Land use policies and markets in some selected African countries

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Abstract
Land use policies and markets in Africa are significantly different from those operating in many other continents. Many countries in Africa are characterized by reforming property rights institutions and burgeoning property markets. This chapter gives an overview of land use policies and markets in Africa as a whole before focusing on Tanzania and Kenya for a detailed examination of the evolution of land use policies and markets and other developments in the property sector. It will be shown that many African countries share a common land policy and property market evolution path that involves four periods, namely pre-colonial, colonial, post-independence, and post-Cold War. During the first half of the twentieth century, colonial governments introduced formal systems of land administration although they focused much on allocating productive land to settlers and plantation agriculture. Land and property markets started developing during the post-independence period and gained much ground after the end of the Cold War when many countries embarked on institutional reforms. The reforms have significantly enhanced property rights and promoted land and property markets. Market transparency is improving in many countries, thereby attracting international and regional investors. With more reforms of land policies and property markets, Africa will continue attracting more investors from around the world.

Introduction
Land use policies and markets in Africa are significantly different from those operating in many other markets. Many African countries are characterized by reforming property rights institutions and burgeoning property markets (Kusiluka, 2012). Changes in demographic and economic trends in many African countries have increased pressure on the need to reform and formalize many institutions. African cities are urbanizing at an average rate of 1.1 percent, young consumers are increasingly dominating economic life, and a middle-class income group is emerging (von Gaertringen, 2014; AfDB et al., 2016). Apart from giving an overview of the continent as a whole, this chapter uses Tanzania and Kenya as case examples to examine land use policies and markets, and other developments in the property sector.
An overview of land use policies and markets in Africa

Demographic and economic facts

Africa, consisting of 54 countries and measuring about 30.221 million square kilometers, is the third largest continent. Africa’s population stands at about 1.2 billion, with an annual growth rate of 2.6 percent, which is the highest growth rate amongst the continents (AfDB et al., 2016). With about 40 percent of the population living in urban areas, Africa is the least urbanized but one of the fastest urbanizing continents. Africa’s average GDP growth since 2001 has stood at over 5 percent (AfDB et al., 2016). The economy is largely commodity driven with agriculture, mining, and oil and gas sectors being the major drivers. Tourism is another fast-growing sector.

Land use rights and the evolution of land markets

Owing to the large number and diversity of countries, the continent has a considerable diversity in land ownership and administration institutions. Land use rights differ from one country to another. In many countries, rights to land are constitutional matters. With the relatively low level of urbanization, many people still directly depend on land for their livelihoods. Rapid population growth and urbanization further increase pressure on land resources, which underscores the need to put in place efficient land administration systems. In the absence of good policies and administration systems, land has been a cause of many conflicts for many countries. It is also noteworthy that most of the land parcels in many countries are not formally demarcated and registered. This limits their transferability and acceptability as collateral for loans (Cotula et al., 2006; Deininger, 2003).

Another notable aspect about land tenure in Africa is the dominance of customary rights. A large portion, especially in the rural areas, is owned according to traditional arrangements. In most cases land is owned along patriarchal norms, which sometimes deny women equal access to land (Kusiluka et al., 2011). However, these discriminatory traditions are increasingly being abolished as many countries enact new land policies and laws. The evolution path of African land and property markets is summarized in Figure 6.1.

Land policies and markets for many African countries have gone through three distinct periods; namely colonial, post-colonial, and post-Cold War. Before the colonial period most of the countries were characterized by very low levels of urbanization as most of the people lived in small villages or family groupings. There are no detailed records on individual countries’ land markets during the pre-colonial period. Between the late 1800s and the end of the first half of the twentieth century, many African countries were under European colonial regimes. It is during this period that many of the existing cities started taking the shape of modern urban centers.

Urbanization increased significantly when countries achieved their independence as many people started moving into urban centers in search of jobs and education. Many urban centers started being overwhelmed with rapid urbanization. Different countries adopted different political systems, ranging from socialism to dictatorship. Military coups characterized many governments, undermining democratic institutions. The end of the Cold War and economic hardships forced many countries to embark on reforming their economies. This entailed creating a conducive environment for private sector growth and secure property rights. It was during this period that many countries recorded noticeable progress in attracting private investment.
From Figure 6.1, it is clear that over the past century land ownership and utilization systems have evolved with time and with the influence of colonial institutions. Different interests in land were introduced during colonial times and modified during the post-colonial period. The most notable interests in land found in many African countries today include customary tenure, which is still dominant, various kinds of leaseholds, and few freeholds. Despite the evolution of land tenure arrangements, restrictions to land ownership by foreigners are consistently notable in many countries (Austin, 2010; Toulmin, 2009).

