

# Appraising institutional challenges in the early stages of development

## Chapter 9: Identifying institutional obstacles to structural transformation: state capacity and property rights

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## **Chapter 9: Identifying institutional obstacles to structural transformation: state capacity and property rights**

After having examined the role of politics in spurring or slowing down structural transformation and development, we are now ready to probe the issue of state capacity. This will complete our discussion of the role of governance-related institutions. In a second step, we will then look at the second generic type of institutions deemed crucial for development: namely property rights.

### **9.1 Weak state capacity**

The following discussion is articulated around three major issues: bureaucratic failures; inadequate incentives and professional norms (as illustrated by the education sector); and the ineffectiveness of the judiciary – discussed in that order.

#### **Bureaucratic failures**

As we have done in the preceding chapter, we start by considering the successful experiences of Taiwan and South Korea before attempting to understand the sources of bureaucratic failures in three in-depth case study countries. We follow a general approach to the problem of state capacity which sees it as a problem of incentives and norms rooted in politics. In the words of Stuti Khemani (2019): ‘Politics fundamentally shapes the culture of bureaucracy all the way to the frontlines of service delivery. Processes or platforms of political contestation, and the leaders it produces, from those at humble local levels, such as in a village, to those occupying the national seats of power, have implications well beyond elections and politicians, through how they influence the incentives, beliefs and norms (or expectations of how others are behaving) of state personnel and thus, the day-to-day functioning of myriad agencies within the bureaucracy’ (pp. 2–3).

#### **Positive lessons from Taiwan and South Korea**

Taiwan and South Korea were not only endowed with a determined and enlightened top leadership but also with an effective bureaucracy. In this respect, they were fortunate to inherit from the Japanese colonial power a modern, meritocratic, and authoritative bureaucratic structure that fitted well with the nature of the new regime. Recruitment and promotion criteria in the civil service thus continued to be based on merit, state employees received lifelong tenure, professional norms were strong, and corruption was limited. In Taiwan, moreover, the jobs of state bureaucrats, down to quite low levels, were occupied by newcomers from mainland China, which automatically ensured political loyalty. Being an alien force, the new bureaucrats developed a corporate identity which was all the stronger as they had to identify their own interests with those of the state, which was their protector. These were obviously ideal conditions for a clean, cohesive, and competent bureaucracy. Another favourable factor consisted of the overarching responsibility of the Natural Resources Commission, the agency in charge of the country’s industrial policy. Made up of the best experts available, it acted as a unique centre of command under the direct supervision of the supreme leader. Here, too, historical circumstances played a key role since the Taiwanese leadership had learned bitter lessons from their defeat at the hands of

Mao's Communists in China. Foremost among the causes of that defeat, as they identified them, was the existence of a fragmented and politicised bureaucracy, which, moreover, was too compliant with the requests of the private interests of powerful business lobbies.

In South Korea, as we have seen earlier, the commanding responsibility for economic development rested with the Economic Planning Board (EPB), and the external threat posed by the close presence of the Communist regime of North Korea, which benefited from an early industrial base which South Korea did not possess, was a powerful incentive to proceed fast and with maximum coherence and efficiency. Characteristically, both the Natural Resources Commission in Taiwan and the EPB in South Korea were modelled on the famous Ministry of International Trade and Industry of post-war Japan. Filled with high-quality and highly motivated bureaucrats – a legacy of the strong morals inherited from the classic bureaucrats of the pre-war period – this agency applied administrative guidance in order to push growth in a desired direction, and 'managed' competition accordingly.<sup>1</sup>

Another important determinant of bureaucratic effectiveness in both Taiwan and South Korea deserves to be underscored: the top layers of their bureaucracies struck clever, incentive-based deals with private business firms, as though they had understood the basics of modern contract theory. Their general approach thus provided that special advantages granted to these firms (licences and permits, export loans, tax exemptions, subsidies) were conditional on their demonstrated ability to achieve the objectives assigned to them (export targets, for example), and to become profitable within a reasonable span of time. Targets could be modified to allow for changes in the economic environment. Moreover, instead of awarding monopolistic positions, they tended to impose competition on the private sector so as to bring the discipline of the market to bear on its firms. In short, the stimulus of internal competition was systematically added to the stimulus of external competition. In South Korea, incentives to comply with production and export targets in heavy industry were reinforced by tournaments organised among the *chaebols*. The government was thus able to overcome the information asymmetry which, in fully new export ventures, prevents the effective monitoring of firm performance by the executive and other state entities. For two *chaebols* committed to some new industrial export target, the tournament formula made it suboptimal for either not to do their best to reach their target. This is because they were keen to avoid the prospect of failure, and of practically going bankrupt, while the rival company achieved success.

Outside the industrial sector, and in line with the approach of inclusive development, careful attention was devoted to the creation of wisely conceived institutional vehicles for the active support of agricultural and rural development (training institutes, cooperatives, promotion of innovation, etc.). Worth noting here is the fact that bureaucrats carefully avoided substituting

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<sup>1</sup> In the terminology of Okuno-Fujiwara (1997), the Japanese model, which had its roots in the tightly regulated and controlled economic system that developed during the war, is of the *relation-based government* type. The difference between such a system and *authoritarian government*, such as found in Taiwan and South Korea, lies in the degree of centralisation of the market's administrative guidance: while bureaucrats are tightly controlled by those in power in an authoritarian government, they have a stake in the power structure of the ministry for which they work in the jurisdictionally decentralised government of a relation-based system. Under the latter, since the career bureaucrats of the ministries have relatively large influence over decision-making, the challenge for the government is to achieve proper coordination between different ministries and bureaus. This is typically done through negotiation (pp. 393–402). The expression 'relation-based' is derived from the fact that, because bureaucrats have less power when not backed by an authoritarian and centralised regime, they rely on long-lasting relationships with agents (business owners or managers, for example), and the associated reputation effects, to obtain compliance.

themselves for private middlemen, letting competition percolate down to local levels. At the same time, producer cooperatives were encouraged to benefit from scale economies in modern input procurement, output transport and marketing, veterinary services, training, and the adoption of new technologies.

It is also remarkable that the move towards economic liberalisation (and even political liberalisation in the case of Taiwan) was authoritatively imposed by the state itself. This radical policy reform was initially opposed by important sections of the population: the business community in particular. It was only at a later stage, when the benefits became more and more manifest, that trade liberalisation was gradually accepted by important group coalitions, and that the prescient decision of the state authorities came to be widely praised. Incidentally, this example has been used by Fernandez and Rodrik (1991) to illustrate their argument that, when there is uncertainty about the distribution of the costs and benefits of a reform, a radical move from above may well be justified.

### **Key aspects of bureaucratic failures in Bangladesh, Benin, and Tanzania**

That the experiences of Taiwan and South Korea were rather exceptional is borne out by our case study material. A major institutional deficiency emerging from this material appears to be the serious lack of coordination between different ministries, resulting in confused, overlapping, and poorly enforced regulations. This problem is often ascribed to poor information-sharing, itself caused by the absence of good communication equipment. Here we want to stress another aspect that is more in line with a political economy approach. In the very logic of political patronage, members of the government are inclined to view their ministry as their own fiefdom: that is, they see it as a source of rents which should naturally accrue to them for personal appropriation and for redistribution to the network of their supporters and brokers. Combined with funds obtained from state budgets and from business oligarchs (see Chapter 8), rents extracted from the bureaucracy through appropriate channelling up help politicians to meet the costs of electoral competition and nurse a constituency between elections.<sup>2</sup> Under these conditions, the sharing of information and any form of cooperation between different parts of the executive tend to be obstructed, with the effect of seriously undermining the coherence and the effectiveness of development

