

Securing Land Tenure and Easing Access to Land

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Overview

To engage in modern commercial farming, global experience indicates that it is necessary to secure land tenure needed to support long term investments and growth in productivity; secure tenure is also needed to create vibrant land markets that can shift land and labor resources from low to higher productive entities. This was the case especially in China and Viet Nam following their agrarian and land reforms initiated in late 1970s and 1980s, respectively. Their agricultural productivity and incomes were enhanced through increased investments and technology, with agriculture fueling the rest of the economy to grow even faster sucking in more labor (Johnson 2000; Zhai, Hertel, and Wang 2003; Deininger and Jin 2003; and Deininger and Jin 2007). Africa's agricultural transformation agenda must therefore include measures to make land tenure more secure and land markets more fluid. While not sufficient on their own, land registration and titling are important measures to make land tenure systems secure and to facilitate the operation of formal land markets (Deininger and Feder 2009).

Land registration in Africa is still at low levels and cannot sustain transformation of Africa's agriculture. While Western European countries have on average more than 95 percent of their land registered (Schmid and Hertel 2005), in Africa only about 10 percent of the rural land is formally recorded in a public register, leaving 90 percent held under customary law and practice where land allocation and use are governed by customary traditions; it is a mix of individualized and communal rights as well as open access for some lands such as range land (AU-AfDB-UNECA Land Policy Initiative 2015). Notwithstanding that customary tenure regime can in many instances provide subsistence farmers -- the vast majority of the farmers in Africa -- with the minimum tenure security to engage in low productive traditional agriculture, it does not provide enough security of land tenure to support higher productive commercial farming. The latter requires assurances that benefits from long term investments accrue to the farmers; and that land markets are fluid to enable farmers' access to land to expand farming and to use as collateral for investment loans (Lawry et al. 2014).

Despite low levels of land registration in Africa, recent experiences provide enough lessons to guide a rapid scale up across the continent. The customary tenure regime and the low level of documentation of land rights in Africa are embedded in the continent's colonial history. During the colonial rule in Africa, the major colonial powers did not launch major national programs of systematic land titling and registration except where large-scale expropriation of land for white settlements or commercial plantations was undertaken, primarily in Kenya, Zimbabwe, South Africa and North Africa. Even in the post-independence era, major national programs of systematic documentation of land rights have only been undertaken in a few African countries, notably Rwanda and Ethiopia (Byamugisha 2013). But the good news is that these national land certification and registration programs in Rwanda and Ethiopia have been successful. They have rapidly raised their stock of individually owned registered land to exceed 50 percent in those countries; enhanced

land tenure security; and provided the required learning experiences for the rest of Africa. In addition to registering individually owned land, initiatives have also been made, notably in Mozambique and Uganda, to formalize and register communally owned land although progress has been limited. For this, Africa can learn from the experiences of Mexico which has had considerable success in registering communally owned land¹.

In addition to recent initiatives in accelerating land registration, African countries led by Rwanda and Mauritius have also embarked on programs to computerize land administration systems that enhance land market transactions. Following completion of its national land certification program, Rwanda has computerized her land administration systems to improve efficiency in land transactions including land transfers and mortgages. Mauritius also did the same. As a result, in 2015 it took 32 days to transfer land in Rwanda and 14 days in Mauritius compared to 57 days for Sub-Saharan Africa and 22 days for OECD high income countries (World Bank 2015b). At least 25 more African countries have joined Rwanda and Mauritius to initiate computerization of their land administration institutions as of 2015.²

From the reforms that have been undertaken so far in accelerating land registration and increasing efficiency in land administration, there are some emerging best practices that can inform the acceleration of reforms in Africa. These are largely based on the use of new cost-reducing technologies. First, to accelerate the titling and registration of individually owned land quickly and inexpensively, a geo-referenced photomap was used by Rwanda as a base map to implement its national program of demarcating and certifying its land in less than 5 years at a cost of US\$8 per parcel in a participatory manner that protected the land rights of women. The pace and cost of the program, which was completed in 2013, were globally impressive. Mexico used similar technologies to successfully register communally owned land after formalizing the communal land owning groups (ejidos) as legal entities from 1992 to 1999. Second, to increase efficiency and transparency in land administration, Rwanda and Mauritius have used ICT technologies to successfully re-engineer and computerize their land administration systems which have speeded up land transactions and improved mortgage services through creation of electronic links with banks. The use of geo-referenced photomaps and related spatial technologies by Rwanda and Mexico to accelerate registration of individually and communally owned land and the use of ICT technologies by Rwanda and Mauritius to computerize their land administration systems offer best practices for Africa to emulate. For Africa to transform its agriculture, these and other best practices in land policy need to be scaled up across the continent to increase the level of security of land tenure and the ease with which land rights can be transferred between different entities, including individuals, households and firms.

The state of land tenure and land markets in Africa

Transforming Africa's agriculture faces at least two challenges arising from the current state of land tenure systems in Africa. First there is a need to increase security of land tenure to provide incentives for long term investments to enhance agricultural productivity and commercialize agriculture. Second there is also a need to increase the fluidity of land markets to provide easy and

1 From 1992 to 1999, Mexico's communally owned settlements called ejidos were formalized as communal land owners in a process which involved legally establishing ejidos as self-governance institutions and registering their communal land rights after surveying and mapping their land. More than 18,000 ejidos were formalized and 57 million hectares of their land mapped and registered (Byamugisha 2013).

2 They include Algeria, Benin, Botswana, Burkina Faso, Comoros, Egypt, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Tanzania, Tunisia, Uganda and Zambia (World Bank 2015b)

secure access to enterprising farmers who want to buy or lease land from farmers that are less efficient or want to get out of farming in search for better opportunities elsewhere.

Africa's land tenure insecurity is considerably reflected in high levels of land disputes. In Africa, disputes over land range from those over boundaries to others over ownership of entire plots of land; they also range from intra family or clan to inter family and clan disputes. The wide variety of disputes and their causes makes homogenous treatment of the subject inappropriate. It is clear, however, that land disputes are an increasingly prevalent feature of life in Africa exacerbated by a combination of low rates of land registration, unreliable land information, rising demand for agricultural land and weak institutions (formal and informal) in charge of land dispute resolution (Urmilla 2010). Land disputes render significant amount of land unusable for agriculture. For example, it is estimated that 6.5 percent of all of Uganda's agricultural land parcels have disputes and that 5-11 percent of agricultural production is lost due to land conflicts (Deininger and Castagnini 2004). It is also estimated that plots of agricultural land with conflicts have 20 percent lower yields than those without conflicts (Mwesigye and Matsumoto 2014).

Africa's judicial systems are strained partly due to the high levels of land disputes. For example, in Ghana, it is estimated that 50 percent of all new civil cases lodged are land-related. This percentage increases if land-related criminal matters are taken into account (Ghana Judicial Service, 2010). In Ethiopia, one-third to one-half of all cases within the formal judicial system are estimated to be land-related (Deininger, Selod and Burns 2012). Land policy actions must be taken to reduce land disputes in the first place and to strengthen judicial and formal institutions of land administration and their interface with the traditional institutions of land administration (Byamugisha 2013).

Also underlying Africa's land tenure insecurity is poor documentation of land rights and rising demand for agricultural land from investors. With the exception of a few countries such as Mauritius, Zimbabwe, Namibia, Rwanda, South Africa and those in north Africa that have completed titling a large share of their rural land, most of Africa's land is undocumented, informally administered and thus vulnerable to land grabbing and expropriation without adequate compensation (Byamugisha 2013). Only about 10 percent of Africa's rural land is recorded in a public registry (AU-AfDB-UNECA Land Policy Initiative 2015). Not surprisingly, countries with abundance of uncultivated land have the least documented and formally administered land. For example Angola, Congo DRC, Mozambique, Nigeria, Sudan, South Sudan, Tanzania and Zambia each has less than 5 percent of rural land registered and formally administered. While Africa's informal arrangements for owning and administering customary land used to provide enough tenure security to the community residents especially for traditional agriculture (Bruce and Mighot-Adolla 1994), population pressure, rapid urbanization and increased demand from investors, especially after the large price increases in food and fuel in 2008, have generated tenure insecurity and made urgent the need to invest in measures to secure tenure and strengthen land administration systems (Byamugisha 2013). The aspiration of Africa's leaders to commercialize and transform agriculture makes it urgent to regularize land tenure and strengthen land administration to minimize risks on the part of investors while also protecting local communities and the environment from land dispossession and degradation, respectively.

