

Final chapter in: Camilla Toulmin and Julian Quan (Eds), *Evolving Land Rights, Policy and Tenure in Africa* (IIED and NRI, March 2000).

**THE STRUGGLES CONTINUE:
EVOLVING LAND POLICY AND TENURE REFORMS IN AFRICA -
RECENT POLICY AND IMPLEMENTATION PROCESSES**

by
ROBIN PALMER
Land Policy Adviser, Africa
Oxfam GB

with **Liz Alden Wily and Martin Adams¹**

In the 1990s, official land policy debates in Southern Africa have become focused on two strategies: promoting freehold land markets to replace so-called customary tenure zones and expanding 'commercial farming' through market mechanisms. These two strategies are expected to resolve the escalating land problems. Yet, in the guise of promoting sustainable land use, environmental care, new agricultural export crops and tourism, large tracts of land are currently being alienated throughout the region. In the last few years, market-based economic reforms and privatisation in general are leading to a greater concentration of 'foreign' and local elite landownership rather than enhancing equitable land redistribution which benefits the majority. (Sam Moyo, 2000).

Introduction: the actors

As the chapters elsewhere in this book amply illustrate, most countries in sub-Saharan Africa are currently undertaking a variety of land reform initiatives.² A small number have recently endeavoured to implement the land laws they have recently passed and are being confronted with new difficulties and challenges. This chapter will selectively examine both processes, but with a greater emphasis on implementation, and will endeavour to draw out some of the lessons that need to be learned. It is important to stress the contrast between countries such as South Africa, Zimbabwe and Namibia, which are concerned with redistribution (or resettlement) and others in East and Southern Africa, where tenure reform is the key issue. (Palmer, 1998).

A characteristic of current land reform processes, in contrast to those of an earlier generation, is the wider number of actors involved. Civil society has expanded greatly since the days of one-party states and the Cold War, and the implications have been widely felt. The Uganda Land Alliance, for example, initially just a coalition of concerned individuals, later a formal NGO, succeeded in both changing the very nature of what was to become the Land Act of

¹ In writing this paper I have benefited from the very considerable support, advice and practical help generously proffered by Liz Alden Wily and Martin Adams, who have both been happy to share their considerable experience with me and to allow me to use their ongoing work extensively. Where one of their works is not cited, this denotes a personal communication.

² For a relevant literature survey, see Palmer (1997) and for the Oxfam GB website *Land Rights in Africa* (2000) endeavouring to keep tracking these events, see <http://www.oxfam.org.uk/resources/learning/landrights/>

1998 and in persuading the government to widen the consultation process which preceded it. In Mozambique, something very similar happened both during debates on the 1997 Land Law and the subsequent NGO Land Campaign, which sought to make peasants aware of their new rights under the law and how they could go about legally establishing them. (Negrão, 1999). Yet one needs to be aware of Sam Moyo's recent caveat that in much of Southern Africa NGOs are less than ten years old, were not involved in the political struggle, are class based and 'dependent on external development agency funding of the land reform agenda.' (Moyo, 2000).

In a context of straightened African government budgets, the role of donors has become more critical. As one might expect, colonial patterns have continued, with the British involved in Uganda, the Belgians in Rwanda, the French in Ivory Coast, etc. In recent years, DFID in particular has become increasingly engaged in land reform processes, most extensively in Uganda, where it helped draft the Act, supported the Land Alliance and a workshop for MPs, and subsequently has been trying to help the Uganda Government rethink and rework what has turned out to be an unimplementable Act. Relations here have generally, but not always, been amicable. This is in great contrast to Zimbabwe, where controversies over land have periodically dogged relationships between the British and Zimbabwean Governments from 1979 to the present. This is an extreme case, but it illustrates the point that foreign aid, in an area so politically contentious as land, can never be unproblematic - which is not an argument against it. In South Africa now, it appears ironically that DFID believes in land reform rather more strongly than the new Minister of Lands. But again it is worth registering Sam Moyo's caveat that, in the eyes of many in Southern Africa and based on historical experience, the real aim of donors is the block radical land reform, rather than encourage it.

The role of foreign legal draftsmen (they always seem to be men), such as the ubiquitous H.W.O. Okoth-Ogendo and Patrick McAuslan, is also key, but little open to public gaze. These lawyers are almost always confronted with formidable problems, but the kind of laws they draft do not always prove entirely practical in the local environment, nor practical when it comes to implementation.

Faced with a variety of pressures to devolve and decentralise because they can no longer control in the good old fashioned way, many African governments have gone along with the rhetoric while clearly being very reluctant in practice to embark on the road leading towards subsidiarity. They might bend to NGO or donor pressures for wider consultation, but have yet to be persuade of the virtues of genuine public participation. Francophone West African countries have perhaps been most active in promoting village land management (*gestion des terroirs*).

Ministry of Lands bureaucrats are generally even more reluctant to support subsidiarity, for it threatens their sources of patronage and challenges the habits of a lifetime. There are those who argue that Ministries of Land are the last places to look to for creative thinking on land.

Politicians, naturally, always like to get involved in land affairs, in a variety of ways, as recent experiences in Kenya (in the Rift Valley) and Uganda (in Parliament), amply illustrate.

The striking thing is that all these actors have been so focussed on the process of debating and passing laws and policies that they failed to anticipate the problems that would arise from implementing them.

Policy processes

The policy processes which have driven land policy reform have been characteristically described by Okoth-Ogendo (1998), who asserts that

what we are witnessing is a search for the systematic articulation of national problems, vision, objectives and strategies about land as a central factor in development. The overriding concern in contemporary land policy reform appears to be the need to formulate a macro-level policy framework and complimentary programmes about land: its ownership, distribution, utilisation, alienability, management and control.

He examines ‘some of the drivers behind this frenzy’ and observes that, given massive colonial plunder of land and its devastating impact on agrarian systems and leadership structures, it is surprising that it has taken governments so long to confront the issues.

In former settler-controlled Africa, Okoth-Ogendo argues, ‘the main drivers were essentially political: the need to right historical wrongs, ensure equity as between different categories of citizens, and solidify the legitimacy of governments.’ More recently, ‘purely economic drivers’ in the form of donor agencies have entered the arena ‘arguing that rapid agricultural development in sub-Saharan Africa requires fundamental and deeply surgical changes in land policy and land law.’ But though economic drivers are now dominant, ‘we should expect social and cultural factors to intervene in an attempt to address issues of justice and equity in land relations.’ Governments have tended to respond in one of four ways:

4 TYPES OF GOVERNMENT RESPONSES (source: Okoth-Ogendo, 1998)

- First and least imaginatively, through customary ‘desk-top processes’ designed ‘to anticipate or pre-empt relatively foreseeable consequences before these develop into unmanageable crises.’ Top officials tightly control and manage this process, which typically leads to ‘little more than broad statements of principles or policy prescriptions devoid of concrete strategies needed to resolve problems.’ Sometimes mere stop-gap measures are taken, especially in sectoral policies on land-based resources such as water, forestry, wildlife and the environment (Kenya, Tanzania, Malawi, Uganda).
- A second approach is ‘the appointment of expert panels of inquiry, task forces and even sole investigators to prepare preliminary working documents.’ The premise is that ‘the basic problems are known, as are their possible solutions.’ So the purpose of the enquiry is to seek validation of *a priori* premises. Such mechanisms are often used at short notice to manage political stresses (Kenya, Zimbabwe), though the implementation rate from such processes has not been high.
- The third approach is of broadly based, independent commissions of inquiry adopting participatory processes. This is much rarer (Tanzania, Malawi, Eritrea), is a long process, and runs the risk that governments may reject the findings on either political or economic grounds.
- Fourth, there can be a combination of a bureaucratic approach with public discourse, with documents being drawn up for the explicit purpose of stimulating discussion (South Africa, Ethiopia). This works best ‘when there is substantial political capital [in the form of enhanced legitimacy] to be reaped from swift but popular action.’ Most countries in fact, now convinced that land policy reform is ‘fundamental to the sustainable management of development, have used a mixed bag of mechanisms and procedures to push this forward.’

Okoth-Ogendo sees three sets of substantive outcomes from these processes. The first are technocratic solutions requiring reorganisation of tenure involving ‘conversion of customary holdings into private estates under individual title’ (Kenya, Malawi, Zanzibar in the 1960s), reflecting dominant western beliefs concerning the magic of private property. The second, occurring where the main drivers are political, are radical measures ranging from ‘reorganisation of production relations to massive redistribution and restitution.’ (Kenya,

Ethiopia, South Africa, Zimbabwe, at different times). The third are ‘reconstitutive of the past, or supportive of existing agrarian conditions’ (Botswana, Swaziland, Lesotho), which are generally evolutionary in nature. He believes that few countries have yet taken a holistic view of land policy reform, and that those which have (Tanzania, South Africa, Malawi) ‘have found actual implementation slow, fraught with numerous political risks, cumbersome and expensive.’ (Okoth-Ogendo, 1998).

