

DONOR AND NGO INVOLVEMENT IN LAND ISSUES – SOME FURTHER REFLECTIONS

**Robin Palmer
(Mokoro)**

Pessimism, optimism or realism?

On 19 July this year I attended the launch by DFID (the British Department for International Development) of its new policy paper, *Land: Better access and secure rights for poor people*.¹ At this launch, I was asked to give a brief presentation on land and governance. I ended with a question: was DFID prepared to make a long-term commitment to working on land, as recommended by one of the people cited in the paper?

I subsequently had an interesting exchange on this subject with John Barrett, who I had known as head of DFID's offices in South Africa and then Zimbabwe, and who is now head of its livelihoods division. He had asked a question about whether we on the panel detected a new mood of openness in dealing with land on the part of African governments. We did not reply on the day, but later I responded by citing some rather gloomy conclusions from a paper I had written for an FAO 'expert meeting' on good governance in land tenure and administration last September.

I think it would be fair to characterise the general context in much of Africa as being one of weak governments (deliberately weakened of course by decades of structural adjustment) and fragile and highly donor-dependent civil societies. Each tends to be deeply distrustful of the other. Over the past decade, governments have frequently gone through the ritualised motions of consultation and participation on PRSPs, land policy and much else because influential donors and well-meaning, but less influential, outsiders pressure them to do so. But on the principle that turkeys don't normally vote for Christmas, there has generally been strong resistance from ruling elites to supporting any radical, pro-poor change, or any serious consideration of, for example, women's land rights.

There seems to be no culture of genuine democratic political engagement in modern Africa. When the Wall came down, there were widespread hopes, in places like Zambia and Kenya, that the advent of multi-party systems would bring about more democratic space. For the most part, those hopes have been dashed, and land issues have either been cynically exploited politically (as in Kenya, Zimbabwe etc) or tough action on a law or a policy has often been suspended 'until after the election'. In the context of land rights, we find all too many politicians, too few statesmen, far too many short-term, far too few long-term horizons adopted for addressing what are invariably complex and highly contested land issues.²

¹ <http://www.dfid.gov.uk/pubs/files/LandPaper2007.pdf>

² Robin Palmer, 'Civil Society, 'Good Governance' and Land Rights in Africa – Some Reflections', *FAO Expert Meeting on Good Governance in Land Tenure and Administration*, 25-27 September 2006

http://www.oxfam.org.uk/resources/learning/landrights/downloads/civsocgoodgov_landrightsinafrica.rtf

In his response to my pessimism, John Barrett replied:

I wanted to make the point that I take an active interest in land issues; and that the main constraint to progress in this area is not necessarily a lack of interest from donors, but lack of clear interest from Africa's leaders. We have seen several waves of fashion over the last 30-40 years in which the issue has come to surface and then sunk again.

I agree strongly with your point that we need a sustained long-term approach to the land issue, which is at the heart of contestation about power and equity, particularly in Africa. In my view this is what makes development such a deeply political agenda, and not a merely technocratic challenge of 'optimising' the economy in a way that all will be winners. We need to be realists, rather than unconstrained optimists - there will be many setbacks and failures, but for each two steps backwards hopefully we will eventually be able to take three steps forwards. Above all, we cannot be pessimists - you yourself could not have sustained 40 years of commitment to the land issue otherwise!³

That exchange, and the invitation to write this paper, have provided a useful opportunity for me to reflect again about the issue of donor and NGO involvement in land issues through this lens of pessimism, optimism or realism.

Self-introduction

For this particular audience, I probably need to introduce myself and say a little about my background and where I'm coming from. I've had two distinct but linked parts of my working career, first as an academic and then as a development worker for Oxfam GB. I trained as an historian, which is not a bad vantage point from which to look at land. This was in what is now Zimbabwe but was then Rhodesia. I wrote a thesis on the politics of land in colonial Rhodesia, which was a controversial subject then, as it is now. I lectured in African history for a number of years, mostly in Zambia and Malawi, and wrote widely on land, labour and agricultural history, including two books which were published 30 years ago: *Land and Racial Domination in Rhodesia*, which was a revised version of my Ph.D. thesis, and an influential collection co-edited with my colleague Neil Parsons, *The Roots of Rural Poverty in Central and Southern Africa*.⁴ The fly-leaf of that book captures what we were trying to do:

Why are African nations so poor today? In this book historians of a new generation look back and rediscover the history of peasant prosperity and subsequent impoverishment in the eleven states from Zaire to South Africa. They question the conventional wisdom of many development planner who have blamed poverty on the stagnant traditionalism of rural Africans. This is social history with economic and political dimensions, examining the impact of capitalism and colonialism on rural societies. Here is historical evidence that has too often been ignored and forgotten.

I know it is easy for me to say this, but I have frequently been appalled by the complete historical ignorance of many donor and NGO workers, especially in Southern Africa, where history matters and continues to resonate profoundly.

³ John Barrett to Robin Palmer, 23 July 2007.

⁴ Both books were published by Heinemann Educational Press and University of California Press.

Twenty years ago I joined Oxfam GB. At first I worked exclusively in its programmes in Southern Africa, travelling extensively across the region at an exciting time of great change, as apartheid came to an end, peace was restored to Mozambique, and the old one party systems crumbled. Ten years ago I was appointed to a new job as Land Policy Adviser for Africa. The job was later globalised. Basically it involved working in support of Oxfam partner organisations, such as the Kenya Land Alliance, who were working on land at a national level, generally engaging in the process of law and policy making in an era of privatisation. There was also a focus on women's land rights (or, more accurately, lack of rights) in the context of HIV and AIDS. It also involved engaging globally with the World Bank, first over its Policy Research Report on land and then on its gender guidelines in land administration, which it conspicuously failed to apply in post-Tsunami Aceh, Indonesia. For a time, Camilla Toulmin of IIED (International Institute for Environment and Development) and I sat on DFID's Land Tenure Advisory Group. This met fairly regularly over a period of almost 5 years. It afforded Oxfam and IIED easy entry to DFID's Rural Livelihoods Division officials both in London and in many African countries, and made for good working relations and a regular flow and sharing of ideas and information. Then DFID restructured and the group was abolished. Part of the emphasis had been on encouraging serious dialogue between governments and civil society at a national level, part on regional networking.

