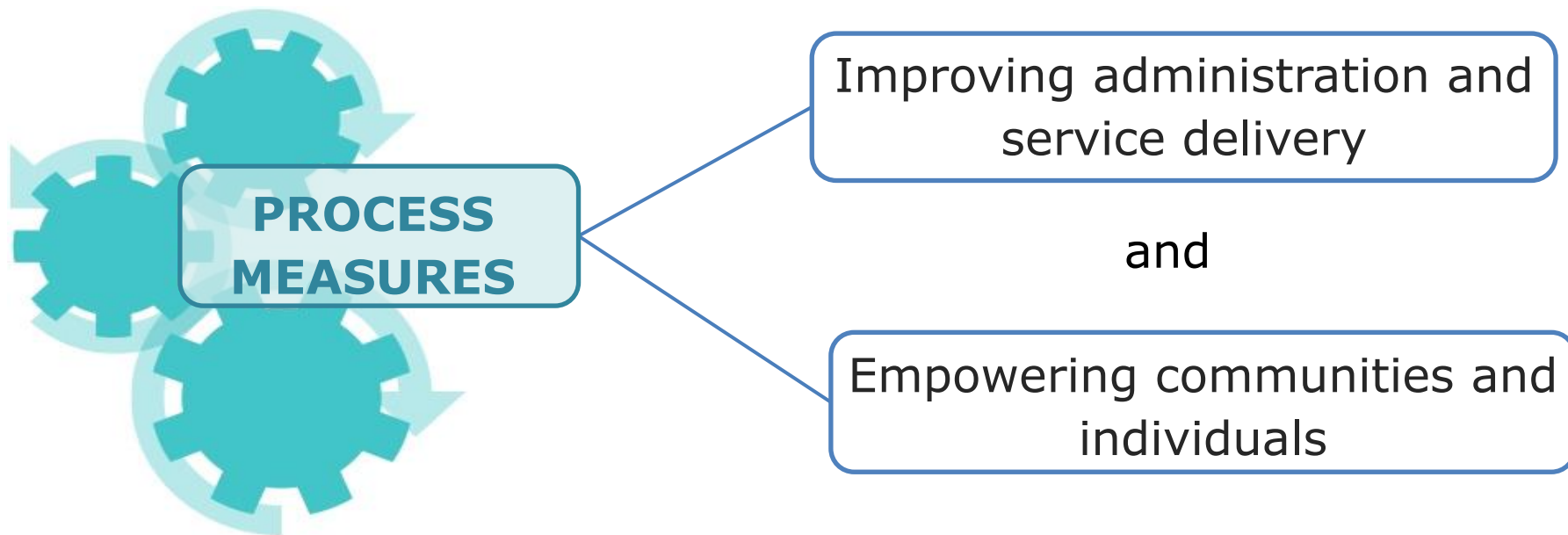
INTRODUCTION

Types of measures for effective dispute and conflict prevention, management and resolution fall into two broad categories:



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PROCESS MEASURES



Governments have a crucial role to play in supporting and implementing measures to strengthen processes and institutions.

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IMPROVING RESOURCE ADMINISTRATION AND SERVICE DELIVERY

PROCESS MEASURES

Improving administration and service delivery



Many tenure disputes originate in **administrative actions** and many claims concerning resources are handled by officials in **local government**.

↓
Administrative bodies, however, are often highly inefficient.

