

# *CADASTRE ALONE NOT ENOUGH*

## Solving Land Conflict in Africa

The governments of many African countries are currently investing in improving land administration with the aim of developing an efficient land market. A side objective is to reduce conflicts over land through implementation of a functioning land-registration and/or cadastral system. Experience teaches that additional preventative measures are required, such as conflict resolution, land management and psychotherapeutic approaches.

Not even a perfect land market can prevent conflicts unless regulated by governing institutions. There are two types of institution: constitutive and regulative institutions. Constitutive institutions are needed to enable an economically efficient land market through land rights, land registration and rule of law, while regulative institutions are necessary to make the land market socially sustainable and environmentally sound through land management and ethical principles. However, even with all these institutions in place, land conflicts can still occur, mainly as a result of extreme emotional and material needs.

### Endless Procedures

In most African countries many constitutive and regulative institutions suffer from massive functional deficits: land rights are most often characterised by fragmented or overlapping legislation and legal pluralism, resulting in unclear property rights and land-ownership conflicts. Land-administration authorities deal with land registration, land-information systems, land-use planning and land development lack trained staff, technical infrastructure and financial resources. Administrative services are over-centralised and responsibilities are often not clearly assigned or are overlapping, impeding co-operation and co-ordination. As a result, the little available and mostly incomplete or isolated data on land ownership and land use is being gathered by diverse non-co-operating institutions, making its proper use difficult or even impossible. The result is endless procedures and low levels of implementation.

Neither institutions constituting nor those regulating the land-market make any substantial contribution to the avoidance of land conflict. Given the low salaries and openness to motivation payments, they rather contribute to them. Legal security is limited by insufficient implementation of rule-of-law principles, while mechanisms for sustainable land development suffer from the fact that ethical principles are not broadly acknowledged. The crucial point for all institutions is lack of implementation. Unclear implementation guidelines and contradicting legislation worsen the situation. Political will is very unsteady. The imperfect constitutional institution of land-markets promotes land-ownership conflict, while poor regulative institutions are responsible for both land-ownership and land-use conflicts.

### Normal Misbehaviour

Functional deficits are not the core reason for land conflicts; they merely facilitate them. Profit maximisation on the part of a multitude of actors is the driving force, either by unjustly grabbing land or by excluding disadvantaged sections of the population from legally using it. Theoretically, these actors include all social gatekeepers, mostly identifiable with principals in principal-agent-relationships. The decisive factor in these irregularities is the 'normality of misbehaviour': Social and religious values are of little relevance in everyday life; self-interest is paramount to public interest, a scenario that underlines the importance of ethical values and rule-of-law principles in preventing land conflict. If individual profit maximisation under a widespread absence of functioning institutions is the underlying reason for land-ownership conflict, then a capitalistic land-market associated with increasing land prices can be seen as a facilitator. As long as land has no monetary value ownership conflicts are rare.

### Fears and Desires

Like any egoistical behaviour, the taking advantage of functional deficits for the sake of reckless individual profit maximisation is based on emotional and material needs, which are a consequence of psychical fears and desires. Such psychical phenomena form the basis of land conflicts. Typical is existential fear (fear for continuing existence), which can result in extreme emotional and material neediness for shelter, or a longing for survival and self-esteem. This may sometimes result in desire for power and a strong need for independence, often expressed as accumulation of wealth. It is usually a combination of very strong emotional and material needs that allow people either to break (instituted) rules or to profit from institutional shortcomings. Land-conflict resolution should therefore look at the psychical fears and desires of those breaking the law or profiting from loopholes.

### Impact of Change

Institutional changes are conflict-prone and therefore tend to mark phases of increased land conflict. While some forms of land conflict can occur under different, and even stable, institutional framework conditions, others depend upon institutional change. Multiple sales due to legal pluralism are, for instance, typical of those slow institutional changes that lead to the overlapping of two systems. Likewise, illegal sales of state land are quite common in situations of either abrupt institutional change marked by a temporary absence of rules, or longer-term absence of a functioning legitimated institutional frame (i.e. during civil war or dictatorship). Changing framework conditions often provide the basis for land conflicts.

Natural disasters such as droughts and floods lead to rural-urban migration. Natural population growth results in increased demand for land, and consequently land prices. The introduction of a market economy endows land with monetary value, thereby eradicating traditional methods of land allocation. Increasing poverty makes it difficult to acquire land legally. And, last but not least, any institutional change causing a temporary institutional vacuum in the land market creates fears, desires, needs, interests, attitudes and

opportunities concerning land use and ownership that are no longer controlled and therefore easily escalate into conflict.