A great deal of the work which my former colleagues and our allies have engaged in over this past 10 years can be found or illustrated on the internationally renowned Oxfam GB website, *Land Rights in Africa*, which was set up in January 2000, is about to acquire yet another new URL,⁵ and which I continue to manage. It was conceived as offering a space where the voices of the land alliances and their allies could be heard promoting pro-poor land reform. The rich and powerful are always heard; those less powerful and more vulnerable rarely so. Many have welcomed the 'oxygen of publicity' it has afforded in a context where governments in general and ministries of land in particular are all too often reluctant to provide freedom of information. The website attempted to redress that and to publish e.g. draft land policies, views of key donors (World Bank, DFID, EU etc) and critiques of their views – especially the Bank's views on titling as a universal panacea, or its so-called market-assisted land reform, and the more recent, highly seductive magic solutions offered by Hernando de Soto.

I retired from Oxfam earlier this year and now work part-time as a land rights adviser for an Oxford-based consultancy group Mokoro, where Martin Adams (with whom I have worked a great deal over the years) is also based. Earlier this year we edited a 20-country *Independent Review of Land Issues, Volume III, 2006-2007, Eastern and Southern Africa*.⁶

I have recently written a number of reflections on my land rights work with Oxfam and my further reflections in this paper are obviously based on those experiences. So they will be personal and selective rather than attempt a level of generality which

⁵ <http://www.oxfam.org.uk/resources/learning/landrights/index.htm>

⁶

http://www.oxfam.org.uk/resources/learning/landrights/downloads/independent_review_land_issues_eastern_and_southern_africa_2006_07.pdf

I think can all too easily slip into superficiality. Even to talk about the World Bank, or DFID, or the EU in general terms in relation to land is problematic. From my own experience so much hinges on individuals, on personal relationships, on particular contexts, and on exploiting (or failing to exploit) new spaces and opportunities which open up.

Ignoring or engaging - a cautious but necessary role for donors?

In a literature review on *Governance and Secure Access to Land*, commissioned by DFID earlier this year,⁷ I looked at how donors themselves conceived of their role vis-a-vis land. This is what I wrote:

All acknowledge that land is a sensitive arena for donors to enter, that it is far easier and safer to disengage, do nothing or confine oneself to the purely technical where possible – though the latter often proves in practice to be a delusion. But Klaus Deininger, the World Bank's foremost researcher on land, believes that donors 'are now starting to realise that the cost of ignoring land may be much higher, and more broadly distributed, than originally thought.'⁸ This appears to have been accepted in the DFID working paper on land reform which, citing Darfur, argues that 'the costs to government of taking no action to resolve problems of local-level land rights management...can be very high indeed.'⁹ The EU *Land Policy Guidelines* of 2004 also agree with Deininger that:

'there is now greater recognition among donors of the importance of addressing land issues. While land policy reform is a long and complex process, requiring broad political debate inside the country, donors can make a major contribution, if they play a cautious role. They can facilitate the public debate, support processes without forcing the pace...They can contribute to research, institutional and capacity building for the different actors involved (government departments, land administration bodies, local government bodies, farmers' organisations, etc.) and monitoring and evaluation of the processes.'¹⁰

In a welcome development, DFID is now saying that 'improving poor people's access to land and water' is one of seven priority areas following the launch of its Agricultural Policy Paper in December 2005, which reads in part:

Improving poor people's access to land and water

142. Working with developing country governments, civil society and other development agencies, we will, in accordance with EU guidelines;

⁷ Robin Palmer, *Literature Review of Governance and Secure Access to Land*, April 2007
<http://www.gsdrc.org/docs/open/HD417.pdf>

⁸ Klaus Deininger, 'Land Rights and Administration in Africa', in Julian Quan, Su Fei Tan and Camilla Toulmin (Eds), *Land in Africa: Market Asset or Secure Livelihood?* (London; International Institute for Environment and Development, Natural Resources Institute and Royal African Society, 2004), p.58
http://www.iied.org/docs/events/LandinAfrica_web1.pdf

⁹ *Land reform, agriculture and poverty reduction*. Working paper for the Renewable Natural Resources and Agriculture Team, (London; DFID, 2004), p.14.
http://www.oxfam.org.uk/resources/learning/landrights/downloads/land_%20reform_agric_and_poverty_reduction.pdf

¹⁰ *EU Land Policy Guidelines*. (Brussels: EU, 2004), p.23.
http://www.oxfam.org.uk/resources/learning/landrights/downloads/4_eu_land_policy_guidelines_nov_2004.pdf

- when requested, support programmes for voluntary land redistribution by increasing poor people's ability to buy land and by making legal processes more accessible to them;
- support efforts to improve land policy and legal and administration systems, including initiatives to make leasehold and other systems operate more efficiently and consistently with the land rights of marginalised groups and women; and
- support programmes seeking to improve access to water resources by the poor.¹¹

More recently, and even more welcome, in its new policy paper on land DFID is saying:

DFID recognises the importance played by secure rights to land and property in reducing poverty and encouraging equality. We are committed to supporting poor countries' efforts to help poor people to gain fair access to land, without which they will not be able to build their livelihoods and secure a better life for their families and communities.

DFID will do more where committed partner governments request support for their land reform processes and where we consider they are committed to supporting change.

DFID responds strategically when there are political opportunities to make progress on land reforms.¹²

Those of us from civil society who attended the DFID land policy launch in July and who had been highly critical of DFID's recent volte-face on land, certainly welcomed this apparent new re-engagement from headquarters. As I said at the launch:

We have missed you, and we hope that this Policy Paper, which charts some of your success stories, while also cautioning that 'there are few quick wins in improving access to land and securing tenure', will send out the appropriate signals and serve as an encouragement to your country level staff to engage in what is always difficult terrain, in situations where there is significant political will.¹³

Changing contexts of donor involvement in land issues

Donors have been involved in land interventions – on policy, reform, tenure, surveying and registration etc – since 1945, often for overtly political reasons. Because such interventions are often very costly, host governments in many parts of the world lack the resources to fund them themselves. Zimbabwe presents a classic case of financial inability to support the beneficiaries of its controversial Fast Track land reform programme.