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IMPROVING RESOURCE ADMINISTRATION AND SERVICE DELIVERY

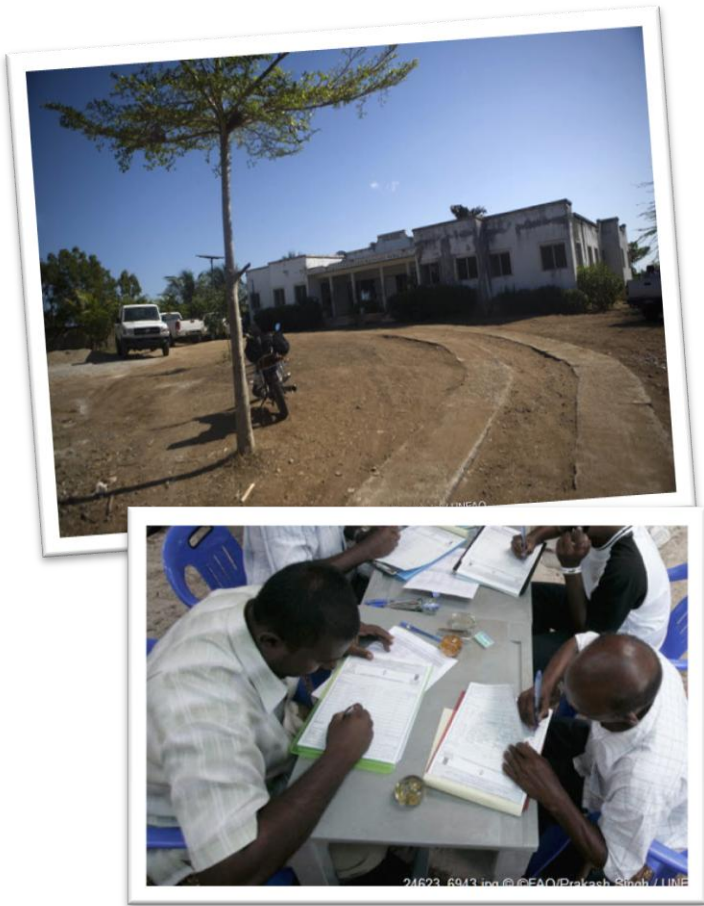


To strengthen administrative institutions:

- ↑ eliminate practices that **discriminate between different groups** in competition for resources;
- ↑ enhance capacities of responsible institutions;
- ↑ ensure **adequate salaries and realistic fees** for services and make sure that **corruption cases are prosecuted**.

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IMPROVING RESOURCE ADMINISTRATION AND SERVICE DELIVERY

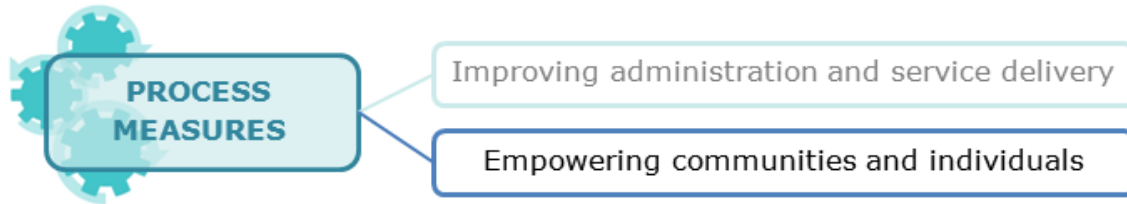


It may also be useful to support:

- ↑ **deconcentration** to bring administration facilities and services closer to local communities;
- ↑ **decentralization** to transfer decision-making over land and other natural resources to more local levels.

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EMPOWERING COMMUNITIES AND INDIVIDUALS TO PURSUE THEIR RIGHTS



Approaches include:



1

Improving rights awareness

2

Rights enabling

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EMPOWERING COMMUNITIES AND INDIVIDUALS TO PURSUE THEIR RIGHTS

Different countries have approached the issues to improve rights awareness and enabling.



Morocco - Information provision

Following unprecedented mobilization of Soulalyates women in recent years, the Government of Morocco has issued several rulings supporting land access and inheritance of Soulalyates women.

It has now also created a Web site to inform people about their rights and how to ensure them.

Source: *www.unwomen.org*

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EMPOWERING COMMUNITIES AND INDIVIDUALS TO PURSUE THEIR RIGHTS

Different countries have approached the issues to improve rights awareness and enabling.



Kenya – Aid programme

The support of legal aid clinics is essential for women who, in many cultures, cannot appear or speak on their own behalf in traditional fora.

For example, a programme in Kenya helped widows with HIV who had been previously evicted from their homes to regain control over land and other property.

Source: *United States Agency for International Development (USAID), 2011c*

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EMPOWERING COMMUNITIES AND INDIVIDUALS TO PURSUE THEIR RIGHTS

Different countries have approached the issues to improve rights awareness and enabling.

Kenya - Community support for women

Women are using emerging grassroots justice mechanisms, including Community Paralegals and Watch Dog Groups, as part of a wide range of strategies to secure their property rights.