One of the main challenges facing Africa is land-grabbing, which is reported in many countries on the continent (Cotula et al., 2009). This is partly due to a lack of comprehensive land policies or the existence of weak institutional frameworks for some countries (EUC et al., 2010). Land-grabbing is both endogenous and exogenous in that both well-off individuals amongst Africans and large multinational companies tend to buy large tracts of productive land, leaving many indigenous people landless and destitute. Large-scale commercial agriculture, industrial uses, and land speculation are some of the main drivers of land-grabbing in Africa (GLP, 2010; Kusiluka et al., 2011).

Institutional reforms and property markets

Although institutional reforms are still ongoing, notable progress has been recorded, especially in developing market-oriented economic environments. Most of the recorded achievements can be largely attributed to the reforms introduced following the end of the Cold War. Despite the achievements, most of the property markets are still at their early stages of development. Apart from South Africa and a few other countries that are regarded as having stable markets, land and property markets in many countries are highly speculative, mainly due to lack of
market transparency. Average land prices in prime locations range between US$1,500 and US$2,500 per square meter (Knight Frank, 2015). Rentals for prime properties differ significantly from one country to the other. For instance, prime office monthly rent in Angola could go as high as US$150 per square meter while in Nairobi prime office monthly rents are around US$20 per square meter (Knight Frank, 2015).

Land policies and markets in Tanzania and Kenya

Countries’ overview

Tanzania and Kenya are both located in the East African region. The two countries together with Uganda are the founding members of the East African Community (EAC). Tanzania and Kenya have fundamental differences in terms of their land tenure systems and the historical institutions underpinning the evolution of the two land markets. There are many countries in Africa whose evolution path is similar to that of Kenya; there are also many countries with many similarities to Tanzania. The discussion of the two countries should therefore give an overall picture of land policies and markets found in many African countries.

The two countries have experienced rapid urbanization and have a young population, growing middle class, and a fast-growing private sector. These attributes are set against the backdrop of an environment that is defined by weak property rights institutions, highly imperfect property markets, and acute shortage of decent accommodation for various uses. Real estate business in these countries is predominantly defined by new development projects rather than trading of the existing stock of buildings. Besides, a large number of land parcels in these countries are unregistered, which inhibits land-based investment, productivity, and sometimes attracts land-related conflicts. Informal land and property markets accounting for more than 70 percent of the market are much more active, but remain opaque.

Agriculture remains the traditional sector of both economies. Some non-traditional sectors such as mining, tourism, and services are also growing fast. The two countries are among the African countries that have been attracting foreign investment. Each has relatively large populations and population growth. Favorable demographic details and trends for these countries coupled with their political stability increase their attractiveness to investors. Additionally, both countries have some of the famous African tourist destinations: the Serengeti, Ngorongoro Crater, Mt Kilimanjaro and Zanzibar in Tanzania; the Masai Mara, Tsavo, Mt Kenya and Mombasa in Kenya. Some of the key demographic and economic facts for the two countries are summarized in Table 6.1.

<table>
<thead>
<tr>
<th>Table 6.1</th>
<th>Key facts for Tanzania and Kenya</th>
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<tbody>
<tr>
<td><strong>Tanzania</strong></td>
<td><strong>Kenya</strong></td>
</tr>
<tr>
<td>Country size: 946,265km²</td>
<td>Country size: 582,650km²</td>
</tr>
<tr>
<td>Population: 53.5 million</td>
<td>Population: 46.1 million</td>
</tr>
<tr>
<td>GDP growth rate: 7.0%</td>
<td>GDP growth rate: 5.5%</td>
</tr>
<tr>
<td>Inflation rate: 5.6%</td>
<td>Inflation rate: 6.0%</td>
</tr>
<tr>
<td>Urbanization level: 30.9%</td>
<td>Urbanization level: 26%</td>
</tr>
</tbody>
</table>

Source: Compiled from a range of sources: Ministry of Lands 2009; AfDB et al., 2016; NBS, 2016
As summarized in Table 6.1, Tanzania is larger, more populous and more urbanized than Kenya. Both countries have relatively low inflation rates compared to many African countries. Similarly, both countries have high GDP growth rates, with Tanzania being slightly ahead but Kenya having a higher GDP. In each of the two countries, some significant progress has been made following economic reforms that are ongoing. The reforms have resulted in new land policies being formulated or significantly reviewed to promote and protect property rights. During the reforms, a number of policies and pieces of legislation have been enacted. Reforms have promoted formal land markets, which are attracting a number of private investors, both local and foreign. Although informal land markets are still dominant, efforts are directed towards developing land markets as an instrument to enhance investment and productivity in land, including improving its collateral value for securing credit (EUC et al., 2010).