¹¹ *Growth and poverty reduction: the role of agriculture*. (London: DFID, 2005), p.40.
<http://www.dfid.gov.uk/pubs/files/growth-poverty-agriculture.pdf>

¹² *Land: Better access and secure rights for poor people*. (London: DFID, 2007), pp. 26, 24, 23.
<http://www.dfid.gov.uk/pubs/files/LandPaper2007.pdf>

¹³ The issue of political will is also stressed in the recent FAO draft guidelines: *Good governance in land tenure and land administration*. (Rome: FAO, July 2007).

Contexts change dramatically, of course, as does what is on offer from donors, as this quote from the editors of *Promised Land: Competing Visions of Agrarian Reform* graphically illustrates:

While it was inconceivable that land could be redistributed through a willing buyer – willing seller approach at the beginning of the Cold War, by the Cold War's end it was inconceivable that it could be done in any other way.¹⁴

They thus nicely encapsulate the ironies of how the economic power of the old landlords was broken in Japan, South Korea and Taiwan after 1945, but how this did not happen in Latin America in the 1960s and 1970s, or in Zimbabwe in 1980 or South Africa in 1994. In the latter cases, the 'willing seller, willing buyer' formula imposed by donors in effect legalised and froze a century and more of colonial land grabbing and protected those who had benefitted from that. And now donors routinely stress 'good governance'. At the DFID land policy launch, I made a gentle plea for a little humility and historical memory. I said:

It's absolutely right that you now stress that 'good governance is a vital ingredient in land reform.' But you did not always emphasise that. If I were a veteran African civil society activist, I would ask you 'where was all that governance rhetoric in the time of Moi's Kenya, Banda's Malawi, or Mobutu's Zaire?' With the Cold War safely won, 'we' can all now preach good governance, but let us do so acknowledging our past sins!

The World Bank's engagement on land policy has always been controversial and provoked a great deal of often rather sterile debate. An exception has been the detailed critique of alleged Bank successes in the book *Promised Land*. I personally had a considerable engagement on behalf of Oxfam particularly in the process leading up to the publication of its Policy Research Report (PRR) in 2003.¹⁵ We and many others chose to do this, rather than jeer from the sidelines, for pragmatic reasons – it was going to happen anyway - and in an attempt to make the final report as undogmatic and pro-poor as possible. I think we can claim some success in this. As with DFID, I chided the Bank about its past sins, and how it was regarded as the enemy in many parts of the world because of very negative historical experience. But I would still stand by my words on the back cover of the PRR:

This report represents a major and welcome shift in World Bank thinking on land policy by offering an increased openness and flexibility in thinking, a readiness to admit to past mistakes, and an avoidance of dogmatism. The critical test will be to ensure that the report's relatively more enlightened approach and principles will be turned into better Bank practice at the country level. This will require genuine commitment from senior management in the Bank and continued pressure from civil society advocates who defend the land rights of the poor.

A second engagement was with the Bank's Agriculture and Rural Development Department, which produced an excellent and highly practical research report,

¹⁴ Michael Courville and Raj Patel, 'Introduction and Overview: The Resurgence of Agrarian Reform in the Twenty-first Century', in Peter Rosset, Raj Patel and Michael Courville (Eds), *Promised Land: Competing Visions of Agrarian Reform* (Oakland, California; Food First Books, 2006), p.18.

¹⁵ *Land policies for growth and poverty reduction, a World Bank Policy Research Report*. (Washington DC and Oxford: World Bank and Oxford University Press, 2003).
<http://web.worldbank.org/external/default/main?menuPK=477769&pagePK=64168092&piPK=64168088&theSitePK=477757>

Gender Issues and Best Practices in Land Administration Projects.¹⁶ When I read it, I was engaged in discussion with my Oxfam colleague in Aceh, Indonesia, Lillianne Fan about women's land rights, and this practical report seemed to have lots to offer. So I wrote a detailed guide to it,¹⁷ posted it on the land rights website and asked one of the authors, Arumina Dhar, to make available on that website some highly useful sample questionnaires for data collection, designed to be adapted and modified to different contexts.¹⁸ Subsequently Lillianne and I directly lobbied the Bank's gender specialists in Washington about the complete failure of the Bank-funded Rehabilitation of Aceh Land Administration System (RALAS) project to adhere to the Bank's own gender guidelines, even on basics like collecting gender-disaggregated data. This was again repeatedly stressed in a soon to be published Oxfam Policy Paper on *Women's Rights to Land and Housing in Tsunami-Affected Indonesia*, which calls for mandatory joint titling for all marital property to be titled under this project. In the course of its outstanding advocacy work on land and property rights in Aceh, Oxfam is continuing to engage with the Bank on this issue,¹⁹ pressing it to match its rhetoric with practice on the ground – which, in my view, is an entirely appropriate role for an international NGO to play.

In a recent book, *Land Law Reform*, John Bruce has usefully sketched out changing Bank approaches towards tenure security. Bruce has himself made a great contribution to this through his influential 1994 study, *Searching for Land Tenure Security in Africa*.²⁰ In *Land Law Reform*, Bruce asks:

How much security of tenure is enough? There was a time when Bank task managers would have been comfortable with nothing less than full private ownership, with all the freedom of action that confers. However, experience and research have in recent years provided evidence that use rights, customary rights, and leasehold rights can provide farmers with security of tenure sufficient to their needs. In Southeast Asia, for example, Bank land administration projects often title land still under ultimate state ownership, so long as beneficiaries have relatively substantial and secure (and even inheritable and transferable) use rights in the land. Recent Bank projects in Africa are registering not only formal tenures less than ownership but also customary rights in land – not seeking to transform them to private ownership, as was done in Kenya in the 1960s and Malawi in the 1980s, but registering the customary right on its own terms, as defined by customary law. The Cote d'Ivoire Rural Land Management and Community Infrastructure Project, 1998 (P0011194)

¹⁶ *Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report* (Washington DC: World Bank Agriculture and Rural Development Department, June 2005). [http://lnweb18.worldbank.org/ESSD/ardext.nsf/11ByDocName/GenderIssuesandBestPracticesinLandAdministrationProjectsASynthesisReportPDF/\\$FILE/Gender_land_fulltxt.pdf](http://lnweb18.worldbank.org/ESSD/ardext.nsf/11ByDocName/GenderIssuesandBestPracticesinLandAdministrationProjectsASynthesisReportPDF/$FILE/Gender_land_fulltxt.pdf)