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<sup>2</sup> The mechanics of redistribution may vary from one context to another. One context in which it has been precisely analysed concerns the centralised bureaucracies of India (Wade, 1985). Bribes are extracted by frontline workers from users of public services – which is rather easy to do for ministries or departments such as the Interior (the police department, in particular), Agriculture, Land Planning, Finance, Public Works – and then channelled up the hierarchy to more senior officers and politicians. For instance, irrigation engineers may raise vast amounts of illicit revenue from the distribution of water to farmers and the awarding of contracts to building entrepreneurs (Wade, 1982). The channelling up takes the form of successive cuts at the different levels of the bureaucratic machinery. But there exists another widespread mechanism, which Robert Wade calls transfer sales, whereby a desirable administrative post (or location) is purchased by an officer who recoups his/her outlay through the sale of the posts of subordinate ranks. This chainlike payment system, which starts at the lowest levels, goes up to the chief of the administration and the minister. To distinguish it from 'parochial corruption' (Scott, 1972), Wade labels it 'market corruption'. Whereas under the former, ties of kinship, affection, caste, and so forth determine access to the favours of the power-holders, under the latter advantages are granted to those who pay the most, regardless of who they are (Wade, 1985: 468). It is rather ironic, according to Wade, that relatively frequent transfers inside the state machinery, which are now part of the corruption mechanism, were a deliberate strategy used by the British colonial administration to combat corruption (p. 488).

policies. These problems of coordination come on top of the costs potentially arising from the fact that the generation of illicit income may not be conducive to economic efficiency.<sup>3</sup>

Land laws and their implementation in Benin are an example that comes to mind here. Reforms of land tenure have proven unbelievably complex, volatile, and their path non-monotonous. One important reason for this is to be found in the assignment of responsibility for land regulation to multiple agencies, and the continuous shifts of missions between these agencies. The Ministry of Agriculture, the Ministry of Town Planning, and the Ministry of Finance have been the main contenders in regard to playing a major role in dealing with land matters. At a lower level, rural municipalities have strongly resisted attempts to reduce their own land prerogatives. For example, thanks to their efforts, missions which belonged to the National Agency for Land Administration under one law were shifted to them under a subsequent law. Rural municipalities also successfully opposed the officialisation of rural land transactions, which would have implied the end of sale conventions, of which they were in charge. Like the customs service and the tax administration, the land administration is the object of fierce political struggles because of the huge rents that its control can potentially create. Decisions in these strategic public sectors have high stakes for powerful groups – such as traders and businessmen for the former two, and notaries, barristers, architects, and land surveyors for the latter – which are therefore ready to pay to obtain decisions that are to their liking. Payments are direct when they are made in the form of bribes to officials in charge, or indirect if they consist of donations to the political party which is in control of the administration or the service concerned.

When elections are won by different parties, or by different factions belonging to the same (dominant) party, time-varying allocations of key ministries or public agencies will not bring an end to corruption as long as the political game continues to be played according to the rules of clientelistic politics. What may change, however, are the laws and regulations enacted by the ruling government. And this is a serious problem to the extent that changing laws and regulations can cause uncertainty, itself a source of disincentives to invest. This possibility is again illustrated by land legislation in Benin where new laws involved backtracking on previous ones, or introduced additional confusion.

Another reason why land laws are unenforced in Benin lies in a misalignment between the law and state capacity: this happens when a complex law is enacted for which the state does not have the administrative resources to ensure effective implementation. Politics may also play a role here if complicated laws are enacted in the full knowledge that their implementation will be difficult, or if they serve to satisfy contradictory interest groups without much concern for the actual enforceability of the legal compromise. The latter possibility is especially likely when formal rules aimed at uniformising and simplifying the diverse customary practices and norms found on the ground run counter to informal and local power structures. The difficulty of reconciling the two points of view is one key issue involved in nation-building, as mentioned in Chapter 8. It not only concerns land matters but also family and other spheres of everyday life. Conflicts thus easily erupt when formal laws are guided

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<sup>3</sup> Thus, in the case of irrigation investigated by Wade, engineers have an incentive to make the water supply more insecure (in the short term) to increase the rents extractable from farmers while, on the side of maintenance, their interest is in providing low-quality maintenance despite their official duty to ensure proper maintenance of the system (Wade, 1982: 314).

by international norms borrowed from advanced Western countries, which exert direct and indirect pressures on poor countries to ensure their adoption.

As examples, we can think of all the laws that confront deep-rooted informal or customary practices, such as laws that prohibit early-age marriage or polygamy (as in many West African countries), laws that prohibit rural land sales above a certain (low) threshold, that prescribe official authorisation for the purchase of rural lands, or that mandate that the owner of an uncultivated landholding rent it out (as in Benin). In these instances, institutional dysfunction at the state level arises not from sleaze and rent-seeking but from ideological motives or external pressures to adopt laws which, being ill-conceived and out of touch with reality, are almost doomed to be unenforceable. Bureaucrats in charge of their implementation face an impossible task, or they are compelled to resort to brutal force, which people will try their best to circumvent through various stratagems.

In Tanzania, coordination failures at the level of the administration bear strong similarities to those noted for Benin. In land matters, for example, laws are even more complex and confusing than in Benin, which is partly due to unresolved tensions and vacillation between two objectives: protecting small and medium-sized landholders and encouraging investment by large agro-processing export companies. Such tensions are institutionally reflected in the existence of a dual tenure system that will be explained later. Institutional overlaps are found at the levels of both the land administration and the land dispute settlement systems. To illustrate the former, while land officers in the local government authorities are paid by and report to superiors in the Ministry of Land, Housing, and Human Settlement Development (MLHSD), they simultaneously execute functions for local governments, which themselves fall under the responsibility of the President's Office. As for the latter, at the lower level the village land councils and the ward tribunals fall under the responsibility of local government authorities, but, right above, the District Land and Housing Tribunals are governed by the MLHSD, and, at the top, the High Court (Land Division) and the Court of Appeal fall under the judiciary. By contravening the principle of the separation of powers, this institutional set-up creates serious problems of accountability.

Examples of multiplicity and overlap of institutions are easily found in other parts of public administration too. Thus, the National Land Use Planning Commission is largely redundant due to the simultaneous presence of the Direction of Urban and Rural Affairs in the Ministry of Agriculture. There is a clear lack of cooperation between the Tanzanian Revenue Authority, responsible for tax collection, and the Minister of Finance, which lays out the tax schedules. Furthermore, the production and distribution of electricity is managed by a public monopoly, TANESCO, but is regulated in parallel by the Ministry of Mining and a regulatory agency (ERUWA), the missions of which are overlapping. As a last example, the demarcation between the mandates of local government executives and those of central government-appointed officers is often blurred, while the relationships between local government authorities, the Prime Minister's Office, the Minister of Finance, and various other ministries are extremely intricate. If it is sometimes hard to retrace the origins of these dysfunctions, the effects are almost always negative. Thus, EWURA may have its recommendations – say, about the pricing of electricity – overturned by a Presidential fiat, even though those recommendations were grounded in serious work performed by experts. And firm managers do not tire of complaining that they must obtain approval from an abnormally large number of government agencies before they can market a new product or service.

Turning now to Bangladesh, we find a country plagued by essentially the same problems as those discussed above. To illustrate, the education sector is riddled with confusing and sometimes conflicting divisions of responsibility between multiple actors. Thus, with respect to primary schools, overall ministerial control lacks effectiveness because three main ministries and several smaller authorities are entrusted with management roles. Added to this dysfunction are tensions and contradictions arising from the devolution of responsibility across central, regional, and local authorities. In these conditions, chains of responsibility and accountability are unclear.

It is typically because the multiplication of ill-coordinated agencies, departments, or services is a result of the desire to create and entrench niches where rents can be earned by state agents that reform of the public administration faces stiff resistance. Thus, in spite of two Public Service Reform Programmes, no clear sign of consistent progress has been detected in Bangladesh. The culture of the recruitment of personnel on other grounds than ability and skills, or of promotion based on seniority or partisan links rather than merit, has largely persisted. In addition, shirking behaviour, embezzlement of state resources, and bribe-taking remain widespread. Poor peer monitoring and absent or perfunctory supervision are the most immediate causes of this predicament.

