

**Pro-poor land-tenure reform in sub-Saharan Africa:
a brief comparative note on the possible relevance of
experience in Asia (and elsewhere)**

Roy Prosterman
Rural Development Institute
& University of Washington School of Law, Seattle

This brief comparative perspective is drawn largely from RDI's just-published book reflecting research and advisory work on pro-poor land-tenure reform in the rural sector of 47 countries since 1967 (Prosterman, Mitchell and Hanstad, eds., One Billion Rising: Law, Land and the Alleviation of Global Poverty (Leiden Univ. & University of Manchester 2009)).

One basic demographic fact, reflected in the table below, is that population pressure on arable land in parts of sub-Saharan Africa is now beginning to approach that in some parts of Asia, creating settings for land law and policy in which such land is scarcer and more valuable.

Table

Country (all figures 2002)	Population ('000)	Ag. Population ('000)	Arable & perm-crop land ('000 has)	Arable & perm land, ha. per total pop.	Arable and perm land, ha. per ag. pop.
Region: All Africa	832,039	513,770 (62%)	210,691	0.25	0.41
S. Africa	44,759	18,514	15,712	0.35	0.85
Nigeria	120,911	65,545	33,000	0.27	0.50
Rwanda	8,272	7,743	1,385	0.17	0.18
Zimbabwe	12,835	8,118	3,350	0.26	0.41
Kenya	31,540	20,392	5,162	0.16	0.25
Angola	13,184	8,504	3,300	0.25	0.39
Ethiopia	68,961	57,784	10,671	0.15	0.18
Region: All Asia	3,775,948	2,321,220 (61%)	573,387	0.15	0.25
China	1,302,307	807,820	153,956	0.12	0.19
India	1,049,549	754,819	170,115	0.16	0.23
Indonesia	217,131	123,473	33,700	0.16	0.27
Pakistan	149,911	99,381	22,120	0.15	0.22
S. Korea	47,430	8,110	1,877	0.04	0.23
Comparison:					
USA	291,038	64,981	178,068	0.61	2.74
UK	59,287	6,261	5,803	0.10	1.08
All Africa (1970-71)	360,750	257,988 (71%)	170,413	0.47	0.66

There are, of course, broad differences between rural land issues in most of sub-Saharan Africa and those typical of other regions. For example, greater swathes of African land are claimed as “state” land, with correspondingly wider issues of actual land users operating under informal or customary systems, many of which involve an overlapping array of group and individual rights. Africa also has comparatively fewer areas characterized by large, private farms using large numbers of hired laborers (South Africa, Namibia, and, at least until recently, Zimbabwe have been exceptions). Africa also has relatively little agricultural tenancy compared to Asia. And, land tenure problems associated with HIV/AIDS are more prominent in sub-Saharan Africa, such as the rights of widows. Nonetheless, there are still many potentially useful experiences to be found in Asia and other regions of the world.

I focus here on five broad areas where Asian, or other, experiences may prove helpful:

- 1) Issues arising in those settings where privately held land may become the subject of redistribution to agricultural workers or others of the needy poor.
- 2) Possibly relevant “next generation” tenure-reform options, such as distribution of micro-plots or house-and-garden plots.
- 3) Issues concerning formal titling or documentation of land rights held under informal or customary-law regimes.
- 4) The overarching issue of women’s land rights
- 5) The further overarching issue of what may be needed to implement measures—including many already on the legislative books—of pro-poor land tenure reform.

1. Redistribution of privately held land (e.g., from large holdings in South Africa, Namibia, etc.)

The accumulated experience, in our judgment, suggests:

- Pay reasonably—at or close to market price, and at least enough to generate the same flow of net income—for land to be taken.
 - Much lower levels of payment generate landowner resistance which, at least in most developing country settings, is likely to be successful in sabotaging or severely curtailing the program.
 - Low levels of land payment are often punitive and amount to a “fine” levied on a whole class of large landowners, very difficult to justify in relation to the rule of law.
- Don’t generally try to take modern plantation land with high “sunk costs”; it is expensive and hard to successfully operate
- Instead, take abandoned or underutilized land, or unimproved pastureland that could be used to grow crops—land which is much less expensive and lends itself to easier operation
- Make the model replicable in terms of land allocated per beneficiary household (allocating too much land per capita a mistake made in Brazil, Zimbabwe in early 1980’s, and, perhaps, now in South Africa in terms of “commercial farms” for black farm families).

- Focus on not only present workers on the farm but other poor agricultural households nearby as beneficiaries
- Beware of “resettlement” costs (an extreme example is “transmigration” in Indonesia) which can easily derail replicability
- Let beneficiaries freely select mode of operation—individual, collective, or partly each: for cropland, in most settings, large majorities choose individual farming.