Increasing productivity and commercializing agriculture require land markets to be fluid to enable easier access to land for enterprising and emerging farmers. Available evidence indicates that land markets exist and are active in Africa but they are limited in scope, lack transparency and

have high transaction costs. The existence and activity of the markets have been confirmed by a number of studies. A cross-country comparative study of land markets in SSA with a focus on eastern and southern Africa found that land markets, particularly informal land rental markets, to be more wide spread and active than generally believed (Holden, Otsuka and Place 2008). And contrary to fears that land markets could cause landlessness and ownership concentration in a few hands (Sjaastad 2003), the study found limited evidence to support this fear in Uganda, Kenya and Malawi. Instead it found that land rental markets helped improve access to land for the land poor and provided rental income for those with land that they could not use productively (Holden, Otsuka and Place 2008). The study findings that land rental markets tend to enhance efficiency and equity are consistent with the findings of other studies in the same region as well as in West Africa. For example, some studies found land rental markets to have had a long history in West Africa and often provided a means to access land for commercial production (such as for cocoa farming in Ghana) (Amanor and Diderutuah 2001). Evidence from the Republic of Sudan indicates that land rental markets transfer land to smaller producers (Kevane 1996). A recent study in Malawi and Zambia found rural land rental market participation to be strongly conditioned by land scarcity, and thus was higher in land-scarce Malawi than in land abundant Zambia (Chamberlin and Ricker-Gilbert 2014). In both countries, the study found that rental markets facilitated the transfer of land from less-able to more-able producers although there was evidence of significant transactions costs which may hamper efficiency gains from the transactions.

While the above evidence indicates that land markets exist and are found to enhance efficiency and equity, there are a few countries such as Ethiopia where land sales on agricultural land are banned. In other countries such as Ghana, Zambia, Mozambique and Malawi, statutory laws reinforce customary law in prohibiting the sale of customary land although there is an active but disguised sales market. There are also a few countries such as South Africa where land sales are permitted by statutory law but restricted through regulations such as a ban on sub-division of land especially under commercial farms, and these regulations have constrained access to land especially by the small and medium size investors (Lahiff and Li 2014). Regarding rental land markets, there are restrictions in place such as in Uganda where they are intended to protect tenants from high rents or eviction (Byamugisha 2014) and in Ethiopia where they are intended to protect smallholders from being dispossessed (Holden and Otsuka 2014) but, in both countries, they have ended up hurting the land-poor by reducing their access to land. Also, due to a predominance of communal ownership of land on one hand and restrictions on land rental markets on the other, land markets have remained weak. For example, according to the Uganda National Household Survey of 2005/06, due to the lack of clear and secure rights to land, 37 percent of agricultural land could not be sold, 34 percent could not be rented, and 44 percent could not be used as security for a loan (World Bank 2015a). Another knock back on the operations of land markets has been high transaction costs, both formal and informal. For example, it takes twice as long and costs twice as much to transfer land in Sub-Saharan Africa compared to OECD countries, even not counting the costs of paying bribes (Box 1.1).

Box 1.1: High transaction costs and lack of transparency

Even for registered land, transferring it to investors is costly and slow. It takes twice as long and costs twice as much to transfer land in Sub-Saharan Africa (57 days and 9% of property value) as in OECD countries (24 days and 4% of property value). For example, in Angola, it takes 190 days to transfer land. In Nigeria (in Lagos) the cost of transferring land in 2014 was 21 percent of the property value ((World Bank 2014b).

The cited statistics of transaction costs do not include the costs of paying bribes for land administration services which could be even higher than the formal payments. There is enough empirical evidence pointing at corruption being a serious issue in land administration. According to Transparency International's 2013 Global Corruption report, land administration was the third most corrupt public service, after police and the judiciary. In this regard, one in five people reported that they had paid a bribe for land services (Transparency International 2013). In Africa, two countries -- Sierra Leone and Liberia -- were listed with Afghanistan, Cambodia, Iraq and Pakistan to have high bribery rates for land services. These rates range from 39 percent to 75 percent. The amounts of money involved can be considerable. For example, the East African Bribery Index indicates that in Uganda, the average size of a bribe paid by households for land administration services was about US\$90 (218,722 Uganda Shillings) in 2013. This represents the third highest amount of bribe among a total of 10 institutions (Transparency International Uganda 2013). In Kenya the corresponding amount was more than US\$100 in 2012 (9,842 Kenyan Shillings) (Transparency International Kenya 2012).

The inadequacies in land markets have not supported acquisition of or rental access to enough land to develop medium size farms. Less productive and/or ageing farmers find it difficult to rent out or sell land to more productive farmers who need it to expand their farms. Women, whose land rights are marginalized by customary practices (Doss et al. 2015; World Bank 2011a; Bezabih and Holden 2010; and Peterman, Behrman and Quisumbing 2010), are not adequately served by land markets to access land for new or expanded production to at least narrow the productivity gap with men (Box 1.2).

Box 1.2: Limited land rights for women and adverse impact on productivity

In Africa, with the exception of a small proportion of the continent that has matrilineal systems, women's rights to land and property are very limited and often depend on their marital status. According to recent research, the limited access to land and other productive resources has made women less productive than their male counterparts, with female farmers in Tanzania, Uganda, Niger, Ethiopia, Nigeria, and Malawi producing 6 percent, 13 percent, 19 percent, 23 percent, 24 percent and 25 percent less than their counterpart male farmers (World Bank 2014a). FAO has estimated that, worldwide, if women could have the same access to productive resources such as fertilizer and land as men, they could raise yields on their farms by 20 to 30 percent and total agricultural output by 2.5 to 4 percent, and that the gains in agricultural output alone could lift 100 to 150 million people out of hunger (FAO 2011).

Partly due to weaknesses in land markets and other factors that have created difficulties for farmers especially women and youth to access land, the agricultural sector of many African countries is dominated by farms that are too small to support commercial farming. Detailed case studies

indicate that 60 percent of farms in Ghana are less than 1.2 hectares and 85 percent are less than 2 hectares (Owusu-Baah, 2012). In Uganda, 58 percent of farms are less than 1 hectare (Byamugisha 2014), which is the minimum required to commercialize and move out of poverty in Uganda (Zorya et al. 2011). In Zambia, 50 percent of farms are less than 2 hectares, the minimum needed to commercialize and move out of poverty. (Chamberlin and Ricker-Gilbert 2014).

There is therefore a need for action not only to develop land markets but also to make existing land markets work more efficiently and transparently. In addition and given imperfections in land and other markets especially for credit in Africa (Besley 1994), there is a need for government intervention to make up for the short comings in markets to ease access to land by all types of farmers including women and youth. In about 40 African countries that are land-constrained or close to using up their arable land area (Box 1.3), policy action is needed to move land to users or uses that are more productive and can move farming from subsistence to commercial agriculture while also enabling less skilled farmers to explore off-farm economic opportunities if and when they are available. In land-abundant countries or in those with high land ownership concentration (Box 1.3), policy action is required to improve the effectiveness of markets to enable full utilization of underused and unused land especially by investors.

Box1.3: Land-constrained, land-abundant and land ownership inequality in Africa

Land-constrained and land abundant countries. Researchers have estimated that about 40 African countries are either land constrained (with population per square km of agricultural land greater than 100 people) or close to approaching the full extent of the arable land area, with countries such as Rwanda, Malawi and Burundi being among the most land-constrained (Jayne, Chamberlin and Headey 2014). The land constrained African countries had an average of 1.23 hectares per farm holding during 2005-2010, a similar size as South Asia which is globally known to be a land-scarce continent, while the land-abundant African countries had an average of 2.82 hectares per farm holding during the same period (Headey and Jayne 2014). The land abundant countries (with population per square km of agricultural land less than 100) are just over 10 including Botswana, Burkina Faso, Cameroon, Cote d'Ivoire, Ghana, Madagascar, Mali, Senegal, Tanzania and Zambia (Jayne, Chamberlin and Headey 2014).

Land ownership inequality countries. Rural land ownership inequality and landlessness are high in countries with former colonial settlements including Southern Africa (Angola, Botswana, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, and Zimbabwe), Kenya, Côte d'Ivoire, Algeria and Tunisia, and growing elsewhere. Inequality in land ownership is at unacceptable levels in many African countries, quantified with a Gini coefficient of 0.53 for the land-abundant African countries – the same Gini coefficient as for South Asia farm holdings (Headey and Jayne 2014). Although land ownership inequality is lower in the land-constrained African countries, with a Gini coefficient of 0.43, overall Africa's land ownership inequality is quite high and growing as evidenced by Gini coefficients rising overtime, and countries such as Nigeria having a Gini coefficient of 0.7 which is approaching levels of Central America (0.76) and South America (0.85) known to have extreme land ownership inequalities (Jayne et al. 2014).