In addition to a lack of coordination between different ministries and administrative units (which is again particularly evident in land matters), pervasive corruption at all levels of the civil service, and low transparency of decision processes, an additional problem undermining state capacity is the frequent meddling of the highest state authority in administrative decisions, such as we have seen for EWURA in Tanzania's electricity sector. The financial sector, which is severely dysfunctional, epitomises the adverse effect of this last factor. In particular, the lack of even formal autonomy of the central bank is perhaps the most egregious example of institutional impediments to development in Bangladesh. The Governor of the Bangladesh Bank is thus in a clearly subordinate position vis-à-vis the government and the president and, given the close links between state and business, vis-à-vis private bankers as well. Subservience to private interests has become even more pronounced as the Bangladesh Association of (private sector) Banks, has recently gained increasing political influence. As a consequence, regulation of the whole banking sector is essentially *ad hoc* and typically unable to control the numerous malpractices committed by the country's commercial banks. The dual authority ruling over the banking system – state-owned banks are governed by the Banking Division of the Ministry of Finance, while private banks are under the purview of the central bank, itself under the thumb of the presidency – is an additional factor that causes ineffectiveness in the regulation of the whole sector.

In the light of these major institutional failures, it is not surprising that the banking sector in Bangladesh, despite its undeniable role in financing the expansion of the textile industry, has shown very poor management performance. In 2017, Bangladesh thus occupied a miserable 147th position out of 179 countries according to the international Z-score, an indicator of the probability of default of the entire banking system. Its Z-score was also the lowest among all South Asian countries. The main factor responsible for this disastrous situation is the low quality of the sector's lending operations, which is itself the result of regulatory and policy capture: bankers are subject to political pressures to grant unproductive loans, or loans which they know will never be repaid by the borrowers. In addition, cases of embezzlement through legal insider lending – i.e. to the bank's owners or their family – have been reported. In such an unhealthy environment, non-performing loans (NPLs) are a major concern: while



representing 25% of outstanding loans in the early 1990s, their proportion shot up to an astronomical 41% in 2000.

Effective reform measures were then applied, in part under the pressure of the International Monetary Fund, but also as part of an anti-corruption policy implemented at that time by the Bangladesh Nationalist Party government. As a result, the ratio of NPLs was successfully brought down to a reassuringly low figure of 6% by the late 2000s. However, because the root cause of the problem, which lies in the political system of patronage prevailing in the country, was left untouched, the downward trend was soon reversed as the proportion of NPLs practically doubled during the following decade. Even more worryingly, while NPLs tended to be initially concentrated in state-owned banks, in recent years they have been on the rise in private commercial banks too. Besides negatively affecting the banks' prudential ratios, these bad loans have forced the banks to raise their borrowing rates, thus discouraging private investments outside the privileged sectors (the textile industry, in particular) which have continuously enjoyed exceptionally favourable terms. To this shortcoming, we must add the frequent need for monetary injection into state-owned banks or the bailouts of private banks.

### **The role of incentives and norms: the example of education**

Education is a key factor of development, and this is even more true today for poor countries in need of production niches in high value-added products and services. It is undeniable that enrolment rates at various levels of the education sector have significantly increased in many poor countries during the last decades. However, the achievement of high rates of enrolment and completion of different cycles is a smokescreen if the level of skills acquired in the education process remains low. In stark contrast to South Korea and Taiwan, where education performance has been remarkable at low, medium, and high levels, and in technical and scientific fields in particular, our sample of four poor countries (Bangladesh, Benin, Mozambique and Tanzania) exhibit dismal education records if we judge by learning outcomes. Especially worrying are the indicators measuring literacy, numeracy, and writing skills for children who have completed primary school. This situation, sometimes termed a 'learning crisis', is not exceptional since similar results have been found for other countries, particularly India and Pakistan, which are close neighbours of Bangladesh. The latter country will receive special attention below.

Below we discuss the causes of poor performance in education under three different headings: weak state capacity, absenteeism, and low teacher quality. Before turning to this task, it is worth stressing that in all these respects Taiwan and South Korea have done very well. In particular, from the beginning of the development process, education was considered a top priority by the political rulers. Moreover, an effective and coherent administration was put in place to manage it and monitor its progress. Equally noteworthy is the strong demand for education among Taiwanese and Korean citizens, whose preferences are highly skewed toward their children's training. This implies that, like in many East Asian countries, parents, and even poor parents, are ready to incur substantial sacrifices in order that their children can get a proper education and boost their income prospects in life. Given the foregoing characteristics, it is not surprising that both the quality and the social status of teachers in this region of the world are remarkably high, and that teachers and school directors exert great efforts to fulfil their duties.

## **Weak state capacity and institutional dysfunction**

The education sector is typically an area where it is uneasy to disentangle institutional dysfunction from limited state capacity (*stricto sensu*). Still, a useful distinction can be made between input amounts and efficiency in their use. In many developing countries, including our sample countries, because of insufficient state budgets allocated to this sector, input indicators reflect a situation that is plainly unfavourable to educational quality: very high pupil–teacher ratios, very high numbers of pupils per classroom, a shortage of teaching materials, and a low number of schools, which forces many children to travel long distances, etc. Except when the country is too poor to finance a vibrant education sector, and therefore needs external assistance, deficient funding of the school system is attributable to low public spending, as a result of low general taxation and/or the low ranking of education within the list of government priorities. While Mozambique, where international donors provide key financial support for education, offers a good illustration of the former situation, Bangladesh comes to mind as a striking example of the latter. In Bangladesh, indeed, not only is general taxation exceptionally low as a percentage of GDP, since the pressure of powerful business lobbies on the government to limit taxes is so strong, but the country also devotes comparatively small amounts of public money to education – primary education in particular. The consequence of these two features combined is that Bangladesh has one of the lowest ratios of public expenditure on primary education to GDP in the world (significantly less than 1%). Interestingly, major actors in the country formally agree that this situation ought to be remedied and taxes significantly increased. Yet in practice everyone behaves as though they are satisfied with the present equilibrium characterised by low taxes and low public expenditures. This is because, like in a prisoner’s dilemma, everyone would like the other actors to bear the brunt of higher taxes, while benefiting from better public goods.

The institutional dimension of the human capital problem relates to the effectiveness with which inputs, however small or large, are used in the education process. Institutional dysfunction generally arises from deficient incentives, absent or weak professional norms, and the power structure. In the following, we illustrate these three possibilities under the headings of two major problems: absenteeism of teachers and school directors, and poor teacher quality and training.

### **Absenteeism of teachers and school directors**

A recurrent and distressing cause of low education performance is the pervasive absenteeism of teachers and school directors, as well as their lack of punctuality. While the rate of teacher absenteeism in primary schools was relatively low in Bangladesh in 2006 (16%, compared to 25% in India), it was estimated to be as high as 31% in a survey of Tanzania’s schools in 2014. The latter figure is of the same order as the rate of 27% observed in Uganda in 2006 (Chaudhury *et al.*, 2006). In Mozambique, the situation is even worse, with a rate of around 45% for both primary school teachers and directors in the same year. In addition to being frequently absent, teachers in these schools have the bad habit of arriving late, or leaving early, so that many pupils in the country are losing more than 50% of the learning time they are entitled to, as a result of late start times, early closing, and extended recesses. These are astronomical figures and the question immediately arises as to the reasons behind such widespread non-compliance with contractual obligations on the part of frontline agents of the education system. Note that the situation appears significantly grimmer in the health sector: the rates of absenteeism estimated for primary health centres

in 2006 were much higher than in primary schools: reaching 40% in India and Indonesia, 37% in Uganda, and 35% in Bangladesh (Chaudhury *et al.*, 2006).

A first possible cause of absenteeism is low or irregularly paid salaries, which compel these agents to take up side jobs that distract them from their primary duties. But this cannot be a complete explanation since the phenomenon can be observed in situations where the teacher salaries are well above the average local earnings. A second explanation is the absence of professional norms ensuring that the agent is internally punished when they do not fulfil their duties: say, by being made to feel guilt or shame in front of peers, parents, and others. In this respect, there are obvious differences between South Asia, Africa, and some countries in Latin America, on the one hand, and East Asia, where education is highly prized, on the other hand.

