

# Africa's changing landscape: Securing land access for the rural poor



# **Overview**

This briefing discusses a selection of the major policy themes in African land markets with a view to inform and engage with policy makers and development stakeholders on a rapidly changing land sector. It offers an overview of current trends and provides a set of recommendations on possible solutions to the challenges faced in relation to land reform within the region.

Access to arable productive land in African has

been in decline due to the pressure of growing population trends and worsening land degradation as a result of climate change. Many low income rural households are dependent on land to access limited sources of credit, with land providing the only means to channel into financial markets. Recent high profile land purchases covering thousand of hectares of prime agricultural land have raised concerns over equitable land access.

Major expansions in regional land markets have increased investor interest in land acquisitions. Perceptions of land availability and competitive land prices have driven demand for prime agriculture land. Subsequent increases in foreign direct investment have been partially explained by substantial land acquisitions undertaken for the purpose of food production and biofuels.

Government responses to land investments have been largely favourable with many countries promoting investor friendly market environments. However provisions are increasingly being adopted to address the threat of land market expansion to local access to communal lands.

The continuing legacy of uneven land distribution remains a major concern in delivering equitable land reform in Southern Africa. Contrasting government policies to address wide disparities in land access persist ranging from radical land distribution policies to moderate measures to protect land rights for marginal groups.

Reform of land governance frameworks has been proposed as solution to the threat that land inequity poses to the rural poor. The importance of customary based land practices and procedures is a critical element in ensuring that land reform serves the interests of the poorest. Forming partnerships between customary and formal land administration may provide the breakthrough in securing gain for low income rural households.

# Land markets in Africa

Land markets in Africa have been characterised by wide dispararities between countries and sub regions revealing diverse trends in terms of rates of land distribution and types of land tenure. Hence Africa's land sector reflects a multi-faceted and complex array of land governance and administration systems. A thriving land markets exists in East and West Africa where the population is more dense and significant trends of migration between agricultural seasons occurs. For example, in Ghana, migrants receive land on which to establish cocoa farms and give one third of yield back to original owners in the form of rent. This contrasts with Ethiopia where restrictions on rental market operations have undermined the development of non farm enterprises. Land markets have maintained a long term presence in African land transactions for both informal and formal processes from a range of long term leases to variable short term land contracts. The competitiveness of African land is a major driver of growth in the regional land market characterised by minimum land fees and a perception of land availability. It is likely that the relative value of land will increase in the medium term as a result of land scarcity.



Despite their variability, land frameworks across the region face the common challenge of diverting land resources into sizeable investments as a prime source of valuable development finance. In turn this places pressure on governments to formalise structures for land management in order to maximise the potential revenue from land resources.

Land transactions are often restricted by the complexity of land systems where formal land tenure is rare. Informal land

sales are more common than large scale land acquisition but tend to be confined to peri urban areas where there is greater potential for high value crops. However formal purchases have been saddled by difficulties over the classification of land ownership with particular concerns over the use of individual land title where communal land interests are not legally recognised. Official land investments also pose risks for local owners due to fears over land seizures as a result of loan defaults and a reluctance by chiefs to use land as collateral.

Proposals have been raised for government intervention in providing land guarantees and legal conditionalities to promote commercial land acquisition. In Mozambique, an open board model has been established where legal recognition is provided around the rights of smallholder communities in private land investments. Under this model, land negotiations between investors and community groups operate within customary boundaries. Comparatively, land laws in Angola provide provisions for community land to be considered as collateral to facilitate access to commercial bank credit.



### Land investments in Africa

Africa's governments have been urged to promote private sector investment in land resources as part of strategy to generate increases in private sector revenue in support of rural development strategies. Investors have responded favourably to Africa's open land sector seizing opportunities to secure large areas of land for food production and biofuel development. The availability of arable land has made Africa a competitive location for investors who are able to gain access to sizeable holdings with government backing. Regional institutions such as NEPAD have welcomed initiatives that encourage private sector land investments. While in Burkina Faso and Mozambique mechanisms to attract land investments are written into law.

Increases in private sector investment, although welcomed as a contribution to increasing levels of rural employment and improving local infrastructure, has also posed critical questions regarding land rights for the poor. How new investment will be managed to ensure that local communities are guaranteed social and economic returns that also secure future land access remains unclear.

