

**LAND TENURE IN
SOUTHERN AFRICA:
CONTEXT, TRENDS
AND LESSONS**

by

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INTRO

1. Who am I?

Oxfam GB's Land Policy Adviser for Africa

**Working with NGOs to influence governments
+ donors**

**Oxfam GB's Strategic Plan 1997-2000 speaks of
'supporting peasants and pastoralists to protect
their land rights'**

2. Before that?

**Oxfam Southern Africa for 10 years, travelling
in rural areas of:**

**Angola, Malawi, Mozambique, Zambia,
Zimbabwe**

3. Before that?

**Academic at Universities of:
Zambia, Malawi, Zimbabwe**

1. CONTEXT

‘CONTESTED’ LANDS

- **Land always a highly CONTROVERSIAL issue**
- **Land always a highly POLITICAL issue**
 - **especially at time of liberalisation**
- **Everyone recognises this - because of CONFLICTING INTERESTS (grace):**
 - ◆ **Gender**
 - ◆ **Race**
 - ◆ **Age**
 - ◆ **Class**
 - ◆ **Ethnicity**

GLOBAL CONTEXT

End of Cold War → Western economic models becoming dominant worldwide

Almost universal championing of:

- ◆ unrestricted market forces**
- ◆ liberalisation**
- ◆ privatisation**
- ◆ structural adjustment**
- ◆ search for foreign investment**

AFRICAN LAND CONTEXT

- **Land again a very high-profile issue throughout Southern & Eastern Africa**
- **Desperate ‘scramble’ for land (like 19th century) in context of privatisation and the search for foreign investment**
- **Farming and grazing lands held under ‘communal’ tenure under particularly serious threat. So:**

- * **Land commissions set up in Tanzania, Zimbabwe, Mozambique, Malawi**
- * **National land policies produced in Zimbabwe, Tanzania, South Africa, Namibia**
- * **Passing or drafting of new land laws in Mozambique, Uganda, Tanzania**

RESPONSE - recent emergence of national NGO land alliances in South Africa, Uganda, Zambia, Tanzania

Land alliances wanting genuine debates before laws passed.

WHY? Concerned:

- ◆ **About long-term impact of proposed changes on the poor and vulnerable**
- ◆ **That women’s already fragile rights to land may be still further eroded**
- ◆ **That communities unaware of their legal rights may be exploited by the powerful**

LAND IN SOUTHERN & EASTERN AFRICA

History: DISPOSSESSION

Current Situation: MORE DISPOSSESSION (Critical)
? REPOSSESSION (South Africa)

Problems: LACK OF INFORMATION
LACK OF POWER
LACK OF ALTERNATIVE MODELS
RURAL PEOPLE ISOLATED/MARGINALISED

Challenges - How To: MAKE 2 + 2 = 5
PROMOTE NATIONAL DEBATES (Translation)
BUILD NAT + REGIONAL LAND ALLIANCES
OFFER PRACTICAL REGIONAL SUPPORT
(Legal, Advocacy, Capacity Building)
ENABLE WOMEN'S RIGHTS TO LAND
(+ Pastoralists, Ethnic Groups)
ENFORCE EXISTING LEGAL RIGHTS

Government approaches: SECRECY
CORRUPTION
MOCK CONSULTATION

Civil Society: VARIES GREATLY (South Africa>Angola)
GENERALLY WEAK & OVERSTRETCHED
BUT NO. OF LAND ALLIANCES FORMING
Land Alliances urban m/c: how to link with rural?
Land Alliances very fragile

DUALISM

Dualism of TENURE throughout Southern & Eastern Africa because of white settlement:

‘modern’ / ‘western’ / ‘individual’

&

**‘indigenous’ / ‘traditional’ / ‘customary’ /
‘communal’**

Also CONTRAST between COUNTRIES which had extensive white settlement and those which did not:

In those that did, focus on resettling blacks onto former white-owned land & redressing colonial history

In those that did not, strong pressures to privatise and make land available on the market

2.