A second analysis of land policy reform processes comes from the ongoing work of Liz Alden Wily (2000), which compliments that of Okoth-Ogendo. Wily notes that

no matter where the intention to reform begins and with what level of modest objective, its scope quickly widens and becomes more complicated. Issues which the state wanted to avoid, or did not realise it would have to address, come into play. Moreover, this extends beyond the immediate realm of property. Each nation state finds itself having to tackle issues of governance, democratisation and state-people relations in general. The very notion of public trust comes under attack and in many states justifiably so. Tenure reform is notoriously destructive upon the current social order. Inevitably, the expressed or real objectives of tenure reform themselves begin to change with a good deal of retrenchment as the implications of the task government has set itself, come to light.

A trend has been for real changes in tenure laws to be less than originally proposed by either commissions or political leaders. Still, Alden Wily adds

once embarked upon, ‘reform’ is difficult to halt altogether. Over time - decades - states tend to be forced towards the surrender of significant elements of authority to more democratic institutions of tenure management and to admit ‘popular’ demands into the law.

Whilst each state has set its own unique agenda, each has, Alden Wily says, ultimately found itself having to tackle a remarkably common set of property issues -

- how far after all, should powers over property be vested in the state?
- how far should a market in land be permitted and prompted - and how freely should land be available to non-citizens?
- at what level of society and with what degree of autonomy from the executive should property relations be regulated, and with what level of popular participation?
- how may the plethora of land disputes be more swiftly and fairly resolved?
- how should unregistered, customary landholding be handled, and with what objective in mind - abolition of the regime as a whole, its conversion into rights of freehold or leasehold, continued subsumption to primary ownership by the state, or recognition ‘as is’?

Alden Wily argues that

The last tends to be the most problematic. Its resolution is also proving the most dramatic and the most influential upon decisions in the other areas. In fact, if there were a single point of radicalism in tenure reform as occurring in sub-Saharan Africa, it is this; that *for the first time in one hundred years, states are slowly being forced to recognise customary rights in land (and therefore customary regimes) as*

legal in their own right. All sorts of implications proceed from this, and few of them anymore welcome to national governments as their resigned recognition in the first instance that customary rights will have to given the weight of national law after all.

She believes that land reform everywhere is also having to deal with new concerns arising from decades of social transformation, in particular:

- the position of women in property holding, a group widely dispossessed in the changes of the last century but at the same time much more definitively now the primary producers of agricultural wealth;
- the position of farm workers or tenants in property holding;
- the untenured urban poor, those still-growing millions of citizens in the sub-continent which land law regards as ‘squatters’;
- pastoralists, along with others who pursue land use and therefore tenure regimes least amenable to the strictures of imported notions of land holding;
- integral to many of the above, a new concern - common property - is it time to make provision for the long-standing capacity of traditional tenure systems to hold land as ‘group private property’ as a viable and registrable entitlement in its own right?

As a consequence, old doctrines and dogma relating to titling are being questioned. Alden Wily concludes:

The very conventions of titling which underpin the history of ‘modern’ tenure is beginning to be re-made. Previously, recordation, registration, and the issue of evidential documentation [titles] were inseparable from the individualisation of the ownership of that property. The damage this has done to domestic property relations on the continent has been immense, quite aside from the constraint this has placed upon group and community tenure. Now, the link has been broken. Whilst certification remains an impregnate strategy towards land security throughout the region, it is no longer necessarily for the purpose of individualisation.

Through this, the very notion of what constitutes ‘private property’ has begun to expand its conventional boundaries to embrace a simple - and traditional - idea that spouses, families, clans, groups and communities may also own private property, as private, legal persons in the eyes of the law. Accordingly, new tenure laws in South Africa, Mozambique, Uganda and Tanzania in particular, make provision for individuals, two or more persons, groups, associations, communities, to hold land in legal and registrable ways.

The certification process itself has to change. Certification may be verbal and verbally endorsed (Mozambique). The community itself may conduct the adjudication, recordation and entitlement process (Tanzania). The incidents of the title may be in accordance with their preference. By being forced to acknowledge that customary rights in land may exist in perpetuity, customary rights in Tanzania and Mozambique are rendered in new land law as superior to other forms of tenure available - a pleasing reversal or fortune for the rural majority. (Alden Wily, 2000).

Participation or consultation?

One of the key issues of implementation is the degree of participation or consultation which different governments - and donors - either encourage or permit. The two approaches are very different. For Alden Wily

It would be fair to conclude that as a whole, nations in the region have failed their populations in terms of ensuring the socio-political legitimacy of reforms among the majority, the poor and the rural. In not a single case has any state set out to reform property relations through the community-based and participatory strategies these same states espouse for most other spheres of development.

For the most part, the process of reform has been centrally-driven, defined and delivered, and such popular participation as has occurred, has been in the vein of ‘consultation’ of which note is, or is not taken, according to the will of state. In some states, public consultation itself has been deliberately limited (Rwanda, Ethiopia, Tanzania).

The common position appears to be that matters of property are too political, too powerful in their implications to be left even in part to those who have most stake in the matter, the ordinary, and mainly peasant landholder. Of such failures ‘reforms’ are being made. It is with no surprise that the implementation of new legal paradigms in property relations are proving to be so frequently unworkable, over-expensive and often unwanted by the supposed clients, at least in the form they are being offered (Eritrea, Ethiopia, Uganda, Zambia, Namibia, Zimbabwe).

The singular advantage of beginning at the local level is that it tackles social legitimacy, commitment and cost all in one go. As a matter of course it leads to community-based solutions and institutional development and slowly accruing process which adds up to more genuine reform in property relations than a nationally designed and imposed ‘big bang’ transformation may ever achieve. By working on a district by district basis, the ‘target group’, the citizen land-holder, has the opportunity to be an actor, not just beneficiary (or casualty) of government’s decisions on his rights. Of such involvement ‘true’ reform may be made. New law-making itself, the most entrenched of bastions of command development, is now being better developed where it is driven by the accumulating {and usually strikingly uniform} changing relations in the field, as new forest laws in Africa interestingly illustrate. All this common sense has been learnt only slowly and painfully in other sectors, but not, it seems, yet in matters of tenure. (Alden Wily, 2000).

Consultation itself comes in varying degrees in the matter of tenure reform. Perhaps the most genuine consultative process so far has taken place in the case of Mozambique. As Negrão observes ‘From the beginning, there was participation of civil society in the land debate. NGOs, churches and associations all discussed how best to guarantee access to and the possession of land by the family sector. The spectre of war preoccupied everyone, either because of the resettlement, which was underway, or because of land grabbing which threatened the peace that had been achieved.’ Thus the land law in force in January 1998, was more of a ‘platform for understanding’ than just new law. (Negrão, 1998). Another interesting example of a land reform process involving much consultation comes from Malawi (Box 1).

Box 1
THE PRESIDENTIAL COMMISSION ON LAND POLICY IN MALAWI
(source: Harawa, 1999)

The importance of detailed planning before commencing an inquiry into such complex issues as land, was one of the main lessons which arose from the experience of the Presidential Commission on Land Policy Reform in Malawi.

Factors to be considered at the design stage: A lot of thought was put into the design of appropriate operational tools and procedures for consultation. The Commission was aware that expectations of land redistribution had been raised during the multiparty electoral campaign of 1994 and had to take particular care to present itself as a sort of research organisation and not the promised land distribution agency. It was also recognised that as important as conducting an inquiry was being seen to have conducted one. For this reason, 237 public meetings were held (i.e. in each area under a chief) despite the fact that according to a statistical sampling approach 70 meetings would have been sufficient to provide the same results. Limitations of time and resources meant that careful budgeting of the US\$1.2m and scheduling over 12 months had to be planned in order to produce credible land policy recommendations. Finally, the Commission had to be aware that Malawians, in particular the villagers, were suffering from ‘inquiry fatigue’. Several studies and consultations had been embarked upon by government bodies and NGOs. But to villagers it seemed that all these studies and consultation were being conducted by the same organisation. Many were puzzled as to why the government keeps sending its people to ask questions that they have already been asked. ‘Don’t government people consult each other?’ was a frequent remark.

Public Hearings: As all land in Malawi is initially administered by chiefs, a meeting was scheduled for each area under a chief. Land Commissioners held briefing sessions for the District Commissioners, local chiefs and other district heads of government. Subsequently the District Commissioners and chiefs visited each area to announce the coming meeting, its purpose, format and how to prepare in advance. It was originally envisaged to hear traditional leaders, women, estate owners separately before consulting the community as a whole. However, this format was invariably rejected by local people in order to save time, in the interests of transparency (of the traditional leaders in particular) and due to the perceived impropriety of sitting down to talk with other people’s wives.

After this series of 237 public hearings, written submissions were sought from the public and thereafter from particular stakeholder groups. Special meetings followed up the issues raised from these submissions, and three regional workshops were held to discuss the Commission’s preliminary report and co-validate the findings. A national workshop was scheduled to discuss emerging proposals to come up with possible recommendations. In addition, the Commission made a review of existing studies, and commissioned additional reports. Travel to four countries in the region and at least one country outside the region was originally planned but due to funding constraints this did not take place.

