

WORLD BANK

LAND POLICY FOR PRO-POOR DEVELOPMENT

POLICY RESEARCH REPORT

A REVIEW

BY

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A. General Comment

The paper is timely. Putting Land Policy in the development debate is a novelty worth commending.

In the past, land issues were either taken for granted and/or treated in passing.

As the paper rightly concludes, the plight of the poor who depend mainly on land in most developing countries has worsened over the years. This shows a failure not only of land policy, but development policies generally.

Whilst Land Policy for pro-poor development is crucial, it is contended that a dynamic and comprehensive land policy is an indispensable component of any progressive national development policy. Land Policy should protect the poor as well as the rich, the weak as well as the strong (i.e. all stakeholders). It should lay the fundamental bedrock for land and agricultural based economies to achieve sustainable development.

B. Specific Comments

The broad objectives, analysis, conclusions are progressive and are generally supported by the evidence available.

The following areas are particularly strongly argued:

- The importance of land access for long term development
- The demand for and the impact of secure property rights
- Demand for greater security
- The impact of tenure security on economic outcomes
- Secure tenure as a precondition for credit supply
- Welfare and equity impacts of greater security
- The impacts of tenure security on equity and governance
- Legal and institutional implications
- Service provision
- Strengthen women's land rights
- Recognize customary tenures and tenure relationships
- Strengthen land rights of indigenous people and leaders

C. General Recommendations

Against the background of failures in past land policies and government interventions in the land market generally, the general recommendations in the paper are pertinent.

- State ownership is limited to essential areas
- Land taxation encourages productive use of land and support local government
- Land use is regulated in ways to maximize social benefit

- Establish national land policy framework
- Capacity building and adjustment of land administration
- Promotion of land markets
- Piloting and monitoring of innovative approaches

On the whole, the paper provides instructive insights into progressive land policies capable of protecting and securing the land rights of the poor.

D. Role of Government

“A fundamental role for government is to provide tenure security to land through both legal measures and effective implementation of these institutions”.

This is indeed fundamental. The snag, however, is that in most developing countries governments are themselves, part of the problem.

Land tenure and landholdings in West Africa

In this region, there was no settler colonization and though a few pockets of some countries might be physically short of land, on the whole there is no apparent national land shortage in most of the countries. DFID (1999, 6 & 7) aptly summarizes the position in West Africa.

The West African region includes a great diversity of environments, from the open savannahs of the Sahel to the humid forest tropics of the coastal areas. There are common principles underlying tenure systems in the region. Chiefs and a separate system of land chiefs, whose authority over land derives from their covenant with the ancestral spirits in the area, continue to play a dominant role in rural communities. People obtain access to land through membership of a particular community. Throughout the region there are diverse institutional arrangements for accessing land and other resources, such as ownership, sharecropping, tenancy, and pledging. These arrangements show great flexibility.

The important trends in the region are: increased scarcity and growing value of land, especially around towns, leading to increased transactions in land; increased entrepreneurial activity in agriculture; and rural – peri-urban links are particularly important. Customary institutions are being weakened and increasingly not recognised by the state or by rural people who see that most traditional structures are no longer acting in their interests. There are rising conflicts over land which most frequently have been between (and among) farmers and herders, migrant farmers and governments. Governments have tried a number of policy approaches and decentralisation has important implications in many countries for investment, security and equity. Some innovative land reform processes are taking place in the region: the *Plan Foncier Rural* in Cote D'voire, the *Code Rural* in Niger, and *gestion des terroirs* in Burkina Faso.

Modern legislation is often cumbersome, inappropriate and difficult to apply

This cleavage between a modern view of private property and the complexity of resource access and usage rights makes it difficult to establish legislation within which these two different perceptions could converge. After independence, Sahelian states therefore had to put up with stifling legislative regimes which tended towards centralization, providing a model but no instructions for use.

Modern land tenure laws are therefore still applied with difficulty and in an uneven manner. Modern law is often unknown to communities because legal texts are not very accessible to them and remains very complex to interpret. The legislative apparatus is often beyond the reach of people in rural areas. In the event of conflict, recourse mechanisms are time-consuming, complex and often ignored. Their impact on land management is not, however, neutral, even though customary law remains paramount in settling conflicts. Such legal procedures often bring confusion and ambiguity in the settlement of disputes. Furthermore, legal texts often provide little encouragement for investment in land and vegetation as, in the final analysis, they offer few safeguards.

"The Colonial impact as well as present adverse international policies are important, but they should not be over emphasized in the post-independence era.