Evolving trends in Africa land markets indicate increasing levels of land transfers to government seeking food and fuel security in association with private investors. Levels of Foreign Direct Investment (FDI) have been on the rise in the region increasing to 30BN in 2007 compared to 22BN in 2006 (FAO 2008). A surge in interest towards natural resource markets has been a major factor in large injections of regional FDI. Land has emerged as a strategic commodity markets for governments looking to integrate land acquisition with national food demand for the medium and long term. Land deals have involved intergovernmental partnership between states underlined by mutual financial stakes, e.g. Special Agriculture Investment Agreement between Syria and Sudan for a 50 year lease over a land area of 12,600 ha. Private investment has also been received from petro-dollar Gulf states. Saudi Arabia, Qatar, United Arab Emirates have provided key sources of investment in addition to EU and US who have been active in land investments across the continent.

Substantial land investments for rice production have occurred across West Africa. Land investments have taken place between the Malian government and UEMOA covering nearly 12,000 ha of land for rice cultivation. The investment package also extends into the Niger Basin Authority Area. Significant land investments have been received in Liberia involving a package of \$30M from the Libyan government focusing on rice production. The national project will extend to over 15,000 ha of land.

Total land investment committed between 2004-09 amount to US\$919M involving over 2 million ha across the region. Sudan Ethiopia, Madagascar and Mozambique are among key beneficiaries of FDI in land in Africa. Although all vary in legal frameworks to regulate land, and in the range of government capacity to manage land investments. Recent announcements of new specialised investment vehicles suggest that land deals may increase in the future while an expansion in investment to bio fuel related projects internationally reinforces the regional trend. In Ethiopia 98% of projects recorded are linked to food production.

Increasingly restricted access to prime arable land has occurred against the backdrop of increasing government backed commercial investment. The implications of substantial land acquisitions for the rural poor are numerous including declining access to available sources of food with a negative impact rates of consumption and malnutrition compounded by an increase in the number of landless poor.





#### Land access

Patterns of land access reveal growing inequalities in various African countries as access to arable land contracts. Strong upward trends land in investment have occurred against a backdrop of narrowing land access to low income rural households. Increasing numbers of the rural poor face the prospect of land displacement and landlessness as a result of land diminishing resources. Importantly expansion in infrastructural investment are likely to drive up land values with an impact on existing occupied land.

Strong demographic growth has contributed to heighten population density, placing pressure on land availability. Figures show population density increased in Ethiopia from 17 pp/km<sup>2</sup> to 157 pp/km<sup>2</sup> between 1950 -2000 alone (FAO 2008). In Mali, Sudan and Ethiopia figures increase significantly if related to land suitable for cultivation. Major differences occur across the region between total land area recorded and net land balance excluding land used for cultivation, settlement, forest and protected areas suggesting severe land deficits in relation to population trends.

Unequal land access and low absolute levels of land per capita of households are shown to be problematic for poverty reduction and growth as result of the strong link between access to land and household income particularly for farm sizes below 1 ha/ capita. In Africa on average households in the highest per capita quartile control between five to fifteen times more land than the lowest quartile (FAOSTAT). Landless households or those who own less than 0.1 constitute 25% of rural agricultural households. Restrained access to land limits the ability of landless groups to graduate from poverty through agricultural productivity growth (Jayne, 2005). Expanding crop production is largely associated with issues of equitable asset distribution, yet little attention is paid to considering the implications of land inequality in relation to food security.

Attempts to achieve equitable land access have been further undermined by the practice of classifying unoccupied land earmarked for public good. African governments that have favoured followed the path of land nationalisation have sought to protect state access to land, restricting potential land transfers and undermining land disputes which involve redistribution of state land to marginalised groups. The poor typically have limited resources to contest land deals in circumstances involving large commercial investment. The concept of waste land continues to be applied in policy and legal practices permitting the state to override rights over land held under customary law. Classifications of land use are highly tenuous as they predominantly exclude seasonal and low intensive uses such as land use for winter and summer grazing gathering and hunting. Displaced communities are often unable to derive direct benefits from appropriated land.