Land tenure and governance reforms to transform African agriculture

(a) Securing land tenure

As already argued above, securing land tenure is necessary in both land-abundant and land-constrained areas to promote investment and increase productivity through land expansion and agricultural intensification, respectively. In the land-abundant areas, most of the land is under customary tenure and held in common. In such cases, the immediate need is delimitation or demarcation of boundaries and registration of communal rights which can be more cost-effective and appropriate than registration of individually owned land. On the other hand, land-constrained and densely populated areas require low-cost community-based systematic land titling to register individual rights. Even after registering land, enhanced land tenure security will require the strengthening of formal and informal land dispute resolution institutions to resolve disputes fast and cheaply if and when they arise in both land-abundant and land-constrained areas. **Scaling up registration of communal land rights and promoting land rental markets.** Many African countries have already made legal provisions recognizing customary tenure and communal land rights although implementation in terms of empowering communal owners through organizing them as legal entities and registering their land rights has been progressing slowly (Alden Wily 2011). Once communal land rights are registered, the allocation and management of individual plots can be left to community institutions, with the option to transition to more formal systems of registering individual land rights as the need arises as experienced in Ghana, Mozambique and Tanzania (Box 1.4). In addition, energies can be focused on the promulgation of necessary regulations and guidelines for long term leasing to non-community members to benefit both parties as experienced with the ejidos of Mexico and the traditional authorities in Ghana and Fiji (Box 1.5).

Three key lessons learnt from the Africa experience is that: (a) demarcation of communal land boundaries is not merely a technical surveying exercise, but a process that requires time and financial resources to resolve disputes and agree on boundaries before field work begins; (b) even without a legal requirement for a detailed survey of boundaries, registration of communal lands can be a very slow process if community owners of land are not clearly defined, such as established traditional authorities (as in Ghana) or statutory ones (as in Tanzania), and if new formal entities have to be developed as in Mozambique; and (c) registration of communal land needs to be followed up with resources to plan for communal and individual land use within the community and to delineate common-property resources such as grazing land. A recent project to watch whose design seems to be putting all the three lessons to work is ProSAVANA in Mozambique. ProSAVANA supports: (i) organization of local communities into legal entities and registering their community land rights through a community title deed which in Portuguese is referred to as a DUAT; (ii) registration of land rights for smallholders within the communities through an estimated 660,000 individual DUATs; (iii) institutionalization of the government's district land use plans in all the 19 districts; and (iv) strengthening government's capacity for land administration. The proposed land governance activities, if well implemented, should go a long way to protecting the land rights of local communities. However, serious concerns have been raised by civil society movements in Japan and Brazil about substantial risks of land grabbing by investors. In response to the expressed concerns especially the ambitiousness of the vision to promote investment in large scale agriculture and the lack of local participation in planning and implementation, recent studies suggest that actions have been taken to reduce the potential risks of land grabbing through preparation of a pragmatic Agricultural Development Master Plan and by increasing the involvement of local communities and

nationals in the planning of project activities (see Box 1.6). The ultimate success of ProSAVANA achieving its land governance objectives will depend on close monitoring of project implementation to ensure that corrections are made and mitigation measures strengthened if investors do not comply with the principles for responsible agricultural investment.

Box 1.4: Legalizing and Registering Communal Rights in Ghana, Mozambique, and Tanzania

Ghana. Since 2005, the Ghanaian government has used funding from the Land Administration Project to demarcate, map, and register Stool/Skin lands in the names of traditional authorities, as was advocated in the 1999 national land policy and is in line with Ghana's constitution (World Bank 2003, 2011c). Funding covered 10 areas (Anum, Asebu, Builsa, Dormaa, Ejisu, Gbawe, Juaben, Tamale, Tieve, and Wassa Amenfi) and started as a pilot using a mix of Total Stations and GPS surveying equipment; the second phase of the project is now scaling up this effort (World Bank 2011b). The average cost to demarcate boundaries was US\$500 to US\$700 per kilometer but this has since been reduced significantly by deploying Alternative Dispute Resolution (ADR) techniques using mediators to help traditional authorities to agree on boundaries before surveying – the most expensive part of the activity – is done. ADR was able to cut down the time spent in adjudicating and surveying boundaries thereby reducing the total time survey teams used to spend in the field; the reduction in time spent by survey teams in the field meant that less money was spent on their accommodation, upkeep and professional fees, thereby reducing the overall cost of adjudicating and surveying allodial boundaries.

Mozambique. Mozambique's mechanisms for dealing with and formalizing customary land rights are largely bound up in a legal process known as "community land delimitation." The Technical Annex (to the 1997 Land Law) defines delimitation as "identification of the boundaries of the areas occupied by local communities including the entry of the information into the National Land Cadastre." The process of delimitation clearly identifies both the community and the boundaries of the land it holds based on "sketch maps" unlike Ghana and Tanzania which require a more costly detailed survey of boundaries; the "sketch maps" and boundaries are agreed upon with neighboring communities. As of early 2010, only 231 communities, representing less than 10 percent of Mozambican "rural communities," had been delimited and given certificates, and a further 92 were in the process of doing so. The cost per unit to delimit and certify a community is US\$2,000–US\$10,000. A recent review recommended shifting away from the present sporadic approach and toward systematic delimitation, methodical strengthening of the capacities of land administration services, and careful engagement of local institutional actors (World Bank and FAO 2010).

Tanzania. With support from the World Bank, the process of surveying and registering village lands in Tanzania was accelerated in line with the Village Land Act 1999, which empowered village authorities to determine the use of land and allocate it to households within the villages and to investors from outside village communities (World Bank 2005). As of early 2012, more than 11,000 out of about 12,000 villages had been surveyed, of which about 7,000 had been registered. The average cost of surveying and registration is US\$500 per village. It is expected that all village lands will be surveyed and registered by June 2013.

All of the above 3 examples show that communal land rights can be formalized to empower the group owners to take further steps to endorse and enable the regularization of individual land rights within the communities thereby giving security to individual farmers within the communities; they also show that inter-community conflicts over land can be prevented. Further steps can be taken to develop institutions for long term leasing of land to non-community members as described in Box 1.5.

Source: Byamugisha 2013.

Box 1.5: Land rental markets in communally owned land: Experiences in Mexico, Ghana and Fiji

Mexico. *Ejidos* are communal settlements owned by beneficiaries of land reform processes in Mexico. These settlements were subject to an accelerated land reform process in the period from 1992 to 1999, with this process involving the formalization of community groups as land owners; the establishment of community self-governance institutions; and the registration of communal land rights. Within a five year period, 57.2 million hectares of land were measured and mapped, with 2.9 million households receiving certificates to individual, common, and housing land. The program increased security of land access for approximately 1 million households who previously had few or no land rights. It also improved governance: more than 18,000 *ejidos* formalized internal bylaws through the assembly, with 90 percent electing representatives through a democratic process. The program provided a strong legal basis for numerous contracts and joint ventures between *ejidos* and entities from outside the communities.

Ghana. About 80 percent of Ghana's land is held under customary tenure. This land is administered by traditional authorities (chiefs) who are recognized by Ghana's Constitution as trustees with the authority to allocate land to their subjects for use. The traditional authorities are also empowered to endorse individual allocations of land for registration. As legal trustees, traditional authorities are also empowered to enter into long term leases with investors. In fact, they are the main source of land for commercial investments in agriculture in Ghana.

Fiji. About 87 percent of land in Fiji is held under customary title (native land). This land is owned communally by indigenous Fijians, who make about half of Fiji's population. Fijians of Indian origin make up about 45 percent of the population but do not own land. However, the Fijians of Indian origin are the key planters of sugar cane, with this planting being conducted on native land leased from indigenous Fijians on 30-year renewable leases, with lease arrangements managed by an autonomous entity called iTaukei Land Trust Board (TLTB). TLTB manages land transactions involving other entities, including local and foreign investors.

Source: For Mexico, see Byamugisha, 2013; for Fiji, see Dodd, 2012; and for Ghana, see World Bank, 2011b.