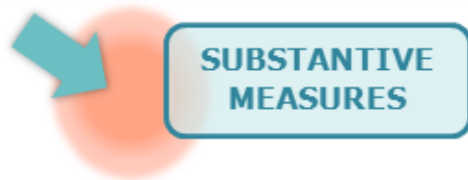
Watch Dog groups proactively monitor community conflicts to protect women against disinheritance, domestic violence and forms of gender-based violence, and other issues. If and when a case occurs, Watch Dog groups provide mediation and negotiation work between parties in conflict.

Source: *Huairo Commission, Women, property and homes*,
www.huairou.org



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NORMATIVE CHANGE



Substantive measures will require a **change in the rules** as a basis for implementation.



Policy reform



Legal reform

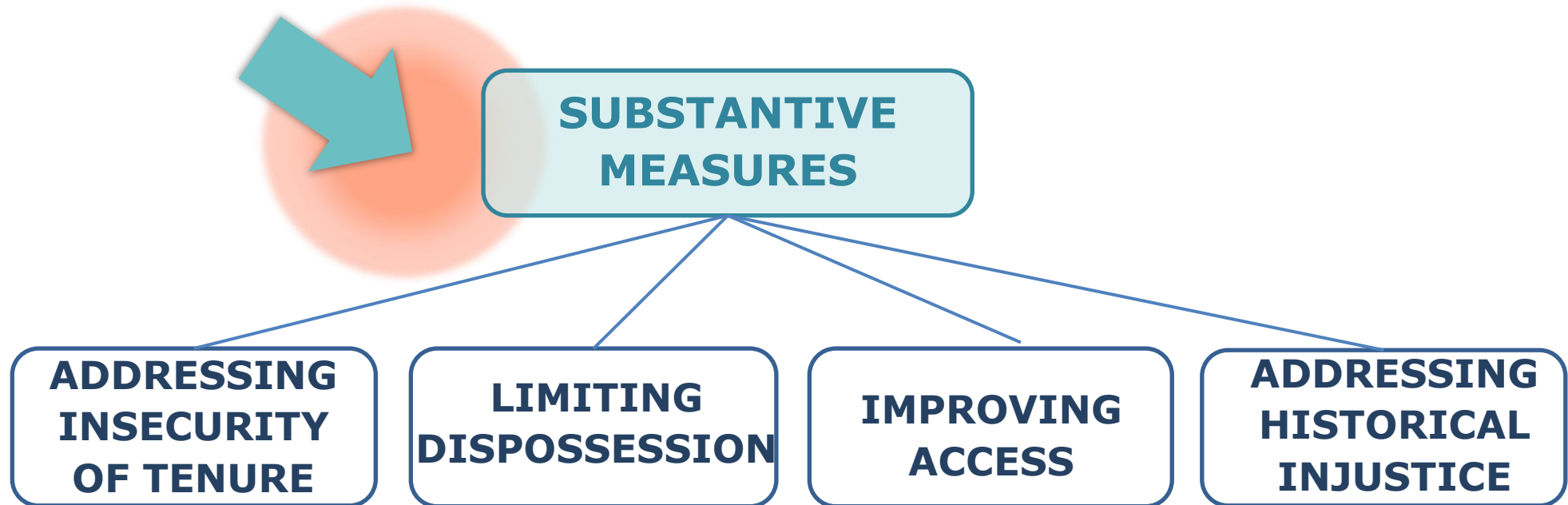


Practice reform

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SUBSTANTIVE MEASURES

Substantive measures to address conflict and the risk of violence include:



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ADDRESSING INSECURITY OF TENURE

Approaches to **improving security of tenure** include:

ADDRESSING INSECURITY OF TENURE



Legal recognition of previously unrecognized legitimate tenure rights

Documenting and recording rights

Devolving management responsibilities

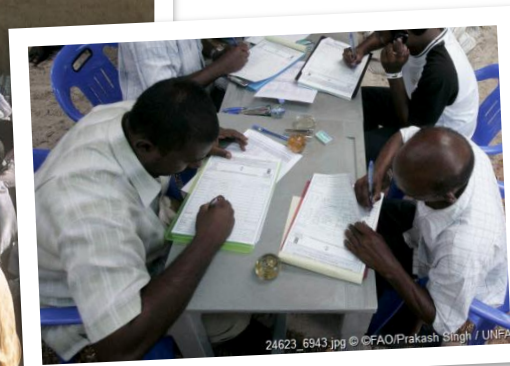
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ADDRESSING INSECURITY OF TENURE

Legal recognition of previously unrecognized legitimate tenure rights

Regularization of customary or informal tenure rights may help manage insecurity of tenure through two main approaches:

- providing recognition of the right as a **customary right**; or
- transforming the right into a right **under statutory law**.



