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# AFRICA

## Reforming Land Rights in Africa

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**I**mproving the performance of African agricultural production systems (efficiency); promoting sustainable natural resource management practices (sustainability); and ensuring access to and control over land for poor and marginalized rural households, women, and groups (equity) are critical policy objectives for promoting agricultural growth and combating poverty in Africa. To address these efficiency, equity, and sustainability issues, governments throughout Africa have introduced land tenure and other reforms.



**A**dvocates of reforms in land rights and land markets frequently posit two important hypotheses: (1) African countries must grant land titles to farmers because titles increase land tenure security and facilitate access to input, land, and financial markets; and (2) land markets constitute the most efficient mechanism for allocating resources and improving access to productive resources by the poor, especially women and other marginalized groups. Land titling, however, is not a panacea for reforming land tenure systems in Africa. Differences in environmental risks, the level of demand for agricultural land, the performance of existing tenure systems, the legacy of colonial and postcolonial reforms, and other socioeconomic factors mean that the need for and impact of titling will also differ. These diverse conditions have led land rights to evolve along different pathways and thus to require different reform options.

**Because land is an immovable resource, all transactions really refer to the bundles of rights associated with a specific piece of land. Land rights set boundaries for opportunities and constraints regarding the control, management, and use of land, whereas land markets are mechanisms by which right holders and non-right holders can transfer, rent, and acquire different bundles of rights to land.**

Two types of reform processes exist. One type seeks to improve the opportunities and relieve the constraints associated with specific land rights, usually by moving from customary use rights, which are generally characterized by limited transfer rights, to full individual or group private ownership. A second type involves redistributing land to reduce disparities and to grant productive assets to landless and land-poor farmers. The first type focuses more on efficiency and sustainability issues, especially when the policies are geared toward granting private rights to communities and special production groups, whereas the second type emphasizes efficiency and equity issues.

Legal reforms have generally been state driven and reflect a limited understanding of the dynamics of land rights and markets and the components of land values for alternative land rights. To help fill some of these gaps, this discussion will focus on the benefits and costs associated with different land rights and the conditions under which right holders may demand alternative land rights.

Such land values would be reflected by the difference between the benefits, which are equal to the sum of the discounted net present value of increased productivity per hectare ( $VP$ ) and collateral value per hectare ( $CV$ ), and the costs, which are the sum of the transaction costs per hectare ( $TC$ ) and taxes on land per hectare ( $T$ ) associated with getting alternative land rights. Given this understanding, we offer a valuation framework for different land reform processes.

Table I illustrates the composition of land values of six types of land reform processes: (1) maintaining customary rights; (2) registering customary land rights; (3) titling land rights; (4) state ownership/redistribution of land rights; (5) subsidized landownership; and (6) market-based land access. For each type of reform, specific land rights have been granted to individuals and groups, with different opportunities and constraints for transferring, selling, and renting lands. Moreover, rights granted within each reform type determine the value of land rights and marketing potential.

## UNDERSTANDING LAND RIGHTS AND REFORM OPTIONS

Under any land tenure system, right holders will demand alternative land rights if the benefits associated with the selected alternative land rights are higher or equal to the costs of getting such alternative land

### **Customary land rights**

The importance of customary land tenure systems varies from country to country. In Botswana, Malawi, Mali, Morocco, Niger, and Zambia, customary land rights are the dominant tenure system. Under these systems, land values are generally equal to the discounted net present value of current and future productivity per hectare. As such, land productivity is used to determine the terms of land contracts. These land

**Table I—Land reform processes and the values and characteristics of associated land rights**

Characteristic	Land reform process					
	Maintaining customary rights	Registering land rights	Titling land rights	State ownership/ Redistributing land rights	Subsidized landownership	Market-based land access
Role of the state	None or limited intervention			Strong state intervention		
Objective	Improving bundle of land rights			Reducing imbalances in landownership		
Land rights	Customary use rights	Registered private rights	Titles	Registered use rights (titles)	Limited titles	Titles
Tenure security	Yes	Yes	Yes	Yes	Yes	Yes
Sales	Limited	Yes	Yes	Very limited	Yes	Yes
Rental and sharecropping	Yes	Yes	Yes	Limited	Yes	Yes
Credit access	Informal/ parastatal	Yes	Yes	Cooperative/ parastatal	Yes	Yes
Composition of land value	$VP$	$(VP + CV) - TC$	$(VP + CV) - (TC + T)$	$VP - TC$	$[s(VP + CV) + ic(VP + CV)] - (TC + T)$	$(VP + CV) - (TC + T)$

Source: Author.

