

PROPERTY AND PROSPERITY: REFORMING LANDHOLDING IN AFRICA

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EXECUTIVE SUMMARY

How Africans access – or ‘own’ – their landholdings is a matter of profound importance for the continent’s future. It touches on social welfare as well as prospects for economic development. This policy briefing provides an overview of the land question, drawing heavily on the Country Review Reports (CRRs) of the African Peer Review Mechanism (APRM). It argues that weak property rights are a major problem for Africa, but cautions against an assumption that full titling is an immediate solution. Rather, drawing on existing informal rights regimes in Africa – and gradually building formalised systems on this basis – offers a more promising avenue for creating effective and durable systems of property rights aligned with the continent’s realities.

INTRODUCTION

Putting Africa on a path that pairs its recent impressive economic growth with robust development must be one of the continent’s central priorities in the decades ahead. The projected growth in Africa’s population, particularly its rapidly expanding youth cohort, will require a step change in how it manages its resources. Particularly vital is the question of land.

The importance of land to Africa’s future is widely acknowledged, touching on many aspects of governance, policy and development. In various ways, land intersects with plans for accommodating populations and managing urbanisation, for natural resource extraction, for siting industries and for environmental protection.

RECOMMENDATIONS

1 Enhance property rights through informal mechanisms that recognise the capacity and financial limitations of African states. Universal formal titling may not at this point be feasible, but it is a worthwhile long-term aspiration.

2 Improve the capacity of African states to manage the administrative complexities of landholding and the gradual adoption of formal titles.

3 Invest in support for rural economies, with an emphasis on agriculture, with a view to boosting their productivity.

4 Research and understand the complex political economy of landholding – land retains a great deal of conflict potential. Policy approaches must be mindful of and sensitive to this.

For Africa, the importance of land as a resource is accentuated by the continent's economic structure. It is estimated that agriculture – often subsistence agriculture – contributes some 32% of sub-Saharan Africa's gross domestic product and employs around 65% of its workforce.² While economic diversification is critical for the future, agriculture holds significant potential: growing global demand for foodstuffs creates enormous trade and investment opportunities. In addition, expanded agriculture would help grow agro-processing industries, precisely the type of value-adding activity that Africa seeks. Meanwhile, domestically, a secure supply of food for a burgeoning population is an imperative. But agricultural productivity remains unimpressive, operating at only a quarter of its potential.³ Interventions geared at improving productivity will therefore be critical.

Africa's population will also become predominantly urban by the late 2030s, and demand for land around cities will increase. Growing cities will need to ensure land for housing, business, industry and infrastructure. Managing the dynamics around urban growth will be important for encouraging urban economies, the latter likely to be sources of innovation and high value-addition.

Land is at the centre of Africa's politics, and has been a factor underlying African political organisation since the pre-colonial era. It was a motif of the anti-colonial movement, and it has loomed large in Africa's post-independence history. Land, central to people's livelihoods and a signifier of their cultural identities, has long been aggressively contested – both peaceably and violently. Managing this potential for conflict, as demands on land resources grow, is a necessity for future stability.

Understanding the dynamics at play is crucial. A rich vein of evidence is provided by the APRM, Africa's home-grown governance assessment system. Its inquiries – contained in the completed CRRs of 17 countries to date – have produced valuable insights into the land-related challenges facing the continent.

A pivotal factor in meeting the challenges around land is resolving the foundational but vexed question of landholding in Africa: how best should land be owned – or 'held' – to spur its development?

LANDHOLDING

The APRM CRRs describe a complicated, hybridised system of landholding, generally encompassing two models: traditional (or 'customary') landholding systems and statutory systems. These have particular characteristics in individual countries. Mozambique and Nigeria, for example, recognise the state as the ultimate owner of land in the country. By contrast, in Ghana, Sierra Leone, Uganda and Zambia, statutory landholding regimes – private and state ownership – coexist with customary ones, typically according extensive powers to traditional leaders. South Africa and Kenya are somewhat different cases, with pronounced traditions of freehold land-titling (that is, outright ownership of land, unlimited in time, particularly by private owners). Indeed, Kenya was unusual as a post-colonial state in that it encouraged the conversion of customary rights to formal, private ownership – continuing a policy begun prior to independence.⁴

However, a clear distinction in practice between customary and statutory landholding in Africa is illusory.⁵ Considerable overlap and fluidity exist between the two models. In Nigeria, for example, the influence of traditional leaders remains strong, enabling them to exercise a great deal of 'informal but effective' control over land.⁶ The Ghana CRR identifies a common continental problem when it describes that country's landholding system as 'peculiar and complex'.⁷

For much of the continent, landholding is not only an amalgam of models but also in a state of flux. Since the 1990s, Africa's economies have gradually (if unevenly) been embracing market mechanisms and general modernisation. However, this is an incomplete project.