Based on the Malawian experience. A checklist at the design stage should include the following:

- Take stock of available resources;
- Analyse resource demands implicit in the terms of reference;
- List additional resources needed;
- Analyse pressure of available time on resources;
- Determine the composition of the support staff;
- Determine an appropriate code of conduct for Commissioners and support staff.

An interesting example of the limitations of consultation comes from Mandivamba Rukuni, chair of the 1994 *Commission of Inquiry into Appropriate Agricultural Land Tenure Systems* in Zimbabwe. (Government of Zimbabwe, 1994). Interviewed in the magazine *Haramata*, Rukuni argues that a one-off commission such as his ‘doesn’t have much impact’ unless the government put in place ‘a more permanent arrangement to learn continually from people and involve them in reforming the land tenure system.’ Otherwise ‘a Commission of inquiry becomes almost like a political gimmick.’ Even consultation, Rukuni argues, ‘should not be confused with the inherent constitutional rights of people for civic participation through communication with government on a continual basis.’ In contrast, ‘by their very nature, Commissions of inquiry are at best consultative; there really is nothing to participate in.’ Participation needs to come during the implementation stage. He feels the Zimbabwean bureaucracy was generally sceptical about his report, both because it was difficult to

implement and it ‘requires them doing more work than they usually do;’ it also requires them to give up some of the central powers allocated to ministries. Once you decentralise, as his report advocated, ‘then a lot of the permanent secretaries and their directors are going to lose power over budgets and management of staff.’ Politicians were on the whole more honest; they sought political gain, were quick to pick out the elements from which they could gain politically, and wanted to see particular things done but not the rest, ‘so the end result is that you don’t have a holistic programme.’ (Rukuni, 1999).

Public participation, as Okoth-Ogendo concludes, is now essential to satisfactory land policy reform and the agrarian public should ideally be engaged throughout. The Ugandan and South African processes demonstrate the advantage of ‘informed public discourse at any stage of the exercise.’ Public participation has become ‘so crucial that donors are now insisting on and actively demanding its incorporation into all land policy reform exercises however limited these may be.’ (Okoth-Ogendo, 1998).

Summarising the extent of public consultation in the formulation of new land policies and laws, Alden Wily and Mbaya conclude the following:

**EXTENT OF PUBLIC CONSULTATION IN
FORMULATION OF NEW POLICIES AND LAWS**
(source: Alden Wily & Mbaya, 2000)

Uganda	Limited consultation until Bill gazetted in March 1998
Tanzania	Consultation began well with 1991-2 Commission, but dwindled thereafter
Rwanda	None
Eritrea	None
Mozambique	High level of consultation
Malawi	High level of consultation by Land Policy Commission
Zambia	Mixed
Zimbabwe	Limited
South Africa	High level of consultation at times
Namibia	High at times, limited at others. Decision-making centralised despite periodic conferences and consultation
Lesotho	Some consultation
Swaziland	Substantial consultation

Implementation processes

Implementation of new land laws and policies has proved problematic. This is scarcely surprising given the contentious and highly political nature of land - and current government financial constraints. The difficulties encountered by countries such as Uganda, Tanzania and South Africa can usefully provide lessons for others, as can the relative success of Mozambique.

It needs to be remembered though, that in addition to these formal, legal, public processes, other far less formal and less legal processes are also underway. Sam Moyo has directed our attention to what amounts to a 'silent class struggle'³ over land in Southern Africa, in which the poor and landless in countries such as South Africa (especially in KwaZulu-Natal), Zimbabwe and Namibia are invading land, occasionally, as in Zimbabwe, with the connivance of local politicians seeking votes. They are doing so because they are impatient that the formal processes are not delivering for them. While there is as yet little documentation of these processes, Moyo (2000) believes

the majority of rural people who continue to subsist on marginal lands are increasingly exerting their collective powers to resolve the land question on their own through organised strategies of land occupations, popular protests, renegotiating their electoral votes and other forms of resistance. Recently, illegal squatting or land occupations, albeit of a sporadic nature, have been more influential in keeping the land redistribution issue on the agenda than formal organisations of civil society or their CBO counterparts.

These events are little understood 'because of the inability of most official discourse to deal with the illegal and underground aspects of mobilising for reform.' (Moyo, 2000).

The dynamics are a little different in countries without a history of substantial settler agrarian colonialism, but here land grabbing has also taken place recently, often in the guise of eco-tourism, mining development or mini Great Treks of white South African farmers. (Moyo, 1998; Palmer, 1998).

³ The allusion is to Issa Shivji's classic work on Tanzania, *The Silent Class Struggle* (Dar es Salaam, 1974).

Uganda

Turning to the formal processes, Uganda is perhaps the prime example (see Box 3). Here, a comprehensive and well intentioned Land Act was passed in 1998 following a relatively open process of consultation compared to other countries (at least towards the end), in which the Uganda Land Alliance (a coalition of local NGOs ‘lobbying for fair land laws’) and DFID (as a major donor) played important roles at different times. Vigorous debate ensued within the Ugandan Parliament before the Act was passed by the 30th June deadline imposed by the Constitution. Yet, for all the good intentions, the Act has proved unimplementable in its current form. Why is this?

First and foremost because no one counted the cost. Not the Ugandan Government, not the politicians or the NGOs, not even DFID. This was because all attention and energy went into lobbying on the Act to get the best deal for the various stakeholders, and no thought was given to the costs of implementation, which in the event proved to be very large; the funding needed to finance land titling and ownership transfer alone was ‘in excess of Ush 700 billion’ or £280 million.

A DFID-funded *Implementation Study Report* of September 1999 (Government of Uganda, 1999) concluded that ‘the implementation of the Uganda Land Act of 1998 is beyond the current capacity of the government budget and may have various negative consequences. Even if the resources for its implementation could be raised, the costs would outweigh the envisaged economic benefits of the reform, at least in the foreseeable future.’ It noted that ‘it would be unrealistic to expect the 1998 Land Act to generate major economic benefits over the short- to medium-term, either in the farm or the non-farm sector.’ It was unlikely to have a significant positive impact on the supply of commercial bank farm credit over the medium term ‘due to the unwillingness of almost all commercial banks to lend to farmers.’ In the short to medium term ‘the impacts of the Act on the rural land market were likely to be limited.’ It ‘was also unlikely to have major impacts on farm production through improved tenure security,’ while one unexpected short-term impact was that the Act ‘had itself created new uncertainties as to the allocation of rights over some urban and rural land.’ It was unlikely to make a major impact on either the Government’s agricultural modernisation or its poverty eradication programmes. The environmental impacts would be variable, while land certification and registration would have a positive social impact in some circumstances (especially urban), but not in others. Moreover, ‘It was not possible to weigh the value of costs generated by the Land Act against the benefits. Therefore, it was not possible to make recommendations concerning priorities for implementation of the Land Act based on a systematic calculation of costs and benefits. The first priority was to confront the main unanticipated costs already generated by the Act.’

Martin Adams summarises the situation thus:

The study found that it would be important to monitor the Act’s impact over time, not just in isolation, but in conjunction with other developments in the economy. With time, the provisions of the Act could cause growing inequality in farmland distribution. If unfettered, such a trend might become detrimental to attainment of the government’s poverty alleviation targets. At that stage, further policy reform with respect to the terms on which land was held might become appropriate, e.g. the introduction of a progressive tax on titled land. Other elements of the impact which it would be important to monitor included the extent to which certificates of title and

land registers were kept up to date and the efficacy and equity of the new dispute settlement structures. In the longer term, as and when the implementation costs of the Land Act had been fully resourced, it might be appropriate to review the scope for providing legal aid to the poor from the Land Fund in order to prosecute the appeal stages of land disputes. (Adams, 1999a).

The *Implementation Study* concluded:

Progress with implementation of the Act is much slower than planned. This has had very serious consequences because previous mechanisms and structures have been removed, and a vacuum exists in land administration and, especially, dispute resolution. Disputes which would previously have been settled quickly at a local level are now persisting with consequent loss of production, hardship, and, in some cases, violence. The vacuum in dispute resolution must be addressed as a matter of extreme urgency. There has also been a degree of land-grabbing by opportunists in the hope of acquiring a certificate. Expectations are therefore rising and there is a major risk that demand will be stimulated beyond the capacity of any embryonic institutions. Under the Constitution, local authorities are now obliged to fully compensate for compulsory land acquisition. This has serious budgetary implications for urban and municipal councils, most of which do not have the necessary resources. It has rapidly become apparent that the title registration system must be developed alongside the customary certification systems, although this is not directly provided for in the Land Act. This will require an extensive development programme in parallel with the implementation of the Land Act itself. (Government of Uganda, 1999).