Note:  $s$  = share of state subsidy;  $ic$  = share of right holder's contribution.

rights have been generally viewed as an impediment to agricultural growth because they entail limited access to formal credit and input markets. Such rights offer many opportunities to poor households, however, because (1) they are easily acquired through group membership and social networking; (2) land contracts are based on risk-sharing strategies, whereby landowners and tenants share input costs and output; and (3) right holders have informal mechanisms for acquiring credit and avoiding loss of their lands.

Land sales are very limited under these systems, especially among members of different groups and communities. When such sales do occur, the value of the sale mainly represents the level of investment made to improve land productivity. Rental markets are dominated by sharecropping arrangements ranging from 20 percent to 50 percent of production. In the case of informal mortgages with local merchants or middlemen, the creditor cultivates the mortgaged field, and the servicing of the loan is equal to the value of the production he obtains. Poor farmers prefer informal mortgages because they can avoid the risks associated with formal financial and land markets. Yet because such rights are outside formal land markets and credit institutions, they limit opportunities for productive exchange and access to credit. In addition, such rights offer very limited

opportunities for women to gain access to and control these lands.

### **Registered customary land rights**

Registered customary private rights are the dominant land rights in North Africa (*mulk/melk*) and a few countries in Sub-Saharan Africa (such as the Central African Republic, Kenya, Mali, and Niger). Registration need not involve costly cadastral surveys, but can rely on simple, local registration processes to define the boundaries of individual or group-owned lands. It facilitates the recording of all transactions at the local level and reduces the incidence of conflict. Registration also transforms the value of these lands. The value of registered land equals the sum of the discounted net present value of current and future productivity per hectare and the collateral value of the land per hectare. Registration, therefore, enlarges the possibilities for right holders to make land transactions in both formal and informal land markets, as well as giving them easier access to credit in state-managed credit schemes.

This approach constitutes an important transitional step from customary systems to titling. In Mali, for example, right holders were only required to register their lands, but purchasers of land under customary systems were required to title purchased lands. This option

reduces the high transaction costs associated with titling, especially when the demand for agricultural land is still low. It is critical, however, to make sure that women's rights are taken into consideration during the registration process.

### **Land titles**

Some advocates consider land titles the optimal option for granting tenure security and facilitating poor farmers' access to input and financial markets. Yet links between land titles and tenure security, demand for inputs, investments, and availability of credit have not been well demonstrated in the African context. Even though such rights may have a high market value, especially where high-value commodities are produced, establishing them involves high costs, including the costs of cadastral surveys and formal legal procedures. Also, titling efforts can lead to worsening inequality, as elite farmers are better placed to take advantage of titling efforts and emerging land markets. Furthermore, the extent to which women hold land titles is not known.

In Botswana, Swaziland, and Zambia, distorted land policies have favored the emergence of landowning elites and private agribusinesses at the expense of small producers. In Côte d'Ivoire the titling process has resulted in the eviction of many migrant laborers who have worked under rental and sharecropping arrangements for generations. In Tunisia, however, titling was widespread because the government reduced titling fees and promoted irrigation and production of high-value crops (olives and nut trees).

### **Land rights from land redistribution policies**

Land redistribution is a popular way to either reduce inequalities in landholdings or grant more productive lands to farmers. Policies to reduce inequality, which involve redistributing lands confiscated from foreign and large landholders, were widely implemented in Algeria, Guinea-Bissau, Ethiopia, Libya, South Africa, Zimbabwe, and other countries. Policies to grant more productive lands to farmers occur in developed agricultural areas after irrigation is introduced. Project beneficiaries receive higher land value but less land than they owned before project development. This was the case in large, community-based irrigation projects along the Senegal River. In both kinds of redistribution, beneficiaries are commonly organized into cooperatives and associations to promote economies of scale in production, but they have very limited possibilities for selling or renting granted land.