This distinction is relevant because external constraints notwithstanding, after independence, various governments in Ghana and elsewhere had the chance to use the available resources and power at their disposal to change, to reform and to restructure existing structures and policies, to suit their countries developmental needs and special problems. If this has not been done, in the case of Ghana, three decades (now more than four decades) after independence, the maintenance of the status quo can hardly be attributable to external powers." (Kasanga, 1988)

E. Apparent Weaknesses

i. Conceptual framework

This discussion in the paper is limited to only ten and half (10½) lines. The section talks about defining who is entitled to reap the benefit streams; property rights can be defined as social conventions;.....

It will appear that this section is misleading, and does not infact describe any conceptual framework.

ii. Methodology

The conceptual framework would have gone along with a methodology adopted for the paper, along with how the work was accomplished. In particular – the sources of data – secondary data, primary data, informal interviews, desk research etc.

iii. An integrated systems approach is needed

A Functional constraining Development Model for Ghana - (Kasanga 1988) – illustrates the point.

The term denotes the most probable causes of poor development in a dynamic economy (Local, regional or national), linked in a functional relationship. Seven variables, including: Land and Tenurial, Population, Environmental and Climatic, Infrastructural, Techno-Economic, Government and Planning, Colonial and International factors are identified, and numbered in that order.

These variables together with all their attributes, individually and collectively, constitute a system, which necessarily varies from one environment to another, and from country to country. It must be acknowledged that the variables have both direct and indirect effects, as well as negative and positive tendencies in their implications for development.

For instance, a land tenure system can directly impose landlessness or harsh obligations on some people, making it hard for them to undertake any productive agriculture. On the other hand, tenurial problems such as land disputes, indebtedness and marginal farms have their effect on levels of development which could result in poverty. But it is also true that a man may have a secure title to land, but lack the inputs (economic factors) to undertake productive agriculture. Or that, given the inputs, the rainfall is erratic (environmental factors), the more so where there is no irrigation available. There is the international dimension too. “The present state of commercial, economic and financial relations between North and South – including current aid practices – were themselves an obstacle to accelerated rural development. Transnational corporations, in particular, were often developing cash crops for export at the expense of local food availability and were contributing to the problems of global food supplies” (Brandt, 1980).

The debt crisis with its attendant World Bank and IMF sponsored Structural Adjustment Programmes and Policies (characterized by cuts in government expenditure, leading to a reduction of government expenditure on basic services, especially health, education and sanitation; increases in prices of commodities, devaluation of currencies and the liberalization of economies) are crucial features in the contemporary scene in some developing countries, including Ghana. Whilst the merits of the World Bank and IMF approaches are not in doubt, their effectiveness can only be objectively and fully evaluated with time and need no further comment here.

Poor development and economic performance culminate in poverty. The effects of and responses to poverty are death, sub-human existence for some, and out-migration for others. This has been documented in Brazil: “The basic directions of migration flows remain unaltered over recent decades – the poorest regions continue to lose large segments of their youthful population to urban – industrial areas of the South East and in a lesser measure to frontier regions” (Martine, 1979).

The model also indicates that to arrest effectively the problems of development, all the major variables in the development function need looking at. Land and agrarian reform, the re-ordering of development priorities, the equitable distribution of resources, political stability and far fairer and more equitable international economic relations, may provide the basis of real reform for development.

The essence of the functional constraining development model lies in its ability to isolate and examine the effects of individual structural factors as well as their collective effects. It also gives room for the examination of institutional and organizational policies such as those of the banks. The approach is thus capable of generating information in the light of the realities of the society/environmental setting under consideration. To that extent the approach is open and can be adapted to suit different environments.

Since Land Tenure as a constraint on development, is the paramount theme of this study, an in-depth investigation of land tenure is presented in a second model. It is possible to do the same to any of the other major factors. If the concern was on them. The distinguishing features of theoretical Second Model may be described as follows:

Parts 1 and 2 denote land tenure systems in their broad forms, including the tenurial structures, scope and extent of various interests/rights in land in a given geographical setting. Parts 3 and 4 are amplifications of some of the adverse effects of a problematic land tenure system. If land is unduly concentrated in a few hands, this could result in landlessness for a majority of the people. Similarly, if the cost, rent or taxes in consideration for land acquisitions are unbearably high, this can restrict access to land for those who cannot afford it. All these are likely to lead to poor development and /or poverty (Parts 5 and 6). If land tenure were the main problem, then suitable public and customary administrative and management practices along with appropriate land and agrarian reform policies ought to effectively arrest the poverty and development problems. In practice, however, for most of the rural and urban poor in the developing countries, urgent problems for survival extend beyond land and tenurial considerations. Hence land and tenurial issues must of necessity be linked with all or some of the wider factors in the development dialogue. Significant environmental deterioration and depletion of scarce natural resources are now occurring in many parts of the world. The problems are often most acute in developing countries where pressures for economic development and the lack of adequate means of managing resources are leading to effects such as deforestation and desertification, with potentially disastrous consequences. It is now apparent that Ghana's forest area is diminishing, while the Savannah is increasing in size; in the extreme north, the desert conditions of the Sahelian countries are manifesting themselves.