Box 1.6: Registering communal and individual land rights in ProSAVANA project in Mozambique

ProSAVANA is an agricultural development project in Mozambique funded under a 20- year tripartite cooperation program involving Mozambique, Japan and Brazil. The project covers 3 Northern provinces and 19 districts within the Nacala corridor and has 3 components. The first component, which started in 2011 and lasts 5 years, supports research and technology transfer for agriculture development in the Nacala corridor while the third component is to promote agricultural production through pilot projects that organize farmers into groups and provide them with agricultural extension services. The second component that started in 2012 supports preparation of an Agricultural Development Master Plan for the social and economic development of the Nacala corridor. A draft has been prepared and is expected to be approved in early 2016. It proposes the creation of zones for the production of different crops with a strategy to integrate local producers into the same value chains as commercial investors (most of them from Brazil) via contract farming and cooperatives. To enhance land governance, it proposes to implement the FAO-led *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security as well as the Principles of Responsible Agricultural Investments*. Detailed activities would include: (a) organizing local communities into legal entities, registering their community land rights and issuing them title deeds commonly known in Portuguese as community DUATs; (b) registering land rights for smallholders within the communities and issuing them an estimated 660,000 individual DUATs; (c) institutionalizing the government's district land use plans in all the 19 districts to guide the identification of surplus unused land for leasing to commercial investors; and (d) enhancing the government's land administration capacity. These land governance activities are intended to protect the land rights of local communities while also providing tenure security to investors. The proposed land governance activities, if well implemented, should go a long way to protecting the land rights of local communities. However, serious concerns have been raised by civil society movements in Japan and Brazil about risks of land grabbing by investors including Brazilian, Japanese and national corporations, and governments. The concerns are centered on the ambitiousness of the vision to promote private investment in large scale agriculture; and the alleged inadequate involvement of local communities and nationals in the planning of the land governance activities and the likelihood that they will not be adequately involved in their implementation. But the ProSAVANA sponsors have argued that there are adequate measures in the ProSAVANA project to mitigate the risks. A recent study of the ProSAVANA project has found that the contestation campaigns by the civil society movements have resulted in a reduction of potential risk of land grabbing even before implementation of the Agricultural Development Master Plan has started. For example, the revised draft of the Agricultural Development Master Plan is less ambitious in promoting private investment in large scale agriculture than the original vision of the ProSAVANA sponsors; the Plan provides for more participation by local communities and the nationals; and since the contestations, there have been greater consultations between local community beneficiaries and officials of the Government of Mozambique (Shankland and Goncalves 2016). Given the concerns that have been raised by Civil Society organizations, there is a need for close monitoring of the project to ensure that corrections are made and mitigation measures strengthened if and when investors fail to comply with the principles of responsible agricultural investments.

Source: Based on Tawa, Amameishi and Noguchi 2014; Okada 2015; Shankland and Goncalves 2016

Box 1.7: Registration of individual land rights in Rwanda and Ethiopia

Rwanda. Rwanda embarked on a systematic land tenure regularization program, first with a pilot in 2008-2009 and scaling up the program in 2009-2013 using a systematic community-by-community participatory approach undertaken in cooperation with local Land Committees. Low technology “general boundaries” rules and simple methods of boundary demarcation, applied by locally trained para-surveyors based on aerial photography and/or satellite imagery, were used. By December 2013, all land parcels in Rwanda, a total of 10.3 million, were demarcated; 8.4 million land titles were approved and printed for issuance but only 6.1 million land titles, representing about 60 percent of the demarcated plots, were collected by owners. The gap (40 percent) between the number of demarcated land parcels and the collected titles may be attributed to a number of factors including the absence of owners (some being outside the country) but also inability of some owners to pay for the land titles despite low fees being charged.

The total cost of the land title regularization program was about US\$60 million, of which 25% of the program was funded by the Government of Rwanda and the rest by development partners such as DFID. Of the total cost of US\$60 million, \$7 million (about 12%) was recovered in fees charged for title collection at about US\$1.6 per parcel for the country except in Kigali (the capital) where the charges was about US\$8.3 compared to the total average cost of US\$8 to demarcate a parcel and issue the associated title deed. While, on average, the cost recovery for the program was 12 percent implying a total subsidy of 88 percent, the land owners in the capital Kigali paid the full cost while the owners outside the capital received a subsidy of about 80 percent. It should be noted that the average cost per title of US\$8 is low given that the cost of similar exercises exceed US\$20 in many countries (Burns 2007). Virtually, the whole country was completed in terms of demarcation except a few activities including: (i) registering land of grouped settlements in line with the new land law of 2013; and (ii) re-demarcating land, that was previously considered swamps, and issuing associated titles. And despite the low cost, the program was found to have a significant impact on investment in land improvements and in increased gender equity (Ali, Deininger and Goldstein 2011).

Ethiopia. Since the late 1990s, Ethiopia has awarded certificates for more than 25 million parcels in the rural areas of country at a scale, pace, and cost-effectiveness that is impressive. Similar to Rwanda’s, the land certification process has been participatory but with no measurement of boundaries and no base map. Regional governments in the four main regions (Tigray, Amhara, Oromia, and SSNPR) used basically the same approach, but developed different formats for records and certificates. In a pragmatic approach, a two-level certification process was adopted by all four regional governments. First-level certification was achieved via locally elected committees who gathered information on land holdings, in a very short timeframe. An elected land use and administration committee assumed responsibility for the field work where parcels were publicly registered by entering all information for a village into a registry book and issuing an official certificate to each parcel owner. Use of unpaid community members and forgoing survey of land boundaries kept costs at about US \$3.50 per household or about US \$1 per parcel.

Despite the low cost, field evidence suggests that the process led to a number of tangible benefits, including reduced conflicts, empowerment of women, increased individual and community investment, and improved tenure security (Deininger, Ali and Alemu 2011). However, there are still issues with the first-level certification, such as document and register forms that are difficult

to maintain, a lack of emphasis on updating records, and the lack of a spatial framework. These issues are being addressed in the second-level certification which is going back to the first 4 regions to supplement first level certification with the charting of boundaries on geo-referenced satellite imagery and orthophotos. This second level certification, whose piloting was done earlier, was in the last two years started in 8 *woredas* in each of the 4 *regions*, and the Ministry of Agriculture is working closely with the regions and donors to extend it to all *woredas* covered by the Government's Agriculture Growth Program. While data is not available about the average cost of second level certification, it is likely to be about US\$5 per parcel.

Source: Extracted largely from AU-AfDB-UNECA Land Policy Initiative 2015.

Scaling up systematic registration of individual land rights. More than 50 years after independence, only 10 percent of Africa's land is registered. But the last 10 years have seen many African countries experiment with more appropriate and low-cost approaches to document land rights combining community participation with new remote sensing technologies for mapping; these countries include Benin, Burkina Faso, Cote d'Ivoire, Ghana, Madagascar, Mozambique, Tanzania and Uganda (Byamugisha 2013).

The more advanced and successful countries have been Rwanda and Ethiopia (see details in Box 1.7 above). In the 5 years ending December 2013, Rwanda managed to demarcate all land parcels in the country, totaling 10.3 million, and to issue 8.4 million land titles in a program which cost the country US\$60 million. Of these, about US\$7 million (about 12%) was recovered in subsidized fees for rural dwellers of only 1,000 Rwanda Francs (about US\$1.6) per parcel compared to the total average cost of US\$8 to demarcate a parcel and issue the associated title deed (Sagashya 2014). Since the late 1990s, Ethiopia has awarded land rights certificates for more than 25 million parcels in rural areas of the country at a lower cost of about US\$ 1 per parcel. Unlike Rwanda's, it was a simpler exercise lacking a survey of boundaries and arrangements to maintain land records; these deficiencies are now being fixed in a more complete registration program which started around 2012 and costs about US\$5 per parcel (Bezabih, Mannberg and Siba 2014). In addition to being much cheaper than previous approaches which cost in excess of US\$200 per parcel largely because of using costly technologies to measure boundaries (Byamugisha 2013), land registration in Rwanda and Ethiopia had a number of tangible benefits, including reduced conflicts, empowerment of women, increased individual and community investment in soil and water conservation measures and improved security and land rental market activities (Deininger, Ali and Alemu 2011; Ali, Deininger and Goldstein 2011). While a systematic review of land tenure security interventions found a positive and significant impact on investment and agricultural productivity in Africa, the investment and productivity gains were weak compared to those in Asia and Latin America (Lawry et al. 2014). The weaker impacts in Africa highlight the need to explore even lower cost approaches to register land rights in Africa and to pursue more aggressively complementary productivity-enhancing measures to maximize net returns from investing in the strengthening of land tenure security in Africa.

Strengthening formal and informal land dispute resolution. It has already been noted in this chapter that land disputes are prevalent in Africa and a drag on agricultural productivity. Even if successful acceleration of land registration is undertaken, which itself should minimize land disputes, there will still be a need to resolve emerging land disputes quickly and cheaply. This requires a multi-faceted approach. Here, we document case studies of initiatives that have been

taken to address land disputes by strengthening judicial systems, particularly courts as players in land administration, empowering alternative fora for settling land disputes including negotiation, mediation, and arbitration as well as using customary and community-level dispute settlement mechanisms and institutions (Byamugisha 2013).

