

LAND REFORM NORTH AND SOUTH - IN SCOTLAND AND AFRICA

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While Scottish Parliamentarians are debating land reform on Edinburgh's Mound, much the same is happening in national assemblies across Africa. Despite differences of history, climate and economic development, there is a lot which looks remarkably similar - whether it is arguments about who can claim to be part of 'the community' or the need to clarify multiple and overlapping rights to resources. Many of the land laws which are now subject to reform in Africa are the creations of British and other European colonial powers. African nations have a head start over Scotland in terms of questioning the legacies of past laws, which had entrenched within them an inequitable system of land ownership and power, with consequent impediments to social and economic development. Learning lessons and exchanging experience across the world could be of great value to all parties - throwing light on new ways of looking at the issues, the variety of the options to be considered, and the means to carry through consultation and build consensus.

The role of land

Land continues to be an asset of enormous importance for the majority of people in most African countries. Often 70-80% of the population relies directly on agriculture for incomes and employment, while national governments benefit from this sector for export earnings and sources of revenue. Settlement and use of land provide a central element of people's identity, as well as bearing strong spiritual and cultural associations.

Land is also a major asset to the Scottish economy. Although farming of land in Scotland generates a direct income to a very small percentage of the population, one look at any local newspaper shows the importance of land to the rural economy of the area. The Scottish landscape and scenery are also principal components of the tourist industry which is now Scotland's largest economic earner, and is particularly vital for many more outlying communities. In addition, the Scottish landscape and environment perform a variety of essential ecological functions, such as provision of water for drinking and fisheries. Despite the relatively low proportion of people who live in the Scottish countryside, many town-dwellers retain a very high level of interest and series of associations with the land, whether as their original homeland, or as a place to walk and seek spiritual nourishment.

Patterns of land holding

In most parts of Scotland, the titling of land in the 1700s transformed customary rights into private claims, and further concentrated ownership into a few hands, leading to the highly

skewed distribution of land you find today. Scattered communities are all that remain of a once huge population of small-scale tenantry. The current distribution of land in Scotland is markedly different from other European countries in terms both of holding size, and the proportion of total area held by the top 500 landowners. Such an unequal pattern of holdings can also be found in those African countries - South Africa, Namibia, Zimbabwe and Kenya - in which white settlers seized great tracts of land. In these countries, as in Scotland, much of the land reform agenda is driven by a strong sense of inequity and the urgent need to right an historic wrong. The debate is coloured, in Scotland, by the echoes of the Clearances, while in South Africa the memory of forced settlement of people in the Bantustans is a harsh reminder of the need for restitution in some form.

Elsewhere in Africa, the distribution of land is much less of an issue. Many West African systems are still based on customary rights associated with cutting a field and settling land around the village, particularly where land is still relatively abundant. There the main issue concerns the need to sort out the contradictions between customary and statutory tenure systems, provide communities with greater formal decision-making powers over how the resources on which they depend may be used, and strengthen local capacities to carry out these tasks effectively.

Where is ultimate power vested?

In Scotland, there has been much breast-beating about the need to abolish feudal tenure, with its associations of archaic social relations and undue powers held by landowners. Much debate has focused on the term 'feudalism' and the need to do away in a modern Scotland with anything that reeks of old forms of servility. Yet with feudalism we also lose obscure but profoundly beneficial customs of obligation to the public good. This set of concepts and principles, linked to stewardship of the land, are of broad relevance today, since they enshrine the rights of society to impose conditions on how land is used. The question of where ultimate rights reside is also an important issue in much of Africa. After Independence, many governments vested ultimate land ownership in the President who, it was assumed, would act on behalf of the citizenry. The state would thereby hold land in trust for the broader social good. But, this was to ignore the temptations of patronage. With land constituting a major asset for many of these countries, those in government have rarely been able to play this role of stewardship. The grant of land holdings to political allies has been a key means of building a power base for many presidents and ministers, just as it was in Scotland after 1745.

The role of customary chiefs & landowners

Customary chiefs and large landlords are deeply out of fashion in political circles whether in Africa or Scotland. Many African governments have been keen to establish new forms of local government, through a series of decentralisation measures, setting up elected local rural authorities often for the first time. With the rallying cry of promoting local democracy, these new systems have in practice been a means to both increase the political power and reach of central government into distant rural areas, and to disenfranchise customary chiefs. However, this has not always been welcomed by the locals. Although in South Africa, many traditional chiefs have been completely discredited as a result of their co-option by the apartheid regime, elsewhere, they may provide an effective, low cost means of managing land and resolving

conflicts, which has greater legitimacy in local eyes than what seem to be incomprehensible procedures and decisions stemming from formal government structures. Of course, neither local chiefs nor elected bodies provide the perfect solution - both mechanisms can exclude important constituencies, and both are at risk from corrupt practices. A balance of forces is needed to get the best of both worlds.