To appreciate the importance of land tenure, it is necessary to investigate all the various attributes of land tenure systems as presented in the model. But the model makes no claim to the existence of a perfect land tenure system anywhere. In the final analysis, each system must be judged against set historical, socio-cultural, economic and political values; with due regard to the present and future needs of any given society.

In doing so, it is essential to reach a majority of those whose lives and struggles really depend on tenurial arrangements. Until a majority of the rural farmers, and migrants are heard, the whole truth about the adequacies or otherwise of land tenure systems may never be known in some developing countries, particularly those in the West African sub-region.

In Ghana, for example, most of the complaints against the land tenure system have been made by urban residents and intellectuals including: students, lawyers/judges, lecturers, journalists, economists, agriculturalists and politicians. While not questioning the competence of such individuals in their own fields, it is true that most of their comments are not based on any special investigation, empirical research, or first-hand experience. Most of them are, in fact, based on hearsay, or made in ignorance of what land tenure systems are, or the function they are supposed to perform.

“To achieve representativeness for agricultural policy participants, it is essential to have relevant and adequate representation to ensure that all shades of relevant opinion are represented; the list needs to consist of the farmers’ representative (selected by or with the approval of the farmers themselves): quality of participants can be defined on the basis of the attributes of personal competence, knowledge of the issue, experience, and the ability to appreciate public need. These qualities have little or no relevance to the more socially dominant factors such as education, religion, wealth, age and tribal grouping, which unfortunately are some of the attributes that today tend to dominate the selection of participants in agricultural policy making in several low income countries” (Anthonio, 1977).

F. Land tenure varies within countries, sub-regions and continents

In some instances, the paper argues from the general to the specific. This appears contradictory.

Land tenure institutions reflect specific geographical, socio-cultural, historical, economic, technological, political, and time conditions. Thus the dimensions and security of farming opportunities are critically affected by labour, capital, rainfall, inputs and markets. In many cases, as in Ghana, it is not the land tenure situation that is the most urgent or serious problem demanding attention. Hence to isolate land tenure systems for reform in developing countries, as has been so far done by many, is to miss some of the equally, if not more important issues. Tenurial factors do not exist in isolation. There are serious dangers inherent in generalizations on tenurial constraints to development.

Land Tenure Systems vary widely among developing countries. Even within individual countries, one can, logically, only talk about specific tenure arrangements in different parts of the country. It is thus difficult, and to some extent unfortunate, to treat the issues of land tenure problems in a general way.

West Africa is different

The land problem in the developing countries has been well documented. To some schools of thought, land tenure systems are the main contributory factor to the food shortages and worsening economic situation in most of these countries. While this contention is partly true for some regions such as Latin America, Asia and Southern Africa, the position in West African has yet to be substantiated.

Critical land and other complementary issues

- Multiple land tenure systems (i.e. customary and imported British, French and German systems) are currently in operation. The customary systems are strong in West Africa generally, and in Lesotho, Botswana and Swaziland. In spite of post independence legal contradictions, the customary tenurial systems still provide the best guaranteed and secure access routes to agricultural land to small holder farmers in West Africa.
- In contrast the customary tenurial systems have been greatly weakened in much of Southern and Eastern Africa. Colonial and post independence arbitrary Government interventions, through nationalization, privatization and state control of all the land administration decision making processes have worked against the interest of small holder farmers, in favour of successful commercial farmers.
- However, landlessness, homelessness, hopelessness and insecurity of tenure which hitherto were akin to Southern and Eastern Africa, have now reared their ugly heads in West Africa even though the causes are different.
- Accelerated mining operations, particularly surface mining against the background of contradictory mining Laws/Acts are threatening the very existence and customary land rights of the affected farming communities. In some countries such as Nigeria and Ghana. Surface mining operations are also major causes of environmental degradation and pollution.
- Current high population growth, rapid urbanization and the indiscriminate conversion of invaluable agricultural lands into housing estates and related urban uses have only compounded the problems in the peri-urban neighbourhoods.
- Women being the overwhelming majority in the farming business are usually the first and the worst casualties.
- Due to the unrewarding nature of subsistence agriculture, the capital intensive nature of farming, poverty and the lack of formal credit support for small holder farmers, the youth, both men and women alike are apparently deserting agriculture as a profession. Instead, these emerging farmers are found every day in the streets of Accra, Lagos, Addis Ababa, etc. showing enterprise selling dog chains, toilet rolls, cookies, etc. in spite of tenurial security in some instances.