A number of initiatives have been taken in Africa to strengthen judicial institutions and operations. These include: (i) addressing backlogs; (ii) creating specialized tribunals; and (iii) addressing weak capacity and training of judges. Case backlogs, a frequently observed symptom of judicial dysfunction are a serious issue in Africa. For example, in Ethiopia, less than half of the land cases filed in lower courts is resolved at that level within one year, and 20 percent require more than five years to resolve (Deininger, Selod, and Burns 2012). Ghana had a backlog of more than 35,000 land cases in courts in 2002. In Tanzania, the backlog was nearly 39,000 in 2007. Through the simple decision to hire retired judges and paying overtime for selected sitting judges to deal specifically with such cases, World Bank-supported land projects were able to reduce the backlog in Ghana by nearly 8,000 cases over two years. In Tanzania, the backlog of land and housing tribunals was disposed of in two years as well (Byamugisha 2013). Clearly such an approach has limited significance in the long run, but when coupled with other measures, this can be an important first step in creating “breathing space” for implementing more substantive reforms.

Another measure that has been tried is the creation of specialized judicial or quasi-judicial mechanisms dedicated solely to land issues such as land tribunals. When national judicial budgets are insufficient to operate standard courts, the prospects for establishing additional specialized bodies may appear grim. And indeed, the experiences of land tribunals established in Ghana (World Bank 2010) and in Tanzania (Deininger, Selod, and Burns 2012) proved this to be the case and suggest the need not only to provide adequate budgets but also to focus more on procedural reforms and changes in institutional culture, rather than creation of specialized tribunals alone. Furthermore, the need for training to enhance the professional standards among judges cannot be overemphasized especially given the complexity of land law and the need to understand the relationship between statutory rules and customary norms.

Strengthening formal judicial institutions is critical. However, it would be futile to neglect alternative forums and approaches including customary institutions and alternative dispute resolution (ADR) mechanisms such as negotiation, mediation, and arbitration to facilitate fair and accessible justice on land matters as Kenya’s National Land Policy advocates (United Republic of Kenya 2009). To a large extent, such provisions simply give expression to what is already happening on the ground – the vast majority of land disputes in Africa are already settled (or continue to fester unresolved) at local levels, outside of formal legal processes. But a growing emphasis on the role of local and community-based institutions in land administration comes at a time when in many parts of Africa, such institutions are themselves evolving rapidly in the face of social and economic pressures, and in some cases weakening. For example, a study of the potential of ADR in rural Ghana noted that there is considerable demand in rural communities for locally-based mechanisms, but not ones controlled by traditional elites or ones that necessarily abide by long-established local norms of justice that may increasingly be questioned or distorted (Crook 2011). Even so, expanding the range of options to resolve land conflicts systematically and out of court can have large benefits, especially for the poor and for women who otherwise are often unable to enforce their legal rights (Commission on Legal Empowerment of the Poor 2008).

(b) Improving land markets and land transactions

Improving land markets. While evidence reviewed in this chapter indicates that land markets are widespread in Africa and are found to enhance efficiency and equity, there are some countries such as Ethiopia where agricultural land sales are prohibited and there are restrictions on the duration and extent of renting land (Holden and Otsuka 2014). There are also land rental restrictions in Uganda that severely limit the amount of rent paid by tenants and protect them against eviction. The restrictions represent a clear case where the apparent motivation to protect the poor has ended up hurting them instead (Byamugisha 2014). The operations of land sales markets in Africa have also been constrained by restrictions. For example, there are restrictions on sales (but not rental) of customary land to non-community members imposed by customary law which, in some countries such as Ghana, are reinforced even in statutory law notwithstanding an active but disguised land sales market (Bugri 2012).

At least three sets of reforms are needed to improve land markets so as to enhance productivity and transform Africa's agriculture. The first is to increase land tenure security. There is enough evidence that improved land rights, through introduction of long-term leases and/or certification of land rights, have increased land rental activities and productivity in a number of countries, including China, Vietnam, Ethiopia, the Dominican Republic, Rwanda and Nicaragua (Deininger and Feder, 2009). In SSA, studies conducted in Ethiopia found that land certification programs in 1998-99 and 2003-05 resulted in higher rental market activities (Holden, Deininger, and Ghebru 2009; and Deininger, Ali, and Alemu 2011). Studies in Rwanda also found land certification programs to have increased land rental market activities (Ali, Deininger and Duponchel 2015). Examples of how to undertake such reforms were discussed in the above paragraphs.

The second is to avoid or eliminate controls and restrictions on land markets. Experience in Ethiopia shows that where and when there were less restrictions on land rental markets, land rental activities went up and eased land access for the land poor and impacted significantly on productivity (Holden and Otsuka 2014) as they did in China (Deininger and Jin 2007). On the other hand, when and where restrictions were imposed or tightened, land rental activities went down with adverse impacts on the land poor and productivity such as in Uganda (Byamugisha 2014).

Box 1.8: Legalizing and institutionalizing customary tenure in selected African countries

Since the late 1960s, at least ten African countries have passed legislations recognizing customary land tenure and their respective institutions or newly created ones to administer and enforce the land rights of people residing in their rural communities. Such a recognition of customary land rights and the development of formal local institutions to manage them are considered essential to securing Africa's predominant land tenure system and to promoting efficient and equitable land transactions. This facilitates increases in investment and productivity and enhances the sharing of prosperity in Africa (Byamugisha 2013). The legislations and implementation performance of 7 of the 10 African countries, namely Botswana, Namibia, Uganda, Tanzania, Mozambique, South Africa and Mauritania, have been analyzed by a number of researchers (USAID 2012). Legislations and implementation performance for the remaining three – Ghana, Kenya and Zambia – can be found in the countries' respective constitutions and land laws. For Ghana and Zambia, there is legal recognition of traditional authorities as trustees of their people. In Kenya, its 2010 Constitution recognizes community land rights and provides for a specific legislation which was being considered by Kenya's Parliament in early 2016. While legislating for the integration of customary tenure into statutory law has made good progress, implementation has been slow except in Botswana, Namibia and Tanzania (USAID 2012). Notwithstanding the slow progress in implementation, the expected benefits in terms of increased tenure security and enabling local communities to administer their lands including transacting with non-community members are potentially worth the investment, based on the experiences of the ejidos in Mexico (World Bank 2002; and Byamugisha 2013).

The third is to scale up the legalization of customary land tenure and to develop representative formal institutions to strengthen land tenure security and to enable formal land transactions to be conducted with non-community members, building on the experiences of at least ten African countries and others outside Africa such as in Mexico (see Box 1.8 above).

African countries have to scale up efforts to organize traditional customary institutions into legal entities as Mozambique, Uganda and Liberia have been piloting to enable them enter into formal contracts of land transactions with non-community members as has been done successfully with the ejidos in Mexico (World Bank 2002; Byamugisha 2013; Knight et al. 2013).

Improving land transactions. Freeing up land sales and rental markets may not be enough to ensure that land markets work efficiently. For example, we have already noted that it takes twice as long and costs twice as much to transfer land in Africa as in OECD countries, and that corruption is prevalent. There is therefore a need to ensure that the government role in enabling land transactions, through registration, is made more efficient. And one key intervention to increase efficiency in land transactions and reduce corruption is to computerize land records as a number of African countries including Rwanda, Uganda and Mauritius have done. In this regard, Uganda was able to cut the average time to transfer property from 227 days in 2007 to 43 days in 2014. This was done by combining computerization and ICT applications with rehabilitation of existing manual land registers and other reforms, especially in cadastral surveying and property valuation (World Bank 2014b). Even with paper-based systems, some efficiency can be gained. . For example, Burkina Faso was able to reduce the number of days it takes to transfer property from 182 in 2005 to 59 in 2012 by establishing a one-stop-shop for property issues and by eliminating the need to obtain a consent to the transfer from the municipality (World Bank 2013c). Similarly, Burundi reduced the number of

days to transfer property from 94 in 2011 to 23 in 2014 by establishing a one-stop-shop for property registration and placing strict time service standards on registration (World Bank 2014b). The lesson is that computerization of land records together with administrative measures to streamline work flows and processes can reduce the cost (in money and time) of land transactions considerably. They can also reduce corruption as demonstrated in the experience of India where, one of its states – Karnataka -- saved users of land administration services an estimated US\$16 million in bribes annually after it computerized its land records (Deininger 2008).

(c) Easing access to land

While strengthening land tenure security is key to achieving efficient land allocation among farmers both in land abundant and land-constrained areas as it facilitates land markets, additional interventions must be made to improve operations in land markets to make land easily accessible to all farming households including the land-poor, women and the youth to maximize their contribution to agricultural transformation. This will entail a number of interventions.