Despite the critical nature of this report, DFID in East Africa took the view that it was committed to the Act over the long term and that land reform was not something achievable in a quick fix. What are the lessons to be learned from this experience? Martin Adams sums them up as follows:

BOX 2
LESSONS FROM THE UGANDAN EXPERIENCE
(source: Adams, 1999a)

- The passage of Uganda's tenure reform legislation was not preceded by a financial and economic appraisal or by a policy development process. The budgetary implications were not the subject of rigorous review. No provision was made in the budget for its implementation. When the bill became law, the responsible implementing agencies were without the necessary staff and funds to implement it.
- The Uganda Land Act covered the whole country in one fell swoop. When the new law was passed, the old order laws and institutions were swept away but no arrangements had been put in place to manage the transition.
- Inadequate attention was paid to the very significant regional differences in land tenure and land use (e.g. intensive smallholder arable production and extensive pastoralism) which, in turn, called for different implementation strategies and arrangements; some areas were urgently in need of the land tenure reforms, others were not. Do not try to fix things unless they are broken!
- Other preparations for the passage of the law were either absent or inadequate: training, public information and communication, community facilitation.
- The rush to pass the legislation in time to meet the deadline set in the Constitution caused the government to overlook all the necessary preparatory work. Insufficient attention was paid to the Buganda proverb: 'fruit which ripens quickly, rots quickly'

- Concentration on capacity building of new institutions of land management was at the expense of the old institutions, which had been cast adrift by the Act. Capacity building must focus not only on those whose land rights are being legally confirmed and officials who are to staff the new institutions, but also on all those elements of existing organisations which are undergoing the change mandated by the Act.

Yet, Adams concludes:

Despite these criticisms, it is important to record that the Implementation Study found that the Uganda Land Act, 1998 *is a major step forward in equitable land tenure reform*. As with all land-related legislation, amendments will be needed to make the law more workable. The amendments proposed by the study do not represent major changes in direction. They aim to provide more flexibility in implementation. This is necessary because of the budgetary constraints and the specific requirements of the different regions of Uganda. (Adams, 1999a).

The legal co-drafter of the Act, Patrick McAuslan, is reported in retrospect to be highly critical of DFID for paying far too little attention to strengthening the capacity of the Ministry of Lands. Recent reports suggests that its capacity remains weak and wholly inadequate to the task of implementing the Act, while it is also proving highly resistant to letting go of its powers at the centre and to setting up the agencies required by the Act.

For Alden Wily, the cause of problems was clear. Uganda provides, she says, but the most recent example of the problem being less a matter of which principles are decided upon but the process through which they are arrived at:

If there were one outstanding failure dogging attempts at land reform in the sub-continent it is a strategic planning failure, the way in which changes are being made. Implementation of the Land Act in Uganda was always going to be unworkably expensive because it was more about institutional change than anything else. The radical decisions had already been made by the 1995 Constitution and the 1998 Land Act was supposed to put these into effect. But particularly in the matter of tenure administration it took the time-worn approach of not bothering to examine the existing institutions and mechanisms for tenure administration in the rural areas into which it was venturing almost for the first time, but creating out of air more than seven thousand new institutions, each needing finance and servicing. In the months preceding the passage of the bill into law, officials and parliamentarians were directly warned of the flaws in this. But because they did not know the alternatives, they did not hear, and were in any event determined upon a path which would keep at least the regulation of property matters under state-driven control and dependence, the declaration of autonomy aside. (Alden Wily, 2000).

BOX 3
LAND REFORM IN UGANDA
(source: Alden Wily & Mbaya, 2000)

Tenure reform began in 1988 with the establishment of a committee under the Ministry of Agriculture to look into ways to increase security of tenure and to make land more freely available for investment. Research into tenure systems was conducted with the support of USAID and the Wisconsin Land Tenure Center. Inevitably, the direction and scope of identified tenure change needed altered and expanded. From 1993 four Bills for a Land Tenure and Control Act were drafted, eventually gazetted in early 1998 as a Land Bill, and enacted in mid-1998.

By 1995 the new Constitution of Uganda had set the policy framework, with a strong orientation towards the democratisation of property relations. This was manifest in the removal of root title from the state and its vesting directly in landholders. Significantly, Government did retain ownership of environmentally-significant resources including forests to itself. Democratisation was to be furthered through the removal of authority over property titling and transfer from Government to district level autonomous Land Boards. Dispute resolution was to be similarly removed from the Government-supported judiciary into a regime of independent land tribunals.

The Land Act, 1998 included a rigorous timetable for establishing the new institutional framework for new land management and dispute resolution and a funding mechanism to support the capacity of local people to benefit from its provisions (e.g. to title their land, or to buy out landlords under the mailo system).

In practice, implementation has been slow and problematic, dogged by apparent lack of support within central Government for the reform and financial incapacity to deliver the promised institutional changes. The ambitious target dates for institutional development have not been met. The new regime of District Land Boards is in place in name but few are operational. The planned new Land Tribunal machinery for dispute resolution has not yet been implemented. The requisite 4,000+ Parish Land Committees have not been formed. Regulations to guide the operations of Land Boards have not been approved and those for the Tribunals are yet to be formulated. The statutorily-required Land Fund is not yet operational. Difficulties arising from the fact that the new law did not fully revise the registration laws are beginning to be felt. There has been some social unrest as a result of land disputes not being able to be held in ordinary courts and remaining unresolved. Land grabbing and squatting on ex Government Land has flourished in especially urban and peri-urban areas and Municipal Councils are experienced a dramatic loss in revenue from no longer being able to charge rent on properties, with consequent fall in service provision.

A programme of national sensitisation has however been fairly successfully launched and most citizens are apparently now aware that their customary right in land is secured and that they may no longer be wantonly evicted. A helpful study has been carried out to examine the practical implications of the Land Act and to propose how the Ugandan state may realistically set about implementing the reform. Amendments to the Land Act have begun to be drafted to address some of the worst constraints. These include an intention to ask Parliament to allow courts to hear disputes until the tribunals are in place, to reduce the number of Land Boards and Committees needed for tenure administration, and to include a new clause of spousal co-ownership which did not appear in the law, although positively supported in Parliament. Amendment will also be sought to put a hold on certain categories of land until the state is able to define exactly which land in urban and rural areas [estates], it will retain as its own property.

Tanzania

In Tanzania, consultation was far more limited than in Uganda (see Box 4). Patrick McAuslan (contracted by DFID) also played a role in drafting the 1999 Acts - the Land Act and the Village Land Act, of which Issa Shivji remains an unrepentant critic. (Shivji, 1999; Palmer, 1999). The Acts are extremely long and comprehensive in a deliberate attempt to restrict the capacity of local bureaucrats for corrupt implementation. McAuslan wrote of the Ugandan Act (but it is equally applicable to Tanzania) that 'It is absolutely essential that the new land law is clear, and in sufficient detail and precision so that people know where they stand and relatively inexperienced officials have their dispositions carefully structured and controlled.' (McAuslan, 1998). This strikes one as a little naïve. But Martin Adams suggests there can a danger in the other extreme, and that South Africa has repeatedly run into problems arising from the brevity of legal drafters. For him, a good principle is 'if there will be doubt, set it out.'

The Acts are proving similarly difficult to implement, not least because of 'the need to have a land administrative network spreading over 9,000 villages.' A paper from the Ministry of Lands (November 1999) says 'The enactment of the new land laws marks the start of a long land tenure reform process *which will take place for several decades to come.*' It will involve both short and long term strategies for implementation. The Ministry has formed an Implementation Committee which has prepared an Action Plan to address the immediate and long term measures necessary for 'operationalising' the new legislation. (Government of Tanzania, 1999). In November 1998, Alden Wily noted that 'provision is made for the law to be under constant review and that amendments are routinely expected.' (Alden Wily, 1998). In July 1999, one of the Ministry's key advisers told the author that the Ministry lacked the capacity and resources to implement the Acts, and he appealed for support. As the Ministry acknowledges, the Acts will take decades to enact and the Tanzanian Government now seems disposed to pilot its implementation in areas where land disputes are particularly acute.

For Alden Wily

the whole point of the Village Land Act is for devolved land administration, by the village, at the village, for the village. The village in Tanzania has existed for a quarter of a century as the social, spatial and legal institutional foundation of Tanzanian society. The outstanding difference of the Tanzanian Bills with other new land laws in Africa is the vesting of (most) control over land tenure administration at the grassroots in the hands of the 'governments' (village councils) elected by the members of each registered village community. (Alden Wily, 1998).

In a later work she adds

If there were one indicator that the Tanzania land reform might ultimately work better than elsewhere it is simply in the fact that the institutions upon which it will ride are already in place and already by their nature vulnerable to popular direction. The main question will be how far the Ministry of Lands will take on board the idea in the law that its role is to advise, and to advise well, not to manage village lands itself. (Alden Wily, 2000).

BOX 4
LAND REFORM IN TANZANIA
(source: Alden Wily & Mbaya, 2000)

Attention to tenure matters began in 1989-90 with the establishment of a Technical Committee in the Ministry of Lands, Housing and Urban Development to draft new Urban Land Policy. This was quickly overtaken by a Ministerial recommendation to establish a Presidential Commission of Inquiry into Land Matters. This began in January 1991 and presented its final report in January 1993. To achieve its objective, the 12-man Commission travelled widely in the country, holding 277 meetings attended by 80,000 people. The prime recommendation of the Commission to vest root title of most of the country in respective village communities, and to remove control over tenure administration from the executive into an autonomous Land Commission met with no support from Government and the lengthy report remained unpublished. In 1993 the Ministry draw up a position paper and draft National Land Policy which nonetheless drew heavily upon most other aspects of the Commission's recommendations. This was presented to Cabinet in December 1994 and the subject of a public workshop in January 1995. The National Land Policy was approved by Parliament in August 1995. No public consultation was held.