- Environmental degradation due to overgrazing, poor range management and intensive erosion as in Lesotho and inappropriate waste management and farming systems as in Ghana pose serious constraints to national development generally.

Policy Suggestions

- **Build on progressive tenurial systems**

On-going innovative land reform processes in the Sahelian region: the **Plan Foncier Rural** in Cote D'voire, the **Code Rural** in Niger, and **gestion des terroirs** in Burkina Faso need encouragement, support and emulation in other developing countries.

"Although easy solutions are not available, policies which encourage more voluntary processes of change and which permit a wide parameter of local level decision making in matters of resource allocation, control and use, are the more likely to succeed than top-down and deeply surgical operations. Strategies which enable the farmer to enhance his threshold capacity to invest in the costs of further changes are therefore more important than those which simply expose him to the vagaries of imperfect markets and institutional inequalities. Considered from a historical trends scenario, the African small-scale farmer, particularly in an erstwhile plantation economy such as Kenya, Zimbabwe and South Africa is particularly vulnerable to factor market distortions." (Okoth-Ogendo 1996: 22).

- **Build consensus on progressive tenurial options**

The efforts of the existing and proposed African land tenure network along with on-going decentralization and the democratic processes generally should enhance consensus building on progressive tenurial and land policy options and facilitate agricultural land development generally.

- **Promote constitutional amendments and legal reforms**

On-going new national land policies and/or Land Acts such as Uganda's Land Act (1998), Tanzania's Land Policy (1999), the Ghana's Land Policy (1999) are encouraging. However most of the current Land Policies or Acts appear strictly administrative. Their implementation machinery and cost benefit analysis remain suspect. Legal reforms are indispensable in order to harmonize the legal and institutional framework. Progressive new Land Policies and tenurial regimes are needed. Such Policies should define progressive tenure categories (i.e. State/Public, customary, leasehold, freehold, share tenancy, etc.) and their ease of transfer from one category to the other.

Continuous empirical research should lay the basis for land policy formulation, implementation and monitoring.

The reforms should also address the problem of insecurity and discrimination against women and other stakeholders generally. Generally, however, policy measures targeted at solving the emergent insecurity and related problems ought to be gender sensitive.

- **Simplify land administration and selective title registration**

Simplified and transparent land administration and standard professionalism would speed up the land documentation process and facilitate investments in the land markets.

Similarly selective, cost effective and demand driven title registration would be helpful. However title registration should be based on the realities on the ground – registering the big parcels first (in Ghana the paramountcies) down to the village and individual levels. The Zambian and Kenyan models of individual title registration for instance, are proving difficult and slow to implement in Ghana.

- **The urgent need for participatory land management**

Participatory land management and land use planning implies the application and “marriage” of new management practices, professional expertise, techniques and support services to customary, social and institutional arrangements at appropriate and workable levels towards optimizing available human, land and financial resources. The concept is aimed at comprehensive consensus building amongst all stakeholders on the progressive principles of customary land law and statutory/constitutional interventions and their translation into practice, in the interest of all stakeholders, not just a select few. The ultimate objective is to harmonize the legal regimes and institutional arrangements towards promoting and securing sustainable land resources management and development generally for all stakeholders based on community participation.

- **Promote agriculture and diversify the economies**

Rural, peri-urban and urban agriculture need urgent promotion and support. Agricultural intensification especially with the use of local manure, compost and other inputs would help. Productive agriculture is crucial but so are alternative employment avenues in agro-industries, eco-tourism, modern services, communications, information technologies etc.

- **Support complementary initiatives outside land tenure**

Many other initiatives, unrelated to land tenure, are called for to rid rural communities of poverty and to improve their management of the land. These include a fairer division of labour between the sexes in the households; investment in time and labour-saving technology, agro-processing, storage facilities, extension services; support for rural finance, family planning, public health etc.

Overall Conclusion

Sustainable development in the developing countries requires the support and commitment of all levels of local communities, traditional authorities (if any), local government, central government, NGOs and Donors.

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