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ADDRESSING INSECURITY OF TENURE



Risks and challenges

There can be discrimination against women in access to tenure rights.



Risks and challenges

Decision-making structures in traditional organizations may be highly authoritarian.



How to manage?

In some countries, governments have recognized customary laws in ways that emphasize the rights of women.



How to manage?

Where community chiefs have signed away lands without consulting their constituents, community mapping processes have proven useful to cancel such land sales.

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ADDRESSING INSECURITY OF TENURE

Documenting and recording rights

Titling is the most common form of documenting a right.



21489.jpg © FAO/Giuseppe Bizzani / UNFAO

Titling and registration can be done on the application of an individual or group (**sporadic**), or, more generally, in an area in which the process is mandated by government (**systematic**).

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ADDRESSING INSECURITY OF TENURE



Risks and challenges

Efforts to formalize rights may disadvantage women...



Risks and challenges

...or may eliminate secondary rights recognized under customary law.



How to manage?

Devise separate titling for distinct rights held by women or joint titling of land to husband and wife.



How to manage?

Use mechanisms for managing mobility and flexible options for the access of different users, such as rights of way.

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ADDRESSING INSECURITY OF TENURE

Devolving management responsibilities

Through **co-management agreements** government agencies can devolve management responsibilities over natural resources to communities.



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ADDRESSING INSECURITY OF TENURE



Risks and challenges

Communities may disagree amongst themselves on how to manage the resources.



Risks and challenges

The degree of authority and financial support granted to communities may be insufficient.



How to manage?

Supporting intracommunity cooperation, including consensus-building approaches.



How to manage?

Supporting community governance, including the building of institutional structures and capacity at local level.

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LIMITING DISPOSSESSION

Measures for limiting dispossession include:

LIMITING DISPOSSESSION



Improving the management and allocation of public natural resources

Improving the regulation of expropriation

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LIMITING DISPOSSESSION

Improving the management and allocation of public natural resources



Some public resources are managed effectively but there are many examples of weak governance.



Conflicts often arise from state actions to change the use of publicly-owned natural resources or to allocate the natural resources to others.



The situations become complex when the natural resources are being used by people.

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LIMITING DISPOSSESSION

Improving the management and allocation of public natural resources



Where states own or control land, fisheries and forests, they should determine **which of these resources should be retained** and used by the public sector, and which of the resources will be allocated to others.

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LIMITING DISPOSSESSION

Improving the management and allocation of public natural resources



Policies on public natural resources should take into account **all legitimate tenure rights.**

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LIMITING DISPOSSESSION

Improving the regulation of expropriation

The abuse of the power of expropriation can lead to conflicts.



For example, the reason for expropriation may be contested: the people whose tenure rights are being acquired may consider that the **purpose of expropriation** is not legally valid, or that the resources they hold are not needed to achieve the stated purpose.

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LIMITING DISPOSSESSION

Improving the regulation of expropriation

How can conflict be reduced?

By defining the
specific purposes of
expropriation.

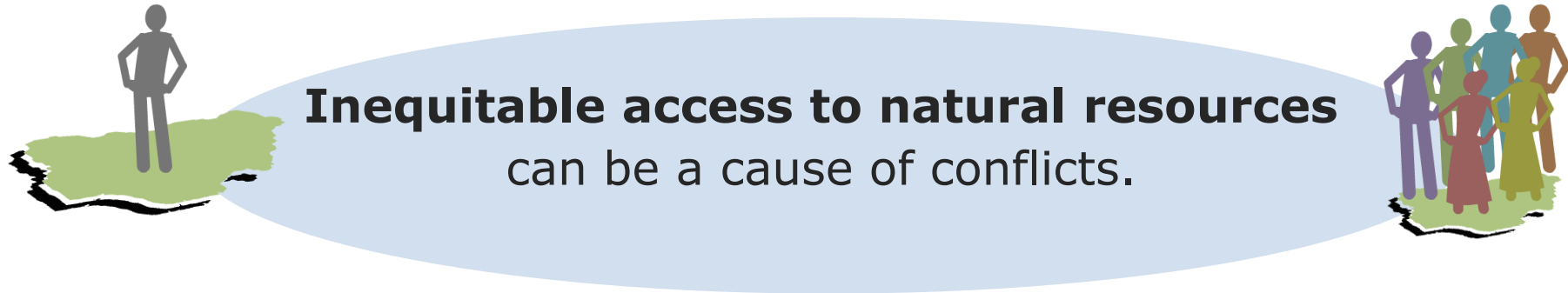
**Feasible
alternatives** to
evictions should be
explored.