Drafting of the requisite new basic land law began in early 1996, led by a foreign expert working with a Tanzanian team, a fact which angered the Commission chairman and resulted in several years of acrimonious academic exchange in local and international publications and the launching of a non-government lobby for changes, spearheaded by the chairman's own organisation.

A final Draft Bill for the Land Act was presented by the working group in November 1996, and remained uncirculated in any form until late 1998. At that point, the extremely lengthy draft was gazetted as two proposed laws, a Land Bill and a Village Land Bill. A limited amount of public discussion ensued immediately before its debate in Parliament in February 1999, where the two laws received full support. A commencement date for the law has not yet been set, Government apparently keen to await the results of the upcoming election [2000].

Plans for a national publicity campaign have been made but remain un-funded. Government is seeking donor support for this and the drafting the regulations through which tenure administration and control will be exercised. The need and role to conduct a thorough and comprehensive information and education programme on the law is especially critical in Tanzania; this is because the centre-piece (and main innovation) of the new tenure laws is the devolution of a great deal of authority and administration over land to the grassroots, in what is arguably a unique form of tenure democratisation. Unlike Uganda, Tanzania has chosen to use the existing and well-established village governance machinery for tenure administration and local dispute resolution, rather than depositing these functions in district level agencies. Each Village Council is the democratically elected government of the community [Village Assembly] and subject to its direction. Village Land encompasses the vast majority of lands in the country. The Land Act and Village Land Act designate Councils as Land Managers, responsible for guiding community decisions as to the distribution of land within the village into household, clan, community or other lands, and their adjudication, registration [Village Land Register] and titling [to be effected by the Commissioner's offices in accordance with the decisions of the village]. The importance of clear, accurate and comprehensive guidance to villagers will thus be clear. Justification for the extremely detailed, procedural and prescriptive nature of the Tanzanian laws is also suggested. In theory at least, this extent of 'democratisation' of control over property relations should simplify implementation of the reform, increase accountability in local land matters, and cost a great deal less than is anticipated in the concurrent reform process in neighbouring Uganda.

Whilst the Tanzanian laws were subject to insignificant public consultation in their formulation, they have received abundant academic critique. Whilst disappointment has been widely expressed at the failure of the Government to release its ultimate ownership and control over land, there is as widespread approval for its handling of customary rights in land, the devolution of administration as noted above, and the express support in principle and procedure given to the security of women, urban 'squatters', and pastoralists. Significant innovations have been made to retain and develop the capacity of groups to securely hold land in common into the 21st century. At this point, early 2000, the main question facing the reform is the extent to which political will and central Government willingness to release powers as suggested in the new laws, will be realised.

South Africa

In South Africa, the obstacles to land reform have been many, not least from the continued strength of ‘organised agriculture’ (i.e. white commercial farmers). Here, as in Zimbabwe and Namibia, the continued intransigence of white farmers blocks land reform in the short term, but (like Rhodesian UDI) could well prove totally disastrous to them in the long term.

The post-apartheid government launched a highly ambitious programme of land restitution, redistribution and tenure reform (see Box 6). An entirely new Department of Land Affairs had to be created to drive the process. Early attention was focussed on difficult problem areas. Mistakes were inevitably made. Although some felt that this served to critically slow the pace of land reform elsewhere in the country, Martin Adams disagrees. For him:

The Land Reform Pilot Programme started in 1994 and ran for two years. It was of immense help. It operated in nine pilot districts and was concerned with land redistribution only. The pilot districts were very often those with major restitution and redistribution problems, but they helped us devise, test and demonstrate the required systems and procedures for the national land redistribution programme. By the time two years of the LRPP had expired, all the provincial offices of the DLA were up and running and working on province-wide redistribution programmes learning from the pilot districts. A thorough and independent review of the LRPP in August 1996 concluded that a considerable amount was achieved in meeting its objectives to devise, test and demonstrate. I don’t think it delayed us at all. It in fact forced us to get on with the job from day one rather than indulge in philosophising. It was a period of frenetic activity by a handful of people and proved a very useful learning experience. (Adams, 1999a).

In June 1999, when Derek Hanekom, an avowed enthusiast of land reform, was replaced as Minister of Lands and Agriculture by Thoko Didiza, whose sympathies were believed to lie more with ‘organised agriculture’, there were many who reflected that a great window of opportunity had been lost, especially when the promised (and much lauded) Land Rights Bill which aimed to sort out tenure problems in the former homelands was shelved by the new minister (Box 7).

But there were also deeper structural problems. As part of the ‘historical compromises’ made at the change of government, South Africa ‘bought’ the prevailing World Bank model of market-assisted land reform. It is now abundantly clear that in the South African context there are fundamental problems with such a demand-led, market-based approach to land reform. The scope that this approach provides for securing sustainable rural livelihoods for poor people has proved very limited. It clearly needs to be complemented by a supply side component involving acquisition of land by government when it becomes available at favourable prices for later redistribution to the rural poor. This is necessary because poor people in South Africa are simply not in a position to organise themselves to utilise funds for land acquisition, settlement and production on any significant scale. Contrary to expectations, South African NGOs did not take up that role, so a considerable government support system had to be put in place before poor people could move even to the point of land acquisition, let alone to settlement and production. It has also been found that extensive training was necessary in a number of critical areas around land acquisition and it has taken 4 years for the Department of Land Affairs to get up to reasonable speed on this.

But the performance of South Africa's land reform programme also needs to be seen within the contexts of:

- the huge constraints imposed by the inherited apartheid structures;
- the relative weakness of the new state structures;
- the absence of effective local government structures;
- the relative collapse of the land advocacy NGOs;
- the fickle and inconsistent political support for land reform which seems to be characteristic of new majority rule situations.

In addition, it bears repeating that rushing to early judgement is not helpful and often downright misleading, as Bill Kinsey's recent findings on Zimbabwe amply demonstrate⁴ (Kinsey, 1999). Some of the key lessons to be derived from South African experiences to date can be tabulated as follows (Box 5):

BOX 5
LESSONS FROM SOUTH AFRICA

- That few countries get land reform right the first time round.
- That there are severe limits to what even a relatively well endowed Land Affairs Department can do at the local level.
- That poor people are often vulnerable in the face of dishonest sellers and valuers of land, and lawyers.
- That political will for land reform can soon dissipate.
- That systems designed to be flexible, decentralised, responsive and beneficiary-friendly can easily become rigid, highly centralised, and unresponsive.
- That existing power relations on the land are not easily dismantled.
- That measures designed to protect labour tenants and farm workers can backfire.
- That the unique land acquisition grant of R15,000 to individuals can result in a 'rent-a-crowd' approach in which people with no past common history come together to buy large farms which they can't afford as individuals.
- That when government is known to be interested in the purchase of land, this will tend to drive up land prices.
- That there is a danger of passing so many new land laws that you don't have the capacity or the energy to implement them all.
- That joint venture schemes involving commercial farmers and beneficiaries, while not unproblematic (mostly due to the high transaction costs involved), can offer economic opportunities and livelihoods.
- That historical political compromises (e.g. over the role of traditional rulers and protecting existing white property rights) can seriously constrain future options.
- That it is difficult for poor, rural people to make their voices heard.
- That NGOs find it difficult to operate when they are broadly supportive of government; but they do not easily become implementers of land reform, as they often lack hands on experience of this.

⁴ In which he argues that negative assessments of Zimbabwe's land reform programme are premature and have used inappropriate criteria. Any attempt at comprehensive evaluation of the benefits of resettlement in less than a generation is ill-advised. He shows that the programme has, after a lag, resulted in both higher incomes and more equally distributed incomes, that genuine poverty reduction through resettlement is possible, and that broad based land reform lead to declining levels of inequality.

- That 5 years is far too short a timeframe in which to measure success or failure of a land reform programme.
- That there is a need to establish good monitoring and evaluation systems at the outset in order to be able to gauge subsequent impact effectively.

BOX 6
LAND REFORM IN SOUTH AFRICA
 (source: Adams, personal communication)

Prior to the elections in 1994, the African National Congress set out its proposals for land reform in the *Reconstruction and Development Programme: a policy framework*, (ANC, 1994). It stated that land reform was to be the central and driving force of a programme of rural development. Land reform was to redress the injustices of forced removals and the historical denial of access to land; to ensure security of tenure for rural dwellers, eliminate overcrowding and to supply residential and productive land to the poorest section of the rural population; to raise incomes and productivity; and, through the provision of support services, to build the economy by generating large-scale employment and increase rural incomes. As anticipated in the 1994 RDP policy framework, government's response has had three major elements:

Land Restitution covers cases of forced removals, which took place after 1913. They are dealt with by a Land Claims Court and Commission, established under the Restitution of Land Rights Act, 22 of 1994. By the cut-off date in March 1999, over 60,000 claims by groups and individuals had been lodged. By March 2000, some 1,450 property claims, mostly in urban areas, had been settled and about 300 been rejected. Amendments to the Act in 1999 provided for simpler administrative processes for the resolution of cases. A major outstanding issue is the level of compensation to which claimants should be entitled. The high cost of compensation is in danger of swamping the budget at the cost of other land reform components.

