

## Securing land rights for the poor in Africa — Key to growth, peace and sustainable development

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*This paper has been prepared for the Commission on the Legal Empowerment (Legal Empowerment) of the Poor.. It argues for a particular focus on securing land and property rights for the poor in sub-Saharan Africa. It presents the key challenges faced in achieving such an objective and outlines proposals for action, combining the strong body of existing work underway across the continent with the added energy generated by the current Legal Empowerment initiative.*

### WHY FOCUS ON LAND RIGHTS IN SUB-SAHARAN AFRICA?

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Land lies at the heart of social, political and economic life in most of Africa. Despite the huge diversity of regions, peoples, and economies across the continent, agriculture, natural resource use and other land-based activities remain key to livelihoods, income and employment for all African nations. African income levels per capita are the lowest on the planet, despite abundant land and natural resources. Such poor levels of growth are the product of both external barriers, such as trade rules, commodity prices, farm subsidies, and internal constraints like infrastructure, climate, soils, and governance. The growing impacts of climate change on rural and urban life will add further challenges to growth in income and welfare. Hopes for equitable and sustainable growth depend on securing the benefits of economic growth and development for the large majority of the population. Key to such broad based growth will be the strengthening of accountable institutions at local and national levels, to manage land and resource rights.

Land rights are coming under heavy pressure, especially near towns and in high value farming areas. In West Africa, it is estimated that less than 2% of land has any formal paper documentation with most rights claimed through unwritten systems of tenure. Rights are particularly vulnerable for women, migrants, tenants, and those reliant on common property resources. Overlapping rights, and the plurality of systems and institutions create conditions for contested claims and corrupt practice. In Eastern and Southern Africa, the share of land with formal documentation is somewhat higher, given the legacy of white settlement. Such insecure rights to land tenure and shelter provide a major obstacle for promoting investment. Land competition can also trigger and exacerbate wider conflicts.

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This paper draws very substantially on a range of materials and activities jointly undertaken by IIED in association with a large number of African and European partners. These include the *Summary of conclusions Land in Africa Conference, London 2004*; and research projects on *Securing Land Rights in Africa* (Ethiopia, Ghana, Mozambique); and *Claims to land in West Africa* (Benin, Burkina Faso, Mali and Côte d'Ivoire). I am indebted to many colleagues, for their collaboration on land tenure issues over the last decade, especially Hubert Ouédraogo, Thiendou Niang, Arlindo Chilundo, Ben Cousins, Mitiku Haile, Moussa Djire, Philippe Lavigne Delville, Jean-Pierre Chauveau, Julian Quan, David Brown, and colleagues Su Fei Tan, Lorenzo Cotula, Ced Hesse, Nazneen Kanji from the international institute for Environment and development (IIED). However, I take all responsibility for any errors in the paper presented here.

Despite their centrality to peaceful and sustainable growth, land issues have often been ignored in the Poverty Reduction Strategy process. Nevertheless, over recent years major progress has been made in piloting new approaches to securing land rights in urban and rural settings. These pilots demonstrate the value of simple, low cost, locally tailored methods which are rooted in local values and build on existing practice. Increasingly governments are recognizing the value of diverse systems, rather than seeking to impose a standard set of measures in all contexts. From this array of approaches stem valuable lessons to be shared between governments, civil society groups and land professionals, in pan-African and South-South exchanges, to enable the emergence of an African-led agenda on land.

#### *Learning from the past and looking forward*

Land issues need to be understood in historical context. This history is often centuries old, with people laying claim to land on grounds of first settlement, conquest, or market acquisition by distant ancestors. The colonial past in Eastern and Southern Africa has left behind a very unequal pattern of land ownership. Addressing historical injustices is recognized as important by many governments, yet efforts to re-distribute land claims have moved slowly. At current rates of progress, the South African government's target of redistributing 35 million hectares by 20 5 will not be achieved. Other quicker, cheaper means to redistribute land may need to be taken, such as expropriation of land which currently is not being used. Otherwise land invasions are an increasingly likely outcome.

While history certainly colors land issues, countries must also look forward and think how best to address the rapid changes they face from a mix of global and local forces. These include trade liberalization, rapid urbanization, world commodity price trends, and the devastating impact of HIV AIDS. Such processes will be further aggravated by major impacts from climate change, bringing new pressures on land. Land users need practical, accessible mechanisms to secure their rights in the face of such challenges.

#### *Land, peace and security*

Conflict is widespread in many parts of Africa. Security of people and property are key to any real prospects for development and poverty reduction. While land may not always be at the source of this conflict, competition for land often inflames tensions between groups, since politicians find it an easy issue with which to mobilize emotions and support. Land seizures, eviction of migrants, and ethnic cleansing have characterized a number of conflicts. Even those countries at peace face major problems spilling over from neighboring conflicts, such as large numbers of refugees who need to be accommodated.

