

1. Land Tenure

Overview of the debate

The purpose of these *Key Sheets* is to provide decision-makers with an easy and up-to-date point of reference on issues relating to the provision of support for sustainable livelihoods.

The sheets are designed for those who are managing change and who are concerned to make well-informed implementation decisions. They aim to distil theoretical debate and field experience so that it becomes easily accessible and useful across a range of situations. Their purpose is to assist in the process of decision-making rather than to provide definitive answers.

The sheets address three broad sets of issues:

- Service Delivery
- Resource Management
- Policy Planning and Implementation

A list of contact details for organisations is provided for each sub-series.

Over the past 5 years, the debate about land tenure (i.e. about the conditions and institutional arrangements under which land is held) has focused on:

- The comparative advantages of formal, statutory and informal, customary tenure systems and how to resolve problems resulting from their co-existence (especially in Africa).
- How to develop effective, legitimate institutions for land rights management at the local level.
- The effects of different tenure arrangements on investment in land and natural resource management at farm level.
- The advantages/disadvantages of encouraging the development of land markets.
- The continuing marginalisation of various groups – in particular women, indigenous peoples and pastoralists – due to lack of secure access to land.

In addition there has been continuing concern with land redistribution (sometimes referred to as 'land reform', though this term can embrace both redistribution and tenure reform), focusing on:

- Finding ways to restore land alienated from indigenous people under colonialism (land restitution).
- The relative merits of market-based vs. non-market mechanisms for redistribution.
- The role of the state in facilitating negotiated solutions between land owners and the landless.

N.B. This sheet aims to be of broad relevance, though it draws mostly on African lessons and experience.

Key issues in decision-making

Donor involvement in the area of land tenure/redistribution can take a number of forms, including:

- providing support to land policy development and legislative change processes to promote stakeholder participation, help diffuse conflict and protect the holders of customary rights;
- extending and securing land and natural resource rights through support to advocacy and capacity building for community groups and NGOs;
- providing policy or financial support to enable the landless and those facing land scarcity to resettle by accessing/acquiring under-utilised private or public land;
- providing technical support to land demarcation and individual/group registration/titling;
- helping to develop effective systems for land rights management and local-level dispute resolution.

In addition, it is often important to provide support in complementary areas, such as:

- improving infrastructure, financial services, information, input provision and marketing services for new land holders and smallholder farmers in general; and
- building local capacity in cases of group tenure/community management of common resources.

Which type of involvement – if any – is most appropriate will depend upon a number of factors, including the current tenure situation and the role that land plays in the livelihoods of the poor:

- How is land currently allocated? What is the legal basis of tenure arrangements?
- Do current tenure systems provide certainty and security of rights? Are land disputes common?
- Do particular groups (e.g. women and younger households) lack access to land?
- How is access to land related to wider social/cultural relations and practices?
- How do broader policy and institutional frameworks affect land tenure and land use (e.g. do larger landowners enjoy special privileges, such as tax incentives and subsidies)?
- How well do local people understand land rights and tenure rules, and how able are they to make and defend land claims?

In practice, customary tenure systems tend to evolve and adapt to changing circumstances. If an existing customary system provides land users with sufficient security and flexibility to meet their livelihood needs, engineered change may not be necessary. However, if the current system is imposing high costs on local livelihoods, discouraging investment and/or is in danger of breaking down, reform may be necessary to prevent unsustainable land/resource use, further impoverishment of already poor groups and land grabbing by elites, traditional leaders or foreign investors.

Tenure reform is an intensely political area of intervention. When donors concur with the overall objectives of reform, they can support the reform process, but they should not attempt to drive it. Careful consideration needs to be given to the impact and cost of any proposed changes.