Improving transparency and deepening community consultation over classification and sale of unoccupied land could reduce the likelihood of potential land conflict. Registration of state land and land for public purposes has been undertaken in Burkina Faso where allocated customary land for public purpose is transferred into management schemes open to public scrutiny. Currently however few state schemes operate in a similar form contributing to multiple land claims.

Evidence collected in Ethiopia revealed, lands allocated to investors in Beishangul Gumuz and Afar region was previously being used for shifting cultivation and dry season grazing. In addition, evidence of pre existing land use and claims allocated to investors provided by qualitative studies in Tanzania and Mozambique (FAO 2008).

Declining levels of land access have come under further pressure due to increasing land degradation caused by climate change. Growing evidence points to a rise in climate volatility across Africa likely to exacerbate availability to arable land. Levels of viable arable land for production are predicted to decline by 2080, with 9-20% of arable land becoming much less suitable for agriculture.

# Land rights and the rural poor

Achieving equitable land access is integral to the protection and enforcement of land rights for marginal groups. Without legally protected right to land vulnerable low income households are unable to defend land claims and positively engage in disputes over land tenure. Failure to administer rights granted to secure land access has been a prime factor in rising land insecurity for the rural poor. Greater tenure security is expected to strengthen income growth and asset status for the poor and ensure livelihoods resilience whilst strengthening the ability to access credit and compete in domestic and global markets (FAO 2006).

Delivering pro poor land rights in Africa is complicated by the fusion of customary and formal governance in land administration. Processes for acquiring land rights through state involvement continue to contrast distinctly with land allocated on the basis of customary law and traditional practices, formed through tight knit communal networks. Problems can occur due to the lack of legitimacy that governments may hold in governing land issues where customary authorities have greater social recognition in negotiations over land distribution. Marrying the two systems customary and formal land rights is perhaps the most major policy challenge facing the African leadership today (FAO 2009).



Consultation between local communities and potential investors is a key area in the protection and implementation of land rights for the rural poor. Advance practices of local consultations are carried out in Mozambique and Burkina Faso where civil society are involved in early phases of land policy formulation. Assessments show that the use of public notice as a means of announcement potential land purchases is not always applicable in the African context due to high illiteracy rate in rural areas.



Studies have shown a near universal tendency among African government to resort to the false notion of free land to appropriate land belonging to local communities in order to facilitate land transactions to private investors with links to local elites. The weak institutional capacity of local institutions to contest such land purchases is a major factor in their inability to bring attention to inappropriate application of local land laws. In Sudan, there has been a strong politicization of land management institutions which have stirred competition for control over natural resources found at the heart of the Darfur conflict.

Critically the application of a wide range of rights should be proposed to encourage the use of innovative land techniques including issuing long and short term land use rights, a variety of lease contracts, licenses and permits as optional mechanisms to protect tenure security.

### Pro- poor Land interventions: the role of government

Securing land rights through legislative reform has been adopted as an important tool in dealing with the challenge of land inequity. Smallholder farmers with legally protected land will be empowered to successfully dispute wrongly claims of land ownership thus reducing the threat of land grabbing to rural livelihoods. However, government action to address issues surrounding the weak bargaining power of the poor over disputed land claims has been criticised for failing to enforce rights granted to protect land access.

Land reform has proved a difficult process for the majority of African states attempting to manage the competing interests of a range of stakeholders including commercial investors, smallholder farmers, agribusiness and the landless poor. Building the right institutional environment to respond to rapid changes in Africa's land markets and the complex arrangements between formal and customary land rights has remained a major challenge for African government. Examples of land reform from across the region reveal the intricacy of land policy frameworks and the challenge poses by the implementation of extensive land reform where political risks are high. Assessments of land institutions indicate that underfunding and low organisational capacity have been problematic in ensuring that organisations are sufficiently focused on the needs of the rural poor. Control over land resource is a major factor in determining patterns of poverty and inequality. Yet, the disparate and cross cutting nature of land mean that linear policy tools have had limited impact on the social networks that produce land inequalities (UNDP 2008).

Developing frameworks for resource management in competing and contested marginal areas and regulating access to collective natural resources are likely to require a range of responses to incorporate policy frameworks relating to agriculture growth, off farm income and rural migration. In this regard regional actors including NEPAD/ CAADP must integrate responses that address expanding urban, regional and global markets in ways which are woven into land systems at local level while concurrently recognising social and economic disparities (Quan et. Al 2006).