In Scotland, many argue that large landowners should be done away with, due to the bad behaviour of a small number of well-publicised cases that have hit the press. There are those who argue that benevolent, community-minded landlords can be a great asset, especially if they have plenty of money to invest in the area. Examples, however, seem to be fairly rare. Many people attempt to make the land tenure debate turn around who is a 'good' and who is a 'bad' landlord, and the need to set codes of good practice to turn the latter into the former. But those with experience from elsewhere argue that land reform must be about land re-distribution. This is *the* essential first step to developing a vibrant, self-sufficient rural economy, such as found in parts of Scandinavia and mainland Europe, where disparities in ownership are much less stark.

Getting people to participate

Around the world, the post-Rio consensus has stressed the importance of 'community participation', though it is unclear in many places how far this constitutes a paper exercise in which 'I tell you what to do, and you participate' or provides for a real transfer of powers. In Scotland, government rhetoric is heavy with promises of participation, but light on commitments to make this meaningful or even possible for most of the rural population. It is often only the assertive incomers with the confidence, skills and knowledge of the 'system' who can play a part in regaining control for local people.

A similar contradiction between rhetoric and practice permeates much experience with 'community participation' in Africa. Governments preach their adherence to people's participation and the value of traditional knowledge, yet are unwilling to match such pronouncements by releasing control. Thus, communities are often made responsible for certain activities but without the power, resources and decision-making needed to carry through such duties effectively. In some countries, farmers must still get a written permit to cut down trees that they have planted on their own land, the authorities considering this necessary to instil a proper sense of respect for the 'environment'. Real commitment to land reform is jeopardised by this institutional resistance to 'letting go'. It also needs investment in the re-building of local communities, their access to funds, and their capacity to have a vision of what might be possible, a capacity lost through centuries of disenfranchisement and centralisation of power.

Inequitable access to the legal system has also been a problem both in Scotland and many African countries. Customary rights are always vulnerable to reinterpretation and seizure by more powerful groups. As land values rise, chiefs become tempted to transform what many consider to be customary responsibilities over land into private property rights. In Africa, rather than being recognised and protected in themselves, customary rights operate by default only in those areas where no other interests are sufficiently important to contest these claims. As a result, those with power and political backing have been able to seize customary land, especially where it is argued that local people were not making good use of it. Grazing of animals is not considered under law to generate a claim to land. Pastoral herding groups have thus been particularly

vulnerable to such losses, with encroachment by tractor and plough on much valuable grazing land which they have been unable to protect through recourse to the courts. A few examples are now starting to emerge where governments agree to recognise the authority of local organisations to make by-laws, and control access to common resources, such as woodlands and grazing. But progress is slow. It takes time to reach agreement amongst the different interests within the community, while those in local government are often reluctant to grant rights to exclude and fine other users. In Scotland, the new provisions for 'several orders' allowing the privatisation of locally managed shellfish resources provide a similar example whereby government has now started to recognise the advantages of allowing local user groups to plan and manage formerly open-access resources themselves.

But who is the community? Who belongs and who is an outsider?

This question afflicts the debate both in Scotland and many African rural settings. In many African countries, certain groups are systematically excluded from debate and decision-making under customary structures - typically women, herders visiting on a seasonal basis, ethnic minorities, and new settlers. Where valuable resources are at stake, definition of identity has become of increasing economic importance, with the definition of community member tightening as land becomes scarcer. In Scotland, the decision regarding who is a member of the 'community' is still under debate, with the final judgement being left up to the Minister's discretion. Perhaps the Scottish Parliament could take lessons from the South African example. In 1996, the Communal Property Associations Act sets out in a simple ten page brochure the principles and procedures whereby a community can form an association based on non-discriminatory, inclusive membership, equality and transparency of decision-making. It would make good reading for them on the Mound.

Consultation

In Scotland, getting input from a broad range of people is recognised as being both of practical value in policy design, as well as of great political importance. Scottish Ministers are awash with consultation exercises. The Land Reform consultation process led by the then Scottish Office provides a good model of how to get many views into the debate on land reform, through distribution of documents, a travelling roadshow, regional meetings, and call for submissions. This process of consultation continues with the current legislative process underway.