¹⁷ Robin Palmer, *A Guide to the World Bank's Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report*, August 2005 http://www.oxfam.org.uk/resources/learning/landrights/downloads/wb_guide_gender_best_practices_land_admin_rtf

¹⁸ *Gender best practices land administration sample questionnaires* http://www.oxfam.org.uk/resources/learning/landrights/downloads/gender_questionnaire.htm

¹⁹ Lillianne Fan, *The Struggle for Land Rights in post-Tsunami and post-Conflict Aceh, Indonesia*, World Bank workshop on *Land Policies and Legal Empowerment of the Poor*, 2-3 November 2006, http://siteresources.worldbank.org/RPDLPROGRAM/Resources/459596-1161903702549/S3_Fan.pdf

²⁰ John W. Bruce and Shem E. Migot-Adholla (Eds), *Searching for Land Tenure Security in Africa* (Dubuque; Kendall/Hunt Publishers, 1994).

registered rights of households derived from customary law, and the Ghana Land Administration Project, 2004 (PO71157) will, on a pilot basis, register rights of customary land authorities and supports traditional land administration.

Most Bank land administration projects address the issue of tenure more directly by supporting not just registration of existing rights but the conferring of new rights. These are land titling projects in which land registration has a 'constitutive function,' creating new rights as it registers them. One important context in which land registration performs a titling function is the creation of new systems of property rights in land for citizens of states that are in transition out of systems of state or collective ownership of land resources. Bank land administration projects in Eastern Europe and the Commonwealth of Independent States (CIS) countries are examples. Here the adoption of western property rights systems is driven in part by the desire to be more competitive within Europe and may figure in EU accession discussions.²¹

Post-Cold War political changes in Eastern Europe have presented huge opportunities to the surveying world, such as FIG (International Federation of Surveyors) Commission 7 on Cadastre and Land Management and Kadaster International here in the Netherlands. (See my Appendix on 'IIED v. FIG – two contrasting ways of looking at land issues').

Earlier in this section, it was noted that contexts change dramatically, and it seems fitting to conclude with Simon Maxwell's thoughts on the changing architecture of aid. Maxwell asserts that:

the proliferation of aid agencies and instruments, including in the private sector, have hugely complicated the aid architecture and greatly increased the transactions costs. New or fast-growing actors include the new member states of the EU, non-traditional donors like the Arab states and the Asian tigers, Foundations and special purpose vehicles like the Global Fund or the pilot IFF for immunisation.

He argues that the complexity resulting from this is ultimately not sustainable and that 'there is a need to re-vision the aid agency of the future' perhaps through a simplified multilateral system. He proposes this helpful eight step programme towards improved collective action:

1. Keep the core group small.
2. Develop trust-building measures from the beginning.
3. Use the same core group for as many issues as possible, in order to keep transactions costs down and benefit from economies of scope.
4. Make it awkward or embarrassing not to cooperate.
5. Choose the right issues, where all players have something to gain and something to lose.
6. Think about positive incentives.
7. Learn the lesson that collective action is often most successful when the costs of defection are high.
8. Set up institutions to manage these interactions and relationships.²²

²¹ John W. Bruce, 'Reform of Land Law in the Context of World Bank Lending', in John W. Bruce, Renee Giovarelli, Leonard Rolfes Jr, David Bledsoe and Robert Mitchell, *Land Law Reform: Achieving Development Policy Objectives* (Washington DC; World Bank, 2006), pp.34-5.

²² Simon Maxwell, *Re-visioning aid*, 2007
http://www.passlivelikelihoods.org.uk/site_files/files/2007%20EIL%20Retreats/Thursday/1%20Future%20Challenges/Handout_Simon%20Maxwell,%20ODI%20-%20Revisioning%20Aid.pdf

NGO involvement in land issues

NGOs are more recent players than donors. For some they are anthem. Here for example are Sam Moyo and Paris Yeros in their book *Reclaiming the Land*:

Development agencies and NGOs had long penetrated rural areas through the funding of 'projects'. This activity expanded under structural adjustment, as the social responsibilities of states were renounced and global development agencies found new and willing partners in NGOs to take over from states. As has been well demonstrated, NGOs have served to depoliticize and co-opt rural grievances into welfarist projects, maintain their own selves in business by means of external funding, and indeed serve as the vehicles of 'indirect rule'.²³

An almost polar opposite view is taken by the distinguished law professor Patrick McAuslan, no defender of neoliberalism or the World Bank, towards the end of his magisterial study *Improving Tenure Security for the Poor in Africa*:

There can be little doubt that the social level has both benefited from and been a major contributor to the new approach to land policies and land management. Major national NGOs now focus on land issues in many countries and are powerful factors in land reform. There can be little doubt that several NGOs in Uganda had very significant input in the land law reform process that culminated in the Land Act 1998 and have continued to have an impact on women's land rights in the law. NGOs, both national and international, have played an important role in re-thinking policies and actions on pastoralism. NGOs based in informal settlements play a role in managing land and settling disputes.

The social level is not just NGOs. It embraces the voice and the actions of the ordinary person. Decentralization has helped the rural poor find a voice and take action. What is significant, but little remarked upon, is that the action that the poor are prepared to take is to go to court to assert their rights and, in many cases, they succeed. This is one of the benefits of a more law-based land management process. The people learn that they have rights and they are prepared to assert them. This may not be comfortable for administrators, but it makes for a more transparent and honest process of land management. Also, at the social level, is the greater recognition and acceptance of the customary norms the rural poor live by which can be of benefit to the whole society.²⁴

I tried to sum up my own position, in a paper written for an FAO meeting a year ago:

On the civil society side, I have worked in collaboration with a number of NGO land alliances and coalitions across the continent in 'seeking to secure and defend the land rights of the poor in Africa', to cite the rather pretentious title of an article I once wrote.²⁵

I have enormous admiration for much of their work and for some extraordinary individuals, such as the late José Negrão from Mozambique. They have many achievements to their credit – one thinks of the way in which the Uganda Land Alliance, in its early years, was able to change the direction of the impending land bill, or the way in which in Mozambique an alliance, formed around José Negrão, was able first to promote an extraordinarily progressive

²³ Sam Moyo and Paris Yeros, 'The Resurgence of Rural Movements under Neoliberalism', in Sam Moyo and Paris Yeros (Eds), *Reclaiming the Land: The Resurgence of Rural Movements in Africa, Asia and Latin America* (London and New York; Zed Press, 2005), p.41.