The role of land and resource conflict in generating wider insecurity makes it vitally important to find means to resolve disputes early before they can escalate. in post-conflict settings, establishing legitimate institutions governing access to land for re-settlement of migrants and refugees becomes hugely important, as do questions of restitution. A new land policy in Rwanda demonstrates that even in difficult circumstances, progress can be made, though this may involve making difficult choices between the rights of different groups.

*Investment opportunities—promoting economic growth*

A favorable climate for investment is vital to generate higher levels of growth. African governments have usually been more interested in attracting foreign direct investment, through advantageous tax regimes, than seeing how best to promote local enterprise. But improving the investment climate is critical for domestic investors too, whether they be smallholder farmers, traders or entrepreneurs. Investors need assured rights to the land and property in which they invest. These do not have to involve full ownership, but can involve tenancy and leases. Indeed, the law in many African countries does not allow for foreign ownership of land. Instead foreign investors can get leases of anything up to 99 years.

*Land rights, smallholder farmers and agricultural growth*

Smallholder farmers have been central to the agricultural economies of most African nations. Despite their responsiveness to new markets and opportunities, African farmers today face many challenges in gaining access to markets, both local and global. In domestic markets, cheap foodstuffs produced by heavily subsidized farmers are being dumped, displacing the harvests of local producers. In European and US markets, imports from Africa are facing rising barriers, through new standards and norms imposed by governments, and private sector actors, such as supermarkets.

Much economic evidence shows that yields per hectare tend to be higher on small to medium sized holdings rather than large commercial farms. Yet despite this, some observers argue that farmers need to be encouraged to leave the agricultural sector, to help consolidate land into larger holdings that can cope with the demands of the global economy. According to this view, larger holdings will lead to higher incomes and productivity for those remaining in the farm sector. Former smallholder farmers should seek employment as farm workers or shift to the industrial or service sectors. But others ask whether this is realistic given little sign of an industrial or service sector creating many jobs.

The debate about the future of smallholder farming is often argued in economic terms alone, with evidence brought about yields, efficiency, and growth. But there are also many other dimensions which relate to the stability, social cohesion, identity, and equity within rural society. In the push for “modernization” of the agricultural sector, governments need to reflect on the consequences of opting for large scale farm development at the expense of the smallholder sector. Rich country governments must also urgently address farm policy, export subsidies, and market barriers which are making it ever more difficult for smallholders to access domestic and international markets, from which to gain a livelihood.

*Growing cities and the challenge of urban land management*

Africa’s urban growth has major impacts on peri-urban land values, bringing great windfall gains to those who can successfully assert a claim to this land and rising insecurity for others living there. Within urban areas, squatter communities are usually not recognized by the state and hence have no access to basic services. Their rights to the land and housing which may have sheltered

them for many years are frequently swept aside when more powerful interests seek to acquire this land. Evictions are a constant threat given the rapid increase in land values for building plots.

However, city governments are increasingly recognizing the need to strengthen rights for slum dwellers as a means to bring them more effectively into the urban economy and ensure better provision of water and sanitation. Neighborhood associations and federations of the urban poor are playing a major role in some cities, to survey, enumerate and negotiate their rights to occupy urban land. The commitment of governments to significantly improve the lives of slum dwellers, enshrined in the Millennium development goals, provides further impetus for more innovative approaches to securing urban land rights.

In Africa it is estimated that 70 percent of the urban population live in slums. Squatter populations in big cities are highly vulnerable to dispossession. The consequences of these evictions are severe: property destroyed, assets are lost, social networks are broken, and access to essential services is lost. Innovative tenure systems are needed to strengthen the rights of squatters and slum-dwellers, and enable a negotiated solution instead of forced evictions. A phased approach makes best sense in which it is possible to upgrade the rights of the poor over time.

## STRENGTHENING LAND RIGHTS FOR ALL – KEY MEASURES

### *Combining legitimacy and legality*

Secure rights to land and property depend on a combination of two key elements. The rights being claimed must be seen, first, as *legitimate* by the local population; and second, they must also be ascribed *legality* by the state. Rights are insecure where this combination is not found. Examples include the very large areas of land held under customary tenure, where governments provide little or no legal protection to such unwritten rights. In such cases, rights may be legitimate in terms of locally recognized claims to land, yet not have the formal legal qualities.

Equally, government may allocate community land through legal process to a commercial investor in the teeth of local opposition. In this case, the rights may be legally valid yet not considered socially legitimate, leading to long-running local conflict. Many land users are seeking to formalize their claims to land to combine legitimacy with legality. In some cases, they are drawing up simple contracts to do with sales, or tenancy, which are then taken to the local government for official stamp. In other cases, communities are working with NGOs to establish firm claims to manage common property resources on which their continued well-being depends.