2. Bear in mind “next generation” options (wherever very little land is likely to be available)

- The first few thousand square feet distributed (roughly 1/10 acre, or 300-400 m²) produces disproportionately large income and nutrition results
 - Can be a small “house-and-garden” plot (see India programs, and traditional pekarangan on Java; also “private plots” and “dacha/garden” plots in former USSR)
 - Can also be a small field plot not adjacent to house (see India’s West Bengal state; also recent expansions of “private plots” in Russia)
- Can be appropriate in a number of settings of scarce or high-value land (need much less land than for “full size” farm allocation, and likely to be affordable)
 - Urban or peri-urban poor who need supplemental source of nutrition or income (probably acquiring land for them on the market)
 - Workers on modern plantations (when very little land available, may be house-and-garden plots; when somewhat more land, possible “nuclear estate” model (Indonesia, Malaysia, etc.) with mini-farms around the continuing central private plantation for families who favor this option)
 - In commercial developments, land allocations within employee compounds
 - Plots for landless laborers and other completely landless rural poor
 - At a macro-level, also consider measures likely to preserve the availability of more land for the next generation of smallholders (e.g., restrictions on large-scale land acquisitions, limits on government land takings for commercial development, protection of customary land rights)

3. Documentation of land rights (controversial “Hernando de Soto” issue, could take the entire conference to cover)

- A general threshold question is whether formalization is wanted and needed: do beneficiaries understand what is proposed and why it is proposed (e.g., not to facilitate taxation)
- Are settings (and African experiences as well as elsewhere) where titling led to ouster of existing small holders, or exclusion of existing holders of subsidiary traditional rights (e.g., women), violation of important principle of “do no harm”
- Sometimes competing claims to the same parcel of land only come to the fore during formalization; must be prepared to deal with these and other issues
- But sometimes documentation of individual holdings can have protective and positive results (see, e.g., China, Andhra Pradesh state in India)
- Highly situation-specific, and needs careful advance thinking and research in choosing what, if anything, to do

- But keep in mind that situations aren't static: increasing population pressures and higher agricultural prices—and, implicitly, higher values for land—may lead to predatory behavior, so rights of customary or traditional land users may need additional protection as time goes on
- If individualization of land rights not safe or appropriate, consider establishing and formalizing external boundaries on community or group lands, with the community or group generally deciding its own land rights and allocations within such established and protected boundaries (such as is being implemented in Mozambique and piloted in Angola)

4. Women's land rights

- Long, and bad, tradition of only having name of (usually male) “head of household” on any documentation issued
- A key issue is the degree to which women and men will experience land tenure reform differently because of their different social and cultural roles; this likelihood must be accepted and understood in advance
- Where new land or clearly more secure land rights are to be allocated, usually possible to get wife's name on the document
 - E.g., house-and-garden plot, or micro-plot in field (see recent Indian experiences)
 - May even be able to document such land rights in wife's name solely
 - Requires careful advance research and assessment of what is possible
 - Having wife's name on land document can produce many basic benefits for wife and the entire family
- China demonstrates importance of explicitly including wives as members of collective or customary group
- It is also vital, in considering such projects as individually documenting customary or traditional land rights, to ensure that “minor” or secondary existing rights of use and enjoyment held by women (and others less empowered) are not “simplified away”, excluded, and destroyed.

5. Implementation

- No matter how “good” or seemingly “well drafted” the laws and regulations on the books, they are useless if not implemented
- Social legitimacy of formal laws (which helps determine “implementability”) is strongly related to whether formal laws are consistent with local customs and norms
- Accumulated experience, both good and bad (a lot of it in Asian settings), gives important guidance as to needed implementation measures
- Publicity, publicity, publicity
 - If beneficiaries don't know they have certain land-related rights, they will not assert them; likewise beneficiaries must know and have reasonable access to, basic procedures for asserting those rights
 - Publicity must be locally appropriate in terms of how poor rural people get their information

- Local outreach and education may be even more important than centrally managed communication (China)
- Legal aid and peri-legal aid can be helpful (Andhra Pradesh state, China, Moldova, etc.)
 - Education component of such programs is vital
 - Including for local officials and justice-system personnel, who themselves often do not know the law
 - But must be prepared to “go to court” if necessary (and, with trained legal-aid lawyers and an education component, more courts – or a functionally equivalent institution, sometimes customary – may be able to handle such matters effectively and fairly than might initially be thought)
- Local administration, if it can be beneficiary dominated (as in all the successful Asian land tenure reforms), or at least beneficiary accountable and not captured by local elites with conflicting interests
- Keep new technologies in mind for some settings
 - E.g., create complaint hotline using cellphone?
 - And see the growing availability of GPS technology that would allow storing a map of one’s official property boundaries, if they have been established, on a cellphone