Besides reducing inequality, the first type of redistributive land reform results in the temporary loss of the collateral value of the land, which becomes state land, and in the removal of land taxes. Under these conditions, right holders generally rely on state-promoted cooperatives, nongovernmental organizations (NGOs), and parastatal societies to obtain inputs, credit, and other services. Inheritance is permitted, but mechanisms for land transactions are very limited. This system poses a risk that inefficient producers, prohibited from selling or renting out their granted rights, will cling to them for fear of losing their land. Research in Ethiopia has shown, however, that when land sales are prohibited but land rental is regulated, land redistribution can increase efficiency and equity by giving greater land access to women and younger households capable of using these lands productively.

The second type of reform maintains inequality because projects apply the same coefficient to all farms, and each farmer receives land according to prior ownership rights. Inequality can even be worsened, as in the case of the Boghé Perimeter in Mauritania, where the irrigation project affected all the land of powerful and wealthy community members, while poor farmers were asked to wait for the extension of the perimeter. Because the extension never took place, poor farmers were transformed into laborers.

### **Land rights from market-based land reform policies**

Agrarian reform issues in Southern African countries are highly politicized because of the difficulty of drawing a line between the legitimate claims of black indigenous people, whose customary rights were preempted, and the equity and efficiency concerns of the many white and elite black Southern Africans who control most of the best lands and agribusinesses. It was generally believed that land redistribution based on confiscation would have detrimental effects on the economies of these countries and that demand-driven land reform involving "willing sellers" and "willing buyers" would improve equity and enhance the efficiency of the agricultural sector.

In Southern Africa, Namibia and Zimbabwe experimented with market-based land reforms, but findings suggest that the white population acquired more land between 1996 and 2001 than the disadvantaged black farmers. Such a situation has raised concerns and prompted changes in government approaches to land reform. The reform experience in Zimbabwe illustrates the sensibilities surrounding this issue. The Zimbabwean

government attempted to move back to confiscation to satisfy the social demand for redistribution, but the outrage of the international community indicates the magnitude of the difficulties facing most Southern African governments. At present, given the poverty of beneficiaries and high indebtedness of African governments, market-based reforms will face many challenges and lead to further inequalities in landownership.

### ***Land rights from subsidized market-based land reform policies***

Under this option, a variant of the market-based reform option, governments subsidize reform by paying part of the cost of purchasing land. In postapartheid South Africa, for example, the World Bank supported a land acquisition scheme whereby the government granted about R16,000 as subsidies to qualifying households. This reform targeted poor people and women more successfully than the reforms in Zimbabwe, but its pace was slow.

Although this option can facilitate landownership for poor people and women, it also has drawbacks. The higher the share of the state contribution, the greater is the incentive for beneficiaries to sell their lands. Indeed, by selling their land in the market, beneficiaries make a profit equal to or greater than the state contribution. Since this option can result in further land concentration and large disparities among the black population, it must be accompanied by regulations ensuring that beneficiaries do not just collect the rent associated with land values and jeopardize the whole purpose of reform.

## **IMPROVING LAND RIGHTS AND THE FUNCTIONING OF LAND MARKETS**

**T**here is no doubt about the need to reform customary rights to alleviate the multiple constraints farmers face in accessing input and credit markets. In response, African countries have enacted plenty of laws and implemented a wealth of land reform processes. Yet many of these laws and reform processes are inappropriate, especially the new policy agenda that attempts to generalize land titling and market mechanisms while bypassing other land rights and evolving market processes. It is critical to account for the capabilities and possibilities of poor households, to target land rights and the markets under which these rights oper-

ate, and to set up a process linking all these rights and markets. Moreover, it is essential to recognize the administrative and legal processes associated with different approaches and the capacity of governments to support those processes.

### ***Reforming customary land rights and institutions***

One can improve the efficiency of resource allocation and meet the demand for inputs and credit by simply registering customary rights. Once these rights are registered, they can more easily be traded between community members and even outsiders. This reform approach involves very low transaction costs because it relies heavily on existing local institutions. Complementary investments consist mainly of setting up a simple recording system that can be used later to develop a cadastre.