²⁴ Patrick McAuslan, *Improving Tenure Security for the Poor in Africa*, FAO LEP Working Paper 1, October 2006 <http://ext-ftp.fao.org/ag/data/agl/agll/Final/Africaframework.pdf>

²⁵ Robin Palmer, 'Struggling to Secure and Defend the Land Rights of the Poor in Africa', *Journal für Entwicklungspolitik* (Austrian Journal of Development Studies), XIX, 1, 2003, 6-21 <http://www.oxfam.org.uk/resources/learning/landrights/downloads/struglin.rtf>

Land Law and then to wage a remarkable campaign to make people aware of their rights under the law. The latter is an excellent example of a positive and critical role that civil society can play. Because governments are notoriously unwilling to translate new laws or policies into local languages, NGOs are often obliged to do this.

The more imaginative organisations also use theatre. I was present at the launch of the Copperbelt Land Rights Centre in Zambia in March 2004, when a 20-minute drama on land conflicts thoroughly engaged and amused the audience, including those in suits, far more than the usual array of worthy platform speakers, including my good self!

But for all the achievements of civil society – and there are many - the stark reality has to be faced that for the most part CSOs remain remarkably fragile. They often lack deep roots. They have to battle hard to sustain themselves. They are heavily donor-dependent and have to compete with each other for funding and so find it difficult to cooperate or coordinate. So they frequently feel obliged to bend their sails to the latest funding fashions of donors.

I added that 'NGO land coalitions are extremely vulnerable to the varying qualities of their successive coordinators and to the level of interest and commitment of their membership.'²⁶

Another law professor, Issa Shivji, has written a strong critique of African NGOs more broadly, in the course of which he memorably enquires 'But how can you make poverty history without understanding the history of poverty?'²⁷

Context and history are surely critical. Each national context is different, likewise each history, however great the similarities (for example, a shared colonial history). In some countries peasants demonstrate in the streets of the capital, in others they do not. Some countries respect the rule of law, others do not. Some have strong social movements, others have weak NGOs. Some have emerged from settler colonialism, others from Soviet rule. Some have adopted Shari'a law. There are countries where most people have easy access to the internet, such as Lithuania, and others, such as Ethiopia, where they do not. Donors have their favoured countries, one could presently cite Rwanda and Mozambique, who are treated less critically than those less favoured. And so on.

In the light of this and because generalisations about donor and NGO involvement in land issues are often rather facile, I want to use the case of Mozambique as an example of:

- (i) some of the complexities of such involvement;
- (ii) the critical importance of individuals;
- (iii) the need for greater donor cooperation;
- (iv) and the need for a long-term approach, with which I began this paper.

²⁶ Robin Palmer, 'Civil Society, 'Good Governance' and Land Rights in Africa – Some Reflections', *FAO Expert Meeting on Good Governance in Land Tenure and Administration*, 25-27 September 2006

http://www.oxfam.org.uk/resources/learning/landrights/downloads/civsocgoodgov_landrightsinafrica.rtf

²⁷ Issa G. Shivji, *The Silences in the NGO Discourse: The Role and Future of NGOs in Africa*, Pambazuka Special Report 14, (Oxford; Fahamu, 2006), p.37.

http://www.pambazuka.org/en/publications/pz_sr_14.pdf

Mozambique case study

In the new DFID land policy paper, one of the boxes celebrating its current work on land is entitled *Strengthening land rights in Mozambique*. It reads:

New land legislation [1997!] in Mozambique recognises customary rights to land. It also emphasises the importance of community consultation and agreement by those applying for or investing in land use. But despite the efforts of government and civil society to spread the message, community awareness of their rights under the Land Law is still very weak.

DFID leads a Community Land Use Fund [now renamed Community Land Initiative], open to communities and civil society organisations, in three provinces. Working with five other donors, DFID is contributing half of the £4 million budget between 2006 and 2011. The programme will help rural communities to register their land rights and negotiate economic benefits from land concessions – by helping government, private sector and NGOs to provide better services. It will raise awareness of the Land Law and link policy with practical actions, and integrate land rights allocation with local development planning. Lessons learned from the Fund will inform DFID's future activities.²⁸

The latest *Independent Review of Land Issues* offers details of further donor assistance to Mozambique in the land sector:

- The US Millennium Challenge Corporation (MCC) is funding a US\$40 million programme over five years, focusing on land issues. This includes substantial material support to upgrading the national land administration, but also includes a proposal to create a complementary fund to run alongside the ITC [Community Land Initiative] in the four northern provinces.
- Many years of consistent work by NGOs and their bilateral and (some multilateral, notably FAO) supporters, is resulting in *de facto* formalization of land rights through a range of actions which are not directly related to land management *per se* e.g. community-investor partnerships, linking the land issue to concrete development initiatives, raising community awareness of their rights and how to use them in practice.
- Since mid-2005, an important exercise in civic education and legal support is being carried out with FAO and Netherlands assistance at the Centre for Juridical and Judicial Training of the Ministry of Justice. The programme trains NGO and some public sector staff as paralegals, who then promote the correct and practical use of land and other laws. They are also trained in the basics of using judicial and extra-judicial methods to defend rights against third parties including state agencies. This programme extends an earlier successful training of judges and prosecutors in these laws, to embrace district level administrative, judicial and police actors in seminars on basic Constitutional rights, the use of land and other rights to promote equitable development, and the role of each 'sector' in conflict resolution and the rule of law.

The review concludes that 'The new nominally independent funds could also have a dramatic impact on local level capacity – read power – to exercise existing rights and establish stronger positions ahead of the emerging policy debate' on land.²⁹

²⁸ *Land: Better access and secure rights for poor people*. (London; DFID, 2007), p.24.
<http://www.dfid.gov.uk/pubs/files/LandPaper2007.pdf>

²⁹ *Independent Review of Land Issues, Volume III, 2006-2007, Eastern and Southern Africa*, pp.22-4.
http://www.oxfam.org.uk/resources/learning/landrights/downloads/independent_review_land_issues_eastern_and_southern_africa_2006_07.pdf

In similar vein, Chris Tanner (the author of the above sections of the *Review*) and Simon Norfolk conclude a recent study for FAO on *Improving Tenure Security for the Rural Poor* in Mozambique with these words:

Mozambique made a huge leap forward in formalizing land rights with the 1997 Land Law and its legal recognition of all rights acquired through customary and good-faith occupation. This point alone demonstrates how formalization can be accomplished with a simple shift in perspective, accepting something today as formal or legitimate that yesterday was informal and therefore not legitimate.

