

**INTRODUCTION TO
CONTESTED LANDS IN SOUTHERN AND EASTERN AFRICA:
A LITERATURE SURVEY
An Oxfam Working Paper
by
ROBIN PALMER
Land Policy Adviser, Africa
Oxfam UK and Ireland
October 1997**

1. Rationale

Land issues and their relation to poverty have again assumed burning importance throughout Southern and Eastern Africa. It was in recognition of this that I first began compiling this literature survey, of which an earlier and much shorter version was circulated privately in February 1997. The very favourable responses which I received to that from a wide variety of recipients encouraged me to expand it for publication as an Oxfam Working Paper and hence make it more widely available. This is important in the current context in which, because there is often far too much secrecy, knowledge can indeed be power. Oxfam UK and Ireland has committed itself, in its 1997-2000 strategic plan, to 'supporting peasants and pastoralists to protect their land rights', and my appointment as Land Policy Adviser is evidence of that commitment.

There is now a vast literature on land in Africa; what follows is inevitably but a selection. My working principle of selection of the articles, books, theses, conference reports, NGO workshops etc. which I have summarised here has been to include items which are recent, are specifically relevant to current concerns, and/or are influential in one way or another.

2. Structure of the survey

The structure adopted is a fairly rough and ready one. I have divided all items selected for summarising into five categories, in the following order:

- land tenure
- land reform
- land and pastoralism
- land and women
- land: misc

Items are further divided into general and country-specific sections. The general section comes first, followed by Southern and Eastern Africa . This is followed by the countries, arranged alphabetically, from Angola to Zimbabwe.

There are a number of multiple entries (e.g. part of a summary may be found within the general section, another part under an individual country) where this seemed appropriate. The most recent or what I judge the more important items tend to feature earliest within each section.

3. Current context

Land has become a very high-profile issue in virtually every country in Southern and Eastern Africa. There is an often desperate scramble for land in the context of privatisation and the search for foreign investment. In particular, farming and grazing lands held under various forms of communal tenure have come under serious threat. Among the consequences one can observe:

- The setting up of land commissions in Tanzania, Zimbabwe, Mozambique, Malawi.
- The creation of national land policies in Zimbabwe, Tanzania, Namibia.
- The passing or threat of new land laws in Mozambique, Tanzania, Uganda.

A significant response to these pressures has been the recent emergence of national NGO land coalitions or alliances in South Africa, Uganda, Zambia and Tanzania demanding open and fully participatory debates on land before laws are passed. These NGO alliances are particularly concerned about the long-term impact of proposed changes on the poor and vulnerable; that women's already fragile rights to land may be still further eroded; and that communities unaware of their legal rights may be exploited by the powerful. Donors too, including the World Bank and DFID (the UK Government's Department for International Development, the successor to ODA), have also become increasingly concerned about land and poverty.

All this is happening in a very particular current context, briefly summarised as follows:

- The Cold War has ended with the triumph of the West and with Western economic models now being promoted worldwide.
- The championing of unrestricted market forces, of liberalisation, privatisation and structural adjustment is little challenged.
- Politically there has been a significant move within Africa from one-party states to supposedly 'democratic' multi-party systems.
- The virtues of civil society are strongly advocated and promoted, though civil society itself is generally weak.
- The role of the state has been drastically curtailed.
- Corruption has become an issue of major concern in many African countries.
- Globalisation and the World Trade Organisation are here to stay.

All these different strands are interlinked and all have an impact on how land issues are now viewed, debated, and contested in Southern and Eastern Africa. It is in such a context that this literature survey should be seen.

The remainder of this brief introduction focuses primarily on works cited in the general sections.

4. Major trends

The World Bank has played and continues to play a key role in debates on land. It first began to get involved in Africa around 1982, arguing that 'improving' land tenure and land use should be a priority in the structural adjustment programmes (SAPs) that increasing numbers of African countries were then being urged to adopt. At that time it tended to view indigenous land tenure institutions as a constraint on production. World Bank staff and experts began calling for the issuing of titles or registration as a top priority, together with a total redrafting of land laws in order to encourage privatisation and the development of a market in land, which they believed would lead to improved agricultural performance. The reforms demanded by the Bank in Africa

were more radical and deeper than in any other part of the developing world, argues Jean-Philippe Platteau, and inevitably they involved the Bank in politically sensitive situations in which it had to exert considerable pressure to get its reforms implemented. In recent years, however, faced with increasing evidence from its own staff, among other sources, that things were not quite working out according to plan, the Bank has generally become far less dogmatic, more aware of the complexities of land issues, more open to dialogue, and, perhaps, more community-centred. This is well illustrated in a paper prepared for a seminar in Kampala in September 1997, in which two World Bank authors, Klaus Deininger and Shem Migot-Adholla, reflect candidly on past experience and mistakes.