### ***Improving the performance of land redistribution programs***

Most land rights established by land redistribution programs fall outside formal land markets and constrain farmers' capacity to sell their lands and invest in other productive areas. Two pathways may improve the system. The first option is to maintain the system but allow these rights to evolve into private property. In Morocco, agrarian reform lands evolved into full private property once holders paid the costs of their field. The second option is to create cooperatives or associations whose members own shares of all the resources. Members who want to quit farming can sell their shares to the cooperative or to farmers who wish to join the cooperative. These approaches would avoid maintaining inefficient farmers and would provide poor farmers with capital to invest in other activities.

### ***Balancing equity and legitimacy in market-based agrarian reform approaches***

High land values have been the main constraint to balancing equity and legitimacy concerns in market-based agrarian reforms. The main differences between the land under customary rights and farms operated by white and black elites are land titles and investments made to improve the land. Consequently, to reduce the overvaluation of land, a clear distinction must be made between improved and unimproved land. On improved land, land prices will include productivity and collateral values, whereas on unimproved land, prices will consist mainly of collateral values. In unimproved areas devoted to grazing or forests, however, land value could be cal-

culated using the value of the feed contribution or timber productivity and its collateral value. Such an approach would allow landowners to recover the full value of their investments on improved lands and give many poor farmers access to unimproved lands at a cheaper price. Moreover, it would reduce Southern African governments' cost burdens for acquiring these lands for redistribution. This valuation approach could also be applied in dry areas, which have low cropping potential, but the redistribution process for dry lands in particular must favor group ownership and be accompanied by an insurance scheme that would service group loans during drought or bad seasons. This would prevent groups from risking loss of their land.

## CONCLUSIONS

Africa has been the theater of various land reform experiences since the colonial period, and it is crucial to capitalize on the lessons of these reforms to develop policy guidelines that will help countries establish appropriate legal and institutional frameworks. Land resources managed under customary tenure must evolve toward titling in a stepwise process, transiting through the registration of customary rights. Here the role of local institutions, both customary and decentralized, is critical. The recent trends toward recognizing and revalorizing customary land rights suggest that many African governments are breaking away from 40 years of groping for policies to reform land rights, but the process must be well monitored to avoid preempting women and

other groups, like pastoralists, from their rights over the resources. In Southern Africa, where the majority of land resources are in the hands of white farmers and agribusinesses, using the proposed valuation framework will help prevent overpricing and promote more access to land for poor farmers. Nonetheless, in the case both of customary land rights and of unequal land rights, it is important to detangle the components of land values that will help determine the demand for alternative land rights and provide guidance in formulating land reform policies. Research must focus on understanding the dynamics of land values in the different markets for land rights and devise ways to improve the marketability of customary rights through simple processes that also increase the demand for agricultural land and effectively contribute to the reform of land rights.

For further reading: P. Groppo, ed., *Land Reform (Rome: Food and Agriculture Organization of the United Nations, 1994)*; N. Chaherli, P. Hazell, T. Ngaido, T. Nordblom, and P. Oram, *Agricultural Growth, Sustainable Resource Management and Poverty Alleviation in the Low Rainfall Areas of West Asia and North Africa (Feldafing, Germany: Deutsche Stiftung fuer internationale Entwicklung, 1999)*; El Ghonemy Riad, *Land, Food and Rural Development in North Africa (London: Intermediate Technology Publications, 1993)*; K. Deininger and G. Feder, *Land Institutions and Land Markets, Working Paper 2014 (Washington, D.C.: World Bank, 1998) www.worldbank.org/html/dec/Publications/Workpapers/wps2000series/wps2014/wps2014.pdf*; M. Roth and F. Gonese, eds., *Delivering Land and Securing Rural Livelihoods: Post-Independence Land Reform and Resettlement in Zimbabwe (Harare, Zimbabwe, and Madison, Wisc., USA: Centre for Applied Social Sciences, University of Zimbabwe, and Land Tenure Center, University of Wisconsin-Madison, 2003) (www.ies.wisc.edu/ltc/zimbabwe/zimbook.html)*.

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