In some countries, this interregnum has created space for interests to assert themselves. In Zambia, traditional leaders' influence extends beyond their official boundaries and into urban areas – which leads to confused and unplanned development.⁸

The CRRs on Kenya and Zambia are instructive: despite the importance of land to their economies, at the time of compilation neither had a proper land policy. In the case of Kenya, a confusing patchwork of laws produced a 'very complex land management and administration system' – with some laws contradicting others.⁹ A National Land Policy was produced in 2009, followed by attendant legislation, to address this problem.

Similarly, Rwanda's CRR pointed to 'scattered' legislation that needed to be consolidated for coherence.¹⁰

A further consideration is foreign landholding, which receives little specific attention in the CRRs. In many countries, land cannot be owned by foreigners; foreigners may also face restrictions on leasing land.¹¹ Large-scale investments in agricultural projects in Africa have made this a heated political issue. Such investments have been criticised for displacing and threatening small farmers' livelihoods – and for the alleged complicity of investment-hungry governments. The Zambia CRR records a perception of political favouritism towards investors,¹² while the Sierra Leone CRR points to 'ad hoc' arrangements to facilitate investment.¹³ The latter point suggests an underdeveloped landholding system, unable coherently to accommodate various types of landholding and land use demands within its framework.

PROPERTY RIGHTS

Africa's people suffer from widespread insecurity in their landholdings. A recent World Bank study noted that ownership of a mere 10% of rural land in Africa is formally registered.¹⁴ For some analysts, such as Peruvian economist Hernando De Soto, this is a key retardant of Africa's economic progress. In this view, without formal title, assets cannot be leveraged for collateral. Part of De Soto's solution involves registering and formalising titles to property. Evidently concurring, the Zambia CRR says:¹⁵

Formal property titles help promote the transfer of land, encourage investment and give entrepreneurs access to formal credit markets. But a large share of property in developing economies is not formally registered. Informal titles cannot be used as security in obtaining loans, which limits financing opportunities for businesses.

The consequences of holding land without title are remarked on in other CRRs, for example, those of Burkina Faso, Sierra Leone and Mozambique.

If weak systems of property rights undermine Africa's prospects, what should be done? The CRRs provide an indistinct response, implying that a stronger regime of property rights in land is necessary without giving enough direction on how to achieve this.

MOVING THE CONVERSATION FORWARD

Titling unregistered property – as suggested by De Soto – seems an obvious solution. But opponents have argued that the practical difficulties of formalisation (such as cost) are considerable. There is also the risk of influential interests subverting the process, using it to seize unregistered holdings. Moreover, formalisation may not stimulate economic activity, as poor people's assets tend not to be worth enough to make them enticing collateral.¹⁶

These limitations are especially pertinent in light of the continent's often inadequately capacitated institutions. In Ghana, the problem of unregistered landholdings has been recognised since the 1980s and a titling programme has been put in place to address it, with some success. But, according to one analysis, a 'lack of administrative capacity and weak public outreach have hindered the process, leading to many citizens losing faith in the land administration system'.¹⁷

A more productive, albeit complicated, approach is to view property – particularly landholding – as a set of legitimising social relations, rather than as a claim over possessions. Titling may be kept in mind as a long-term goal, or limited to particular settings.

However, in the intermediate term, it would make sense to build on existing understandings of 'property', aiming to enhance the functional dimensions of landholding such as security of tenure and user rights. This would constitute a type of informal titling. These would vary according to the specific context. For example, an initiative in Zambia has seen customary landholding certificates introduced in some regions. These do not provide private ownership, but are a written record of land allocations and thus documentary proof of rights.¹⁸

This would have to be supplemented by two things. Firstly, state administrative capacity would need to be improved. Through information technology, the goal would be to move, gradually, untitled holdings and informally registered holdings to a formal system. Ghana and Uganda have been pursuing the computerisation of landholding records. This would hopefully ensure that a strong administrative system would protect the legitimate rights of landholders while introducing the idea of land as collateral. It would also help provide certainty to investors – particularly foreign investors – and integrate them into countries' overall landholding systems.

Secondly, given the intimate relationship between land and rural economies, it is essential that more investment be channelled into the latter. Ghanaian scholar Professor George Ayittey has observed that African states have frequently ignored their rural hinterlands in favour of their cities.¹⁹ Investing in transport networks and agricultural extension services would boost productivity, ultimately improving land values.

CONCLUSION

Africa's land is a precious asset, but its true value has not been realised. With much at stake, it is essential that any initiative to do so should be properly considered and evidence-based. The APRM's work on this matter has made an invaluable contribution. Clearly, stronger property rights are important for Africa's future, but they must be enhanced with a clear-eyed recognition of what is possible within the continent's resource and institutional capacity. Imaginative solutions, rooted in the experiences of Africa's people, must be developed as an interim alternative. It is also imperative that infrastructural and technical support be made available to enhance land productivity. Taken together, these will help build the foundations for a rejuvenated approach to landholding – one geared to a prosperous future.

ENDNOTES

- 1 Terence Corrigan is a Research Fellow with the Governance and APRM Programme at SAIIA. This policy briefing draws on *Space, Soil and Status: Insights from the APRM into the Governance of Land in Africa*, SAIIA Occasional Paper, forthcoming.
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