Many writers see a general trend during the colonial period, continued since independence, for land rights to become more individualised as a result of factors such as population growth, more intensive land use, the closing of land frontiers, and greater commercialisation of agriculture. Often this led to the emergence of land markets, especially in those parts of West Africa where tree cultivation developed.

In contrast to those arguing for individual title in the Western sense, many writers have stressed the capacity of indigenous tenure systems to adapt to situations of great demographic and economic change. (The term 'indigenous' is now generally preferred to 'customary' tenure, on the grounds that the latter is a misnomer, tenure systems having changed so much over time). Deininger and Migot-Adholla admit that previous World Bank assessments exaggerated the benefits and neglected the costs of freehold tenure and the advantages of communal tenure.

Valid though this endorsement of indigenous systems may be in challenging earlier assumptions that they represented a serious barrier to economic development, it is important to note the caveat of Catherine André and Jean-Philippe Platteau in the case of Rwanda, where local systems proved quite unable to cope with extreme population pressures, when combined with a lack of alternative economic outlets.

An important theme in the literature is the way in which indigenous and modern land tenure systems have been able to live side by side. This rather contrasts with the expectations of planners who believed that once 'modern' systems were introduced, as in Kenya, they would inevitably undermine and replace indigenous ones. In fact there is evidence of continuing complex interactions between the two.

Kenya's land titling and registration programme has a longer history than any other. It was introduced in the wake of the 'Mau Mau' crisis and resulting British colonial response - the famous Swynnerton Plan of the late 1950s, many of whose ideas were adopted by World Bank planners in the 1980s. There is both an extensive literature on the Kenya programme and a growing consensus that it has been extremely expensive and deeply flawed, and has not achieved the goals of agricultural transformation that were set. An important article by Gavin Williams offers a strong critique of the very positive interpretation of the Kenyan experience by World Bank writers proposing something similar for South Africa, but more recently Bank writers have accepted that titles in Kenya became 'virtually worthless' because landowners had no incentives to update them.

There may now also be a general consensus that in Africa titling is not worth the expense or the effort involved. This is principally because records are never maintained properly; they fail to reflect social reality; the process has generally disadvantaged secondary holders of land,

especially women; it has not brought an end to land disputes; and it failed to activate a credit market. But it is important to note the view of Diana Hunt that in particular contexts - she cites semi-arid areas with low population densities - titling can offer positive incentives for people to make long-term investments, such as soil and water conservation. Citing Bruce, Migot-Adholla and Atherton, Hunt concludes that titling is most likely to be justified where there is high incidence of dispute (as in urban and peri-urban areas), in resettlement areas, or where new project interventions require full privatisation. On the other hand, Platteau argues that titling is certainly not justifiable in situations where land is abundant or has no commercial value, where land transactions and disputes are few, and where other markets are absent or poorly developed. He believes that there is a need for a pragmatic and gradualist approach that promotes the adaptability of indigenous tenure systems, avoids a regimented model, and relies mostly on informal local procedures, which are cheap and equitable and attract local support. He further believes that the World Bank is now open to such an approach (personal communication) and the thrust of the Deininger and Migot-Adholla paper would seem to endorse this.

Deininger and Migot-Adholla also sketch out the 'new paradigm' of market-assisted land reform, now underway in South Africa, Brazil and Colombia, where governments, rather than transferring or expropriating land, play a far more limited role of merely providing grants to beneficiaries wanting to buy land, who themselves select the land and negotiate prices with any willing sellers they can find. Current South African experience, in a highly politicised current context where the rural balance of power still remains with the old (white) landowners, reveals many problems with such an approach, which also ignores the history of past dispossession.

South Africa raises another important question for the future. Will the 'small (family farm) is beautiful' thesis, propounded by, among others, the World Bank, many NGOs, peasant historians, and Michael and Merle Lipton in a recent two-volume collection on land, labour and livelihoods in South Africa, stand the test of the new economic order? Concerns have been voiced, even within the Liptons' own volumes about how emerging small-scale black South African farmers will fare in a world in which the protective barriers once built around white farmers have been dismantled in the name of free markets. Some writers believe that this will leave many black farmers highly vulnerable to competition from subsidised imports, with the real danger that this may then lead to concentration of production and land in fewer hands.