A framework of action to secure land rights, enhance productivity and secure livelihoods has been developed by the Africa Union Commission and UNECA who have committed to work closely with government, Regional Economic Communities (RECs), civil society and development partners to provide governments with a continental framework and guidelines for land policy and reform.

# Land distribution: policy options and implications for the poor

The colonial legacy has burdened Africa with severe inequalities in the distribution of land between large scale farms, smallholders and state farms. Where this is not the case in West Africa, substantial land inequalities remain in Eastern and particularly Southern Africa.

In Southern Africa, land has been an intrinsic part of rural livelihoods placing land reform at the centre of poverty reduction strategies. Scarcity of land, poor access to available land combined with weak institutions to enforce land judgements has had a negative impact on the welfare of the rural poor. Misrepresentation of the poor in policy processes concerning land and natural resource management has led to increasing inequity in relation to land allocations. Despite this, the commoditization of land has been widely supported as a strategy to promote commercial investment in agriculture with government taking a less active role in land management.

Growing interest in land investment as a source of capital has elevated the value of land holdings placing the issue of land into debates on rural market development. The combination of a large settler population, high levels of land displacement and rural poverty has posed serious questions concerning the sustainability of land systems in Southern Africa. A thriving agribusiness with access to lucrative western markets has limited the scope of extensive government intervention in readdressing the balance between settlers and the rural poor due to reluctance to implement widespread reform that may interrupt sector performance. The South African government has supported the granting of concessions to commercial operators over land which has facilitated a moderate environment for land reform. An entrenched system of customary tenure has presented a challenge for the implementation of reform in homeland areas. In addition the low political currency of the rural poor has favoured distribution of land in urban areas where considerable progress has been made in the resettlement of land due to networked intervention between the Department of Land Affairs and Regional Land Claims Commission to government and non governmental agencies. Despite this only 4% of land has been transferred in 15 years since the collapse of apartheid in 1994. (Lahiff, 2003) Equitable land access continues to be denied to thousands of agricultural workers whose livelihoods depend on often fractious relationships with powerful land holders. Limited involvement of local government has been cited as a contributing factor in the consolidation of pre existing models of commercial farms and the small allocation of funding to land reform. Failure to integrate development at municipal and district left has preserved the physical isolation between black communal areas and white farming communities. (Quan et. Al).

The majority of governments in the sub region have focused on the protection of land rights for vulnerable groups eschewing issues of extensive land distribution. In Mozambique where there is a long history of a dual system of state farms and collectives, the 1997 Land law held up the rights of peasant groups with the aim of reversing discrimination towards the rural poor in relation to land access. Implementation of the law has been somewhat restricted by a fast track process of privatisation which has encouraged the development of individual land holdings as part of a policy framework of land liberalisation. Poor government allocation towards the execution of the law has also constrained the likelihood of substantial improvements in land access. However the constitution clearly prohibits the commoditization of land for foreign investment formally protecting the rights of vulnerable groups occupying untitled or unclassified land holdings.

Government strategies to promote increased land investment have tended to rely on the concept of vacant land which is an integral part of approaches for the development of land use and land management policies. In this regard the government has adopted the role of mediator acting to work for the interests of commercial investors while simultaneously protecting the rights of customary land holders. Unlike South Africa, Mozambique boasts a vibrant and vocal political movement of the rural poor which is actively engaged in negotiations over land reform.



In Rwanda access to land is based on structures of land tenure inherited from Belgian colonial rule which have contributed to the continued concentration of land amongst a small urban elite. Land titles are generally uncommon and a large proportion of land is held in property of the state. Land markets have been largely defined by issues of land scarcity and environmental degradation. Chronic land shortages have led an to increased number of land transactions, pushing up long term land rentals exacerbating land fragmentation and diminishing plot sizes for cultivation and grazing.

Assessments of current land reform in Rwanda are doubtful of whether proposed legislation can be expected to deliver pro poor growth and reduce poverty. The 2004 land policy and 2005 land law produced two major elements of land reform, land registration and formalisation. However gender inequality was not adequately addressed in either set of legislation, with criticisms raised over grey areas between land law and inheritance.

