

Land rights and administration in Africa

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The importance of secure land rights

A significant body of research demonstrates the importance of secure property rights to land as a precondition for land-related investment in many settings. Farmers who have only insecure or short-term land rights are unlikely to invest their full effort, to make long-term improvements attached to the land (including services), or to exchange it with others who may be able to make better use of it, thereby reducing productivity and possibly hindering emergence of a vibrant non-farm economy. The same is true for urban residents and it is now increasingly recognized that, as a consequence, land and the institutions governing its ownership and use are of great importance for broader economic growth and poverty reduction from a much broader range of perspectives.

Investment climate: Setting up or expanding a business requires physical space, i.e. land. Non-transparent, corrupt, or simply inefficient systems of land administration constitute a major bottleneck that makes it more costly for small and would-be entrepreneurs to transform good ideas into economically viable enterprises. Investment climate surveys indicate that access to land was the *main* obstacle to conducting and expanding business by 57% of the enterprises interviewed in Ethiopia as well as 35% in Bangladesh and about 25% each in Tanzania and Kenya.

Credit markets access: Well functioning land institutions and -markets also improve the investment climate because ability to use easily transferable land titles as a collateral reduces the cost of accessing credit for entrepreneurs, thus contributing to the development of financial systems. Even in developed countries, more than two thirds of small business loans are secure against land and real estate. In Eastern and Central Europe, formal land titling, especially in urban and peri-urban areas, helped to start mortgage markets that now comprise a large part of overall lending.

Revenues for local governments: With economic development, increased demand for land, together with public investment in infrastructure and roads tends to increase land values. In many cases, however, lack of well-functioning mechanisms to tax land implies that the potential for society, especially local governments, to benefit from these increases is limited and that much of the gains instead fuel speculation or end up as bribes. Colombia illustrates the potential for quick increases in land taxes that can contribute significantly to local government revenue, thus helping to match decentralization of responsibilities for service delivery with the needed resources.

Social safety net: The importance of land for economic development does not mean that it is irrelevant for poverty reduction -quite to the contrary, access to even small plots of land to grow crops can greatly improve food security and -quality. The case of China illustrates that broad-based land access can provide a basic social safety net at a cost that is much below alternative government programs, thus allowing government to spend scarce resources on provision of productive infrastructure instead of safety nets. Also, having their basic subsistence ensured is likely to have allowed Chinese households to take on greater risks in non-agricultural businesses and, with policies to foster lease markets for land, contributed significantly to the emergence of a vibrant non-farm economy.

Accountability and transparency: In many developing countries, more than half of households' wealth is in land and associated real estate. If the system to administer such a significant part of national wealth is perceived to be corrupt, overstaffed, and not trustworthy, it will be difficult to maintain confidence in the rule of law and the competence of the state. Improving land administration can thus contribute to broader public service reform as in the state of Karnataka (India) where computerization of 20 mn. land records within a short period of time resulted not only in a reduction of corruption and improved satisfaction with public service delivery but, because it was financially self-sustaining, also provided a basis for reforms beyond the narrow realm of land.

Specific challenges for African countries

In addition to the general characteristics mentioned above, a combination of continuing population growth, rapid urbanization (estimates suggest that more than 72% of inhabitants in African cities belong to the informal sector), and the need to re-orient the focus of the rural economy from low-value subsistence crops towards higher value added all imply an urgent need for African countries to confront land issues. At the same time, the intimate links

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between land access and ethnicity, race, and gender, and a legal and institutional legacy that was often highly discriminatory in these respects, imply that in doing so, there are a number of characteristics that distinguish land tenure in Africa from that in other regions and that have to be borne in mind in addressing them.

High conflict potential: Increasing land scarcity and the associated rapid changes in land use are associated with a significant increase in the conflict potential, especially at the interface between nomadic and sedentary land use, in areas of rapid expansion of export crops, and at the peri-urban fringe. Even in cases where traditional institutions have remained intact, the fact that they were not originally designed for this type of conflicts (which often cross ethnic lines) puts them under considerable stress which they are not always able to cope with. In many countries, including Cote d'Ivoire, Rwanda, Burundi, and Zimbabwe, conflicts that originated in questions of land access have escalated into much broader clashes, often with very damaging humanitarian and economic consequences.

Dualistic legal system and limited enforcement limited capacity of associated institutions: A history of colonial occupation implies that in many African countries, secure formal land rights are available only to a small part of the population on a limited part of the total land area. The remainder is supposed to be either state land or, where the state institutions lack outreach, be governed by "customary laws" that often reflected more the need to co-opt local elites than the wish to adhere to traditional practices and therefore provide little tenure security. This dualistic structure deprived large parts of the population of formal protection and created a multiplicity of institutions, often with conflicting goals and overlapping competencies. Together with regulatory frameworks that fail to take account of the features, such as group tenures and an emphasis on individual use rather than ownership rights that are a key element of customary system, this is a key factor for high rates of informality in Africa's rural and urban sectors.