Land policies and markets in Tanzania

As stated in the National Land Policy of 1995, all land in Tanzania is public land and vested in the president as the trustee on behalf of all citizens. All occupiers of land must do so by way of having a right of occupancy. A right of occupancy may be granted or deemed. Whereas certificates of granted right of occupancy can only be issued on surveyed lands, deemed right of occupancy is mainly for unsurveyed lands. Foreigners in Tanzania can only own land through certificates of granted right of occupancy or rights derivative of granted right of occupancy. Derivative rights are offered to foreign investors by the Tanzania Investment Centre (TIC). Foreigners can also lease land from holders of certificates of right of occupancy (Kongela, 2013). The maximum term of a right of occupancy is 99 years. The law provides for the possibility of term renewal upon expiry. A deemed right of occupancy, on the other hand, has no term limit.

Formal land ownership was introduced during German rule, prior to which land was owned according to different institutional arrangements of different tribes (Kusiluka, 2012). By the Imperial Decree of 1895, the Germans declared all lands in Tanzania (then Tanganyika), whether occupied or not, to be Crown land. Private individuals started owning land formally by way of leaseholds or freeholds. These were mainly foreigners who were engaged in plantation agriculture. After the end of World War I, Tanganyika became a Trust Territory under British Administration. In 1923, the British came up with the Land Ordinance, which provided that all land was public land under the control of the governor, and that no title to the occupation and use of any such lands was valid without the consent of the governor (Shivji, 1998). The legislation further introduced a new system of land ownership known as right of occupancy. Titles and interests created prior to the enactment of the Ordinance were not affected by the provisions of the Ordinance (James, 1971).

When Tanzania attained its independence in 1961 there were four types of interests in land: freeholds, leaseholds, granted right of occupancy, and deemed right of occupancy. In 1962, Government Paper No. 2 was issued to abolish freeholds. In 1969, Government Leaseholds (Conversion to Rights of Occupancy) Act No. 44 was enacted and all leaseholds were converted to right of occupancy. Since then, land ownership in Tanzania has been in the form of granted and deemed right of occupancy. In 1967, through the Arusha Declaration, a major ideological shift towards socialist policies was announced. The Enactment of Acquisition of Buildings Act in 1971 led to the nationalization of private rental properties whose market value was above Shs. 100,000 (then equivalent to US$14,000) or whose rental value was above Shs. 833.3 per month (Meredith, 2006).

Institutional reforms in the land sector in Tanzania have significantly improved tenure security and property rights, which is essential in attracting private investment. Tanzania has a

As a result of the reforms, land and property markets have been fast evolving. The private investment environment has improved significantly, thereby attracting a considerable number of private investors. Besides, the burgeoning real estate markets reflect economic growth, rapid population growth, and the growing demand that is created by the expanding middle class. Both public and private investors have been increasing their investments in the sector. In Tanzania, pension funds and the National Housing Corporation (NHC) dominate the market. Real estate accounts for about 21 percent of pension funds’ portfolio allocations in Tanzania. High demand for office space and retail space have attracted some commercial banks to provide partial short-term funding for some commercial property projects. Large-scale retail projects are also emerging in all large cities. However, in the absence of long-term financing, private developers still have difficulties raising funds.

Housing is one of the sectors that is also growing very fast. Pension funds and the NHC have attempted to undertake affordable housing projects but not on a scale that is capable of making a significant difference. Lack of housing finance has forced many people to build their homes on an incremental basis using family savings. Building a house may take more than ten years, and in many cases families move into semi-finished houses and continue with the construction while occupying the houses (Alananga et al., 2015; Kongela, 2013). Private developers have mainly focused on upmarket residential units fetching prices of above US$150,000 or renting at above US$500 per month.

**Land policies and markets in Kenya**

In 1895 Kenya became a protectorate under the British East African Protectorate with the powers to enact policies and laws under the Crown. It is from this time that the indigenous community land ownership and administration system started changing in favor of colonial master systems. The effects of this have been far-reaching and are still observable today. In Kenya this is the period during which settlers amassed large tracts of land. Unlike Tanzania, after attaining its independence in 1963 Kenya kept some of the land policies and laws that were enacted during the colonial period (McAuslan, 2013). By so doing, many native and poor Kenyans were denied access to prime or productive land. For many years before and after independence, demand for the restitution of land in Kenya has been unwavering. Even after independence, no adequate efforts were made to correct the earlier mistakes. A few individuals – settlers and influential citizens – continued to own large tracts of productive land.