In the African context, some consultation has been highly impressive. In South Africa, a National Land Policy Conference was held in 1995, where over 1,000 delegates from all sectors of society took part in the debate. This led to six major land related acts being passed in parliament in the following two years, another five in 1998 and a further five in 1999, ranging from restitution of land rights, farm labour protection, farm tenancy reform and communal property associations. These bills arise from a process driven by clearly espoused principles of consultation, inclusion, equity and subsidiarity. Elsewhere, consultation is more of a patchy affair. Some governments have set up commissions to investigate land issues, such as Professor Shivji's report of 1992 for Tanzania, Professor Rukuni's commission of 1995 in Zimbabwe, or the consultations prior to passing the Rural Code in Niger in 1993. But, as with all consultation exercises wherever you are, it is unclear how much account gets taken of the results of such processes, particularly where the findings are politically inconvenient. In many cases, the consultation process is limited to

debate amongst civil servants, MPs, and Western donors, but with few opportunities for broader public debate. Even in South Africa, it looks as though the new government elected in mid-1999 will now backtrack on the more radical objectives of the Land Reform process. It may be that land as an asset to cement political alliances, has become too important to re-distribute to the poor. Can we see hints of the same backtracking in Scotland?

Who is driving the agenda?

In Scotland, as elsewhere, the issue of land reform is highly political and, despite the relatively few who actually work and live off the land, there is a justifiable perception that land is closely associated with power. Large landowners may no longer hold much formal political power, but continue to exercise huge informal influence. So much so that few of the current 'reforms' will actually touch their power. Meanwhile, land reform has become a symbol of the things that need to be changed to make Scotland fit for the 21st century. The broad rhetoric in favour of community participation has been further strengthened by the emblematic cases of Assynt, Eigg and Knoydart. The aim is to create a broader set of arrangements through which people can own and gain access to land, which respond to a wider set of interests in the countryside. At the same time, policy needs to address ways to promote more sustainable rural communities, and regenerate the rural economy through increased control over decision-making and access to livelihood opportunities linked to land.

In Africa, the land reform agenda is driven in part by international donors and the World Bank, with the UK, France, Germany and the US particularly involved. Such engagement stems in part from the perception that land reform is vital to ensure sufficient security of tenure to encourage agricultural investment, reduce conflicts, and allocate land from less to more productive users. Such a stance is intended to open up many African countries to outside investment in agriculture. There are also important domestic constituencies with diverse interests, including some who see a chance to acquire land as it shifts from customary to market-based systems of management. At the same time, engagement by the UK and France in the land reform process stems from a final attempt to tidy up some of the mess left by colonisation and white settlement.

There is a warning here for Scotland, where the debate, although driven by a historical and emotional identification with the land, is hardly radical and involves mainly a tinkering with the status quo. In many African countries, although land reform began as a brave exercise, it has driven into the sand of political inertia.

Legislative change alone is not enough

Whatever the differences in history between Scotland and Africa as they wrestle with land reform, both must acknowledge that legal process alone will not be enough to revive local economies and guarantee secure incomes for local people. There are limits to what legislation can achieve. The law needs to agree broadly with what people feel is right and fair, if it is to work. Equally, people need not only access to land but also the means to tap into credit, technology, input supplies and markets if they are to make use of the opportunities which land can provide. One without the other is not enough. Whether a tenant farmer in Moray, or a peasant growing millet in Mali, the options for getting a reasonable income are further limited by many

other factors. These combine to throw up major hurdles, whether due to the marginal climate and soils or to high transport costs and distance to market.

If land reform is to work here in Scotland, it needs a greater vision, practical goals and targets to meet. In order for this to come about, we need more informed debate about the different options - and African experience can help us here. We need to decide the kind of rural economy we want to encourage. Highly unequal land ownership tends to provide a particular kind of local economy. A more egalitarian pattern would generate a different mosaic of economic opportunities, as shown by the case of Norway. A new approach is needed which draws on experience from across the world, with innovative thought given to new sorts of institutional arrangement that can achieve broader goals. There has been a lot of debate about what should be done away with, but we need a better idea of what we want to create, what sort of model we have in mind, and whether land reform is the best means of getting there. Learning from experience across the world gives us a better basis from which to test out the options and review the political challenges. Perhaps the recently established Scottish Land Reform Convention could broker such a debate? Both of our organisations would be happy to contribute.