

CASE STUDY BOXES ON LAND REFORM IN UGANDA, TANZANIA, MOZAMBIQUE AND SOUTH AFRICA

Source: Liz Alden Wily with Sue Mbayu, *A Study of Land, People and Forests. The Impact of Property Relations on Community Involvement in Forest Management* (forthcoming IUCN, 2000).

LAND REFORM IN UGANDA

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 experiencing 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.

LAND REFORM IN TANZANIA

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 drew 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.

LAND REFORM IN MOZAMBIQUE

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 unclarity, ambiguities and lacunae, concerns not entirely remedied by the Regulations of the following year. In 1997, Kloeck-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.

LAND REFORM IN SOUTH AFRICA
(source: Martin 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.