Outdated, incomplete, and inefficient registries: Even in the areas -characterized by high land values and considerable potential for land markets and the use of land as collateral for credit- where formal land rights had been established and documented by a registry, the potential for using land as an economically valuable asset is often constrained by the fact that inefficient operation of the registry, and possibly additional corruption, considerably increase the cost of registering and transacting land. In Nigeria, for example, registering a land transaction requires at least 250 days and payment of official fees equivalent to 39% of the property value. Such high transaction costs force people into informality with all the undesirable consequences associated with it.

Inappropriate land rights for women: In most parts of Africa, women traditionally gain access to land only through male relatives. This restriction on land obtain ownership, constrained both their ability to use land as collateral and their bargaining power within the household. The recent increase in HIV/AIDS-related mortality further exacerbates the impact of such arrangements: studies show that prime age women whose husband died have to spend considerable resources on defending their claims to household land at a time when the loss of a household member already threatens their economic survival, with negative impact on their and their children's welfare.

Large amounts of land under state control: In many African countries, the problems introduced by declaration of large areas as "state land" during the colonial period were after independence compounded by nationalization of land or introduction of legal provisions that make it easy for government to expropriate land without adequate compensation -and for a wide variety of reasons other than provision of public goods. This has often led to excessive land takings, with negative impacts on equity. The threat of expropriation has not had only undermined tenure security and investment but also led to informal sales in anticipation of expropriation that invited corruption and shady property deals involving state agencies. Productivity was impaired as the state apparatus had often neither the means nor the incentives to invest in or effectively use the land acquired, thereby often leaving the potentially most valuable land undeveloped. Competition between central state organs, local governments and actual occupants of areas designated as state land increases conflict and limits tenure security. In Ghana, about 40% of urban and peri-urban land is estimated to be controlled by the state and in Kenya, the state's ability to acquire land and distribute it is now recognized to have helped to maintain an unpopular regime's grip on power.

Unequal land distribution: Although colonial occupation has had a lasting impact on the ownership distribution of land in many parts of the world, the fact that in some African countries such measures were abandoned only recently and had been unusually severe led to very inefficient patterns of land and negatively affected households' access to economic opportunities. Programs to provide access to land -through a variety of mechanisms- to those who have been deprived of their rights through historical injustices may thus be warranted not only from a point of view of historical justice and equity but also as a means to improve productivity of land use. The symbolic value of land and the attached emotions imply that addressing unequal land distributions may be of considerable political importance.

Inappropriate regulations: In many African countries, outdated regulations make it more difficult and costly for small entrepreneurs to use land optimally. Some of these regulations, such as town and country planning acts, were designed with the explicit purpose to segregate property markets and there is little controversy on the need to amend them. Others, which include price and rent controls, restrictions on the ability to transfer land, land ownership ceilings, and prohibitions on land ownership by institutions or foreigners, may have been introduced with more benevolent goals in mind. Although it would be dangerous to generalize too much, in practice the effect of these regulations is often conducive neither to poverty reduction nor growth and the only reason for their continued existence is limited knowledge on alternatives that would allow to achieve the desired goals in a more effective way or the fact that powerful vested interest groups derive considerable benefits from their continued existence.

Opportunities available

The above suggests that, to maximize the contribution of land policies and administration to growth and poverty reduction, African countries have to overcome a number of obstacles specific to the region. Even though doing so successfully will still require a long-term commitment, addressing these issues now may be easier than in the past for a number of reasons. First, a number of legal initiatives demonstrate that there is now much greater recognition of the obstacles that can be caused by inappropriate land administration systems. Second, macro-economic reforms and decentralization, provide a better basis for undertaking the needed changes and increase the potential for them to be sustainable. Finally, improvements in technology can help to greatly reduce the cost of land administration and, if adapted to the social reality of African communities, offer tenure security at reasonably low cost.

Awareness of the importance of land: Policy makers all over Africa are now aware that the legal basis for land administration, which often was adopted from colonial masters at independence without much revision or review, is no longer adequate and poses an obstacle to economic development. The fact that a large number of countries have enacted innovative land legislation that offers the opportunity to give formal recognition to land rights and households who have traditionally been outside the realm of the law suggests that the topic is no longer taboo and that a technical discussion of the issues is indeed feasible. There is also growing recognition that, even though it is necessary, legal reform by itself will not be sufficient to improve tenure security and transferability of land and that successful reform will require a vision of the overall goal, a country-specific prioritization of issues, and a long-term commitment that is part of a national consensus. This has led a number of African countries to initiate a broad-based policy dialogue in an attempt to establish a well-prioritized and sequenced land policy.

Broader institutional reforms: A number of broader legal and institutional changes suggest that the chances for addressing land issues are now much better than in the past. First, decentralization and greater attention to accountability provide elements for a land administration system that is sufficiently flexible to draw on communities and local authorities to accommodate a diversity of situations rather than relying, as in the past, on rigid top-down structures. Second, even though there is debate about how to do so most effectively, the benefits of transferring at least land use rights from the state to individuals or communities are no longer disputed. Third, numerous grass-root initiatives to provide legal aid and educate land owners are helping to bring about the change in social values required for greater security and (gender) equality in land rights (which is now anchored in the constitutions of many African countries) into practice. Finally macro-economic policies or subsidies which in the past often supported inefficient forms of land use have in many cases been eliminated, strengthening the case for more effective land use.