Strengthening land markets. First, as already discussed in the previous section, the performance involving land sales and rental markets must be enhanced further by addressing structural barriers and easing restrictions and controls. In the land abundant areas countries where customary tenure systems are predominant, legalization and registration of communal land rights are expected to create community groups that can conclude agreements with national and international investors in the form of long term lease contracts as traditional authorities in Ghana have been doing (Bugri 2012). In the land-constrained countries, informal land sales and rental markets which are already prevalent are expected to grow even stronger if actions are taken to free up those markets. In this respect, the rental markets have a high potential to increase access of the land-poor, women and youth to land. This is because such actions are cost-effective in transferring land (Deininger 2003). Impact evaluation studies indicate that the establishment of land rental markets following the agrarian reforms in China 1978 and in Viet Nam in 1988 proved successful in easing access to land for the land-poor and in increasing overall productivity. In China, the introduction of land markets increased agricultural productivity by about 60 percent (Deininger and Jin 2009) while in Vietnam, both rental and sales markets were found to have an unambiguously positive impact on productivity (Deininger and Jin 2003). In addition, in China land markets reduced population pressure in the densely populated agricultural areas by facilitating out-migration which increased the share of migrants in China's labor force from 5 percent in 1988 to 17 percent in 2000, or a total of 124.6 million people (Zhai, Hertel, and Wang 2003, and Deininger and Jin 2007). In Viet Nam, it increased the incidence of migration by households from 29% in 1993 to 64% in 1998 (Deininger and Jin 2003).

Allocating unused agricultural state land to investors and the land-poor. Given that most of the state-owned land in Africa is underutilized, such land would be put to better use if it were allocated to investors using competitive mechanisms or to the land poor in a transparent way. Ghana and Tanzania are some of the African countries in the process of allocating suitable state land to agricultural investors (SAGCOT 2011; World Bank 2012) while Kenya's new land policy provides for legal recognition as owners to long term occupants of state-owned agricultural land (United Republic of Kenya 2010). In Malawi, unoccupied or underused state land was sold to land-poor farmers at subsidized prices under a community-based land reform program (World Bank 2004b; Tchale 2014). But as noted earlier, to undertake any of these options to allocate state land, a land inventory exercise has to be done first to identify and establish the ownership and occupancy status

of the lands and to survey and register it as Ghana has done (Ahene and Byamugisha 2014).

Redistributing to the land-poor underused private land using market-oriented approaches. In Southern African countries where, due to a colonial legacy, there is high land ownership inequality with many large farms having unused land that could be allocated to the land-poor using market-oriented land redistribution mechanisms using willing-buyer willing-seller approaches that are participatory, with funding available to support both land acquisition and land development. Examples of such redistribution mechanisms include Brazil (World Bank 2009) and Malawi, which in a pilot program during 2004-2011 successfully redistributed land to 15,000 families (see Box 1.9). While a similar land redistribution program has been undermined in South Africa by policies that favor land-rich landowners such as net agricultural subsidies as opposed to taxes and ownership ceilings on large landholdings to induce the excessively land-rich to sell to the land-poor (Lahiff and Li 2014), the successful piloting in Malawi demonstrates that it can work if carefully designed and implemented.

Box 1.9: Redistributing Agricultural Land in Malawi

To address the highly unequal distribution of overcrowded arable land, which coexists with underutilized large-scale farms, Malawi piloted a land reform program with funding from the World Bank (World Bank 2004). The pilot project aimed to increase the income of about 15,000 rural poor families using a decentralized, community-based, and voluntary approach in four districts. Modeled on Brazil's market-based approach to land reform (under implementation since the mid-1990s), the pilot had three key elements: (a) voluntary acquisition by communities of land sold by willing estate owners; (b) resettlement and on-farm development, including transportation of settlers, establishment of shelter, and purchase of basic inputs and advisory services; and (c) survey and registration of redistributed land. Land reform beneficiaries, organized in voluntary groups, were self-selected on the basis of predefined eligibility criteria. Each family received a grant of US\$1,050, managed directly by beneficiaries, with up to 30 percent for land acquisition and the rest for transportation, water, shelter, and farm development. Land for the project was acquired from willing sellers, the government, or private donations and was registered initially under group title; it is expected that individual titles will be provided to beneficiaries upon demand in the future. Implementation was decentralized through District Assembly institutions and required capacity enhancement, especially for surveying and registration (additional financing was approved by the World Bank in 2009).

Lessons learned from the pilot were expected to guide implementation of a broader program of land reform initially designed in 2004, but this is currently being revised. According to the impact evaluation, the project achieved even better results than the Brazilian model on which it was based (World Bank 2009): more than 1.5 hectares of land were distributed, on average, to each of 15,142 rural households (40,102 households in Brazil); agricultural incomes increased an average of 40 percent per year for beneficiaries (compared to non-beneficiaries) between 2005–06 and 2008–09 (6 percent in Brazil); the economic rate of return was 20 percent (13 percent in Brazil); and impacts on the livelihoods of beneficiaries and surrounding communities were positive, with improvements in landholdings, land tenure security, crop production, productivity, income, and food security (similar results in Brazil).

Source: Byamugisha 2013.

Eliminating the gap between men and women in accessing land. While many African countries have put in place legislations recognizing gender equality, implementation has been lacking especially in the face of customary practices which discriminate against women. Relying on land markets alone has not provided women enough access to land. However, there is a number of countries that has made significant progress toward eliminating discrimination against women. The leading countries are Ethiopia and Rwanda (Box 1.10). Key interventions have involved providing for gender equality not only in the constitutions but also in land related laws and others governing marriage, divorce and succession. In addition, intensive publicity and awareness campaigns have been undertaken to disseminate these laws. Nation-wide programs of land tenure regularization and certification have also been structured and implemented in ways that ensure adequate representation of women.

Box 1.10: Land Reforms to Strengthen Women's Land Rights in Ethiopia and Rwanda

Ethiopia. Since the 1997 Federal Proclamation (law), which devolved the responsibility for land policy to the regions, and the subsequent land proclamations of the main regions, both men and women are entitled to the same land rights. However, in practice, women's rights to land depend on marriage as their rights are not registered separately, but jointly with their spouses. This has limited access of women to land. This is especially the case with widows and unmarried women. But Ethiopia's land certification program, implemented in its four main regions in the late 1990s through the mid-2000s, undertook a serious effort to strengthen women's access rights to land. The program provided tenure security by issuing land use certificates to both spouses, conferring equity and joint ownership. A number of studies have analyzed the impact of the program on women farmers' tenure security and on agricultural productivity, and found that women received land certificates either jointly or singly, with certificates that carried the names and photos of both husband and wife (Deininger, Ali, and Alemu 2011; and Bezabih and Holden 2010). The studies found that the certification program raised land tenure security for both men and women farmers, but the productivity gains were mixed. While the program had an overall positive impact on productivity, the gains of men farmers were far greater than those of women farmers. This supports the widely claimed hypothesis that women farmers need better access to other productive inputs, such as improved seed and fertilizer, to maximize their gains from improved tenure security (Quisumbing and Pandolfelli 2008).

Rwanda. After emerging from genocide in 1994, Rwanda undertook considerable legal and institutional reforms in the land sector, followed by implementation of a nationwide land registration program. The National Land Policy of 2004 and the Organic Land Law of 2005 (together with the 1999 Law Regarding Matrimonial Regimes, Liberalities and Successions) conferred the following: (i) equal rights to daughters and sons to inherit property belonging to their parents; (ii) protection of women's property rights under legally registered marriages subject to the provisions of the family law; and (iii) requirements for both women and men to provide consent in the case of sale, mortgage, or exchange of matrimonial property by any of the partners (Government of Rwanda, 2005). The government used financial and technical support, primarily from DFID, to implement a nationwide land registration program that aimed to clarify existing land rights on all of the country's 10 million land parcels (Sagashya 2014). An impact study analyzed the short-term impact of the registration program and found that the program: (i) improved access to land among legally married women; (ii) prompted better gender-neutral recording of inheritance rights; and (iii) led to increased investment and maintenance of soil conservation measures, particularly among female-headed households (Ali, Deininger, and Goldstein 2011).

Source: Byamugisha 2013.