A third explanation is the absence of effective monitoring, which has the consequence that defaulting agents cannot be externally punished, thus encouraging them to act with impunity. This mechanism is likely to be interlinked with the previous one in the following sense: adequate social norms are prevented from emerging if a dutiful teacher who starts by abiding by the contract gets discouraged by seeing that others around him (her) are not sanctioned when they violate the terms of their contract. In game-theoretic terms, agents' behaviour follows conditional reciprocity, and the bad equilibrium in which everybody feels free to act according to their own selfish interests comes into existence.

A fourth way to understand school dysfunction relates to individually rational behaviour. Thus, if many people do not perceive significant returns to education for their children – typically because they live in a region where there are no job prospects in the formal sector of the economy – they will not send them regularly to school, especially so if they can employ them at home and/or teachers are badly trained and, hence, of low quality (see the next subsection). As a consequence, parents may not consider teachers as socially useful specialists, and the latter lose their own motivation to regularly attend to their duties. In these conditions, professional norms of regular attendance fail to get established. In other words, a link is likely to exist between the formation (and maintenance) of norms and the intensity of the demand for education.

Finally, contract-breakers may feel protected by locally powerful people, who can even be the instigators of fraud. The existence of so-called 'ghost schools' and 'ghost teachers' in Pakistan, from which Bangladesh actually seceded in 1971, illustrates this possibility, showing that not only may education fail to be a priority but it may also be actively opposed by local strongmen. The latter need not be religious leaders who are opposed to secular education and favour religious teaching in madrasas (Malik *et al.*, 2021): they may also be traditional landlords who are eager to prevent the emancipation of their dependents lest they should develop 'unrealistic expectations' and cause a shortage of cheap agricultural labour (Martin, 2016: 87). In these instances, school dysfunction is not (necessarily) caused by a lack of spontaneous demand for education, but rather by deliberate attempts by powerful people to repress it.

When they act as political leaders or brokers, reactionary landlords may go as far as diverting school buildings from their intended function by using them as cowsheds, farm

buildings, accommodation for relatives, and the like (Martin, 2016: 133).<sup>4</sup> Teachers themselves are then 'ghost teachers' who rarely turn up for duty, and make false entries in attendance registers (p. 88). Their time and energies are diverted to other uses that serve the interests of their patrons, who protect them from disciplinary action (see Zahab (2020: 82) and Gazdar (2000) for quantitative evidence). In some cases, primary school teacher posts are sold by politicians and officials for large amounts of money, thus inducing the beneficiaries to take side jobs to repay their loans (Hasnain, 1988: 137). Also, it may happen that teachers surrender as much as half their salaries in order to escape the duty of attending school because they are essentially happy with the reward of the lumpsum pension of 2–3 lakhs which they receive at the end of their careers (Martin, 2016: 80).

In the presence of deficient monitoring by state authorities (school inspectors), a frequently proposed solution consists of schools being monitored by stakeholders, comprising the parents of pupils in particular. Nowadays, this solution is promoted by many scholars, including economists. In Mozambique, for example, school councils have been set up to precisely supervise school activities and denounce failures. However, the results have fallen short of expectations. The underlying reasons for this are several, but two deserve special mention in the context of the present discussion. To begin with, members of school councils may lose their motivations to attend school council sessions because they do not derive any material gain, typically in the form of per diems, from their participation. This type of behaviour would be largely unthinkable in East Asia and in Western advanced countries, because members of school committees are either intrinsically motivated or attach a high value to improvements from which their own children will benefit. Next is typically a power-related problem: school councils frequently complain that children may suffer from reprisals by teachers and school managers if they point to unjustified absences, lack of punctuality, abuses of power, or non-transparency in the use of school funds. As a result, the school councils risk being pseudo-participative institutions whose members are coaxed to accept what is decided by the school board, thus being reduced to the role of rubber stamping. According to the same logic, school directors may exert their power and influence to ensure a compliant person is appointed president of the school council.

### **Low teacher quality and training**

To a large extent, teacher quality depends on recruitment procedures and training (in addition to decent salaries). That these determinants are often distorted is starkly testified by the experience of Bangladesh. There, the recruitment of teachers is often biased by the leakage of the written exams on the basis of which selection is made. Moreover, the payment of bribes may decide which teachers will be transferred to Dhaka, the capital city, which is equivalent to a big promotion. In many poor countries, teacher training is strongly deficient, with the consequence that the level of skills of, say, primary school teachers is hardly higher than among the pupils. The reasons for this sorry state of affairs may vary. In countries like Mexico, the main culprit is the teachers' trade union, which staunchly opposes the skill upgrading of the profession. Being politically well-connected, it is able to block or derail training reforms even though they are manifestly in the general interest. The backtracking on these reforms by the present president, Lopez Obrador, who is himself close to the teachers' trade union, attests to the possible influence of politics on teacher quality. In another scenario, teacher training is undermined by severe budget cuts, which

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<sup>4</sup> Moreover, schools are often of poor quality because of commissions given to contractors.

reflect the low priority that education quality receives at central state level or even among international donors. Thus, in Mozambique, the fast-track teacher training model, which abruptly reduced the number of years of training for primary teachers from three to just one, was seen as a way to increase the number of teachers in a short span of time without increasing the burden of salary expenses (since salaries are calculated according to the length of the training period). While it may have helped slow down the increase in pupil–teacher ratios, the reform had the devastating effect of supplying teachers with insufficient skills in reading, writing, and arithmetic. In Benin, within the framework of the Structural Adjustment Programme of the years 1989–1992, the imposed downsizing of the public sector led to a severe reduction of the education budget. This caused, *inter alia*, a doubling of the pupil–teacher ratios in the poor, northern part of the country, with catastrophic effects on teaching quality.

### **An inspiring experience**

An inspiring experience to which we want to draw attention in concluding our discussion of education problems relates to an innovative approach adopted in the city of Sobral in Brazil's poor north-eastern state of Ceara. Before the start of the programme, only about half of children could read by the time they finished primary school. After its completion, 12 Cearan school systems ranked among Brazil's 20 best. The key elements of success were: (i) the ending of the practice whereby city governments appointed their friends and political allies to serve as school principals, and its replacement by selection procedures exclusively based on merit (as assessed in interviews and tests); (ii) the priority given to enhancing teacher training, with, in particular, the strictly enforced obligation for every teacher to spend a day per month in training; (iii) the systematic application of city-wide tests in maths and Portuguese for all grades by local professionals, and the payment of bonuses to teachers who succeeded in hitting minimum targets; (iv) the setting of the absolute requirement that children must master basic literacy before they can enter the third grade (when they are aged eight or nine); (v) the devolution to cities of greater power to run their own schools; and, finally, (vi) the linking of a (small) part of the budget allocated to each city to improvements achieved in school results. Perhaps even more decisive was an element of the policy environment. Sobral benefited from its unusually stable politics: the same political team has run the city for 25 years, and education was kept a priority during this whole period (Economist, 2021: 33–4). This condition sharply contrasts with the constant changes of education policy in a country like Mozambique, particularly in matters of teacher training. The main lesson to draw from the Ceara experience is that success in improving educational performance very much depends on a bundle of conditions, rather than a single factor. This is negatively confirmed by a recent randomised control trial which found no effect on student outcomes and teacher attendance of a scheme allowing high-performing teachers to receive their preferred posting in Uganda (Cohen *et al.*, 2021).

### **Lack of independence and the effectiveness of the judiciary**

Since the judiciary is a critical part of the law enforcement mechanism, its functioning must play an important role in any assessment of a country's state capacity. Another issue is the degree of independence of the judiciary. Clearly, in Taiwan and South Korea the authoritarian nature of the regimes there meant that the judiciary was not independent of the executive, at least in matters involving freedom of expression, political organisation, and

human rights. On the other hand, rights and obligations pertaining to the economic and the family spheres were effectively enforced, and this proved to be important for the smooth running of the economy and the harmonious life of the society. For an independent judiciary in the full sense of the term the two countries had to wait until later, after the basis for sustainable growth and development had been built. Almost by definition, 'developmentalism' places a higher priority on the modern transformation of the economy than on full democratisation of the society, the idea being that successful modernisation will naturally lead to the democratisation of a society, while the reverse does not necessarily follow (Okuno-Fujiwara, 1997: 403).