Technology to modernize registries and expand coverage: There is little doubt that updating registries that are no longer up to date and expanding their coverage to include those whose land rights have traditionally lacked formal recognition can have high economic and social benefits. However, the high cost of doing so, especially in African settings, has often precluded this from being put into practice. New technology makes it simpler to provide broad access to records, update them, or, where no previous records exist, to establish a registry through systematic and community-based processes of demarcation and adjudication. Pilots for the latter in Uganda illustrate that use of transparent procedures to do so that draw on local expertise can greatly reduce the potential for conflicts, strengthen the rights of women and others who traditionally had only weak land rights, and provide a basis for land transfers.

How can development partners help?

A number of reasons, including their political sensitivity and apparently low macro-economic relevance, the complexity and long-term nature of any involvement, and the lack of good examples and best practice, have in the past prevented donors from providing support to land policy formulation and its implementation in Africa. They are now starting to realize that the cost of ignoring land may be much higher, and more broadly distributed, than

originally thought, and that, even though significant support will be required to develop “African solutions to African problems”, the opportunities for doing so exist. A number of areas are particularly relevant in this respect.

Awareness raising: Even though many African countries have started to address land issues, such awareness is by no means universal, resistance to reforms by vested interest remains an issue, and in some cases the scope as well as the policy dialogue supporting them remain narrow. Even though land touches upon issues of equity, investment climate, financial market development, governance, local government revenue, gender, conflict, environmental sustainability, and the productivity of the economy, analysis of the related policy issues is largely absent from documents such as the PRSP. Donors can help broaden the policy dialogue and provide the analytical basis to transform general awareness of the importance of land into specific policy recommendations based on empirical study. The fact that a number of multilateral institutions have recently developed land policy guidelines and that collaboration between them and with bilateral donors on the issue is a useful first step that should be followed up with additional action in this respect.

Capacity building: Donors are aware that efforts at institutional reform will not be sustainable unless they are home-grown and local capacity to maintain them is available. The complexity of the technology, the large number of professionals large, required, and the history of past neglect and mis-management that has affected institutions of land administration in Africa implies that this will be a challenging task - tough examples demonstrate that it can be done. For example, collaboration and exchange of experience among about 30 Eastern European countries with those from Western Europe and the rest of the OECD under the auspices of the UN Economic Commission for Eastern Europe’s working party for land administration has allowed countries which, only slightly more than a decade ago were steeped in a tradition where no private property to land existed, to catch up to the level of skills in developed countries. African networks (e.g. AERC) in other subject areas have successfully built used this principle and demonstrate that to achieve this goal, a sustained effort will be needed.

Provision of technology: In the many countries that have passed new land legislation recently, the key constraint to a more effective system of land administration is the roll-out and implementation of these provisions. As GPS and other technology which is now increasingly used in developed countries can significantly reduce the cost of doing so in many ways, G8 countries are particularly well placed to offer assistance the case for which is strengthened by the fact that considerable efforts will be needed to adapt this technology to local social and economic realities in a way that fully realizes its advantages. Embedding technology transfer in programs for capacity building and long-term institutional support is thus particularly important and a number of promising examples for this exist.

Access to international experience: Since land-related institutions are deeply rooted in a country’s history, solutions have to be developed locally and can not just be imported uncritically from other contexts. Still, the common heritage of African countries, the breadth of the issues touched upon by land policy, and the fact that no off-the shelf solutions exist all imply that exchange of experience among African countries and a debate on which elements of other countries’ experience can be used can help to strengthen the momentum for reform, improve the quality of technical solutions, and achieve the scale that is needed to deliver sustainable security of tenure to the majority, including the poor. Developing countries are well placed to provide such access and, in the process, strengthen professional networking among those charged with formulating and adapting policy as well as implementing it.

Monitor progress across-countries: The technical and political complexity of land policy issues carries the danger of that specialists spend large amounts of time on debating issues which, although interesting, will not help to meet the challenge of implementing systems that deliver tenure security rapidly and at a large scale. Also, recognition of the fact that individual land titling may not always be the most appropriate or affordable way to achieve coverage, a number of African governments have, since the 1990s, been adopting innovations in the field of tenure and land administration. There is much to be gained from rigorously evaluating these models in terms of their cost and impact on poverty, and where appropriate scale them up and disseminate them more widely within the region. Defining a set of indicators for the services provided by land administration systems, establishing ways to monitor them regularly and on a cross-country basis, and making the results available to the broader public can help to (i) focus attention on the need to produce results on the ground; (ii) concentrate policy-makers’ and bureaucrats’ attention and improve the quality of the policy debate; (iii) determine the type (and to some extent magnitude) of assistance that is likely to have the biggest impact; and (iv) demonstrate that such assistance produces good value for the money spent. It may be a logical next step to move from a general awareness about the importance of land policy in Africa towards concrete actions to tackle specific problems affecting the poor.