Land tenure reform has been addressed by laws, which aim to improve tenure security and to accommodate diverse forms of tenure, including communal tenure. The Communal Property Associations Act, 28 of 1996, enables a group of people to acquire, hold and manage property under a written constitution. The Land Reform (Labour Tenants) Act, 3 of 1996, provides for the purchase of land by labour tenants and the provision of a subsidy for that purpose. The Extension of Security of Tenure Act, 62 of 1997, helps people to obtain stronger rights to the land on which they are living or on land close by. It also lays down certain steps that owners and persons in charge of the land must follow before they can evict people. The Interim Protection of Informal Land Rights Act, 31 of 1996, protects those with insecure tenure, pending longer term reforms. The proposed Land Rights Bill, covering the rights of people living on state land in the former homelands, was to have finalised the programme of tenure reform, set out in the 1997 White Paper on South African Land Policy. However, the measure was overtaken by the elections in mid 1999.

Land Redistribution aims to provide the poor with residential and productive land. It started with a two-year pilot exercise to devise, test and demonstrate arrangements for a national programme, which began in 1997. The legal instrument to allocate a government subsidy to 'qualifying persons' for rural land, housing and infrastructure is the Provision of Certain Land for Settlement Act, 126 of 1993, previously introduced by the National Party. The Act, amended and renamed in 1998, had provided some 700,000 hectares to over 55,000 households by the end of 1999. Major outstanding issues are: who should qualify; the extent to which government should intervene in a 'market-based' and 'demand-led' process; and the coordination of government agencies in the planning and implementation of land redistribution projects.

In terms of the RDP policy framework, South Africa's land reform programme has failed to meet expectations. It has faced serious fiscal constraints, receiving less than 0.4 per cent of the government budget, over the financial years 1994/5-1998/9. Under the Constitution, landowners are entitled to market-related compensation. The Constitution also sets out responsibilities for land reform, which are not easily coordinated. While the national government is responsible for land acquisition, the provincial and local spheres are meant to provide services for settlement and agriculture. Constraints have arisen from the weak organisation of rural people and the lack of capacity of governmental agencies, whose personnel lack experience and training.

BOX 7
SOUTH AFRICA: THE FATE OF THE LAND RIGHTS BILL
(source: Adams, 1999b)

The Land Rights Bill aimed to provide for far-reaching tenure reform in the rural areas of the ex-homelands by repealing the many and complex apartheid laws relating to land administration, by recognising customary tenure systems, and by bringing tenure law into line with the Constitution. The law was expected to confirm the rights of a broad category of rights holders who occupy, use and have access rights to land. It was to have provided for the transfer of property rights from the State to the *de facto* owners and to have devolved land rights management functions to them. Rights were to vest in the people, not in institutions such as traditional authorities or municipalities. The proposed law would have recognised the value of both individual and communal systems and would have allowed for the voluntary registration of individual rights within communal systems. Where rights existed on a group basis, they would have been exercised in accordance with group rules and the co-owners would have had to choose the structures to manage their land rights. The envisaged law was neutral on the issue of traditional authorities. Where such systems had proved functional and enjoyed popular support, the law would have provided them with legitimacy. Where they were no longer viable or supported, the proposed law would have enabled people to appoint new structures.

Following the elections of June 1999, the draft Land Rights Bill was shelved by the incoming minister, who instructed that new legislation be prepared to transfer state land in the former homelands to tribes. In an attempt to salvage work done on the bill, attempts are being made to desegregate the draft bill and incorporate the principles in regulations and amendments to tenure laws already on the statute books. The overall effect is expected to be the dilution of the significance of the reforms as originally proposed and a perpetuation of the dual system of land rights inherited from the colonial and apartheid past. It remains to be seen whether the proposed legislation to transfer land to tribes (i.e. tribal leaders) will prove viable or whether the draft Land Rights Bill will have to be reactivated. There is little doubt, however, that the cause of tenure reform in South Africa has been severely set back for reasons which have yet to be publicly debated.

The political opposition to tenure reform is, however, predictable. It changes the terms and conditions on which land is held, used and transacted. A tenure reform worthy of the name was sure to be challenged by those with vested interests in maintaining the status quo. Opposition stems from traditional leaders reluctant to abide by constitutional principles and from rent-seeking officials who seek to control and profit from land allocation. There are others who feel that priority should be given to capital expenditure on the redistribution of land alienated by European settlers. There is a reluctance to allocate funds to land administration, despite the fact that the Department of Land Affairs budget remains consistently under spent and that over 1,500 officials (mostly supernumerary), employed by provincial governments, continue to allocate land under the old-order Bantu land regulations.

Currently, in South Africa, government's plans to redistribute freehold land to 'progressive' African farmers are in the ascendance. However, if experience in Zimbabwe and Namibia is any indication, the issue of tenure reform in the communal areas will continue to recur. In South Africa, there is increasing evidence that, contrary to expectations, rights-based policies (i.e. land restitution and land tenure reform) are likely to receive more political support than land redistribution, a purely administrative process. It should not be a case of either one or the other, but of obtaining a better balance between rights-based and administrative land reform measures.

Mozambique

In Mozambique, a more modest enabling law has proved far more implementable in practice than the new legislation in South Africa, Tanzania or Uganda. This was partly due to the participative processes surrounding the making of the 1997 Land Law (see Box 8), partly because of the subsequent successful Land Campaign by NGOs, and partly because NGOs have actively sought partnerships in economic development (rather than confrontation) with new investors and the business sector. Martin Adams suggests that the relatively even political balance of power between Frelimo and Renamo may also have been a factor, in contrast to South Africa and Namibia, where the ruling parties felt less threatened and less need to consult on implementation.

Those organising the Land Campaign believed that ‘the effective application of the law would depend to a large extent on the knowledge rural families had about the law.’ The Campaign did not attempt to substitute for the voice of small farmers, but rather ‘to inform the producers, as well as the operators and businessmen, about the rights and duties of each according to the new Bill.’ As well as disseminating information about the new law, the Campaign sought to promote justice by enforcing application of the law and to stimulate discussion between the family and commercial sectors occupying the same area. The organisers produced and disseminated 15,000 copies of a *Manual to Better Understanding of the New Land Law*. In addition:

The most sensitive point was the recognition of rights to land occupation on the basis of oral proof; it was necessary for all citizens to have knowledge of this legal measure so as to avoid conflicts and the violation of a fundamental right in Mozambique, namely the right to land.

At the end of two years of operations, 114 of the 128 districts and 280 of the 385 administrative posts existing in the country had already been covered. Around 15,000 volunteers had been trained as activists in the Land Campaign – these included young people, priests, pastors, evangelists, teachers, extensionists and NGO workers, in an authentic movement of national unity. (Negrão, 1999).

In its second year, the Campaign stressed the fact that consultation with local communities was obligatory where applications are made by outsiders to acquire land in rural areas and it sought to inform citizens about the ways in which consultation with the state should be carried out. This concern arose from a series of cases in which officials had limited themselves to collecting only a few signatures as a token attempt to fulfil the consultation requirements. In addition, there are a growing number of cases of corruption in urban and peri-urban land matters. While the Campaign advised citizens to register their land, they acknowledge that, in practice, the capacity to do this does not always exist. The Campaign is being replaced by a Forum which is expected to focus its attention on the key issues of community land, women’s land rights within the family, and the buying and selling of land in peri-urban areas.

BOX 8
LAND REFORM IN MOZAMBIQUE
(source: Alden Wily & Mbaya, 2000)

As in all African states, land ownership matters have been central to the battle for Independence in Mozambique and post-Independence policy. In 1979 the state promulgated a land law which vested land in itself, earmarked areas for socialist-oriented enterprise and restricted rural families to certain areas to encourage agricultural co-operative development and provide labour for state enterprises. The land laws [No. 6 of 1979 and No. 1 of 1986] permitted individuals to title their land and established titles issued by Government as the only mechanism for foreign access to land. Demand for land accelerated in the late 1980s as a result of the successful negotiation between Renamo and the Government and the introduction of the economic reconstruction programme. White farmers from South Africa and especially Zimbabwe represented a significant source of interest in land acquisition, resulting in a strong concessionaire culture [lands leased by Government to foreigners for certain productive uses].

In 1992 the Land Tenure Center of Wisconsin, contracted by USAID to examine tenure issues, organised the First National Land Conference in Mozambique. This was undertaken in conjunction with the Governments Land Commission established the previous year and now named the Inter-ministerial Land Commission within the Ministry of Agriculture. A subsequent Conference was held in May 1994.