(d) Protecting land rights of smallholders and local communities

To develop Africa's abundant uncultivated land which gives Africa a potential comparative advantage in agriculture, it is critically important to improve land tenure security and governance to ensure that the investments are economically, socially and environmentally viable. Large scale agricultural investments jointly studied by UNCTAD and World Bank found that they have generated positive socio-economic benefits for surrounding communities and host countries but

many have had negative impacts, the biggest being disputes over access to land such as conflict between formal rights given to the investor by the state and the informal rights of existing users of the land (World Bank 2014). Africa, is of particular interest partly because more than half of the land that has been claimed by investors in the last ten years has been in Africa including at least 1 million hectares each in Ethiopia, Liberia, Mozambique and Sudan between 2004 and 2009 (Deininger et al. 2011; Cotula 2013) and, with weak land governance including 90 percent of rural land being undocumented, there are serious concerns about failure to recognize, protect or (where a voluntary transfer can be agreed upon) properly compensate local communities for their land rights (Deininger et al. 2011). Examples of investor land acquisitions in Africa with poor local community consultations and compensation have been documented for cases in Ghana (Yeboah 2014), Ethiopia (Keeley et al. 2014), Mozambique, Tanzania and Zambia (German, Schoneveld and Mwangi 2011) and Uganda (Atkinson and Owor 2013).

To protect land rights of African smallholders and local communities while also ensuring security for investors, it is important for African countries individually and collectively to undertake reforms that take into account global and regional guidelines on large scale land-based investments particularly the Principles for Responsible Agricultural Investment That Respect Rights, Livelihoods and Resources (UNCTAD, FAO, IFAD, and the World Bank Group 2010), the African Union Guiding Principles on Large Scale Land Based Investments in Africa (African Union, African Development Bank and UN Economic Commission for Africa 2009), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO 2012), and the African Union Framework and Guidelines on Land Policy (African Union, African Development Bank and UN Economic Commission for Africa 2009). The call for action from these principles and guidelines include the need to: (i) scale up legal recognition and documentation of rights to secure communally and individually owned land; (ii) undertake participatory land use planning to identify surplus land for investors; (iii) develop information systems to increase transparency of land deals for all stakeholders; and (iv) encourage investment models that do not involve land acquisition or, if they do, to ensure that there is fair and prompt compensation.

Scaling up legal recognition and documentation of customary land rights. As documented above, while many African countries have since the 1990s put legislations in place to recognize customary land rights; implementation in the way of documenting those rights has been slow especially in the registration of communal land rights. However, there are encouraging results from a few African countries that have initiated the registration of communal land rights, notably Mozambique, Tanzania and Ghana (Box 1.4), and even more significant results from registration of individual land rights in Rwanda and Ethiopia which have completed programs covering a whole country and a large part of the country, respectively (Box 1.7). Scaling up these registration programs across Africa would go a long way to protecting the land rights of smallholders and local communities as investors engage in developing Africa's abundant uncultivated land in the quest for transforming Africa's agriculture. ProSAVANA project in Mozambique is a good example of tripartite arrangements between African countries and their development partners that has committed to building on past experiences to scale up registration of communal and individual land rights in Mozambique (Box 1.6).

Undertaking participatory land use planning to identify surplus land for investors. A challenge to attracting investment that respects land rights of smallholders and local communities is the identification of surplus and environmentally suitable land for investors. This is necessary for

African states to avoid some past mistakes including making commitments to investors to allocate them land that is already allocated, is unavailable or involves dispossession of local communities as was experienced in Mozambique before rural land use planning was introduced (Deininger et al. 2011). After going through such unscrupulous experiences, Mozambique placed a six-months moratorium in October 2007 on the allocation of land to investors while it undertook a zoning process of rural land at a scale of 1:1,000,000; the zoning exercise, which was based on soil suitability maps and rainfall data, identified 7 million hectares of land as potentially available, with 3.78 million hectares suitable for agriculture, livestock and forestry (Locke and Henley 2014). Later on, a more detailed zoning process was launched at a scale of 1:250,000 in provinces where there has been more investment interest. The zoning process involves not only better mapping but also enhanced capacity building underpinned by donor-supported programs such as ProSAVANA (Tawa, Amameishi and Noguchi 2014). Similarly, while it has faced more challenges, Tanzania has also committed to re-orient and speed up its village land use planning activities to identify surplus land for investors (G8 New Alliance for Food Security and Nutrition. 2012). Other African countries could learn from experiences in Mozambique, Tanzania and other countries within and outside Africa to improve their land use planning so as to facilitate identification and allocation of suitable land for investors without jeopardizing the land rights of local communities (UNCTAD and World Bank 2014).

Developing information systems to increase transparency of land deals. A recent review of mature agribusinesses in sub-Saharan Africa and South East Asia by UNCTAD and the World Bank focusing in particular on their approaches to social, economic and environmental responsibility concluded that there was an insufficient amount of publicly available information to ensure full transparent and accountable conduct of agricultural investment. The review therefore recommended that governments should publicize land applications under review or approved, using publication outlets including investment registry websites (UNCTAD and World Bank 2014). To provide such transparency requires African countries to develop information systems building on current initiatives such as the land information systems in Mauritius, Rwanda and Uganda (AU-AfDB-UNECA Land Policy Initiative. 2015). These initiatives need to be scaled up by taking advantage of new technologies in ICT.

Encouraging investment models that do not involve land acquisition. A key lesson for governments from the recent review of agribusinesses in sub-Saharan Africa and South East Asia by UNCTAD and the World Bank is that “business models with low land needs, such as processing operations, can provide important development benefits without the land issues associated with estate operations” (UNCTAD and World Bank 2014). In these models, local farmers and other members of the local community are active partners (FAO 2012). Large-scale farming is only one option for farming the land and small farmers may find it more profitable to retain their activity rather than accept a wage job. In these circumstances it may be advantageous for both smallholders and large-scale investors to enter into partnerships rather than an agreement involving the transfer of land (Deininger et al. 2011). There is growing experience with models for structuring agricultural investments other than large-scale plantations. A wide range of collaborative arrangements between investors, on the one hand, and family farmers and local communities, on the other, include diverse types of contract farming schemes, joint ventures, management contracts, community leases and new supply chain relationships or a combination of these (Cotula and Leonard 2010). No single model is the best possible option for smallholders in all circumstances. The adequacy of a model depends on the local context and on factors involving tenure, policy, culture, history and geography

and demography. None of the models can be described as a holistic solution to rural development. Each of the various options has risks and opportunities. The success of such partnerships, and the actual benefits to communities in general and smallholders in particular depends on the level of ownership, voice (governance), risk-sharing and benefit-sharing between partners.

Among these models that provide alternatives to land acquisition, contract farming and out grower schemes seem to be the most established and with some successful ones that African countries can learn from. These include the Kilombero rice and sugar schemes in Tanzania (PLAAS 2014) and the contract farming and out grower oil palm schemes in Ghana (Huddleston and Atton 2007), in Uganda known as the BIDCO Kalangara oil palm scheme (Masaba, Liversage and Jonckheere 2014) and in Malaysia (Cooke, Toh and Vaz 2011). Details of a sample of the out grower oil palm schemes in Uganda and Ghana can be found in Box 1.11.

Box 1.11: Out grower Oil Palm Schemes in Uganda and Ghana

Uganda. Around 2,000, the Kalangala oil palm out grower scheme was initiated as a public-private partnership involving the Government of Uganda, Bidco Uganda Limited (BUL) and smallholders. The agreement was to develop 40,000 ha of oil palm plantations in subsequent phases, as well as a 300 ton/day refinery to produce crude palm oil. The first phase of the project, which is on-going involved the development of 10,000 ha of oil palm plantations on Bugala Island in Kalangala District, of which 6,500 ha was nucleus estate and 3,500 ha were smallholder plantations as out growers. Both the nucleus estate and the oil palm refinery were developed by BUL on land leased from the government of Uganda. The second phase, which is underway, intends to expand smallholder production from 3,500 hectares to 4,700 hectare while keeping the nucleus estate at 6,500 hectares. BUL (and its business corporate partners) also provides inputs, credit and transportation of oil palm to the factory for which out growers receive a guaranteed price for oil palm based on a long term average world market price for palm oil. Using financial support from IFAD, the government of Uganda funded the required transport infrastructure including upgrading the Kalangala district road network and establishing a ferry service to and from the island of Kalangala district. It also facilitated the leasing of land to BUL, the bulk of which was public land while the rest was private land the government acquired on a willing-buyer willing-seller arrangement at market prices; the government leased the land to BUL for 99 years on standard terms provided for under the Uganda Land Act. To ensure land tenure security for the out growers on their own land, land surveying and registration services were provided free by the government with support from IFAD. While this oil palm out grower scheme has not reached full completion, a review by IFAD has concluded that the project has been successful, with customer surveys indicating satisfaction from the out growers. The land acquisition arrangements have not adversely affected the land rights of the local community while, at the same time, they have provided land tenure security to the investors.