Poverty, institutional change and other changes in society (including war and peace) influence one another, provoking strong psychological desires and fears that result in extreme emotional and material needs. Looking at these from an analytical perspective, they can also be attributed to political, economic, socio-economic, socio-cultural, demographic, legal, administrative, technical (concerning land management), ecological and psychical causes. All are also included in the model presented in Figure 2: political, economic, socio-economic, socio-cultural, demographic and ecological causes are part of the changing framework. Legal, administrative and technical causes are summarised under institutional shortcomings.

#### Land Conflicts

Among the many different ways to classify land conflicts, the one based on the social dimension of a conflict is the most suitable of all, especially when it comes to conflict resolution. One possibility of classification offered by conflict research in this regard is distinction according to the social level at which a conflict takes place: inner-personal, interpersonal, inner-societal and inter-societal/international level. While in the case of land conflicts the inner-personal level can be ignored, the other three are very useful for classification. Land conflicts within one country will then occur at either the interpersonal or inner-societal level.

In the long term, land conflicts can only be resolved and avoided if addressed by an integral and system-oriented approach. Core elements of conflict resolution and prevention are therefore the establishment of a state under the rule of law and implementation of good governance to minimise abuse of power and corruption. Beyond this, integration is required of psychotherapeutic methods for active trauma counselling and reappraisal of historical injustice so as to restore missing trust in the state and its institutions. Further elements are functioning, regulative and constitutional institution of locally adopted land-markets, a transparent capital market and a co-ordinated system of arbitration boards and jurisdiction.

#### Preventive Measures

Good governance is of particular importance in this context. Criteria such as sustainability, subsidisation, equality, efficiency, transparency, accountability, public participation and security, if applied to land tenure and urban land management, form a good basis for development in developing countries to be relatively free from land conflicts. Tools and approaches to avoiding and resettlement of land conflict can be distinguished as preventive and curative measures. The former focus mainly on institutional framework conditions such as establishment and strengthening of constitutive and regulative institutions and establishment and control of an accessible and transparent capital market.

#### Curative Measures

Curative measures include a much broader range of activities, broadly divided into three types: (1) conflict resolution, (2) land management and (3) psychotherapeutic approaches. Conflict resolution, including moderation, mediation and arbitration can take place at different levels; it can be applied within the formal and within the informal sector, or even in mixed forms (hybrid structures). Conflict resettlement institutions can also be administration-based, be it state or traditional. Land management includes various ways of clarifying land rights and security of tenure. It embraces surveying and land registration, land consolidation, land readjustment, land sharing, land pooling, land-use planning, investments in the housing market (including housing for the middle-class, social housing, concessions, site and service programmes and site without service programmes), recovery of state assets and an increase in transparency and documentation of land conflicts, for example through state land inventories and GIS specially designed to document land conflicts.

Psychotherapeutic approaches are required because conflict over land, like any other type of conflict, often ends up in a vicious circle wherein the parties stick to their positions and unconsciously force each other to adopt increasingly extreme positions. People normally tend to project negative characteristics onto one another until at last the opposite party incorporates these. Reality becomes more and more distorted and the other party ends up carrying responsibility for all sorts of negative aspects of life; for example, squatters often point to the state as being responsible for all their problems, whilst the state considers them a handicap to any development.

In such situations it becomes necessary for both parties to change their perception of the other, so as to pave the way for equitable dialogue. This can be achieved by sociodrama. As it can not generally be expected that both parties do this together, they can at least do it among them selves, thereby experiencing the feelings of the other party and developing empathy for their position, behaviour patterns, interests and needs. As an alternative, street theatre and TV soap operas can be used to address the various types of land conflict people are typically involved in.

Land conflict can be minimised only if all approaches are combined as required by the specific case and adapted to the specific situation with respect to existing rules, organisational structures and overall cultural, political, legal, economic and conditions of the prevailing social framework.

#### Concluding Remarks

No matter how difficult concerted action might seem amid the chaos and confusion following conflict, land questions have to be dealt with as early as possible. Each land conflict needs its individual solutions, adapted to its local, regional, national and supranational political, socio-economic, cultural and power-related framework conditions. It depends on each specific case which of the tools and approaches presented here can or must be applied for effective solutions to land conflict.

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