TRENDS

GENERAL TRENDS

- **Since colonialism growing INDIVIDUALISM of control & ownership of land (community → household → family)**
- **Growing CENTRALISATION of authority, especially after Independence - Governments wanting to control everything**
- **Recent → DECENTRALISATION (resisted)**
- **Since Independence, land grabbing by urban elites (week-end/telephone farmers)**
- **Weakening of capacity and role of state**
- **Greater corruption**
- **Abuses of political power**
- **Appalling fate of pastoralists**
- **Growing rejection of ‘outsiders’**
- **Declining access to off-farm income**
- **De-agrarianisation**

INDIGENOUS TENURE TRENDS

- ◆ **Great capacity of indigenous tenure systems to adapt**

- ◆ **Indigenous & ‘modern’ tenure systems can live side by side**

- ◆ **Whatever the formal legal position, the vast majority hold title under indigenous tenure systems & acquire land through inheritance rather than the market**

- ◆ **The ‘traditional’ has changed greatly over time e.g.**
 - **law**
 - **tenure**
 - **inheritance**

TENURE TRENDS

Dominant belief during colonialism and after that individual tenure is more progressive, modern, efficient, better for economic growth etc. than indigenous 'communal' tenure

So Kenya titling & registration programme held for many years as model for elsewhere by World Bank & Wisconsin Land Tenure Center etc

Expected that indigenous tenure would wither - but it has proved surprisingly resilient & adaptable & has co-existed with modern tenure

Meanwhile, problems have arisen in titled areas:

- **registers not maintained, so fail to reflect social reality**
- **problems over succession**
- **land vested in household heads, so women and children lost out**
- **Kenya system bureaucratic, lacks transparency, encourages corruption**
- **titles 'virtually worthless' so no incentive to update**
- **people with titles driven away in Rift Valley clashes, undermining integrity of tenure system nationwide**

So World Bank now had serious rethink

GOVERNMENT TRENDS

- **Governments generally have severe problems of lack of capacity and resources**
- **So they are unable to implement ambitious, grandiose plans (this was true of colonial governments too)**
- **Government capacities and resources are now declining further with cutbacks demanded by SAPs and global trends**
- **Governments are now facing demands to decentralise**

CIVIL SERVICE TRENDS

- * The technocratic perspective has been enormously influential in Southern Africa**

- * Much of the civil service in new (as in old) Zimbabwe, Namibia, South Africa is highly technicist**

- * It tends to see land as a TECHNICAL rather than a SOCIAL/POLITICAL issue**

- * Many civil servants in Southern African retain a belief in settler myths and legends masquerading as science or fact with regard to:**
 - farm size**
 - land carrying capacity**
 - imagined iniquities of communal area farmers**
 - many more**

- * They generally hold a distorted & uncritically negative view of the Zimbabwean resettlement experience**

3.

LESSONS

LAND TENURE REFORM LESSONS

- **Land tenure reform issues have been around since the 1950s, but have become more urgent because of SAPS & liberalisation**
- **Land reform always involves a hierarchy of beneficiaries, with winners & losers**
- **Land reform has tended to favour better off farmers (Kenya, Zimbabwe, South Africa)**
- **It is very rare for women's incomes to rise in land reform schemes:**

registration Kenya

villagisation Tanzania

resettlement Zimbabwe

have all curtailed women's rights & enhanced men's

- **It takes a long time for resettled people to become a 'community' (Zimbabwe, South Africa)**
- **Few bureaucrats are trained to administer land reform programmes, so they are often implemented by local authorities who ensure that the old systems don't disappear**

Evidence from all over Africa shows that:

- **individual title often fails to activate an agricultural credit market based on land as collateral**
- **it's possible to design rural credit programmes which don't rely on land as collateral**
- **credit from land title is often not used for farming**
- **land markets are not driven solely by profit motive**
- **widespread adoption of tree crops shows that absence of title does not deter investment in farming**
- **with land scarcity and free land market it's usually the rich who first exploit gains from accumulation while the poor & households in temporary economic crisis are induced to sell**

Group titling, at the village or community level, can be beneficial in some contexts

Widely agreed that the strength of the economic case for titling varies positively with

- **the degree of pressure on land**
- **the strength & nature of investment opportunities in agriculture**
- **the degree of local demand for titling**

Since customary systems evolve, need to examine whether intrusive programmes are necessary after all

Titling NOT justified when:

- **land is abundant or has no commercial value**
- **land transactions and disputes are rare**
- **other markets are absent or poorly developed**