Ghana. In 1978, an out grower oil palm scheme was initiated in central Ghana, by a tripartite public-private partnership involving the Government of Ghana (GoG), Twifo Oil Palm Plantations Limited (TOPP) and smallholder producers of oil palm. GOG provided a concession to TOPP including land for the nucleus estate and processing factory. The occupants of land, totaling 250, were resettled on a government-owned land as long term tenants and given support to grow oil palm as out growers under the Smallholder Tenant Scheme Project (now in phase 3) funded by EU and the government of Netherlands. These out growers have received technical assistance (including extension services) as well as inputs and transportation (for inputs and outputs) on credit from TOPP which deducts the costs from payment for the oil palm fruits, amounting to about 30 percent. In addition, the scheme co-opted other farmers who are supported to grow oil palm on their own land under the Buabin Oil Palm Out grower Project, funded by ADF. These new out growers, about 900, have received similar support from TOPP as the original ones; in addition, they receive support to register their land. As of July 2011, the scheme had about 1,000 out growers growing oil palm on 3,000 ha of land while TOPP grows its own oil palm on a nucleus estate of 4,234 ha. According to evaluations of the out grower scheme, the land rights arrangements have generally been adequate; the challenge faced by the out growers is the fluctuation of world prices of palm oil on which payments to out growers is based. On the other hand, the challenge faced by TOPP is the side-selling of oil palm fruits by the out growers.

Source: For Uganda, see Masaba, Liversage and Jonckheere, 2014; Ghana, see Paglietti and Sabrie, 2013.

Costs and benefits of land reforms for transforming African agriculture

While no attempt has been made to quantify the costs of land reforms suggested in this chapter, they are considerable and in the range of US\$5 billion for the African continent given that a recent estimate for similar reforms made by a World Bank study put the cost at US\$4.5 billion for SSA which excludes North Africa (Byamugisha 2013). They include costs not only for land policy and institutional reforms but also for public investments in reforming land tenure and modernizing infrastructure and systems for land administration.

Though the costs of implementing the land reforms are high, the reforms are likely to produce considerable benefits. The primary benefits include increased agricultural productivity and economic growth, poverty reduction, conflict prevention and resolution, good governance and environmental protection (Deininger 2003; Byamugisha 2013; Deininger and Feder 2009). The increase in agricultural productivity would materialize through several pathways that enhance either investment or its productivity, including (a) more incentives for investment, especially from land tenure security; (b) higher productivity as land moves from less efficient to more efficient producers through rental and sales markets; (c) value added through land information; and (d) access to more and low-cost credit through the use of land as collateral in areas with access to banks and other financial institutions. Indeed, the impacts of interventions and associated contributions will vary between countries and even within a country. However, there is ample empirical evidence to confirm these contributions to agricultural productivity and economic growth through the indicated pathways, especially via investment, as evidenced in recent impact studies of land registration in Ethiopia and Rwanda (Deininger, Ali, and Alemu 2011; Ali, Deininger, and Goldstein 2011; Ali, Deininger and Duponchel 2015).

A recent comparative study of impacts of land tenure security in developing countries concluded that the impacts on investment and productivity in Africa were modest compared to those in Latin America and East Asia regions. However, these impacts were positive and significant (Lawry et al. 2014) and, in some cases, large. For example, a study in Ethiopia found that farmers with land certificates were associated with an increase in agricultural productivity of as much as 45 percent (Holden, Deininger and Ghebru 2009). Moreover, as has been demonstrated by various studies especially for China and Viet Nam (Deininger and Jin 2003; Deininger and Jin 2007), the land reform and its growth impact on agriculture has even greater effectiveness on reducing poverty given that growth from agriculture is at least twice as effective in reducing poverty as growth from other sectors (World Bank 2007). In addition, studies show that land reforms would support economic development in other ways. For example, in post-conflict countries, studies on Liberia and Rwanda show that early interventions in reforming land tenure prevent and improve management of recurring conflicts associated with land and generate peace dividends (Bruce 2014). The land reforms are known to also improve management of common property resources, and to facilitate sustainable exploitation of natural resources, including agricultural land, forests, water, and minerals (Deininger 2003). In addition, the land reforms contribute to improved governance especially increased transparency and reduction in corruption (Deininger, Selod and Burns 2012). While lack of data and difficulties of quantifying benefits from land reform do not allow estimation of an aggregate figure against which to compare the costs of land reform, the qualitative assessment of the benefits leave no doubt that the expected benefits of the reforms would exceed the costs.

Rising to the challenge and exploiting opportunities

(a) Challenges to reforming agricultural land tenure and land administration

While there has been increased determination on the part of African leaders to undertake necessary land policy reforms as reflected in a declaration adopted by African Heads of State and Government Summit in July 2009 in Libya (African Union, African Development Bank and UN ECA 2010), there are challenges reflected in the enormity of the task. These include:

- The escalation of “land grabs” in Africa and in countries with weak land governance (Deininger et al. 2011; Cotula 2013);
- High vulnerability of agricultural lands in Africa (compared to other continents) to land grabbing and expropriation without adequate compensation as less than 10 percent is registered (AU-AfDB-UNECA Land Policy Initiative 2015);
- Highly inefficient land administration as it takes twice as long and costs twice as high to transfer land in Africa compared to OECD countries (World Bank 2014b);
- High levels of corruption and lack of transparency as documented by Transparency International (various issues) and in a study by FAO and Transparency International in 61 countries (Ariani, Fagan and Zimmermann 2011); and
- Low capacity and demand for professionals as indicated by Ghana, Kenya and Uganda each having fewer than 10 land professional surveyors per 1 million population compared to Malaysia with 197 and Sri Lanka with 150 (Byamugisha 2013).

(b) Emerging opportunities to reform agricultural land tenure and land administration

The enormity of the challenges points to the need for reform effort to be much greater than in the past. On the positive side, there are emerging opportunities for scaling up reforms in policy and institutions, including:

- Emergence of better commodity prices and increased foreign direct investment with potential to increase agricultural yields and markets thereby raising returns to investment in reforming land tenure and land administration (Byamugisha 2013);
- Availability of new technologies such as satellite and ICT with potential to reduce costs of land administration;
- Enforcement of basic land laws in many African countries that recognize customary land rights and gender equality which are key to improving land tenure security and equitable access to land (Alden Wily 2011); and
- Design and implementation of important global and regional initiatives including the *Voluntary Guidelines on Responsible Tenure of Land* and the African Union’s *Framework and Guidelines for Land Policy* which should make it easier for African countries to design and implement land reforms.

(c) Overcoming political and vested interests

African leaders have collectively indicated commitment to undertake the necessary land policy reforms as reflected in the declaration adopted by African Heads of State and Government Summit in July 2009 in Libya (African Union, African Development Bank and UN ECA 2010) and there are considerable opportunities to undertake the necessary reforms. There are also other barriers to

overcome especially from vested interests who would oppose land reforms to preserve the status quo or manipulate the reforms to maximize their personal interests. These anti-reform interests include some African governments that have resisted reforms in the past, many large landholders and “land grabbers”. The anti-reform interests have in many African countries resisted the implementation of new constitutional and legal reforms in favor of promoting land rights for women because of centuries old cultural practices that militate against land ownership by women (AU-AfDB-UNECA Land Policy Initiative 2014). Similarly at the global stage, there are many countries that have initiated land reforms to reduce land ownership inequalities but have been unsuccessful because of resistance from politically powerful land owning classes who would lose from such reforms (Studwell 2013; El-Ghonemy 1999).

To enhance chances of success, land reform initiators must solicit support from the wider and influential sections of society especially non-state actors including interest groups representing women, youth, poor farmers, farm workers and tenants and national and international activists in favor of equitable access to land; the mobilization of such pro-reform groups was done successfully in support of development of the 2009 Kenya National Land Policy, with the Kenya Land Alliance and the media playing a critical role in supporting its approval (USAID 2009-2010). In addition, land reforms using negotiated and win-win approaches stand a better chance to succeed in reducing land ownership inequalities in a democratic and peaceful environment than those using approaches that involve compulsory land acquisition and redistribution (Binswanger-Mkhize, Bourguignon and van den Brink 2009). However, as experiences of Brazil and Malawi have demonstrated, measures must be included to overcome shortcomings in financial and land markets including provision of grants or subsidized loans to the land-poor, organizing the land-poor into groups to increase their negotiating power in land and credit markets, and eliminating agricultural subsidies for the land-rich while imposing progressive taxes and ownership ceilings on excessive land accumulations to discourage unproductive land concentration (El-Ghonemy 1999).

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