In Rwanda, proposals to achieve effective pro poor land reform include the adoption of a pluralistic approach that joins customary and formal land tenure, create an enabling environment that devolves authority to local and indigenous institutions while assuring access and transparency in land administration and tribunal and judicial processes (FAO, 2006).

Rising trends of rural poverty and growing social disparities between land owners and rural producers has worked as a catalyst in radicalising land reform in Zimbabwe. High rates of national unemployment combined with poor returns to small scale agriculture have been compounded by lack of access to social services and the HIV/AIDS endemic. Approximately 4,500 commercial white farmers previously owned the greater proportion of prime agricultural land compared to the majority smallholder farmers confined to congested communal



areas. Pervasive rural poverty has contributed to widespread public support for radical land distribution from white settlers towards marginalised landless groups. Increasing land militancy has emerged as a result of an extensive government programme targeting the distribution of large land holding towards smallholders. The forcible seizure of land has been openly supported and promoted by government policy. The allocation of large areas of land towards smallholder farmers has presented the opportunity for a new generation of commercial farmers, involving the most radical distribution of land assets in the sub region. A total of 11.5M ha of land changed hands between 2000-2002.

Assessments have shown Zimbabwe's action on land reform implemented in the context of rapid economic decline and political instability has produced a chaotic and inefficient policy for wholesale land distribution. National sourcing of food previously made by farm workers led to 1.5Mt of maize imports by government and aid agencies to avoid famine. Food security was further exacerbated by serious drought in the 2001/2 season. The displacement of 200,000 farm workers caused a substantial rise in unemployment and deprivation. Farm workers were already faced with chronic poverty before land reform with many dependent on landowners for basic welfare needs. Less than 5% of agriculture workers were granted land following land distribution.



# Land Institutions: the challenge of delivering land equity

Issues of land access and distributions are closely associated with the effectiveness of land institutions to carry out reform. The vulnerability of smallholders to the threat of large scale private acquisition has been exposed by inadequate organisational infrastructure of land institutions in negotiating claims for land ownership. Weak capacity of land institutions has worked as a barrier to improved land management services for vulnerable groups as organisations struggle to manage a high volume of land claim demands. Dealing with the complex arrangements of customary land entitlements and their formal transition into private property rights has proved difficult for stretched and under resourced national land management organisations. Augustinus and Deininger (2005) in their study on land tenure and administration in Africa note 'Conventional land administration systems do not fit customary structure of groups and family rights, do not function adequately or solve land conflicts, and are not useful to most people.' The absence of community based approaches in national land management policies has contributed to the marginalisation of pro poor perspectives in attempts to improve standards of land equity.

Localised land authorities have experienced reduced influence over land decision making which has been narrowed in favoured of centralised government bureaucracies. Local institution building is more pronounced in French West Africa where decentralised bodies were promoted at district level. Despite this devolved power over land management to community level remain rare. The establishment of community level land registration bodies is uncommon for most African countries.

Improved processes for the resolution of land disputes is another area that could directly benefit the rural poor. Increasing trends of land grabbing and discriminatory practices against marginalised groups including women and those suffering from HIV/AIDS has highlighted the need for transparent land allocation processes which integrate pro poor land tools and ensure security of land tenure irrespective of social group. Women face systemic disadvantages in securing land access as a result of culturally embedded prejudice compounded by male control of land inheritance. The HIV/AID pandemic has created additional challenges for women's equal access to land as land rights are weaker for widows and also for girl orphans who are typically socially marginalised (FAO 2006).

The introduction of more innovative tools on land tenure need further development to deliver affordable secure tenure and property rights. Proposals for reform incorporate the integration of new land law laws with PRSP objectives and the increased decentralisation of local land administration officers alongside free titles and tenure protection for the poor.

### Land registration: redefining customary tenure

Formalising land rights through categorising and titling land is largely perceived as critical for securing commercial returns. Unregistered land reduces the likely hood of investment due to the risks posed to potential buyers as a result of potential land disputes. Moreover, land without title is regarded to act as a disincentive to improvements to local rural facilities and infrastructure. Increasing private sector investment in land has been associated with the implementation of private property land titles for individuals and an extension of land registration initiatives to consolidate legitimate claims to land and address with potential land disputes.