In a context of land grabbing and an increasingly aggressive land market ... legal formalization is not always enough. There is a need for a stronger way to protect land rights. This is particularly difficult in a country with a colonial and authoritarian post-independence past that still influences both government administrators and rural people. [This] underlines the importance of non-state actors, such as NGOs and even private investors, and of new approaches, such the Community Land Initiative, for providing alternative avenues to formalization. The innovative consultation and delimitation processes allow local people to register rights using approaches that are not found in the classical toolkit of Western surveying and registration methods.³⁰

To explain why I welcome this kind of donor cooperation, it is necessary to go back a decade to trace examples of earlier donor and NGO interventions in Mozambique.

Ten years ago the 1997 Land Law (*Lei de Terras*) was passed. Its key elements were:

- Land remains the property of the state; communities, individuals and companies only gain use rights (leases).
- Use rights can be transferred but cannot be sold or mortgaged.
- Use rights are gained by occupancy or by the grant by the state of lease of up to 100 years.
- Formal title documents showing the right to use land can be issued not just to individuals and companies, but also to communities and groups.
- Communities or individuals occupying land for more than 10 years acquire permanent rights to use that land and do not require title documents.
- Courts must accept verbal evidence from community members about occupancy. (Verbal testimony was restricted under the old law, which gave absolute preference to paper titles. This clearly worked against peasants.)
- Titles for use cannot be issued on land already occupied by others.
- Titles for use rights are only issued if there is a development plan; titles are issued provisionally for two years and made permanent (for up to 100 years) only if the projected development is being carried out.³¹

All of these components were remarkable, not least the retention of land belonging to the state in the face of very considerable western pressures to liberalise, and the use

³⁰ Simon Norfolk and Christopher Tanner, *Improving Tenure Security for the Rural Poor Mozambique Country Case Study*, FAO LEP Working Paper 5, May 2007, pp.33-4.
<ftp://ext-ftp.fao.org/ag/data/agl/agll/Final/Mozambiquecase.pdf>

In recent correspondence, Chris Tanner has written: 'the potential in making use of formal mechanisms to override customary and counter land grabbing by more powerful relations is what we are promoting in Mozambique, through our current programme – training paralegals to tell women – and male leaders – that while customary and practice places them in a vulnerable situation with weak real rights, in the Constitutional and Land Law context their rights are strong and can be protected by recourse to legal action. The idea of recourse to formal justice mechanisms is VERY weakly rooted here, which is again what we are trying to address.' Chris Tanner to Kaori Izumi, 20 August 2007.

³¹ Joseph Hanlon, *Mozambique Peace Process Bulletin*, 19, September 1997.

of verbal testimony to assert historical claims to land. The processes which produced the law involved a wide range of actors, including the NGOs ORAM (Associação Rural de Ajuda Mútua - Rural Organisation for Mutual Help) and UNAC (União Nacional de Camponêses - National Peasants Union), church based groups, a Land Studies Unit at the University of Maputo, various politicians and international organisations.³² In a study of the role of NGOs in promoting land rights in Kenya and Mozambique, Nazneen Kanji and Carla Braga have suggested that the critical factors involved in the case of Mozambique were:

- Political liberalisation, increasing freedom of speech and of the press allowed NGOs to influence land policy. It was possible to criticise draft versions of the land law in public without fear of reprisals. Freedom of the press allowed opposing voices to be heard and citizens to be informed of different arguments.
- In the process of formulation, discussion and approval of the new land law and its regulations, the broad alliance between sections of government, parliament, religious institutions, NGOs, academics and donors was a critical factor in its success.
- The churches were important and active in this process, promoting dialogue between Frelimo and Renamo, establishing the Diocesan Lands Committees, and supporting the creation of the NGO ORAM to defend the rights and interests of communities.
- The Latin American experience of agrarian reform positively influenced the Mozambican land reform process. Some individuals - religious persons, academics, and representatives of development agencies and consultants of the United Nations system - were from Latin America and had particular knowledge of and sensitivity to land issues.
- The fact that individual academics and leaders of non-governmental organisations were respected and recognised for being honest was vital to the success of their advocacy. These leaders were able to engage with different interest groups while maintaining their commitment to promoting land rights for the majority. They were not members of either of the main political parties.³³

A year before the Land Law was passed, I had discussed with Graham Saul, Oxfam International's first Advocacy Coordinator in Mozambique, the sensitivities of the role of international NGOs intervening in the one area in which local NGOs were operating effectively. I stressed that 'given the horrendous past role of foreign intervention in Mozambique and the fact that local NGOs are now clearly running with this, I think it is right – no essential – that INGOs step back and let them get on with it. Obviously, we can and should support them in this when asked – funding workshops, translations of legislation, networking, information sharing etc.' Graham felt it would be useful to tell local NGOs that we were at least aware of such sensitivities. The upshot was that Graham attended the Draft Land Law Conference in Maputo in June 1996 which led him to ask himself, 'if communities are going to be given rights to their land, how will these rights be communicated to them?' Apparently I shot back with a number of questions which convinced him of the long-term importance of the issue, which Oxfam was previously not going to prioritise in its advocacy work. So he went off to attend local NGO meetings on land and got Oxfam International to fund parts of the very imaginative Land Campaign which emerged.

