Meeting of the Royal African Society

NEW LAND LAWS AND OLD DONORS IN AFRICA

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on the occasion of the publication of

Evolving Land Rights, Policy and Tenure in Africa
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Camilla Toulmin and Julian Quan
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School of Oriental and African Studies (SOAS)
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LAND RIGHTS AND SUSTAINABLE DEVELOPMENT IN SUB-SAHARAN AFRICA

UK Department for International Development (DFID), Sunningdale, February 1999

75 participants: African policy-makers, researchers, civil society representatives, and donor agencies

LAND TENURE IN AFRICA:
COMMON FEATURES

1. **Land a central element in rural livelihoods – economic, social, cultural, environmental**

2. **Assured access to land of particular interest to poor**

3. **Rights acquired through work, occupation, and social networks**

4. **Colonial impact created plural legal and administrative systems**

5. **Recognised failure of past approaches**

6. **Wide range of stake-holders with an interest in land**

7. **Donors continue to play a major role**

OUTLINE OF THE BOOK

Land reform, economic growth, & poverty

Ways to harmonise different legal systems – colonial/ customary

Management of common property resources

Women's rights to land

Decentralised management of land, including Land Boards

Registering customary rights

Land reform proposals for Southern Africa

Lessons from policy and implementation

Networking on African land issues

WEST AFRICA: LAND MATTERS

Senegal	**1964 Loi sur la Domaine National**
	1972 Decentralisation to Communautés Rurales
	Current discussion of land tenure reforms
Mali	**1961 Nationalisation of all resources**
	1986 new Code domaniale et foncier enacted
	1995 Code forestier revised
	1998 Draft charte pastorale
	1999 Decentralisation to Communes Rurales
	Current discussion of revisions to CD&F
Ivory Coast	**1992 Plan Foncier Rural set up**
	1998 Loi sur la domaine foncier rural
	1984 Decentralisation to urban communes
Burkina Faso	**1984 Réorganisation Agraire et foncière (+ several modifications)**
	1995 Decentralisation to urban communes
Niger	**1993 Code Rural passed into law**
	1994 11 Land Commissions established
	Decentralisation on hold
Ghana	**1988 Decentralisation to District Assemblies**
	Current discussion of land tenure reforms

DOWN ON THE LAND,
LOTS GOIN' ON

1. LAND COMMISSIONS

- **Tanzania 1991-3**
- **Zimbabwe 1994**
- **Mozambique 1990-5**
- **Malawi 1996-9**
- **Kenya 1999-2000-?2001**
- **Lesotho 1999-2000**

2. NATIONAL LAND POLICIES

- **Tanzania 1995**
- **Mozambique 1995**
- **South Africa 1997/8**
- **Zambia 1998 (draft)**
- **Namibia 1999**
- **Zimbabwe 1999 (draft)**
- **Swaziland 1999 (draft)**

3. LAND LAWS

- **South Africa 1993-7**
- **Zambia 1995**
- **Mozambique 1997**
- **Uganda 1998**
- **Malawi 1998**
- **Tanzania 1999**
- **Namibia 1999**

IMPLEMENTATION PROBLEMS

- **Implementation of new land laws proving difficult & problematic**

- **Not surprising given contentious & highly political nature of land + severe financial constraints of African governments**

- **Not necessarily a problem: fact that Acts passed means things are different from before**

- **Museveni (Oct 97) said: 'Decide now on this issue; this land reform thing should be resolved now' Echoes colonial attempts at final solutions to land problems**

- **But FINALITY not achievable - dealing with long processes, open & hidden struggles, much contestation**

- **Needs stressing because donor + much NGO rhetoric consciously apolitical**

- **Tenure reform only part of wider struggles to achieve SUSTAINABLE LIVELIHOODS**

- **Land conflicts even more acute in unequal societies: 'Unequal ownership of & access to land are increasingly a THREAT TO STABILITY in Southern Africa' (Sam Moyo)**