In two in-depth case studies that we conducted, of Tanzania and of Bangladesh, special attention was devoted to the functioning of the judiciary. The analysis revealed that not only is this system highly dysfunctional in both countries, but also its flaws go beyond problems of insufficient staffing, out-of-date equipment, archaic procedures, huge backlogs of pending cases, and poor communication of information. In evidence is the pervasive presence of corrupt practices and the meddling of powerful actors in the treatment of judicial affairs, including day-to-day matters pertaining to the civilian and commercial spheres. It is therefore not surprising that there is such a marked lack of trust in judicial institutions and magistrates in many poor countries: people tend to believe that judicial decisions are biased in favour of those who are well-connected to politicians or rich enough to afford to pay bribes.

The judicial system in Tanzania is not expeditious, at least if we can judge from the situation of land dispute settlements. Backlogs of cases and delays in the settlement of land disputes are among the problems most often mentioned in relation to land administration. What needs to be stressed is that, in land and other matters, slowness of public decision-making feeds corruption, as bribes are often demanded by officials on the grounds that they know ways of speeding up delivery. In countries like Tanzania and Benin, the practice of bribe-taking persists in spite of public notices being displayed in offices warning that such practices are strictly forbidden (which we were able to verify ourselves), and in spite of official anti-corruption campaigns.

As attested to by testimonies, in Bangladesh the situation may be even worse in the sense that lengthy procedures and various other tricks may be part of delaying tactics that are used to extract illegal payments from both plaintiffs and defendants. The strategic positions of clerks, advocates, and judges allow them to demand additional payments, allegedly in order to 'accelerate' the resolution of the case in question. There is thus widespread suspicion that actors along the enforcement chain often indulge in practices that amount to piracy: they artificially create the problem which they then pretend to be able to solve in return for receiving illegal dues. The difference with the aforementioned situations where slowness of delivery of public goods or services feeds corruption is that in the present case corruption is born of calculated prevarication or fabricated administrative problems: that is, it is the result of malevolent manipulation.

Another salient dysfunction of the judiciary is caused by the meddling of powerful people in judicial decisions. Bribes are not necessarily involved since political interventions may be part of an implicit contract of political patronage. This is attested by evidence collected in Pakistan. Thus, Lyon (2019) argues that one important reason why a Pakistani landlord may decide to engage in politics is to get a serious land conflict settled in his favour with the help of powerful politicians at district level. As for Martin (2016) and Mohmand (2019), they cite

meaningful anecdotal evidence attesting that a political patronage system anchored at the village level enables landowners connected to a political machine to secure the recognition of their perceived rights, including by bribing or intimidating judges if needed. This is especially true of the entrenched dynastic elite, which lord over hierarchically organised patron–client networks which they use as trustworthy voting blocs to endorse their favoured politicians (Malik *et al.*, 2021).

What bears special emphasis is the deleterious effect of political interventions on professional norms inside the judicial system. If Big Men can influence judicial decisions and derive direct or indirect advantages from their action, why should even low-ranking officials refrain from seeking to obtain small perks from their position? The situation is even worse when the appointment and/or the promotion of judges are the outcomes of political and politicised decisions. In Bangladesh, this is true at the highest level of the judicial system since the judges of the Supreme Court are nominated by the Ministry of Law, Justice and Parliamentary Affairs, itself vulnerable to high-level political pressures aimed at keeping political rivals at bay and buttressing the ruling political regime.

Delving deeper into the case of Bangladesh: based on the perceptions and opinions of a sample of respondents, it is possible to identify how this country performs in comparative terms. The assessment of the fairness of the judiciary relies on three indicators extracted from the Rule of Law Index of the World Justice Project (2019): while the first two measure the extent of inequality in access to the courts and in the treatment of the cases, respectively, the third one tries to capture the degree of corruption and bribery involving judges. Essentially, they converge to show that Bangladesh does not fare very well along the three dimensions considered. Where it performs especially poorly (with a rank of 115 among 126 countries) is in regard of the second indicator (measuring the degree of discrimination in case treatment), for which it nevertheless does slightly better than its two big South Asian neighbours, India (ranked 117) and Pakistan (ranked 118).

When the expeditiousness of judicial procedures is measured by the size of the backlog of pending cases, the picture which emerges for Bangladesh is rather dismal. Civil court cases resolved during a recent year (2018) represent a significantly smaller number than the total number of cases received and filed, implying an increase in the backlog. This is clearly not a new or transient phenomenon since at the end of the year 2018, more than one-fourth of the total backlog of civil cases consisted of cases that had been pending for more than five years. A similar deterioration is observed when considering the total number of civil and criminal cases, and, interestingly, case backlogs are especially large in the three most prosperous administrative divisions of the country. Among the chief factors behind this worrying situation are the shortage of judges and the ineffectiveness of judicial procedures, which continue to be based on manual paperwork and even require judges to write witness statements out by hand.

The lack of independence of the judiciary from the executive is harder to estimate, and evidence is unavoidably piecemeal. A rare exception is the detailed and rather unique study by Mehmood and Seror (2019) for Pakistan.<sup>5</sup> They argue that the meddling of the executive in judicial matters does not mean that all types of judgement are biased. Decisions that are

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<sup>5</sup> Another exception is the recent study of the judiciary in India, where the authors show that, against expectations, judicial decisions are not biased against the Muslim minority (Siddiqi *et al.*, 2021).

most liable to be influenced by such interference concern cases where resources that are valuable to politicians are directly or indirectly at stake (think of the expropriation of private property by government agencies, for example). They thus show that the rise of religious landowning elites, taken as a proxy for democratic regression, has increased the incidence of court rulings in favour of the government for cases involving land disputes with the government, and for cases involving violations of human rights. In contrast, no effect is detected for ordinary criminal cases, such as theft. Moreover, democratic regression has reduced the quality of judicial decisions, as measured by case delay (the difference between the year of the case decision and the filing year) and by merit, as proxied by a dummy indicating whether the decision was based on evidence rather than technical or procedural grounds.

Unfortunately, there are no systematic data available to explore the influence of politicians on judicial decisions for civil cases. As argued above, we expect civil judgements to be biased toward the clients of powerful local politicians in contexts dominated by political patronage. Do reforms show promising results in this area? In Bangladesh, the mode of appointment of judges, which is critical for their independence, has apparently improved since this prerogative was taken away from the Public Service Commission, which seems to have occurred in 2007. Yet there is lingering doubt about the extent to which, in actual practice, judges are appointed based on their competence and experience, rather than their political loyalty. If we go by the reform experience of Pakistan, however, it is possible to entertain some hope in progress: an important reform that has seen the move to the appointment of judges by peers rather than by the executive appears to have produced significant effects in the form of more expeditious and less skewed decisions (Mehmood and Seror, 2019).

## 9.2 Uncertain and ambiguous property rights

A useful distinction to be made in regard to property rights is between property rights over business assets and rights over land. Land tenure is especially important in countries where a significant portion of the population still depends on agriculture and related activities to eke out a livelihood.

### Rights over business assets

Together with governance failures, the weakness of property rights is the main generic institutional obstacle to development economists repeatedly point out in their writings on the subject. The central argument is that absent or fuzzy property rights impede investment and growth both because they cause uncertainty about who will benefit from the investment effort and because, by preventing asset collateralisation, they make access to credit difficult or impossible. Perhaps the most egregious example of such an adverse effect is the high risk of politically motivated expropriation following a change of ruler, or a change of mood on the part of the present ruler, in autocratic regimes. There is ample historical and contemporary evidence of this possibility, as attested to by the many instances in which, on the spurious grounds of accusations of tax evasion, oligarchs have been suddenly dispossessed of their



wealth and even thrown into jail.<sup>6</sup> Examples run from the Ottoman empire –where reaching the positions closest to the sultan (the post of the sultan’s treasurer, in particular) was a dangerous step which could be quickly followed by demotion, arrest and execution – to ex-Communist countries today (Russia, Ukraine, and the Central Asian republics) and the developing world (India, China, Malaysia, South Africa, etc.).