³² Christopher Tanner, *Law-Making in an African Context: The 1997 Mozambican Land Law* (Rome; FAO Legal Papers Online **26**, 2002).
<http://www.oxfam.org.uk/resources/learning/landrights/downloads/FAOMzLaw.doc>

³³ Nazneen Kanji, Carla Braga and Winnie Mitullah, *Promoting Land Rights in Africa: How do NGOs Make a Difference?* (London; IIED, 2002), p.11.
<http://www.oxfam.org.uk/resources/learning/landrights/downloads/PLR.pdf>

This Campaign was coordinated by the respected academic José Negrão and sought to address the lack of information issue by translating key aspects of the new law into local languages, and by using media such as comics, audio cassettes, theatre, music and posters to help raise people's awareness of their new rights. This was particularly important in a country with high levels of illiteracy, and where the law acknowledged peoples' historical rights to land as communities, on the basis of acknowledged occupation rather than formal written records. Negrão wrote that '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.'³⁴

The Law and the Campaign not surprisingly produced a strong backlash. As soon as the civil war had ended in 1992, USAID and the Wisconsin Land Tenure Center had pushed heavily for privatisation of land, but had been rebuffed in the process leading up to the 1997 Law. But during 2001 an alliance of local and outside forces began seeking to undermine the law. USAID was irritated because Mozambique had not taken privatisation as a fundamental guiding principle in drafting the law. It began to argue that the law blocked the creation of land markets and was impossible to implement because it implied serious (and hence lengthy) consultations with communities before any agreements could be made to lease land to outsiders. In addition, some senior Mozambican elite figures did not like the law. They felt that they had been caught off guard when it was passed and complained that it challenged the power and interests of the state and complicated their accumulation of land. Quite a few Western donors sympathised with this view, and those in Mozambique who were seeking to defend peasant rights grew increasingly concerned about these developments.

On hearing about this and being approached about a possible response, Oxfam's concerns were that the whole process of getting a pro-poor land law in place, then following this with a fairly effective campaign of publicising the law and making people aware of their new rights, was in danger of being undermined, and thus all the time, effort and resources which people had put into the process could well be undone. In the event, Oxfam GB agreed to support some fact finding research by the Mozambican specialist, Joe Hanlon, who would try to discover what exactly was going on and by doing so would give support to those trying to defend these hard-won gains. Hanlon went to Mozambique in mid-2002 and produced a careful, thoughtful and comprehensive research paper on the land debate. He stated that:

Land is again the subject of debate in Mozambique, five years after the passage of a land law following wide-spread consultation in one of the most democratic processes in Mozambique in the 1990s. The law has won praise for protecting peasant rights while creating space for outside investment. The new debate is about two issues:

- Should land, or at least land 'titles' (effectively, leases), be able to be sold and mortgaged?

³⁴ José Negrão, *The Mozambican Land Campaign, 1997-99*. Workshop on the Associative Movement, Maputo, Mozambique, 14 December 1999.

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/Mozcamp2.rtf>

- Should more emphasis be put on improving conditions for would-be investors (particularly large foreign investors) or should the stress be on delimiting and protecting peasant land, and capacitating communities to deal with investors?

Hanlon argued that the debate on land was actually a proxy for a debate about rural development and who should drive it - foreign investors, the urban elite, advanced peasants, or family farmers. Different groups were prioritised by various Mozambican and foreign actors, and he found sharp divisions within government, the World Bank, donor agencies, and Mozambican civil society. Hanlon went on to note that:

The law gives communities the right to delimit and register their land, including not just immediate farms but fallow and reserve land. Once registered, potential investors need to negotiate with communities rather than merely consult them. About 100 communities have had land delimitations approved, but so far there have been no negotiations with investors. Delimitation gives communities power, but the process can cause problems, raising expectations and sometimes disinterring old disputes. Although the process is expensive and time-consuming, it may be the only way to protect peasant rights. So far, communities do not understand the value and potential of their land.³⁵

Hanlon's paper stressed the central role of Mozambican NGOs, but raised a number of questions about their increased role as service deliverers and their ability to do what might be asked of them.

Which takes us back to the current position of donors, the issue of long-term commitment, and why it is so welcome that DFID and other donors are engaging in the ways described earlier. As I stressed in my farewell speech to Oxfam, it is obviously important to seize historical moments and spaces when they occur, but equally important to defend earlier gains, such as Mozambique's progressive Land Law, which the private sector, among others, is currently seeking to undermine.

Conclusion

The somewhat prosaic conclusion which emerges from all this is that those who work in the land sector need to be strongly encouraged to do all they can to exploit the spaces currently available to them. In the course of my work, I've observed individuals from many different kinds of organisations who wanted to do something and have managed to make a difference and to make things happen which would almost certainly not have happened without them. I'm thinking about people like Mike Scott, former head of DFID's rural livelihoods division, Rachel Lambert, of DFID livelihoods in Kenya, Vincent Lelei of UNDP in Zimbabwe, Kaori Izumi of FAO in Southern Africa, the late José Negrão of the Land Campaign in Mozambique, my Mokoro colleague Martin Adams, who worked tirelessly in the land ministries in South Africa and Kenya, of my former Oxfam colleagues Lilianne Fan in Aceh, Anne Mumbi on the Zambian Copperbelt, Craig Castro in Southern Africa and Rosário Advirta (now with Christian Aid) in Angola. I also think of academics who are much more than 'just' academics, such as Ben Cousins, Cherry Walker, Issa Shivji, Okoth-

³⁵ Joseph Hanlon, *The Land Debate in Mozambique: will Foreign Investors, the Urban Elite, Advanced Peasants or Family Farmers Drive Rural Development?* (Pretoria; Oxfam GB in Southern Africa, 2002).

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/debatmoz.pdf>

Ogendo and Patrick McAuslan, who are all, in their different ways, passionately committed to defending the land rights of the poor.

John Barrett usefully challenged my pessimism, and my ultimate response is that while the overall picture for pro-poor land reform is not very positive in an era of privatisation, neoliberalism and now the challenging biofuel revolution,³⁶ dedicated people can still push out the boundaries of where they find themselves – in donor agencies, in national and international NGOs, in academia, and, no doubt, in the surveying community (see Appendix below), and make an impact, make a difference. It matters. It really does matter. Because things are often bleak, that is not an excuse for giving up and doing nothing, just as it is no excuse for donors to opt out because it's safer to do that. The challenge of addressing the difficult and sensitive issue of women's land rights, to take but just one example, calls for intelligent, committed and multi-sectoral responses from all actors who claim to be serious in this area.