- If the aim of reform is to reduce poverty, how will the poor be targeted? Do they have the means to take advantage of the reforms?
- What effects will reform have on inter- and intra-household access to resources, including on secondary rights (such as women's/children's access to plots and temporary rights of land borrowers, in-migrants and visiting pastoralists)?
- What is the likely impact of reform on investment and (the sustainability of) land/resource use?
- How will proposed reforms be implemented? (Approaches should be pragmatic, flexible and

DFID experience

- **Policy research:**
 - IIED/GRET: Franco-British initiative in W. Africa (start 1996)
- IIED: Inventory of UK expertise on land (1998)
- South Africa: Land reform pilot prog. (start 1995)
- Uganda: Support to land legislation reform and implementation of 1998 Land Act (start 1997)

NEDA experience

- Burkina Faso: Securing land rights for migrants and women in integrated development projects (1994-1998)
- Mozambique: Support to the land reform prog. (start 1996)

Expertise

- DFID's Land Tenure Advisory Committee:
 - Oxfam GB
 - IIED
 - NRI Social Development Group
 - Mokoro Ltd.
 - Ordnance Survey International(contact through Julian Quan at DFID - also links to African expertise)
- GRET
- Land Tenure Centre, University of Wisconsin Madison
- FAO
- World Bank
- The African Studies Centre
- CEDLA
- Erasmus University, Rotterdam

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gradualist; legislation should not be passed without considering the feasibility of implementation.)

- Who will cover the costs of tenure reform? Is financing reform a priority for the government? In the past, individual land titling was promoted as a way to improve credit and service provision. Recent experience – notably in sub-Saharan Africa – has, however, shown that individual titling has often disadvantaged poor farmers by overriding established subsidiary rights, creating opportunities for land acquisition by elites and forcing or enabling distress land sales.

The design of tenure reforms should be based upon a thorough understanding of the livelihoods strategies and objectives of local people. It is also important that reforms are consistent with governance structures and wider national objectives:

- How – and through what structures and processes – will land rights be managed and defended and disputes resolved after the initial period of reform? (As far as possible it makes sense to adhere to principles of subsidiarity and to devolve land rights management to users themselves.)
- Is land rights management consistent with other structural reforms (e.g. decentralisation)?
- How democratic are decentralised structures? Is there sufficient flexibility to avert unnecessary conflict between various social groups? Is capacity-building support necessary?
- How will information about reform be shared? Should land laws be translated into local languages?

Redistributive land reform may be important in countries with highly skewed land ownership patterns. Market-based approaches to redistribution include the imposition of special taxes/subsidies and credit facilities to promote desired patterns of land sale (though taxes have seldom had the desired effect). Non market-based approaches may entail the imposition of restrictions on certain types/sizes of land holding and the expropriation of land with or without compensation. In either case a major challenge is to determine the most appropriate forms of tenure for any resettlement schemes. Consideration must be given to the impact on existing land and resource rights in resettlement areas. Despite the hazards associated with it, individual titling may remain the best option. Decisions about the most appropriate means of achieving reform will depend upon:

- lessons from elsewhere and from pilot reform efforts in country; and
- the affordability, political feasibility, flexibility and equity implications of the various options.

Whatever the nature of involvement in land issues, core concerns remain the same:

- Has provision been made for stakeholder consultation at all levels and stages during the reform process? Is the process transparent and legitimate? How will conflicts be resolved?
- Do any particular groups have the will and power to derail the process? How can these groups be brought into the process?
- If landowners and rights holders (large or small) are dispossessed as a result of land redistribution, restitution or titling, how are fairness and adequate compensation to be assured?
- Are the institutional arrangements and timetable for reform realistic? Is there provision for monitoring and evaluation so that corrections can be made as necessary?

Land tenure and land reform issues remain firmly on the agenda because of the importance of tenure security for the achievement of sustainable livelihoods and poverty reduction. Because of the cost, complexity and long-term nature of tenure reform and land redistribution, sustained donor support for all stages from policy development to implementation and impact evaluation is likely to be very important. To avoid confusion it is preferable for donors to work together in this area, though issues of donor dependency should always be kept in mind.

Key references

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Papers in this series can be accessed on the Internet at:

<http://www.oneworld.org/odi/keysheets/> or through the websites of DFID and NEDA

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