The examples of Taiwan and South Korea nonetheless show that this is not a necessary attribute of autocratic regimes. Enlightened autocrats are indeed able to internalise the negative long-term effects of violations of private property rights on their country’s development, and therefore to stand as their strong guarantor. It is true that expropriation or nationalisation of business assets was an overhanging threat in Taiwan and, even more so, in South Korea. However, it was clear that this threat would be executed only if a breach of contract was clearly committed by the business owner in his dealings with the state authorities. In other words, the risk of expropriation was predictable. As far as land property rights are concerned, the creation of a cadastral survey was one the priorities set by the Japanese authorities, which, early on during the colonial period, wanted to boost tax revenue and facilitate land transactions (Cheng, 2001: 20; Chu, 1999: 15). On the occasion of the radical land reforms carried out by the independent governments of Taiwan and South Korea, these rights were duly revamped.

In our small sample of country case studies, Benin and Bangladesh are clear cases where the property rights of Big Men are uncertain. The logic is plain: their rights are secure as long as the right political ruler, the one whom they have supported, is in power. In Benin, Ajavon had bitter experience of this logic after his defeat by Talon, who himself had to go into exile after his defeat by President Boni. Diversifying political support is the obvious way of avoiding or mitigating the risk of expropriation, yet this may be an impossible tactic in strongly polarised political universes. Just think of Bangladesh where, until recently, a person of importance was compelled to choose either of the two available political sides, the Awami League or the Bangladesh Nationalist Party. Accusations of treachery or duplicity were easily made against anyone who appeared to play a double game. The risk is equally high for businesspeople belonging to ethnic minorities, as testified by the fate of the Gupta family in South Africa or the expulsion of all Indian entrepreneurs and merchants from Uganda under Idi Amin Dada.

It is therefore not surprising that wealthy Indian, Chinese, or Lebanese entrepreneurs tend to adopt cautious behaviour when they enter into the political game, which is almost inevitable in most countries. One frequently observed tactic consists of sharing ownership with powerful local politicians-cum-businessmen. In Malaysia, for example, many of the bigger Chinese business interests have chosen to co-opt influential politicians from the dominant party (UMNO), as well as former civil servants from the dominant ethnic group, as directors and shareholders of their companies (Jomo and Gomez, 1997: 364).<sup>7</sup> In reality, ‘the

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<sup>6</sup> When using the word spurious we do not mean that the accused oligarchs have not actually committed tax evasion, but only that it is not distinctive behaviour that can be attributed to them: other oligarchs commit the same crime and they are not harassed or jailed.

<sup>7</sup> In the specific case of Malaysia, this tactic was especially appropriate as the Industrial Coordination Act of 1974–75 provided that the development of the manufacturing sector should be aligned with the ethnic redistributive policies that the Malay political elite demanded with a view to achieving interethnic economic parity. (Until then, Malay businessmen had been essentially concentrated in agriculture and the public sector). As a result, ‘both Chinese and foreign companies began to actively solicit business ties with politically influential Malays willing to lend their names for a price without taking on executive roles after becoming owners and

allocation of rents by the state has ostensibly been primarily intended to redistribute wealth in favor of Bumiputera [indigenous Malays] capitalists', and it is striking that the business operations of those benefiting from those rents were mainly confined to sectors sheltered from competition – the non-tradeables and the import-substituting sectors (pp. 354–5, 368). In South Africa, likewise, Indian-born entrepreneurs, the Gupta brothers, befriended the highly corrupt President Zuma and went into business with his son, Duduzane.

## Land rights

Before delving into the intricacies of land laws, it is useful to describe the major types of land conflicts observed in our four in-depth case study countries, and to identify their root causes.

### Types of land conflicts and their root causes

Land rights were the subject of frequent complaints voiced by national experts in our discussions with them. This explains why this issue has received special attention in the cases of Tanzania, Benin, and Bangladesh. We have already mentioned the extremely complex and even confusing character of many land laws, hinting that such a feature is a result of the big stakes involved in the way land is allocated. What we had in mind are lands located in urban and peri-urban areas, which have a relatively high value. A key problem here is the uncertainty of property rights caused by fuzzy original rights, double sales, the production of fake documents, and other malpractices. For example, disagreements around the 2013 land law in Benin resulted from conflicts of interest between those who wanted maximum security through the provision of a five-year period during which rights could be verified, on the one hand, and those professionals, intermediaries, and public agents who rejected the idea of an authorisation period, on the other hand. The 2017 amendment actually cancelled the five-year authorisation period provided in the 2013 law, creating confusion and furore among certain circles.

Another type of insecurity may also arise in relation to rural lands, particularly when village lands are coveted by international plantation companies. Here, the issue arises when villagers grant a concession over their customary land in the absence of a full understanding of the contract signed, or when the deal with the plantation company is made secretly by the village chief or the elder council for their own profit. The latter possibility exists because of the temptation to use local power positions to unduly appropriate the rents obtained from the awarding of uncultivated common lands. In this instance, as in the case of urban and peri-urban lands, it is because the value of the land has suddenly increased that unscrupulous people may try to lay dubious claim to it, exploiting informational advantages, abusing their power position, or both.

Rising land values or scarcity are caused not only by the growing commercialisation of land-based activities but also by sheer population pressure. These powerful forces tend to disrupt traditional practices and customary rules, particularly in high population density countries. Two types of land conflicts deserve special mention here, and they are both in evidence in our case study material for Bangladesh. First, intra-family conflicts around land inheritance

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directors of the companies' (Bowie, 1991: 103–4, as cited by Jomo and Gomez (1997: 363)). Moreover, indigenous Malay enterprises were generally assured of favourable government treatment, particularly in the form of being given licences, contracts, and access to finance and information, especially if supported by influential politicians who themselves often became involved in business (Gomo and Jomez, 1997: 362).

tend to multiply when land becomes scarcer. For example, as some children internally migrate to take an urban job, those who stay behind and live off agricultural activities may lay claim to the customary bequest shares of their migrant siblings. As has been shown in the case of pre-genocide Rwanda (André and Platteau, 1998), such conflicts can be so pervasive and severe that they end up tearing asunder a village's social fabric and the core institution of the family, setting not only members against cousins, in-laws, and more distant relatives, but also brothers against sisters, brothers against other brothers, and siblings against parents.

Relatedly, when some children have settled in a foreign country (say, India), and the duration of their foreign stay is indeterminate, there may be undue attempts to appropriate their land in the village, whether by close or distant relatives or by neighbours. Such attempts are typically made without informing the rightful landholder. When these conflicts, as well as others (for example, boundary conflicts about the precise delimitation of land plots), cannot be resolved by informal institutions, the plaintiffs tend to proceed to litigation. The question then arises as to which laws ought to govern or guide the decisions of judges in these cases.

A second important source of land disputes arises when the village population is heterogeneous in the sense that migrant farmer families coexist with descendants of founding lineages: pressure on land generally prompts the latter to remind the former that they possess only use rights and that these rights can be rescinded if native families need their landholdings. The same customary principle, according to which freeholder rights exclusively belong to long-term native residents considered as the 'sons of the soil', is also asserted in situations where sedentary agriculturalists and nomadic land users, typically pastoralists, have claims over the same land territory. Coexistence between farmers and pastoralists is a ubiquitous phenomenon in Africa, which is not surprising given that, until recently, and in most parts of the continent, land was abundant and therefore used in extensive ways. Under land pressure, the customary rights of the herders are denied by the farmers, who want to enclose their agricultural plots to avoid encroachment by wandering animals.