After many years of debate, in 2009 Kenya enacted a comprehensive national land policy (Harbeson, 2012). The policy, among other things, sought to redress both historical and contemporary land related injustices and problems. The policy provided for the enactment of several statutes and the establishment of land administration institutions. Some of the laws that were enacted in the course of the implementation of the National Land Policy and the new Constitution of Kenya that was promulgated in 2010 include the Land Act of 2012, the Land Registration Act of 2012, and the National Land Commission Act of 2012.
All land in Kenya is vested in the people of Kenya collectively as a nation, as communities and as individuals (Manji, 2014). Three main categories of land exist in Kenya, namely public land, community land and private land. The National Land Policy of 2009 clearly distinguishes the three categories of land. Public land refers to all land that is not private land or community land and any other land declared to be public land by an Act of the Parliament. Community land refers to land lawfully held, managed, and used by a given community as defined by the Land Act. Private land refers to land lawfully held, managed, and used by an individual or other entity under statutory tenure. The National Land Policy further provides that ownership of land in Kenya will, apart from customary land tenure, be through freeholds and leaseholds. However, freeholds are increasingly being replaced by leaseholds as foreigners are no longer allowed to have freeholds. Foreigners can own land through leaseholds of a term of up to 99 years.

Kenya is one of the few countries in sub-Saharan Africa that have attracted many private investors. It is estimated that more than 100 multinational companies have their offices in Nairobi (JLL, 2016). The country has attracted international equity investors and private real estate funds, which have mainly focused on acquisition of prime properties. Some of the real estate funds investing in Kenya include Actis, Sanlam, Stanlib, and Fusion Capital. Nairobi remains the most advanced real estate market in the Eastern African region and Kenya is the only country that has attained a semi-transparent status (JLL, 2016). Most of the large international real estate consulting firms such as Jones Lang LaSalle, CBRE, Cushman and Wakefield, and Knight Frank have their regional offices in Nairobi.

Other market developments in Tanzania and Kenya

Speculative land prices and urban sprawl

Land speculation is rife in Kenya and Tanzania. In many urban centers land prices are very high, which denies many people access to such lands. For instance, bare land price in prime areas in Dar es Salaam ranges between US$1,000 and US$1,500 per square meter. For secondary residential locations the price per square meter ranges between US$15 and US$30. This is one of the reasons for sprawl in most urban centers in the two countries. Urban sprawl presents a problem in providing basic services such as clean water, sanitation, electricity, paved roads, and security to scattered neighborhoods (Kiunsi, 2013).

Despite having legal provisions discouraging land speculation, the problem is still pervasive. For instance, in Tanzania a holder of an urban land title is required to complete development of the land within 36 months from the date of the commencement of the lease term. The main limitation of this legal requirement are the difficulties that the majority of the people have in raising funds for developing their land. Besides, this condition applies only to land parcels that have titles or letters of offer while in practice most of the land parcels are held without titles.

Development of capital market-based property investments

Broadly, institutional reforms in African countries have seen the development of capital markets institutions. Many countries have stock markets, although most of the stock markets are still at the early stages of development. Nairobi Stock Exchange (NSE) is the largest stock market in East Africa. Until 2015, the real estate sector had not taken advantage of the local capital markets. Both Tanzania and Kenya introduced REITs in 2015. The first REIT in Kenya, namely Stanlib Fahari I-REIT, launched its IPO in November 2015. It was followed by Fusion Capital in June 2016. Stanlib Fahari I-REIT is listed at NSE, which enhances its governance
and accessibility to a wider range of investors. Watumishi Housing Company is a private REIT and the only one in Tanzania; the future plan is to go public and get listed at Dar es Salaam Stock Exchange (DSE).

**Development of mortgage markets**

Property market sector growth is supported by the emergence of primary mortgage market institutions. Kenya’s mortgage market is the third most developed in sub-Saharan Africa after South Africa and Namibia (IBRD, 2011). While mortgage lending in Kenya accounts for about 2.5 percent of the GDP, mortgage lending in Tanzania accounts for only 0.46 percent (IBRD, 2011; BoT and TMRC, 2016). Mortgage lending rates in the two countries have varied from time to time but they have mostly reflected treasury bills and bonds rates. The lending rates in Tanzania have ranged from 14 percent to 19 percent reflecting treasury bills rates, whose yields reached their highest level, 17.8 percent, in 2015 (BoT and TMRC, 2016). Low levels of financial literacy for the majority of the people is another reason for low mortgage take up, especially in Tanzania. To address some of the problems, some steps have been taken including establishing a mortgage liquidity facility for primary lenders and increasing public education and awareness on mortgage literacy.