5. Key texts and key authors

There are three edited general books on land in Africa which are of particular note, by:

- John Bruce and Shem Migot-Adholla (1994).
- Thomas Bassett and Donald Crummey (1993).
- S.P. Reyna and R.E. Downs (1988).

Of greatest significance is Bruce and Migot-Adholla, not only because it is the most recent, but because it is a joint work of the World Bank and the Wisconsin Land Tenure Centre, which, like the Bank, has been very active in many African (and other) countries, for example in Malawi and Zambia. What is most striking about the Bruce and Migot-Adholla book is its openness to challenge previously accepted dogma, its admission of past failures, and its recognition of the strength of indigenous tenure systems. If customary systems do not in fact break down under population and other pressures, but rather evolve, the editors conclude that there is a need to re-examine the extent to which more intrusive programmes, which seek to replace them, are necessary. According to Migot-Adholla himself, this book 'has been received exceptionally well within the Bank' and 'the change (of policy) has been surprisingly fast in the last two years

partly because of widespread publicity in and outside the Bank' (personal communication). That change is further reflected in his September 1997 article with Klaus Deininger.

Key authors include:

- Shem Migot-Adholla.
- H.W.O. Okoth-Ogendo.
- Jean-Philippe Platteau.

All have written both about Africa generally and about specific countries. A thesis on Uganda by Joanne Bosworth contains a good general discussion. More tends to be written about Kenya, South Africa, Tanzania and Zimbabwe than elsewhere. Only a fraction of the vast writings on South Africa are included here, but those of Gavin Williams are particularly important, given his earlier work on land in West and East Africa. There are summaries of the White Paper and preceding Green Paper on Land Policy. The recently completed thesis on Tanzania by Geir Sundet offers excellent detailed analysis of a particular process (of the interaction between land commissions, national land policies and draft legislation) which has echoes elsewhere, for example in Malawi, Mozambique, and Zimbabwe. Some recent work on West Africa is included for the sake of comparison. I have summarised some of my own recent work on Southern and Eastern Africa.

Workshop/conference reports, papers and proceedings worth noting include those from:

- Darwendale, Zimbabwe, in April 1997.
- Dar es Salaam in May 1997.
- St. Peter's College, Oxford, in November 1996.
- London School of Economics in May 1996.
- Dar es Salaam in April 1996.

The Darwendale conference was a Southern Africa regional one, which culminated in the desire to establish a regional network of national NGOs engaged in advocacy work on land. The two in Dar es Salaam were much inspired by the prolific Issa Shivji, who headed the 1991-2 Presidential Land Commission in Tanzania. The gathering in Oxford was convened by Gavin Williams and myself.

Recent publications of particular interest by authors writing as consultants for DFID (the former ODA) include those by Julian Quan, on Southern Africa in general, with particular emphasis on Malawi, Mozambique, and Zimbabwe, by Julian Quan again on land tenure and poverty eradication, and the detailed critiques by Liz Wily of draft land bills currently under consideration in Tanzania and Uganda, but which are hotly contested by the local NGO land alliances there.

The works on land and pastoralism depict all too clearly the appalling fate that has befallen many now marginalised pastoral societies whose lands have typically suffered a progressive process of enclosure and privatisation. A 1996 report on Kenya by Ced Hesse crystallises many of the key issues.

On land and women, the most recent general collection is by Jean Davison (1988), while the work of Fiona Mackenzie on Kenya is particularly worth noting, as is Bina Agarwal's book on South Asia, which is of universal relevance. Shamin Meer's recent collection of South African

case studies also contains much that is of wider relevance. Many items not specifically placed in the sections on land and women nevertheless address gender issues.

Listed under 'land: misc', the article by Shipton and Goheen has been influential in debunking various myths and in stressing the great complexity of African land holding.

There is a short selection of articles on the well-publicised trek of white Afrikaner farmers from South Africa into Niassa Province, northern Mozambique, which many see as the precursor of the displacement of peasant communities on an extensive scale throughout Southern and Eastern Africa.

One cannot conclude this brief introduction without mentioning the widespread abuse of political power in the current context of land privatisation. It is an issue which crops up everywhere and one which cannot be ducked. One of many examples is in Kenya, where the impact of land clashes and resulting creation of what resemble ethnic homelands has been documented in a series of reports on human rights abuses. This rejection of 'outsiders', which goes against the grain of deep traditions in African history, has its echoes in many other countries, such as Zimbabwe and Malawi, as well as in much of West Africa. It is a very dangerous trend that could well become increasingly serious and destabilising in the future.