LESSONS FOR GOVERNMENTS

- **Central governments cannot expect to manage and control land effectively at the very local level**
- **Land reforms work best where Local Government capacity is strong**
- **Uniform national land policies which neglect local ecological, population density, tenure & other differences will prove conceptually flawed**
- **Governments should intervene to the minimum extent possible in a few special cases where some tenure reform is required, e.g. where indigenous systems are under great stress, in settlement areas, or zones of ethnic conflict, etc**
- **The most effective form of policy intervention would be for governments to guide and coax, assisting indigenous tenure systems to evolve and to operate more effectively**
- **Policy makers should identify and recognise the positive values of indigenous systems & give local communities control of their resources, while keeping national goals & priorities in view**

LESSONS ON RURAL-URBAN LINKS

Planners too often ignore the importance to rural economies of rural-urban links:

- ◆ how urban incomes supplement and support rural livelihoods**
- ◆ how the linkages are underpinned by communal tenure systems**

e.g. in Zimbabwe money from wage earners is invested in agricultural inputs every season & contributes to household & national food security

WORLD BANK WRITERS NOW

- **take a very critical view of titling, which should only be introduced in particular circumstances**
- **say titles have become worthless in Kenya**
- **admit that in the past the Bank exaggerated the benefits and neglected the costs of freehold tenure**
- **admit that in the past the Bank underestimated the virtues of indigenous tenure and so made great mistakes**
- **believe there should be transparency**
- **believe we need to learn from history and there should be comprehensive participation and consensus building before land laws are passed**
- **argue that the Bank should provide a menu of opportunities from which communities can choose**
- **say communities should have the right to administer their own internal land affairs autonomously**
- **argue that there is a need to respond flexibly to local needs**

DECENTRALISATION

There are increasing arguments in favour of *local* control and management of land (& other natural resources)

But how to make this:

- **EFFECTIVE**
- **DEMOCRATIC**
- **REPRESENTATIVE**
- **TRANSPARENT**
- **ACCOUNTABLE?**

Some see Botswana land boards as a good model

Others cite Tanzanian villages

Challenge is to develop *appropriate* institutions

GENERAL LESSONS

There are no 'CORRECT' solutions

There are no 'FINAL' solutions

It's a 'LONG HAUL' struggle

**So there's need for pragmatic,
gradualist approaches**

**Things generally don't work out as
planned**

**People often don't behave in ways
planners expect**

The principle of subsidiarity is key

Land will ALWAYS be a contested issue

4: APPENDIX ON KENYA

KENYA LAND TITLING & REGISTRATION PROGRAMME

- **High degree of coercion needed to consolidate holdings 1950s before adjudication & registration**
- **Unanticipated abuses of adjudication procedures**
- **High initial & recurrent costs**
- **Failures to maintain registers**
- **Disincentives to production because neglect of subordinate rights**

Tenure conversions led to conflict because officials under-estimated the strength of community and family controls, which guaranteed:

- **stability of social reproduction**
- **security of access to land**
- **integrity of trans-generational rights**
- **equity in distribution among social groups**

Credit not worked as expected and denied to most smallholders

Community grazing grounds disappeared because of attempts to individualise every piece of land

Registration eliminated communal sources of wood, forcing landholders to develop individual sources

Polarisation with a large class of smallholders & smaller number of absentee landlords

NOT the anticipated emergence of widespread commercial farming

WHO GAINED MOST?

- **rural elites**
- **urban employed**
- **urban businessmen**

Distribution of power & social influence in rural society has changed considerably

In densely populated areas, later generations challenged registered titles when attempts were made to extinguish their inheritance rights through sub-divisions & transfers

Process of tenure reform & aftermath caused great confusion & insecurity; in areas of severe land shortage it led to marked increase in disputes over registered land

Impact of tenure conversion disenfranchised esp women + children

Despite +30 years of registration, a land market has not yet clearly emerged in the former reserves:

- **this has nullified the credit & investment objectives**
- **the dispute system reduced to a costly bureaucratic travesty**

Throughout the process of adjudication, the odds were weighted heavily AGAINST:

- **the poor**
- **the uneducated**
- **those unfamiliar with bureaucratic ways**

SO, a lot depended on knowing one's rights & being able to prosecute them effectively

The results have not justified the effort & the staggering resources invested

Any contribution to growth has been completely offset by the disequilibrium caused