Evictions should be
carried out in ways
that are consistent
with **human rights**.

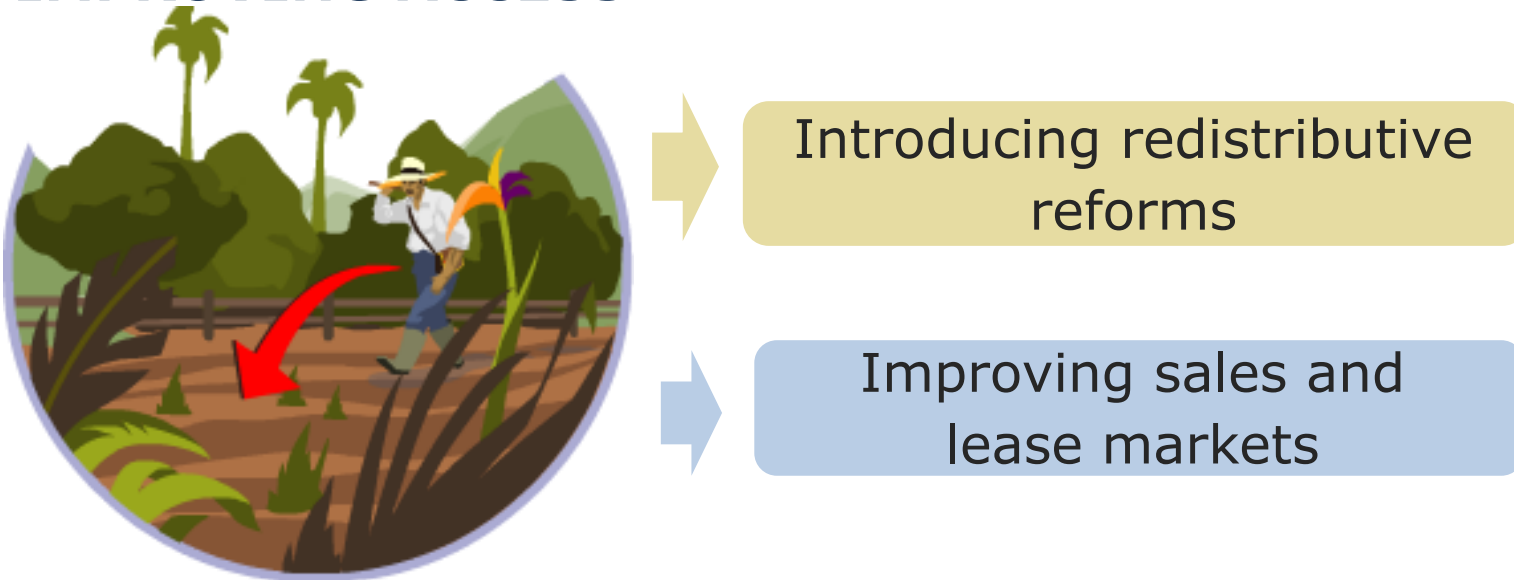
If plans change, the
original holders
should be able to
reacquire their
resources.

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IMPROVING ACCESS



IMPROVING ACCESS



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IMPROVING ACCESS

Introducing redistributive reforms

Social pressures can be relieved through redistributive reforms that make access to natural resources more equitable.



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IMPROVING ACCESS

Introducing redistributive reforms

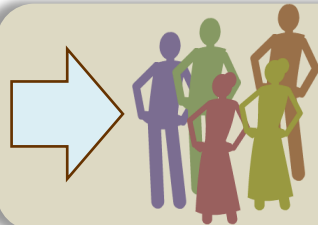
The following aspects should be considered when introducing redistributive reforms:



Objectives of redistributives reforms



Identification of beneficiaries



Ensuring support to beneficiaries

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IMPROVING ACCESS

Improving sales and lease markets

What can be done to improve sales and lease markets?