In October 1995, Government approved a National Lands Policy (PNT) and an Implementation Strategy. A draft new land law was prepared in January 1996. This was circulated to 200 institutions, experts, NGOs and the media. Working teams were sent to all ten provinces. A Technical Secretariat compiled the findings and submissions, presented to a (third) Land Conference held in June 1996 and attended by 226 participants drawn from all public and private sectors. The resulting Working Document formed the basis for the Bill, considered by an open public session, two parliamentary committees and various other bodies, but not without conflict and delays (debate of the Bill apparently delayed three times in 1997). NGOs played a critical role in mobilising pro-peasant support. The Bill was formally approved on 31 July 1997. Regulations under the law were subsequently developed through a comparable working group mode with widely inclusive non-governmental participation and finally approved by Cabinet in December 1998.

In the interim a range of national and foreign NGOs and academics founded a National Committee to launch a Land Campaign. Its aim has been to disseminate the new law, to promote justice by enforcing the application of the new law and to stimulate discussion between the family and commercial sectors which occupy the same land areas. Rights of women in land, the right of communities to participate in tenure-related decision making and promotion of group action on land matters, have been important thrusts of the campaign. Manuals, leaflets, videos, comic books and plays have been developed. The Campaign operates in many areas of the country and continues into 2000.

Pursuant to the mode of Portuguese law, the new Land Law, 1997, is a concise set of articles, setting out principles with minimal detail or procedural guidance (and in this respect, a strong contrast to the highly detailed and prescriptive Tanzanian Land Act, 1999). Nonetheless, its promulgation was marked by prompt concern as to unclarities, ambiguities and lacunae, concerns not entirely remedied by the Regulations of the following year. In 1997, Kloek-Jensen observed that the law neither met the ambitions of most citizens nor met the keenest of the donor community to create a clear legal environment for the development of private property and a free market in land. At the same time, 'the law devolves more authority and autonomy to private investors and assumes a more conciliatory approach towards capital, both foreign and national'. Some writers examine the ambiguities of the law and Negrão concludes that the considerable consultation process had the effect of diluting consistent policy and rendering the law 'more a platform for understanding between the different actors and interests' than a strategy of reform – i.e. a compromise. The strong lobbying stance of Renamo appears to have constrained 'pro-peasant' developments.

A key legal tenure change provided by the law is the requirement that communities participate in the administration of natural resources and the resolution of conflicts [Articles 10 & 21]. This does not extend however to a right of veto. Another critical change is that communities as well as individuals may hold land and may be titled as such [Article 7]. Verbal evidence is accepted in the law as the basis of a recognised right in land. Application of the law is proving less satisfactory than these clauses suggest however, partly through the absence of clear community organisation and representation and partly through the retention of complex and expensive titling procedures, unfavourable to the poor majority.

Conclusions

In October 1997, President Museveni urged his countrymen to ‘Decide now on this issue. This land reform thing should be resolved now.’⁵ His call echoed many earlier attempts by British colonial administrators to find ‘final’ solutions to land problems. But experience suggests that finality is not achievable and that we are dealing here with long processes, with open and hidden struggles, and with much contestation. This is very important to stress, because most donor (and much NGO) rhetoric is quite consciously apolitical, for understandable reasons.

It is in many ways too early to rush to judgement, as Chou-en-Lai once famously remarked of the French Revolution. That the new Land Acts are proving difficult to implement is neither surprising nor necessarily a problem. The fact that they have been passed means that things are now in a different place from where they were beforehand. Moreover, as Martin Adams observes, had governments and donors been aware of how much it might cost, they would almost certainly have recoiled from the endeavour. In South Africa, the issue of tenure reform in the former Bantustans, where rural people have to endure daily conflicts over resources, will surely not go away (whatever the new Minister may think in the short term), while the ANC’s almost pathological fear of confronting so-called traditional authorities on this is surely also not sustainable in the long run.

Tenure reform itself however is only part of a wider struggle to achieve sustainable livelihoods. It may well be, as Sam Moyo argues, that:

land tenure reform is not crucial to the major struggles for land, even if the present preoccupation with foreign investment places demands on the marketisation of land and natural resources. What is crucial is that without popular support, imposed land policies tend to be rejected through what appears to be low intensity but effective rural warfare over returning lost lands. (Moyo, 2000).

Conflicts over land are made even more complex in societies experiencing ‘deepening differentiation along racial, class, ethnic and gender lines’ as attempts at redistribution are thwarted by an increasing concentration of land by new black and foreign elites. For Moyo, ‘*unequal ownership of and access to land are, increasingly, a central threat to stability in Southern Africa.*’ These are the major issues and are more important than ‘the legal form of tenure that concerns elites, some governments and some donors.’ (Moyo, 2000).

The role of donors, as stated at the outset, is not unproblematic. Donor dependency is doubtless inevitable in present circumstances. But donors need to be bolder, more imaginative and far more sensitive to political terrain - and to charges that what they are really about is frustrating and diverting land reform. It was abundantly obvious to Martin Adams, John Cusworth and myself in May 1999 that the British Government needed to bite the bullet and purchase land in Zimbabwe for resettlement (Adams, Cusworth and Palmer, 1999), despite the obvious current political problems and all the past baggage (Palmer, 1990). One of the lessons to be learned from Zimbabwe is surely the danger of adopting overly narrow and closed conceptions of the appropriate roles for donors and host governments in land reform programmes. A lesson from Uganda and Tanzania is clearly that donors should aim at strengthening capacities at national and especially at local levels, as was recommended to

⁵ *Sunday Vision*, 12 October 1997.

DFID in South Africa in November 1999 (DLA Review, 1999). A very promising step in this direction, following the Sunningdale (February 1999)⁶ and Addis Ababa (January 2000)⁷ workshops, has been DFID's encouragement of the development of African-owned networks on land tenure and policy in East, West, Southern and the Horn of Africa. Here DFID has played a positive role in listening to and facilitating requests for networks aimed at 'continued learning, information exchange, collaborative research and capacity building for policy debate and practical implementation involving both governments and civil society.' DFID seems genuinely committed to 'letting go' of these processes rather than seeking to direct them. This is striking because, as Sam Moyo told the Addis workshop, such networks are in reality political, not just technical, processes. But everything will depend on how sensitively DFID responds in the future to these networks as they grow. Welcoming this process, Okoth-Ogendo cautioned the Addis workshop that while sharing experiences and networking were clearly necessary, African countries had yet to develop a culture of exchange and there was a need to develop capacity for rigorous comparative analyses to help both policy makers and researchers.

What is the future vision of land reform in Africa? The word subsidiarity is often banded about, meaning that decisions on land management and control should be taken at the lowest levels possible. Governments often subscribe to this rhetoric, no doubt partly in search of donor funding, and sometimes couched within 'decentralisation', a process that historically has generally led to greater centralisation. But will governments really let go this easily? Martin Adams is far from convinced. For him

as in the colonial past, the political dimension is the over-riding one and seems to receive less attention than I would expect. In Ethiopia the argument may have been equity, but the reality was to break the power of the political opposition. It is not so much the 'balance' of state-people relations, but the unequal nature of those relations which will determine what is feasible. I am very aware (from time in Sudan, Somalia, Ethiopia, Kenya, Namibia, Zimbabwe and now South Africa) of the persistent manner in which politicians manipulate and control access to land in order to further party and personal interests and so retain the balance of power. This is the capricious joker in the pack. Politicians may tolerate bottom-up participatory processes in other areas, but not in matters which require them to relinquish control (directly or indirectly) over land allocation. Any analysis of prospects for land reform, including tenure reform, should not be divorced from an analysis of the political processes at work.

Adams' views are shared to some extent by Alden Wily. For her

I could not agree more - the political is the constraint but also the key and the 'refusal to let go power', and the 'learning to let go' of that power, the heartland of conflict and change, every time. And that is precisely why it is important to root for devolution of powers - and in control over local land resources first and foremost. I see neither workability/cost-efficiency, nor accountability/transparency in any development process that I can think of in Africa attainable through any other means. The powers

⁶ DFID, *Land Rights and Sustainable Development in Sub-Saharan Africa: Lessons and Ways Forward in Land Tenure Policy: Report of a Delegate Workshop on Land Tenure Policy in African Nations*, Sunningdale Park Conference Centre, Berkshire, England, 16-19 February 1999.

⁷ NRI, OSSREA and DFID, *Networking on Lands Issues in Sub-Saharan Africa*, Report of the Workshop held on 24-26 January 2000, Imperial Hotel, Addis Ababa, Ethiopia.

that currently may be (and they do change) may find a thousand ways to pre-empt devolution of powers and process, but at the end of the day, it will have to come about in tenure matters as in any other. And it is coming about, country by country, step by step. It is already manifest in empowerment strategies and new institutional development below the district level. And even where it is agreed to for foul means rather than fair (Ethiopia), it takes on a momentum of its own. Ordinary people do not easily surrender power once they have it. Who ever heard of a 'local authority' of any ilk giving up powers it has mistakenly or otherwise been awarded? No, it simply becomes a new point of departure for further entrenchment of local level power. The 20th century 'did' district government and in some countries, district land boards. Now we have gradual recognition that this is not enough. Village government and village land administration will almost certainly come into its own in the 21st century. In is from these stepping stones (not new political parties), that the real shift in state-people power relations and democratisation will occur.