Obviously, the tense inter-group relationships which result from these troubled circumstances can easily degenerate into violent conflicts, as numerous examples testify. For the first situation, the bloody confrontations between Ivorian and Burkinabé farmers in Côte d'Ivoire, or those between Senegalese Toucouleurs and Moorish farmers in the Senegal river valley, come to mind. In these two cases, the occupation rights of the ethnic minority stretched over several generations so that its members perceived those rights as having been progressively upgraded into full freehold tenure, especially so because they had made significant improvements to the land. In other situations, it is migrants of a rather recent origin who settle in areas where future land scarcity is anticipated by the local population. This is illustrated by the situation of the Chittagong Hill Tracts (Bangladesh), where Bengali farmers, encouraged by the central government, have obtained access to land situated in the traditional territory of native communities of forest dwellers, who have been gradually transformed into farmers. As for the second situation, we can think of the genuine war which opposed non-Arab agriculturalists to Arab herders in the Darfur province of Sudan, or of the ongoing insurgencies of Tuareg and other groups of herders (Fulani, for example) in some Sahelian countries (most notably, in the northern parts of Burkina Faso

and Mali), or elsewhere in sub-Saharan Africa (in northern Nigeria, in the Rift Valley in Kenya, etc.).

### **The need to sort out the maze of land laws**

The above-described issues are obviously intricate and they all require government intervention, yet not of the same kind and intensity. Let us start with the situation of land-scarce rural areas where the population is heterogeneous, particularly when excruciating conflicts need to be defused and traditional informal mechanisms of conflict settlement are unable to come up with a satisfactory solution. In these instances where land conflicts risk degenerating into a vicious circle of bloodshed and retributive reactions, the full force of the law and the supreme authority of the state must obviously be brought to bear. In order to save the face of the customary authorities, the state is well advised in such cases to seek some form of 'accommodation' terms with them (see our Chapter 1 typology of formal–informal interactions). A key problem, here, is that the state itself may fail to act as a benevolent ruler and may side with one group against another for reasons of political opportunism or on the basis of identity considerations. This is clearly what was observed in the nasty Darfur conflict where the authorities in Khartoum backed the Arab herder groups (both antagonists were actually Muslim), in the Sahel and other areas of Africa where the rights of herders have always been ignored or under-estimated, and in Côte d'Ivoire where the native farmers enjoyed the support of Ivorian nationalists. In the latter instance, however, and following a protracted period of troubles that threatened the integrity of the nation, the Ivorian state eventually decided to confirm the rights of longstanding foreign farmers to stay on their land, based on certified long-term land leases. Since the latter concept is compatible with informal rules, the solution is of the 'accommodation' type. The point remains that, when there is an inter-ethnic dimension to land conflicts, politics (and partisan politics for that matter) necessarily intrudes into debates around land legislation. Because political compromises may then be hard to bring about, we discover a vivid illustration of why land laws may be complex – and even contradictory – when opposing interests confront each other.

We can now grapple with the issue of relationships between customary landholders and large-scale investors. Evidence shows that problems on the ground have generally not been remedied satisfactorily by state legislation and intervention. In a nutshell, this is because large-scale allocation of land by the state is frequently undertaken with no genuine prior consultation of the rural communities concerned. As a consequence of the absence of their informed consent, frustrations are likely to surge up when they come to realise that they are experiencing losses or that their expectations (e.g. in regard to new jobs) are not being met. The top-down state approach to large-scale agricultural investments seems to be the main culprit: public authorities act as though they consider that rural communities do not possess useful knowledge or are unable to understand all the stakes involved. Not surprisingly, therefore, the formulae that work best for the management of plantation lands are contract farming or out-grower schemes. Local people, then, are not dispossessed of their land and they receive valuable inputs, including seedlings and training in new techniques, as well as assured markets for their produce from the investing company with which they are directly in contact.

The dual tenure system prevailing in Tanzania is worth considering in some detail because its approach (though not necessarily the details) is so characteristic of many other African

countries. Under this system, most rural lands belong to the category of so-called village lands, which are placed under the jurisdiction of village councils. Land rights based on customary tenure, which are not mandatorily registrable but can be backed by certificates issued by the village council, are either individual or collective. This implies that the land can be used by individual occupiers or by the community and, in the former instance, individuals may apply to have their private parcels surveyed and registered. Because the president of the republic is the eminent owner (the custodian) of all Tanzanian lands, a remnant of the colonial period confirmed by the socialist regime of Nyerere, the holders of village certificates are not entitled to transmit them, through sales, donation, or bequest, to somebody outside the village community without the approval of the village council. The intent is clearly to prevent the lands of a village from ending up being controlled by people foreign to the village community. Inside the village community, however, rights acquired through bequests and purchases are valid, so that not all land is allocated by village councils. But land reserved for future use can be allocated by these councils to needy applicants, whether villagers or non-villagers. In all their operations, village councils are required to sanction customary practices only as long as they do not go against the fundamental principles stated in the written law, such as equal treatment of men and women.

The Land Acts resulting from the National Land Policy (1995–99) provide that the status of some village lands can be changed by shifting them to the category of so-called general lands. Formal titles of long-term occupancy (for a maximum of 99 years) are then granted by the state to both citizens and non-citizens, whether in rural or urban and peri-urban areas. If the land had occupiers, a process of compensation is initiated. The important point is that external investors cannot obtain village lands unless they have been first converted into general lands. Persuaded that many village communities have plenty of unoccupied or unused lands, the Government of Tanzania intended to transfer a significant portion of the village land area to the general lands category. In actual practice, the dual tenure system, in which centralised control coexists with devolution to customary law at village level, has given rise to deep discontent on the sides of both rural communities and external investors. Major reasons for this are the long and cumbersome procedures for obtaining official approval for land transfers (for areas exceeding 20 hectares), which themselves create rent-seeking opportunities, the inadequate compensation paid to the villagers, and the considerable delays in their disbursement. An additional difficulty arises when, as often happens, there is no proof of ownership for parts of the village lands, which, although deemed unoccupied, are actually used by the community as common lands or kept in reserve for the needs of future generations (in conditions of population growth).

Finally, it must be remarked that, despite the intentions of the lawmakers, the intricate land legislation in Tanzania does not actually prevent illegal land speculation. A habit has thus developed whereby separate villagers allow ‘investors’ to come in and buy land parcels that do not individually exceed the legal threshold of 20 hectares. Once these purchases are aggregated, though, they exceed the statutory limit. Worse, they violate the spirit of the law insofar as, instead of developing the land, the buyer uses it as collateral to borrow money from banks, and afterwards sells it by surveying and creating plots.

What about the regulation of land problems that occur in situations of extreme land scarcity and that hit the core of community and family life? These are the hardest to solve and, here, there is no escape from economic solutions consisting of enhancing labour absorption in agriculture and agriculture-related activities, and of expanding non-farm employment,

whether in rural or urban areas. Therefore, institutions that enable these economic transformations, such as those put in place by Taiwan and South Korea, matter even more than land institutions. As attested to by the experiences of many poor countries in Asia and Africa, legal inheritance norms, the imposition of a minimum viable farm size (below which any sale of land is prohibited), and like measures produce weak or no effects. This being acknowledged, it is in conditions of great scarcity that land titles, based on sound surveying and adjudication procedures, are most needed. Two major problems must nevertheless be overcome. First, titles cannot achieve their objective if land dispute settlement institutions are not effective and if judges are corruptible. (As one Kenyan farmer put it to one of us, 'A title is worth less than a bribe to the judge'). Second, for titles to become widespread enough, an effective land administration must exist that is capable not only of surveying, registering, and formalising land rights, but also of updating land registries systematically. The evidence is not reassuring if one judges by the situation observed in many countries in Asia (Bangladesh and India, for example) and Africa. In Tanzania, where land is rather abundant, very few rural residents hold occupancy certificates (Certificates of Customary Rights of Occupancy) aimed at securing their individual land parcels. One key problem is that the village land must be properly surveyed, and its land boundaries duly demarcated, before the Ministry for Land Affairs can approve its regularisation and the issuance of individual land certificates by the village council can proceed. The whole procedure takes several years to complete. In addition, only a small proportion of Tanzanian villages have land use plans, which are a precondition for transferring land to the general category. And, finally, only a minority of land records are found in the land registers, with the consequence that cases of multiple titles for the same piece of land are not uncommon.

