



## Institutionalisation of Sub-Saharan Africa's Land Reforms: The Way Forward

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**When implementing land reforms, African states tend to focus on issuing title deeds. However, the reform agenda should be much broader. The narrow focus may undermine positive reform outcomes in terms of tenure security and economic growth. Attention to long-term institutionalisation of change is required.**

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Governments across Sub-Saharan Africa seek to address the increasing pressure on land by introducing land reforms. More than half – at least 32 countries – have introduced reforms since the end of the Cold War. Though the reforms are heterogeneous, most of them share a number of characteristics. Most reforms aim to streamline land legislation, land administration and land dispute settlement and to promote markets in land. These new wave land reforms typically do so by recognising existing rights to land (customary rights included), by decentralising responsibility over land administration and land dispute settlement and by promoting registration and issuing land title deeds. How are land reforms being implemented? What is their effect on institutions at the local level? Are the land administration and land court institutions becoming more accessible due to the reforms? This policy brief addresses some of these questions.

Overall, most of the legal changes are commendable because they improve tenure security for the rural poor, whose rights are rarely formally registered, and increase local control over land. Policymaking processes have become more consultative over the years as more countries become more democratic. However, reforms are only slowly being implemented and often in a piecemeal manner. State-led implementation projects tend to focus more on issuing land

### POLICY RECOMMENDATIONS

- Apply a long term perspective on implementation of land reforms. Project approaches may be useful to test methodologies but not to implement a reform in the longer run.
- Address people's perceptions and practices in order to institutionalise changes at the local level.
- Reforms decentralise responsibility over land administration and dispute settlement to the local level. It is important to support these local level institutions.
- Mainstream women's rights into every activity that relates to land, land administration and land dispute settlement, from policy formulation through implementation to evaluation.
- If issuing land title deeds is a part of implementation it should be an ultimate goal, not the point of departure of activities.



title deeds than on making institutions work at the local level. The focus is short-sighted where a long-term focus is needed. By introducing the concept of institutionalisation into the land reform debate this policy brief highlights that institutions are not only made up of administrative rules and structures. More attention should be directed towards people's perceptions and practices. Addressing them is equally important if change is to be institutionalised over time.

## WHAT IS INSTITUTIONALISATION?

Institutionalisation can be seen as a matter of rules and power; that is as the creation of incentives and alliances to make institutions work across administrative boundaries. But there is another side of the coin too: the related cultural values that members of society share.

In other words, the implementation of a new wave land reform not only requires the establishment of land administration institutions; it also requires a general understanding and acceptance of these institutions at the local level. This may be a challenge in African countries where there are often cultural caveats on land usage. Therefore, the implementation of a land reform and the institutionalisation of change should be regarded a long-term process that involves bureaucrats as well as local leaders and end users.

## IMPLEMENTATION OF NEW WAVE LAND REFORMS

Often, implementation of new wave land reforms focuses primarily on the economic aspect of reforms; states wish to promote economic growth through land titling and land markets. Supported by donors, a number of projects have been carried out across the African continent to test titling methodologies and ways to update land registries and spatial data infrastructures. Empirical research on the effect of these measures is inconclusive at best. The non-economic aspects of reform, on the other hand, are often neglected, though they may matter more to most people.

Overall, the implementation of new wave land reforms has proved slow and uneven. However, this does not mean that reforms are not important. The *de jure* recognition of existing rights to land, customary rights included, applies from the day a reform is enacted. This is important for people's ability to defend their rights in land court cases, even when they have not formally registered their rights to land. Still, the impact of this measure also hinges on the accessibility of courts and the enforcement of land court rulings.

When it comes to the daily operation of these institutions, outcomes are diverse. In Tanzania, for instance, most of the prescribed decentralised land court institutions have been established. Therefore, institutions are more accessible now than prior to the reform. But access is unevenly distributed and often the court representatives are untrained at the local level. Some groups find it difficult to access these courts in practice. In Uganda, by comparison, there was no plan for activating the newly decentralised land dispute settlement tribunals. Continuous changes in the legal framework have also led to widespread confusion at the local level. Consequently, the formal court system in Uganda is harder to access in general.

## THE PROBLEM WITH PROJECTS

The main problem with projects to implement the new wave land reforms is their short-sightedness. However, we can still learn from projects, even some of the less successful they apply. Supported by some donor agencies, states tend to focus on issuing land title deeds in short-term projects. Whereas these projects are controlled by state authorities the updating of registers and maps is often left to the lower levels in the land administration structure. But the latter may not have the skills and resources to carry out this task. Therefore, there is an inherent risk that registers and title deeds will soon become outdated. The tenure security that the deeds were supposed to provide at the local level will be undermined and the economic growth promised by the projects will not materialise.

Some examples from Tanzania serve to illustrate this point. An early implementation project was carried out in Handeni District by a state entity called MKURABITA. It focused on formalisation through titling. On the surface it



*Office Mess: Sustained and open-ended training on land rights and land dispute settlement procedures is important for the institutionalisation of a land reform. Photo from Partimbo Ward Tribunal, Kiteto District, Tanzania*



*Partimbo Ward Secretary: Sustained and open-ended training on land rights and land dispute settlement procedures is important for the institutionalisation of a land reform. Photo from Partimbo Ward Tribunal, Kiteto District, Tanzania.*

was quite successful. Over a very short time period – three months at the end of 2006 – it facilitated the establishment of the land administration structure and started issuing customary title deeds. However, the short-term focus proved problematic in the longer run. The surveying of plots stopped shortly after the MKURABITA teams left. It proved challenging for the villages to make the land administration and land dispute settlement institutions function properly. The villages did not have the right equipment – a GPS – to continue. And training of new leaders and public officials was not provided for.