UGANDA LAND ACT, 1998

- **Well intentioned, comprehensive, subject to much debate & relatively open consultation, with very active support from DFID**
- **Seemed a good model, but running into difficulties**
- **Cost implications not thought through; all energies went into lobbying on the bill**
- **Found to be very expensive**
- **Lots of new structures needed to be set up, old ones abolished, so dangerous legal vacuum**
- **Ignored existing rural mechanisms for tenure administration**
- **Supposed to cover whole country in one go**
- **Inadequate attention to regional differences**
- **Insufficient attention to strengthening capacity of Ministry of Lands**
- **Ministry very reluctant to let go of power & resources**
- **Some social unrest, land grabbing & squatting - landlords fighting back**
- **Problems led to further consultations between Uganda Govt & DFID re implementation**

DFID-funded STUDY pointed out many problems:

- **beyond capacity of government (+ local govt) budgets;**
- **won't generate major economic benefits in short-medium term;**
- **unlikely to generate credit;**
- **limited impact on rural land market;**
- **unlikely to have major impact on production through improved tenure security;**
- **unlikely to have major impact on agricultural modernisation or poverty eradication programmes;**
- **created new uncertainties;**
- **environmental impacts variable;**
- **impossible to weight value of costs v. benefits;**
- **first priority now to confront unanticipated costs; but**
- **important to monitor Act's impact over time in conjunction with other developments in the economy**

- **Despite all this, study found Act "A MAJOR STEP FORWARD IN EQUITABLE LAND TENURE REFORM"**

- **But will need amendments to allow more flexibility in implementation**

- **Despite reported problems, DFID's response was that it is committed to the Act over the long term & that land reform is not achievable in a quick fix**

LAND REFORM IN SOUTH AFRICA, 1994-

- **1. REDISTRIBUTION**
  c.700,000 ha transferred to +55,000 households by end 1999

- **2. RESTITUTION (of post-1913 forced removals)**
  60,000+ claims lodged by cut-off date March 1999;
  1,450 property claims (mostly urban) settled by March 2000

- **3. TENURE REFORM**
  (currently stalled)

SLOW PACE often criticised, but need to remember:

- **Huge constraints imposed by inherited apartheid structures**
- **Strong opposition from white farmers**
- **Relative weakness of new state structures - new DLA created**
- **Absence of effective local govt structures**
- **Relative collapse of land advocacy NGOs**
- **Financial constraints**

Too soon + not helpful to judge success or failure (Chou-en-Lai) - needs a generation (cf. Bill Kinsey on Zimbabwe)

DIFFICULTIES:

- **Land bought from willing sellers at market rates**
- **People got R15,000 grant, but not enough to buy land, needed to come together in artificial groups, 'communities'**
- **World Bank model of market-assisted land reform underestimated fact that poor black South Africans were not in position to organise themselves to use funds to buy land**
- **Now recognised Govt will have to intervene to buy land**

Great uncertainty about future political support for land reform since June 1999 when Derek Hanekom replaced by Thoko Didiza

SOUTH AFRICA: TENURE REFORM BLOCKED

- **Attempt in LAND RIGHTS BILL to address problem of tenure insecurity in former homelands (32% pop in 13% country)**

- **Old labour reservoirs, dumping grounds, with legacy of severe land pressures & conflicts unsurpassed in Africa**

- **1994-9 vigorous policy debates on reforms to dismantle apartheid map, much of it under Land Reform Support Project, funded by donors - DFID, EU, Danida**

- **Proposed LR Bill aimed to provide far-reaching reform by:**
  - **repealing many apartheid laws;**
  - **recognising customary tenure systems;**
  - **bringing tenure law in line with Constitution;**
  - **upgrading customary rights without changing essential nature;**
  - **confirming rights of broad category of rights holders;**
  - **providing for transfer of property rights from the State to de facto owners;**
  - **devolving management functions to owners**

- **Would have recognised value of individual + customary systems and allowed voluntary registration of individual rights within customary systems**

- **Where rights existed on a GROUP basis, co-owners could have chosen structures to manage their land rights - traditional rulers where still viable and popular, new structures where not.**

- **Bill shelved June 1999 by new Minister, who instead wanted new law to transfer land to tribes**

- **Debates carrying on (but mostly in private) - some details on http://www.oxfam.org.uk/resources/learning/landrights/index.html**
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- **‘The cause of tenure reform in South Africa has been severely set back for reasons which have yet to be publicly debated’ (December 1999)**