Concerns have been raised in relation to disadvantages posed by formal land registration. The financial costs involved in carrying out large scale land registration programme have been extensive involving considerable funding from donors in some cases amounting to 40M CFA (IIED 2004). Moreover formal processes may fail to take up a pro poor approach in ensuring the most vulnerable groups including marginalised groups particularly the youth and women, are fairly represented in registration initiatives.

Centralised management of land registration processes despite formal transfer of authority to regional districts has made it difficult to gain access to land institutions, limiting the distribution of information and guidance for vulnerable rural groups. This is compounded by the influence of

elites who are able to access advance knowledge of impending registration programmes. Elites are subsequently able to pre-empt action taken by the local district in land certification, enabling them to assert claims under customary law.

Smallholders are particularly vulnerable to losing their rights over land with women typically failing to be fairly represented in land registers. In this regard, current land registration processes provide limited options for reasserting the balance of land rights towards the poor.



Recognition of customary tenure under formal law is being increasingly adopted within the region in response to criticisms over land registration neglecting the complex management of land at district and village level. The integration of customary based approaches has proved more suitable in securing rights for the land poor who are able to negotiate on the basis of extended family networks and kinship groups. In South Africa recognition of legal protection for legitimate customary rights was written into the constitution. Recognition of customary tenure was put into practice in Mozambique where the 1997 land law allowed oral evidence to be used as part of land tribunals. Importantly customary based arrangements also take into account the oral presentation of evidence submitted during land testimonies, in areas where literacy rate are high this has proved to be a critical factor in the participation of land registration procedures by the rural poor.

Conversely customary governance has experienced significant challenges in delivering equitable land management and administration. Customary authorities are faced with meeting the demands of rising demographic pressures, coupled with increasing competition over scarce land resources, only worsened by a breakdown in customary influence. Ensuring the accountability of decisions taken in relation to the distribution of communal land has also remained a concern.

A number of examples have shown inappropriate measures taken up by chiefs who have undertaken commercial transactions of land without the consultation of kin members. The issue of personal appropriation of land by chieftaincies is a major issue in several African states where land markets are becoming increasingly open.



### **FAO's Response**

FAO has established strong linkages with land programmes and initiatives on the continent by supporting member states through technical assistance and adding value to land networks. In Mozambique technical assistance was provided in crafting an innovative approach to land rights that allows gains for investors and local residents. As part of the approach legal protection is in place to avoid the inadvertent dispossession of community land and to facilitate community negotiation with commercial investors.

In Namibia, FAO provided technical assistance in support of Agriculture Land Reform Act by providing assistance in the preparation of regulation surrounding the implementation of a land tax designed to discourage non productive speculative land holding. In addition, FAO provides support in capacity building for farmer organisations through the promotion of their engagement in national and regional policy issues. In Burkina Faso, FAO supported the *Confederation Paysanne du Faso* to develop a forum for exchange and debate on themes such as land tenure security, family farms, agro business, global trade policies and food security.

# Conclusion

As land markets in Africa develop, managing the impact of land negotiations on the poor is likely to become more urgent as diminishing access to arable land impacts on progress towards food security and poverty reduction goals. The expansion in land investments has occurred against a backdrop of rising land scarcity leaving millions vulnerable to widespread displacement. Limited access to prime agricultural land has pushed the poorest onto less productive land holdings with low yield potential. Increasing displacement of low income rural households will increase the probability of land degradation as population pressures impact on environmental sustainability.

Government responses to the challenges of land reform have been varied from legislation to protect and expand protection of land rights to radical land distribution to smallholder farmers. Prospects for equitable land management have been largely determined by the extent to which government are willing to set conditions on private investment and the degree of public engagement in relation to land policy. Integration of customary land governance with formal legal land frameworks may hold the key to land negotiations that protect land rights and promote commercial investment.

Implementing pro poor tools to ensure low income rural households are integrated into complex processes of land registration and distribution will remain an important concern for the region, whereas diverting the required resource necessary to ensure that governments have the capacity to effectively respond to land inequity is fundamental to successful reform. Formulating effective responses that widen channels of land access to the rural poor is largely dependent on the successful decentralisation of land institutions to district and local level. Critically, establishing programme networks between land management and poverty reduction initiatives will facilitate a process of strengthening the sustainability of land interventions.



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April 2010