In Benin, another country where land is rather abundant, the initial approach to the formalisation of land rights was more decentralised and progressive than in Tanzania. It opted for a scheme, known as the *Plan Foncier Rural*, in which land demarcation was based on the community and undertaken on demand: only those villages which felt the need for a survey of village lands and their certification were eligible, and in each of them a committee was tasked with identifying and demarcating all parcels situated on the village territory.<sup>8</sup> Thereafter, customary land ownership was formally and legally documented in the form of transferable and collateralisable land certificates, which, like in Tanzania, could be individual or collective. A clear advantage of this scheme is that it supplied convenient and fast services for obtaining legal proof of landholding rights and for carrying out land transactions. Yet it was soon called into question and telescoped under the pressure of external forces, combined by the preference for centralisation of some politicians. A reform was thus initiated (in 2004–2005) under the impulse and with the support of the Millennium Challenge Corporation, with the explicit purpose of ending legal dualism and streamlining and centralising the administration of land rights. Responsibility for implementation of a new Land Code (the *Code Domaniale et Foncier*) was vested in a newly created agency, the *Agence Nationale du Domaine et du Foncier*, the central idea being to transform rural land certificates and urban residence permits into full-fledged titles. Aware that the issuance of titles is a time-consuming process, the lawmaker authorised the issuance of a new, temporary *attestation de détention coutumière* to replace the previous *certificat de propriété foncière*. Land sales continued to be permitted through conventions or through officially sanctioned contracts.

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<sup>8</sup> This operation included the mapping of customary ownership in the form of a full land survey.

What is worthy of note is that only a minority of villages demanded the demarcation of their lands under the initial scheme and, even in those in which demarcation took place, the proportion of land certificates to the total number of parcels surveyed was typically low. The only exception was villages where migrants form a significant portion of the local population, thus confirming the idea that local demand for land documents varies greatly depending upon the specific context of rural communities, and that their heterogeneity is an important variable (together with population density). It barely needs to be added that the subsequent reform was unsuccessful.

Further confirmation comes from a recent study (Broka *et al.*, 2021) of a pineapple development scheme in one of the richest parts of the country, not far from the two main commercial cities in the south (Cotonou and Porto Novo). This shows that rural land markets are quite active despite the fact that most producers have no land certificate. Thus, a significant proportion of the plots owned have been acquired through outright purchase rather than through inheritance or gifts.<sup>9</sup> Looking at all the pineapple plots under cultivation, more than a third of them have been rented in by the possessor, and if traditional land loans are included, the proportions are much higher.<sup>10</sup> Even more strikingly, most land transactions have been made through strictly informal channels. Regarding the land rental market specifically, barely 60% of the deals made by men rest on a written piece of paper while the proportion goes down to barely 45% for women in a couple. In these cases, moreover, the great majority of the land deals (about 85%) are attested by a simple piece of paper carrying the signatures of the two transactors and their witnesses (in the remaining cases, there is no witness). Hardly anyone has therefore followed the prescribed legalisation procedure before the competent court. And yet land disputes seem to be rather rare.

Compared to Tanzania and Benin, Bangladesh, like neighbouring India, is in a radically different situation: population pressure on land resources is so high that land titling is necessary. However, as stressed earlier, land titling is not of much use if land records are not regularly updated and if the judiciary cannot rely on proper registry evidence. This is, unfortunately, the grim situation observed in South Asia and, in these conditions, it is no coincidence that citizens distrust the land dispute settlement procedures even though there are other factors behind their poor performance. Together with the noxious corrupt and opaque practices with which land acquisition and compensation procedures are riddled, particularly in relation to the creation of special economic zones, the failure to keep valid records of land transactions is probably the most severe institutional dysfunction of land administration in Bangladesh and the whole region.

The lesson seems to be the following. In land matters, and for rural areas particularly, a great deal of flexibility, decentralisation, and respect for informal arrangements is desirable. In the context of multi-ethnic societies governed by a plurality of norms, the ambition of the state to regulate land tenure rights in a top-down and uniform manner, without due consideration for the role of local agencies and semi-formalised mechanisms, is doomed to end in disappointment and failure. The main reason for involving communities in any process of land rights formalisation is that land issues are intimately related to other aspects of the

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<sup>9</sup> The exact figures are: 40% for men, 52% for women whose husband is absent, and 29% for women living alone.

<sup>10</sup> The exact figures are: 39% for men, 48% for women in a couple, 35% for women whose husband is absent, and 32% for women alone. If traditional land loans are included, the proportions rise to 48%, 64%, 45%, and 46%, respectively.

village social life, so that mishandling them can have major consequences beyond the strict domain of land-related management and activities. Evidence suggests that, as long as communities can function on the basis of informal rules which they themselves devise and enforce, the state should not intrude into their land institutions or, if it does, it should do so with caution and restraint. It is to the special situations which require its intervention, and which have been identified above, that it should devote much of its attention and its formalisation efforts. In terms of the terminology used in Chapter 1, formal institutions or rules should replace informal ones only in extreme situations, while they should complement them in more ordinary circumstances.

### 9.3 Conclusion

Politics has an enormous influence on state capacity. When a regime is rooted in political clientelism and cronyism, the money needed to mobilise and maintain support is obtained not only from donations made by big business leaders and from embezzled state budgets, but also from kickbacks extracted by low-level officers and channelled up the bureaucratic hierarchy. As substantiated by evidence from India, Pakistan, and Bangladesh, sales of desirable posts and locations in the administration, through appointments, promotions, and transfers, are a pivotal mechanism of rent appropriation that is ultimately intended to grease the wheels of the political machinery. Insofar as frontline officers are induced to take decisions that maximise rent extraction, and these decisions run counter to the citizen's interests, the socially harmful effects of this mechanism can be substantial. Ghost teachers and ghost schools are an extreme example of the immense social cost which rent-generating policies can entail.

Political capture of the bureaucracy can yield another, less well-known, undesirable effect: because within the logic of this capture, administrative departments operate as feudal fiefdoms under the control of political bigwigs, coordination between them is made intrinsically difficult, thereby hampering the effectiveness of development policies. In fact, the problem may be worse than just poor coordination if it consists of fierce struggles to gain control of lucrative rent opportunities embedded in certain key ministries or departments (police, customs, tax administration, and land planning, to cite the most important).

Deficient state capacity may also stem from factors that have nothing to do with politics, however. Thus, if bad educational performance may arise from policy neglect, reflected in small budgets and poor monitoring, from reactionary rural landlords working to undermine schooling efforts at local level, from bureaucratic dysfunction, and/or the lobbying corporatist pressures exerted by trade unions, they may also be caused by a lack of professional norms leading to teacher and school director absenteeism. In turn, absent norms may ultimately be the consequence of a low demand for education in areas that are deprived of job opportunities where returns to schooling can show up.

Turning to property rights, and land rights in particular, their uncertainty and ambiguity may be traced not only to undue meddling of politicians on behalf of influential people, or to malpractices at the level of the state bureaucracy (land surveyors, architects, and the like), but also to unenforceable laws that prescribe unrealistic procedures or unattainable standards. The root of the problem may then lie in an incorrect appraisal of the genuine demands of the people, in a lack of consultation with them (such as is typically the case with



investments by large foreign plantation companies), in unnecessarily slow and cumbersome procedures, and in inappropriate attempts at systematisation and uniformisation of enduring informal rules and practices. Ill-advised external pressures by donor organisations, informed by their own Western standards, may actually be responsible for the latter type of dysfunction.

Finally, malfunctioning of the judiciary may originate in a variety of causes, which go beyond illicit political interference and corruptibility of judges and magistrates: poor equipment and staffing resulting in slow treatment of cases, the low quality of personnel, imprecise or non-enforceable laws (see above), outdated working procedures, and unreliable documentary sources (e.g. land registries).