³⁶ Recent research by ODI has noted that 'this rapid expansion of biofuels is likely to generate increased conflict over land rights and utilisation' and that in Brazil 'evidence suggests that access to land for poor people continues to be reduced under biofuels production.' Leo Peskett, Rachel Slater, Chris Stevens and Annie Duffy, *Biofuels, Agriculture and Poverty Reduction*, second draft, March 2007, pp.9-10. A shortened version of their work with the same title appeared as ODI Natural Resource Perspectives **107**, January 2007 <http://www.odi.org.uk/NRP/NRP107.pdf>

In the July 2007 edition of the GRAIN magazine *Seedling*, an article on Africa notes that:

'the money being invested in agrofuels in Africa is focused around large-scale plantation agriculture, tightly integrated into transnational corporate networks. And, as in any other sector of agribusiness, corporate profit with agrofuel crops is best assured when these plantations are on the most fertile lands, close to major transportation routes. Millions of small farmers still occupy these lands, however, and they have become the main obstacle in the path of the agrofuel rush. It is becoming clear that, whenever agrofuels are on the agenda, the pressure on farmers to leave their land intensifies.

'the agrofuels boom in Africa is not about rural development and improving the living standards of poor farmers. On the contrary, it is about foreign companies taking over the land: by striking deals with government officials and lobbying for legal protection, subsidies and tax breaks; by acquiring scarce fertile land and water rights; by coercing farmers into becoming cheap labour on their own land; by introducing new crops in large-scale plantations; by introducing GM crops through this backdoor; by displacing people and biodiversity-based systems; and by enslaving Africa even more to the global market. Land grabbing on an unprecedented scale is on the march in Africa.' GRAIN, 'The new scramble for Africa', *Seedling*, July 2007, pp.42, 44.

APPENDIX

IIED v. FIG – two contrasting ways of looking at land issues³⁷

It is a striking feature of both the literature and the reality as observed in ‘expert meetings’, conferences and the like that people who specialise in land issues are divided into ‘soft’ and ‘hard’ camps. People see the world – and what ought to be done to improve it – in often quite contrasting ways. At the risk of caricature, one could call them the ‘IIED’ and the ‘FIG’ schools.

For IIED (International Institute for Environment and Development), with much of its now extensive experience drawn from Francophone West Africa and predominantly drawn by social scientists, the world of land is full of complexity, uncertainty, ambiguity, of ongoing processes, of the ‘traditional’ and the ‘customary’ changing and evolving as the world changes. This is well captured in this observation from Paul Mathieu and colleagues:

In many parts of Africa, rural dwellers find themselves in a period of uncertainty – a time of hesitation between two systems and two periods: a time not long ago when customary principles were the point of reference, and an uncertain future, in which new rules and norms are inevitable.³⁸

In practical terms, many of those who have written for IIED, such as Camilla Toulmin, now IIED’s Director, have argued the need for policy makers to recognise and legalise customary ways of resolving disputes over land at the local level, rather than trying to impose uniformity from the centre. In some parts of West Africa this approach has been gaining political favour, but it clearly challenges all the basic instincts of those brought up within highly centralised traditions.³⁹

In stark contrast lies a hard scientific world of precision and certainty, the world of FIG (the International Federation of Surveyors). They have had something of a field day in recent years, surveying and mapping many of the transition states of Eastern Europe and the former Soviet Union. Much (though not all) of this work has been hugely impressive – for example in Lithuania, with its centralised, computerised land administration. This works on a cost recovery basis, involving both the state and the private sector on a competitive basis in both cadastral work and individual valuation, and has a Real Property Cadastre and Register located within one organisation. It is presented as simple, effective, accessible, economical and, above all, highly transparent.⁴⁰

³⁷ This is taken from Robin Palmer, *Literature Review of Governance and Secure Access to Land*, April 2007 <http://www.gsdr.org/docs/open/HD417.pdf>

³⁸ Lorenzo Cotula, Camilla Toulmin and Julian Quan, *Better land access for the rural poor: lessons from experience and challenges ahead*. (London; IIED, 2006). <http://www.iied.org/pubs/pdf/full/12532IIED.pdf> citing Paul Mathieu et al, *Making Land Transactions More Secure in the West of Burkina Faso* (London; IIED Drylands Issue Paper 117, 2003).

³⁹ Lorenzo Cotula (ed) *Changes in ‘Customary’ Land Tenure Systems in Africa*. (London; IIED, 2007). <http://www.iied.org/pubs/pdf/full/12537IIED.pdf>

⁴⁰ Romualdas Kasperavicius, *Real Property Administration System in Lithuania*. Expert meeting on Good Governance in Land Tenure and Administration, 25-26 September 2006. Rome, FAO.

Paul van der Molen, Chair of FIG Commission 7 on Cadastre and Land Management, and his colleagues at Kadaster International in the Netherlands are hugely in demand as a result of what modern technologies can achieve in a country such as Lithuania, with its high level of literacy and ease of access to the internet. He wryly acknowledges that 'land registrars and land surveyors are not always reputed to be the most flexible professionals' and recognises that the standard approach of aiming for registration of full titles 'hampers the provision of security to people that live in countries that cannot afford the huge investments in the establishment and maintenance of such quality systems.' Therefore there is a need to consider unconventional approaches.⁴¹

One of the people who would welcome such an attitude is Clarissa Augustinus, of UN-HABITAT's Land and Tenure Section, and one of the relatively few people with a background in both the 'IIED' and the 'FIG' camps. She has observed over many years that in many forums the two camps, set in their own silos and with their own extensive vested interests to protect, 'are still mostly talking past each other' though she feels that this is slowly improving. In order to change land administration systems, she argues forcefully for the need to break out of these silos and for both sides to listen to each other, be open to criticism and 'alter our approach about how we go about our business.'⁴²

This is surely something which donors such as DFID can and should encourage.

<http://www.oicrf.org/searchdocument.asp?p=1&e=39>

⁴¹ Opening and Closing remarks by Paul van der Molen, Fig Commission 7, *Secure Land Tenure: New Legal Frameworks and Tools in Asia and the Pacific*. Proceedings on an Expert Group Meeting, Bangkok, 8-9 December 2005. (Frederiksberg; FIG, 2006), pp.19, 141.

⁴² Clarissa Augustinus, 'Global Network for Pro Poor Land Tools', in FIG Commission 7, *Secure Land Tenure: New Legal Frameworks and Tools in Asia and the Pacific*. Proceedings on an Expert Group Meeting, Bangkok, 8-9 December 2005. (Frederiksberg; FIG, 2006), p.41.
https://www.fig.net/commission7/bangkok_2005/papers/1_2_augustinus.pdf