A similar project approach seems to have been applied in the largest-ever state-led pilot implementation project in Tanzania. More than 30,000 customary title deeds were produced during the project, which started in 2006 as part of the Business Environment Strengthening for Tanzania (BEST). However, a study in one of the project villages in October 2012 showed that no villagers had yet received a certificate. So many mistakes had been made during the fast-tracked implementation process, in which people's identities, photos and plots had been mixed up, that the deeds could not be issued. Furthermore, there were no funds for finishing the project and the District Council had no computer literate person, who could maintain the computer system. Generally, people were uncertain about how to update certificates and registers.

#### **HOW TO DO IT: THE IMPORTANCE OF APPROACHES**

Other implementation initiatives have been more successful in institutionalising change. Today, for instance, most Tanzanian villages have received the village land certificates

with maps of the village land that are a prerequisite for village leaders to take over the full responsibility for administering land. This is due to a successful national initiative by the then Minister of Lands a few years back. It was partly funded by a World Bank project, which made it possible for the Ministry of Lands to take aerial photographs of

#### **INSTITUTIONALISATION AND WOMEN'S RIGHTS**

Women's rights to land have generally seen better coverage in land reforms in the last couple of decades. However, there is often a gap between the legal framework and what is happening on the ground. Much depends on implementation. Firstly, despite having been abolished by the reform, discriminatory practices may continue, disadvantaging women's access to land. Sub-Saharan Africa women, whose marital status changes because of the death of a husband or a father or because of divorce, are often particularly vulnerable. Second, the approaches to implementation matter: Short-term titling projects seem to lead to lower levels of female ownership than do long-term engagements with communities about land rights, land administration and land dispute settlement. If gender-progressive changes are to be institutionalised, local values and practices should be addressed. It takes time to address the inequalities that have their roots in culture. If land titling is a part of this, it should be an ultimate goal, not the point of departure of activities.



rural areas, and for the districts to finish the job of settling boundaries in cooperation with the villages.

NGOs have also been engaged in implementation in rural areas in a number of countries. In post-conflict northern Uganda, for instance, NGOs have initiated projects to address the problems that people experienced upon returning from the refugee camps after the civil war. Supported by donors, the Uganda Land Alliance has implemented a project that seeks to strengthen the traditional authorities and to incorporate them into the more formal land court system. These authorities often play an important role in land dispute settlement at the local level, but are ignored by land reform efforts. The project carried out training of communities and local leaders (members of the formal land committees, as well as traditional leaders).

Similarly, in the Masai areas in the north of Tanzania an NGO, Community Research and Development Services (CORDS), has come a long way in facilitating the design of land use plans, which help villages carry out the administration of village land, and provide training on proper land administration and land dispute settlement procedures. It proved important that CORDS came back to the villages repeatedly and provided training. Consequently, local level institutions there are rather strong. An NGO may thus help institutionalise changes prescribed by a reform.

Overall, these examples demonstrate that interventions to implement a land reform require coordination of activities. In the absence of a functioning formal land administration system, NGOs may step in and initiate and coordinate activities at the local level. Often they work together with

local level authorities. However, NGO-led implementation is hardly a viable way to implement a land reform on a larger scale. Successful interventions at the national level are characterised by the involvement of all layers in the land administration structure and a clear division of labour between them. A short-term focus on issuing title deeds is unlikely to succeed if the needs felt by the villagers and village leaders concerning land matters are not also being addressed. If changes are to be institutionalised, support should be provided continuously. Otherwise, the new land administration and land dispute settlement institutions are unlikely to continue working in practice. In the end, perceptions and everyday practices at the local level are decisive for the prospects of implementing a reform. More attention to the institutionalisation of change in the longer run is needed.

## A SUCCESSFUL INTERVENTION

In 2004–2005, the Tanzanian Prime Minister's Office issued a circular ordering the district authorities to establish village land councils to settle conflicts over land. Though there are still problems with capacity, the number of land disputes that are being settled at the more formal land court institutions in Tanzania has increased immensely. Although we cannot take it for granted that all councils are working, we can assume that a large number of Tanzanian villages do have functioning village land councils today. The anchoring of oversight in the Prime Minister's Office and of practical responsibility in the District Councils seems to have had some effect.

## FURTHER READING

- Knight, Rahael S. 2010. "Statutory Recognition of Customary Land Rights in Africa. An Investigation into Best Practices for Lawmaking and Implementation". In *FAO Legislative Studies*, edited by FAO. Rome, Italy: FAO.
- Pedersen, Rasmus Hundsbæk. 2013. "Access, Decentralisation and Local Governance of Land in Africa. The Implementation of Tanzania's New Wave Land Reform". PhD dissertation, International Development Studies, Roskilde University, Roskilde.
- Silva, Leiser. 2007. "Institutionalisation does not Occuroccur by Decree: Institutional Obstacles in Implementing a Land Administration System in a Developing Country." *Information Technology for Development* no. 13 (1): (27-48).
- Spichiger, Rachel, Rikke Broegaard, Rasmus Hundsbæk Pedersen, and Helle Munk Ravnborg. 2013. "Land administration, gender equality and development assistance. Lessons learned and challenges ahead". In *DIIS Working Papers 2013*: 30. Copenhagen, Denmark: DIIS.

*The opinions expressed in this policy brief are those of the author alone and do not necessarily reflect the official opinion of the Danish Institute for International Studies.*