### *Strengthening public dialogue*

Because land issues involve political choices, broad public debate of the options at stake is essential to develop a locally-owned land rights agenda. Drawing up new legislation is usually not the first or only step to take. Rather government needs to engage with different parts of society to understand diverse interests and priorities. Taking time to consult effectively and following a flexible calendar is key to ensuring confidence between government and people.

Political leadership needs to outline clearly the process and principles to be followed and the timeframe for discussion and decision-making. In the cases of Uganda and Ghana, it took several years to design the land policy and work to amend legal provisions is still underway. The importance of land rights for political stability, economic development and social identity highlights the need to support development of civil society actors and networks with knowledge of land issues – at national, Pan-African and global levels.

*Secure access to land is at the heart of sustainable development throughout Africa.*

Land is not just an economic asset and market commodity, but has strong political, social, cultural, and spiritual dimensions. Where land distribution is very unequal, programs to title land will further entrench such unequal property rights. Sharp inequalities in land distribution need urgently to be addressed, as found in parts of Eastern and Southern Africa where the legacy of colonial land alienation remains strong. Decisions concerning the “formalization” of land rights, whose rights count and how those rights will be managed are not just technical choices, but are highly political. The choice of structure to manage land rights and resolve land disputes and resource conflicts will have consequences for different interests and groups of people. Some will win and others lose.

There are multiple ways of registering rights to land, from short term certificates of occupancy to more formal registers and titling procedures. Rights can be secured at different levels, such as the individual or family, and at collective levels, such as the village or clan. The state should play a fundamental role in managing or facilitating the process. This is best done in a decentralized way in partnership with local institutions which can check and validate claims on the ground. In some places, the registration of rights has been carried out in a systematic fashion with all land in a given village or area being adjudicated and registered at the same time. There are advantages to such a method, as it is more efficient and less liable to fraud. In other cases, registration of land has been done on demand, leading to a patchwork of registered and unregistered land. Blueprint solutions to land registration should give way to locally appropriate initiatives and actions.

*Making government more accountable*

In many countries, the ultimate ownership of land remains in government hands, with land allocated administratively rather than through the market. This brings serious risks of rent-seeking and corrupt behavior. Compensation is often not paid when land has been taken by government for public purposes. Many large land holdings remain in government hands, and constitute a valuable asset for gift to political allies.

While governments have an important role to play in regulating and administering land rights, the degree and form of intervention must be balanced against the costs imposed. In many cases, systems to register land ownership are so complex as to render them effectively inaccessible to any but the elite. Given weak bureaucratic systems and poor controls on the performance of government officials in a number of countries, the design of land administration requires careful thought to minimize the risks of corruption, at central and local levels. Institutional strengthening means developing better checks and balances to make structures accountable both upwards to central government but also downwards to the people they are meant to be serving. For land, it



means establishing open processes with publicly accessible land registers and information about how and to whom land is being allocated.

## INNOVATION AND CHANGE IN LAND RIGHTS MANAGEMENT

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Great progress has been made in testing out new approaches to securing land rights in many parts of Africa. Twenty years ago, much emphasis was placed on formal land titling programs, which have proved slow, expensive, difficult to keep up-to-date and hard for poor farmers to access. Evidence shows that formal titling is neither necessary nor sufficient to generate tenure security. Indeed, programs to title and register land may generate conflicts rather than resolving them. Pilot cases from Ethiopia, Mozambique, and Benin show how rights can be registered at much lower cost and in simpler ways.

In many places, land rights registration may be much less important than working to strengthen local institutions with responsibility for managing land disputes. The recent shift by many African nations towards decentralizing government has been valuable as a means to get land rights management much closer to the field. This better understanding of the diverse options available to government allows approaches to be tailored to different settings, and for upgrading of rights and systems over time. Ways of securing rights work best when these are based on tenure systems already known to the community concerned. The local knowledge of neighbors is essential to clarify rights and boundaries. Learning lessons from elsewhere provides ideas and experience from which to build.

Many economists argue that titling land is key to generating more equitable and sustained economic growth, through use of titles as collateral. Experience from India shows the value placed by many on land registration documents as a means to access credit. However, evidence from land titling in Africa to date has shown little or no use of titles for collateral, because of thin land markets and uncertainty regarding the value of the document in cases of conflict. In many settings, moreover, property rights are complex and overlapping, so that their registration in the form of an individual property title would risk many secondary rights holders losing access to land. Although opportunities to formalize property rights need to be made more accessible for all, care is needed in achieving this goal. And if unlocking access to credit for poor people is the key objective, thought could usefully be given to other means to achieve this end, such as building on experience with micro-finance schemes.