- **But political OPPOSITION predictable, bound to be challenged by those with vested interests in the status quo, e.g.**
  - **traditional leaders**
  - **rent-seeking officials**
  - **also by those arguing for priority of redistribution.**

- **Current ascendancy of redistributing freehold land to progressive black farmers**

- **But issue of tenure reform in communal areas will recur (cf. Namibia, Zimbabwe)**

CONCLUSIONS ON LAND REFORM IN AFRICA

1. **Many approaches and diverse lessons to exchange**

2. **Government has a limited but centrally important role**

3. **A highly political process: choices must be made**

4. **Law cannot be drafted in a vacuum but must build on social values and consultation**

5. **A very expensive process; potential benefits need to be weighed against costs and 2nd best solutions**

6. **Pilot programmes a good idea - focusing on priority areas and testing new methods**

7. **Neglect of 'unconventional' forms of tenure**

1. **Contempt of customary rights and practices**

2. **A long-term iterative process, needing feedback, learning and involvement of many stake-holders**

3. **Donors need to tread carefully**

NEW APPROACHES TO LAND RIGHTS MANAGEMENT

Registering customary rights: Ivory Coast, Benin

Granting legal title and certificates: *Code rural* Niger

***Gestion des terroirs* – village land management**

Local conventions for natural resource management

ROLE OF DONORS

- **Problematic**
- **Donor dependency inevitable**
- **Donors need to be bolder, more imaginative, more sensitive to political terrain - and to charges that they really want to frustrate land reform (e.g. Zimbabwe)**
- **Zimbabwe SHOWS a danger of adopting overly narrow & closed conception of appropriate roles for donors & host governments in land reform programmes**
- **Uganda & Tanzania SHOW need to strengthen capacities at national & especially LOCAL levels**
- **Regional African NETWORKS on land tenure & policy evolving, with donor support**
- **Despite agreed rhetoric on subsidiarity, politicians extremely reluctant to relinquish control over land allocation**
- **'I am very aware of the persistent manner in which politicians manipulate and control access to land in order to further party and personal interests and so retain power.' (Martin Adams)**

APPENDICES

ZIMBABWE LAND INVASIONS - DIFFERENT INTERPRETATIONS

- **Reversing colonial history?**
- **Mugabe struggling to stay in power at any cost?**
- **A struggle for democracy and human rights?**
- **Disturbing his regional neighbours & being No.1 liberator again?**
- **'Nobody can claim the moral high ground', Michael Holman, *Financial Times*, 13 April 2000** http://www.oxfam.org.uk/resources/learning/landrights/downloads/zimground.rtf
- **Britain should have re-entered the game last year (Cusworth, Adams, Palmer, May 1999)**

ZIMBABWE LAND CHRONOLOGY

1979		**Lancaster House**
1980	**April**	**Independence**
1988	**September**	**ODA Land Resettlement Evaluation Report**
1990	**April**	**Lancaster House agreement 'expired'**
1992		**Land Acquisition Act**
1994	**October**	**Report of Commission of Inquiry into Appropriate Agricultural Land Tenure Systems (Rukuni)**
1996	**Sept/Oct**	**ODA Land Appraisal Mission**
1997	**November**	**Listing of 1,471 farms (with intention to compulsorily acquire)**
1998	**March**	**SOAS conference on land reform**
1998	**September**	**Donors' Conference on Land Reform**
1998	**November**	**Compulsory acquisition of 800 farms announced**
1998	**December**	**National Land Policy Framework Paper**
1999	**May**	**DFID Land Reform & Resettlement Programme Inception Phase Identification Mission**
1999	**June**	**Draft National Land Policy discussed in national stakeholder workshop**
1999	**December**	**Maximum farm sizes defined by Statutory Instrument**
2000	**February**	**Mugabe loses referendum vote**
2000	**February**	**Farm invasions start**
2000	**April**	**Constitution amended, says if Britain fails to pay for acquisition of land, Zimbabwe not obliged to**
2000	**April 27**	**Robin Cook meets 3 Zimbabwe ministers**