In conclusion, in Malawi the report of a presidential land commission (Government of Malawi) was eventually received by President Mluzi after he won an election in 1999, but it is extremely doubtful whether his government will seriously seek to address the country's desperate land problems. In Rwanda, there is a willingness to address them, in part through the controversial policy of villagisation, and also a willingness to look at experiences elsewhere, but there are huge constraints, not least historical. Ethiopia too has major historical constraints, which may explain the central government's current paralysis on the issue. But the dynamic and favoured Tigray Region seems determined to go ahead alone, with little apparent intention of looking elsewhere for guidance. Even Kenya has announced a presidential enquiry into land, but most observers see this as a political ploy designed to kick the issues into touch pending the next election. But even here, Alden Wily believes, the new commission will surely have to decide if it is going to seek to increase the sanctity of title deeds or the sanctity of private property and in its answer a whole string of new thinking will have to come about.

But many of the long-term answers must inevitably lie off the land, in *de-agrarianisation*,⁸ to use Deborah Bryceson's highly inelegant term (Bryceson and Jamal, 1997). Failure to find radical alternatives to small-scale farming will inevitably mean doomsday situations in the most critical countries, like Ethiopia, Rwanda or southern Malawi - which share the Rift Valley and particular histories of great land stress and conflict.

But there is another doomsday situation looming in much of Africa - one associated with the spread and likely future impact of HIV/AIDS on production, livelihoods and land. This is not something much discussed in the literature on land, but it surely needs to be. Already a general trend is emerging. At the household level, people who fall sick are less able to work and family members devote more time to caring for them and less to vital seasonal agricultural activities. Then people in the most productive age group die off before they can pass on their experience to the next generation, so the skills and knowledge base declines.

⁸ By which is meant that Africa's population is becoming less agrarian in nature year by year, a process that has been ongoing for several decades. For various reasons more and Africans are abandoning agriculture and engaging in a variety of non-agrarian activities, such as petty trade. The borders between urban and rural areas have blurred, as more urban households engage in farming and more rural households engage in non-agricultural activities. So 'We are witnessing a period of erosion not recovery of African peasantries. The process of de-agrarianisation represents the historical reversal of almost a century of African peasant formation.'

When people become sick, vital physical and social assets like cattle or tools are depleted or sold off as they or their families draw on their savings to pay for medical care, funerals, or the hire of labour. Once these productive assets are sold, people's future range of activities is reduced as their options become more limited and so they become increasingly vulnerable. In these processes women are especially vulnerable, both to infection and, as widows, to landlessness and destitution following property grabbing by the husband's relatives. External supports also decline as relatively mobile service providers become more deeply affected.⁹ In short, 'African peasant agriculture will never be the same after Aids. But it is taking too long for ministries of agriculture, donors and NGOs to adapt to the grim reality.'¹⁰ In terms of land tenure reform, there is therefore a real danger, in cases where both opportunity and temptation exist, that people might sell their land (together with their other assets) to pay for fruitless health care or costly funerals. The spectre of possible growing landlessness associated with HIV/AIDS should, at the very least, give serious pause for thought to those ideologues who still advocate that individual titling is the best, or indeed the only, way forward.

⁹ I owe this analysis to my colleague Dan Mullins, who is based in the SADC region, which he says 'is home to at least one third of the global population of people living with HIV' and where 'about 12 percent of the adult population is now infected with HIV.'

¹⁰ 'How Aids is starving Zimbabwe', *Daily Mail and Guardian*, 16 August 1999.

REFERENCES

- Adams, Martin (1999a) *Economist's Guide to Land Reform*, work in progress.
- Adams, Martin (1999b) *Setbacks to Tenure Reform in the ex-Homelands of South Africa*, in Oxfam GB, *Land Rights in Africa*,
<http://www.oxfam.org.uk/resources/learning/landrights/downloads/satenure.rtf>
- Adams, Martin; Cusworth, John, and Palmer, Robin (1999) *Zimbabwe Land Reform and Resettlement Programme Inception Phase (LRRP-2), Identification Mission Report for Department for International Development and European Union* (Harare: DFID and EU, May).
- Alden Wily, Liz (2000) *Changing Property Relations of State and People. A Critical Review of Land Reform in Eastern and Southern Africa at the turn of the Century*, work in progress.
- Alden Wily, Liz (1998) *The Village, Villagers and the Village Land Bill*, Paper prepared for the Land Management and Natural Resources Programme, Arusha Region, November.
- Alden Wily, Liz with Mbaya, Sue (2000) *A Study of Land, People and Forests. The Impact of Property Relations on Community Involvement in Forest Management* (forthcoming IUCN).
- Bryceson, Deborah Fahy and Jamal, Vali (1997) *Farewell to Farms: De-Agrarianisation and Employment in Africa*, African Studies Centre Leiden, Research Series **10**.
- DLA Review (1999) McIntosh, Alastair; Barnard, Jan; Wellman, Gwendolyn; Sejake, Sandy; Cliffe, Lionel and Palmer, Robin, *Review of the Land Reform Pilot Programme in South Africa, for South African Department of Land Affairs, Department for International Development, the European Union and Danida* (Pretoria: Department of Land Affairs, November).
- Government of Malawi (1999) *Final Report of the Presidential Commission of Inquiry on Land Policy Reform*, (Lilongwe: March).
- Government of Uganda (1999) *Report of the Land Act Implementation Study*, (Kampala: September).
- Government of Tanzania (1999) Ministry of Lands and Human Settlements Development, *Land Reforms in Tanzania: Development and Implementation of the National Land Policy 1995*, (Dar es Salaam: November).
- Government of Zimbabwe (1994), *Report of the Commission of Inquiry into Appropriate Agricultural Land Tenure Systems* (Harare: October).
- Harawa, Viphya (1999) 'The Presidential Commission of Inquiry on Land Policy Reform in Malawi: Operational Design and Consultation Approach', Workshop on *Land Rights and Sustainable Development in Sub-Saharan Africa: Lessons and Ways Forward in Land Tenure Policy*, Sunningdale, 16-19 February
- Kinsey, Bill (1999) 'Land Reform, Growth and Equity: Emerging Evidence from Zimbabwe's Resettlement Programme', *Journal of Southern African Studies*, **25**, 2, 173-96.

McAuslan, Patrick (1998) *As Good as it Gets: Politics and Markets in the Making of Uganda's Land Act, 1998*, Land Market Reform in Africa, Eastern Europe and Latin America, Lincoln Institute of Land Policy, Cambridge, Massachusetts.

Moyo, Sam (2000) *The Land Question and Land Reform in Southern Africa*, work in progress.

Moyo, Sam (1998) 'Land Entitlements and Growing Poverty in Southern Africa', *Southern Africa Political and Economic Monthly*, **11**, 5, 15-22.

Negrão, José (1999) *The Mozambican Land Campaign, 1997-99*, Workshop on The Associative Movement, Maputo, 14 December, in Oxfam GB, *Land Rights in Africa*, <http://www.oxfam.org.uk/resources/learning/landrights/downloads/mozcamp2.rtf>

Negrão, José (1998) *Land and Rural Development in Mozambique*, African Studies Association of the UK, Biennial Conference: Comparisons and Transitions, SOAS, University of London, 14-16 September.

Okoth-Ogendo, H.W.O. (1998) *Land Policy Reforms in East and Southern Africa: A Comparative Analysis of Drivers, Processes and Outcomes*, Paper delivered at a Public Policy Debate on Land Reforms in Africa organised by the African Centre for Technology Studies at the Nairobi Safari Club, 20 May.

Oxfam GB (2000) *Land Rights in Africa*, <http://www.oxfam.org.uk/resources/learning/landrights>

Palmer, Robin (1999) *The Tanzanian Land Acts 1999: An Analysis of the Analyses*, in Oxfam GB, *Land Rights in Africa*, <http://www.oxfam.org.uk/resources/learning/landrights/downloads/tananaly.rtf>

Palmer, Robin (1998) *Mugabe's 'Land Grab' in Regional Perspective*, Centre of African Studies, University of London, SOAS, and Britain Zimbabwe Society, Conference on Land Reform in Zimbabwe - The Way Forward, SOAS, 11 March, in Oxfam GB, *Land Rights in Africa*, <http://www.oxfam.org.uk/resources/learning/landrights/downloads/zimgrab.rtf>

Palmer, Robin (1997) *Contested Lands in Southern and Eastern Africa: A Literature Survey*, Oxford: Oxfam UK and Ireland Working Paper.

Palmer, Robin (1990) 'Land Reform in Zimbabwe, 1980-1990', *African Affairs*, **89**, 163-81.

Rukuni, Mandivamba (1999) 'Interview', *Haramata*, **35**, October, 6-7.

Shivji, Issa (1999) *The Land Acts 1999: a Cause for Celebration or a Celebration of a Cause?*, Keynote Address to the Workshop on Land held at Morogoro, 19-20 February.