## CUSTOMARY TENURE AND WOMEN'S RIGHTS

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Customary practices for managing land are outmoded and not working in many areas. Interpretations of “customary rights” are disputed, with chiefs stretching the interpretation of their powers for personal gain. Customary practices regarding land are particularly adverse for women who rarely have full rights in land but must negotiate as secondary claimants through male relatives—their father, brother, husband or son. Nor can women usually inherit the matrimonial home on the death of their spouse. Women’s rights are often affirmed in the Constitution in unequivocal terms, but in most cases on the ground, customary law tends to be more important than what the constitution says. New legislation needs to strengthen women’s formal rights to

land through spousal co-ownership and a bar on sales of family land if there is no agreement by both husband and wife. But law is not enough. A range of supporting measures are needed such as ensuring women are represented on land committees, and setting up legal clinics. It is especially urgent to provide legal protection for women now, since the rising incidence of HIV/AIDS has put widows and orphaned children even more at risk of dispossession of their house and land by their dead husband's kin.

It is important to emphasize, however, that customary land tenure is not the only barrier blocking women from participating in the formal sector. Indeed, exacerbating this problem is cultural bias against women in many post-colonial regimes—even after land reform takes place. Education initiatives and other social programs to promote a change in awareness may be more essential in addressing the gender inequity.

## CONSERVING THE COMMONS

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Common property resources—such as grazing, woodlands, ponds and fisheries—are a vital source of livelihood for many peoples across the continent. Yet there are growing pressures on these resources, and trends towards privatization and enclosure. In many cases the breakdown or absence of access rules has led to unsustainable levels of use and degradation. Common resources are of special significance to pastoral herders who need assured rights to access grazing and water when away from their home area. Mobility and flexibility are key to the survival of such livestock-keeping people who continue to provide a major part of the meat and milk produced in much of Africa. There have been calls for pastoral herders to “modernize” and settle down—yet this would be death to livelihood systems which have proved productive and sustainable, despite harsh environments. Instead, ways should be found to reduce risks of conflict between herders, neighboring crop farmers, and other land users. This may involve locally agreed rules for rights of passage for animals along agreed pathways, access to water and compensation for crop damage. Group management and ownership of community rights are essential to avoid open-access and unsustainable use. Many successful examples exist and include *Conventions locales* for resource management in the West African Sahel, hillside enclosures in Ethiopia, and community land registration in Mozambique.

## WHAT CAN LEGAL EMPOWERMENT DO TO HELP?

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*A sustained commitment:* Effective reform of Africa's land and property rights to support the livelihoods of the poor requires a sustained commitment from the Commission and its principal sponsors. Institutional and legal reform of this nature is long term and complex, requiring a phased approach which tackles priority activities within a longer framework. Significant harm can be done through short term project-based approaches. The land reform agenda must be driven and owned at the individual country level and, whilst lessons of good practice can be shared across Africa, simple, single solutions cannot be applied across the continent.

*Integrating land within the PRS:* The Poverty Reduction Strategy (PRS) process is currently at the heart of relations between donors, international development agencies, and African governments, bringing in substantial financial flows through budgetary support. While the PRS

process has many merits, the focus has been on service delivery in key areas, such as health, education, and water. Whilst these are necessarily high priorities, strategic support to the institutions that underpin economic growth and stability must not be neglected.

*Update and make accessible existing land records:* in many countries, land records are effectively inaccessible, making it impossible to check who is claiming which piece of land. Often dispersed in different government offices and in poor physical states, these written claims to land need to be ordered and made open to public scrutiny. Outdated, inefficient, and incomplete land registers generate conflicting claims and fuel disputes. Simple methods to bring together existing records and make them open to the public are key to establishing transparent management of land and property rights.

*Training and capacity building – essential and new skills:* new approaches to land require investment in skills including surveying, land registration, land use planning, and lawyers specialized in land, community based planning and management. Support to national and regional networks of policy makers, practitioners, and civil society provides the means for professional development, lesson sharing, capacity building, and policy influence. Specific opportunities exist for capacity building at the university level in centers of excellence and through learning networks and platforms.

*Build and share models of innovation rooted in local contexts:* There now exists a growing body of sound, innovative local practice on which to build new innovations in land administration. These include public and private partnerships in urban housing, ways to link customary with formal systems, strengthening of local conflict and dispute resolution mechanisms, new forms of land leasing and promotion of rental markets. Islands of innovation and success need to be validated and shared for wider adaptation as appropriate.

*Work with civil society groups and networks:* The distribution and management of land has important political aspects. Civil society organizations can play an important role in providing checks and balances on government decision-making and the implementation of land policy, feeding in new perspectives and policy options. Donors should find means to build on existing civil society initiatives, at local, national and sub-regional levels.

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