**Secondary property markets**

Secondary formal property markets in both countries are still developing, but Kenya has a more vibrant market when compared to Tanzania. Both countries have land registries, however they only cover transactions involving surveyed and registered lands. It is noteworthy though that informal property markets are much more active than formal markets. It is thus important to consider them because they play a much more important role as market movers. Tracking of transactions in the informal market is more complicated. However, both countries have a well-established real estate valuation practice. Ardhi University in Tanzania and the University of Nairobi in Kenya have been offering undergraduate programs in real estate valuation since the 1970s. Each country has a specific law catering for valuation practice. Recently, the Royal Institution of Chartered Surveyors (RICS) has opened its regional office in Nairobi. Moreover, Kenya has a law catering for estate agency business; Tanzania is in the process of enacting a similar law. Tanzania is also in the process of setting up an institutional framework that will oversee the entire real estate sector including collecting, processing and publicizing key sector data.

**Emergence of satellite towns**

The tendency is emerging for some large developers to embark on satellite city development. The satellite town concept seems to be sensible considering the exorbitant land prices within the cities. Besides, many of the city centers have obsolete infrastructure and are characterized by traffic jams. Satellite cities seem to give a solution to some of these problems, as they are located at the outskirts and have adequate infrastructure provisions. Tatu city and Konza city, both in Kenya, are the largest satellite city projects in East Africa. Kawe city is one of the satellite cities being developed in Dar es Salaam. Two satellite cities are planned to be developed on the outskirts of Arusha.

However, satellite towns in these countries are still a new phenomenon. There are no success stories yet from which one could derive optimism. The main criticism for the satellite city
concept is that their designs are copycats reflecting Western lifestyles and many of them focus on expensive units, making them exclusive to the rich. Even the pre-sales are apparently based on speculative prices and projections. Some of the satellite city projects are likely to end up as non-performing projects due to their disregard for consumer taste.

**China’s influence in Tanzania and Kenya**

As Western governments and institutional investors from those countries are hesitant to engage in large-scale investment projects in Africa, the government of China and some Chinese companies are heavily engaged in different sectors, including construction and real estate (Rothenberger, 2010). Pre-dating the recent flow of Chinese funds to Africa, East Africa, and especially Tanzania, has for many years enjoyed cooperation with China. This dates back to the 1960s when Tanzania decided to follow socialist policies. The first large project undertaken by China in Tanzania was the construction of a railway connecting Dar es Salaam in Tanzania and Kapri Mposhi in Zambia (TAZARA). The railway, which is 1,860km long, was completed in 1975 (Monson, 2009). Over recent years, China has been involved in many of the large infrastructure projects, including the construction of a natural gas pipeline, upgrading railways to standard gauge, and construction of roads. Some of the future projects in which China is heavily involved include the Mombasa to Nairobi railway upgrading in Kenya and the planned construction of a more than US$10 billion port in Bagamoyo, Tanzania (Knight Frank, 2015).

Recently, Exim Bank of China has agreed to provide a concession loan to the government of Tanzania to finance the construction of a railway that will connect Dar es Salaam and the hinterlands, including Rwanda, Burundi, and the Democratic Republic of Congo. Exim Bank also financed the construction of a 532km gas pipeline from Mtwara to Dar es Salaam, which was completed in 2015; the project is estimated to have cost US$1.2 billion. China also financed and undertook the construction of Tanzania’s new football stadium and an international conference center, both located in Dar es Salaam. AVIC International and CJRE Estate are among the Chinese real estate developers in Tanzania.

**Summary**

Many African countries share a common land policy and property market evolution path. Prior to the colonial period, most of the countries did not have formal property markets and land administration institutions. Besides, very little is documented about land issues during the period. The colonial governments introduced formal systems of land administration, but in most cases customary systems were retained, especially for rural lands. As such, many African countries still maintain a dual land ownership system, consisting of statutory and customary land tenure systems.

Land policy and legal reforms that have been taking place in many countries around the continent in the process of institutional reforms have, among other things, significantly enhanced property rights and thus promoted land and property investment markets. Market transparency is improving, which has attracted international and regional investors and real estate consulting firms. Chinese firms are investing heavily in many countries in Africa. With more reforms of land policies and property markets, African countries are likely to attract many more investors from around the world.
References