Ensuring that people are not prevented from participating in markets

Recognizing informal markets and simplifying procedures

Increasing the availability and quality of information

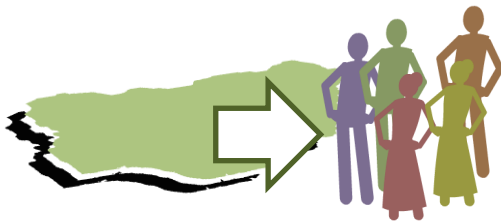
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ADDRESSING HISTORICAL INJUSTICE

ADDRESSING HISTORICAL INJUSTICE



Restitution can be an effective way to reduce conflict.



At times, restitution arises because natural resources had some forms of coercive actions.



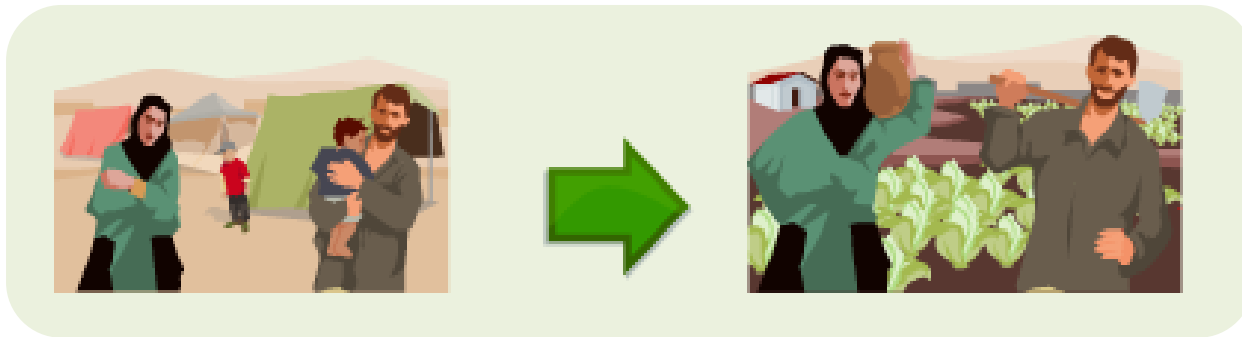
When restitution is not possible, **compensation** may be provided.

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ADDRESSING HISTORICAL INJUSTICE



Restitution allows people to return to the areas where they had previously lived.



International law and principles promote return and restitution as the preferred option for people who are displaced by violent conflict.

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ADDRESSING HISTORICAL INJUSTICE

Following violent conflicts, it is not always possible for people to return to places they once occupied.

For example, an area may not be habitable because of land mines.



In such cases, people may require some form of **compensation**.

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DEVELOPING A STRATEGY FOR ADOPTION AND IMPLEMENTATION

A strategy for adoption and implementation should be developed.

This strategy involves identifying windows of opportunity and leveraging the potential support of different actors.



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MONITORING AND COORDINATION

Two important activities should be considered:



Monitoring



Monitoring and evaluation is an area of crucial importance for ensuring the effectiveness of measures and processes.



Coordination



Greater coordination or integration of policies is a priority and should be encouraged.

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THINK ABOUT YOUR COUNTRY...



These are some questions to bear in mind when considering the situation of your country.

- What are the options in policy, law and practice being considered in current dialogues?
- In case of a political impasse what are the entrenched positions?
- What other options are conceivable and what are their relative pros and cons?
- How can local, regional and international buy-in be secured in support of identified solutions?
- Who are your potential target group(s) and how can they be further mobilized (e.g. through legal empowerment processes)?
- Is there international support for promoting certain solutions? Are there any windows of opportunity/risks in the near future (e.g. changes in political landscape)?

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SUMMARY

This lesson has provided guidance on possible responses to situations of dispute and conflict. Types of measures fall into two broad categories:

- **process measures;** and
- **substantive measures.**

Process measures are aimed at strengthening administrative institutions and at improving individuals' rights awareness and enabling.

Substantive measures to address disputes and conflict are aimed at:

- changes in the normative framework;
- building security of tenure;
- restraining governments and markets actions which might threaten tenure rights;
- improving land access through a wide range of possible alternatives.

Once appropriate responses have been identified, a strategy will need to be developed for adoption and implementation.

