

**REPORT ON**  
**WORKSHOP ON CURRENT LAND REFORM**  
**AND LAND TENURE ISSUES**  
**IN SOUTHERN AND EASTERN AFRICA**

**Convened by**  
**Robin Palmer**  
**Oxfam UKI**  
**&**  
**Gavin Williams**  
**St Peter's College, Oxford**

**held at**  
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**Written by**  
**Izzy Birch**  
**Oxfam UKI**

## Introduction

The purpose of the workshop was to bring together academics and NGO workers interested in current issues of land policy and land reform in Southern and Eastern Africa. There were several reasons why this was a timely initiative:

- land is now an issue of wide concern and conflict (or potential conflict) and this needs to be more widely recognised
- legislation currently planned in several countries is likely to have serious and long-term consequences
- bridges can usefully be built between academics and NGOs working on land
- the South African experience needs to be situated within the broader context of Eastern and Southern Africa
- communities are being threatened by land grabbing and need to be supported

The day was structured into four sessions, which looked at the following:

1.	pp. 3 -6	<b>Land Policy in the Context of Political and Economic Reform</b>
2.	pp. 7-10	<b>Land Redistribution</b>
3.	pp.11-13	<b>Land Tenure and Title</b>
4.	pp.14-16	<b>Facilitating Land Reform: Governments, NGOs and Academics</b>

Some background papers had been circulated in advance, and each session began with two or three short presentations, after which the discussion was opened up for general contributions.

- This is an account of the day's proceedings.
- A second paper is also available which summarises the key issues presented and discussed in the course of the day.
- There are also three appendices, which have all been revised from earlier versions:

<b>Appendix 1: Addresses of Participants</b>
<b>Appendix 2: Select Bibliography of Recent Publications</b>
<b>Appendix 3: List of Papers circulated in advance</b>

## Session One

### Land Policy in the Context of Political and Economic Reform

#### **Geir Sundet - Tanzania**

In the 1990s a movement began within the Ministry of Lands, funded by the World Bank, to reform the centralised land tenure system in order to facilitate economic reform and to attract investors.

Between 1992 and 1995 a succession of proposals for reform were produced, with some consensus between World Bank consultants and the Presidential Land Commission (chaired by Professor Shivji) about the need for decentralisation and greater community control.

However, during the run-up to the elections in 1995 political manoeuvring effectively sidelined the Minister, and a National Land Policy was rushed through Parliament in June with minimal consultation or publicity. Policy in Tanzania appears to be being driven by a handful of individuals within the Ministry.

#### **Joanne Bosworth - Malawi**

A process of reviewing land policy began in 1994, driven by concerns about land utilisation and land shortage, but it is still in its early stages.

In the Malawian context the term "estate sector" refers to private land, under freehold or leasehold, which may be as small as 10 hectares. In recent years more and more land has been alienated from smallholders into the estate sector, which now covers 14% of all land. This growth was in part the result of political patronage under the Banda regime, although ownership of estates within the present government is also widespread. It was also linked with the liberalisation of the agricultural marketing system and the production of export crops.

The transfer of land from communal to estate only requires permission from the village head or chief, and a broad range of people have benefited. It has also caused the displacement of people from the smallholder sector, who now form the workforce on private farms. Many people in Malawi are completely landless.

As part of the review process a Policy Planning Unit has been created within the Ministry of Lands, supported by the World Bank. An Inter-Ministerial Steering Committee is co-ordinating with some difficulty a series of donor-funded studies looking at land utilisation in the different sectors (estate, customary and public).

In February 1996 the President appointed a 17-member Land Commission, which is scheduled to report by September 1997 but has not yet got off the ground. It is still looking for funding. At this stage it is unclear who will draft the land policy, which is due

to be tabled in 1998, just before the next election. There are tensions within the Ministry and between the Ministry and the Commission. NGOs and other representatives of those affected by the policy have not been involved.

Some redistribution is likely, though there is no indication as yet of how extensive this is likely to be. The idea of a stronger land market is attractive to people in the Ministry of Lands because it legitimises the existing land market and provides opportunities for them to appropriate revenue from land transfers. A crucial issue for the Ministry is how to facilitate an increase in land rent from the leasehold sector and how to streamline administrative procedures. We should recognise that policy in different ministries may be contradictory.

### **JoAnn McGregor - Mozambique**

Efforts at land reform and redistribution have been taking place since the early 1980s, but only after the end of the war has this process gathered pace. Insecurity and drought led to population concentrations in certain areas and slowed down the rate at which people have been able to rebuild their lives.

Despite this, there has been a rush to acquire land, which happened before most people were able to resettle. Approximately 40% of total land has now been allocated on a concessionary basis, although cumbersome administrative procedures mean that less than 5% of applications made since 1991 have been processed. In some areas there is still a dual administration, since both the Government and Renamo control tracts of land. However, the largest concessions have been made centrally.

A Land Commission was appointed in 1995 and the issues debated in several fora, including a National Land Conference. The new Land Policy states that land will remain the property of the state, allocated on 50 year leases. It also defines commercial and communal land, and states that smallholders are supposed to be consulted before concessions are made. However, any new conditions will not apply to land which has already been allocated (the 40%). There are also several key omissions in the policy, such as proposals to address the procedural problems and lack of transparency, and a definition of who will decide the boundaries and the use of communal land.

The old Frelimo popular organisations, such as the women's and co-operative movements, have been very vocal in the debates on a new land bill, but lobbying does not often extend far beyond Maputo. There is some concern about the loss of women's rights. But there is also cynicism about the leadership: in one instance the President and the Prime Minister both offered concessions on the same piece of land.

### **Discussion**

Updates were given on policy developments in other countries:

**a) Namibia**

Sporadic public consultation has been used to defuse the issue and then effectively to put it into abeyance. Members of the government are increasingly benefiting personally from land deals, and therefore it is no longer in their interests to advance the platform of land reform on which they came to power. The draft Communal Land Bill is continually being changed amid fears that it may legitimise extensive enclosures of once communal ranching land.

**b) Eritrea/Ethiopia**

New legislation is also planned. One key difference is that in Tigray, for example, land was a part of the national liberation struggle - not just in rhetoric but with actual land tenure practices. Inevitably, therefore, land is prominent on the post-revolution agenda.

**c) Zimbabwe**

There is still plenty of evidence of pressure for land redistribution coming from below, but concern that the government's interest is confined to rhetoric. A second round of redistribution is planned which is targeted at one-third of the remaining white-owned land.

**d) Uganda**

Land reform has been on and off the agenda since 1986, with heavy World Bank involvement in the drafting of a Land Bill. The issue has gathered pace recently, and a key factor is that of regionalism and the future role of a central state. In 1994 the new constitution vested control of land in the people. Foreign investors, however, have increasingly been allowed in, particularly in Karamoja.

**e) Zaire**

The state has less and less control, such that the Ministry has little relevance. The study of land issues should focus on people's actual rights over land - such as forms of customary authority - and less on national policy.

These examples show that there is a convergence of highly formal processes of land reform and review taking place in several countries in Africa, in conditions of insecurity and pressures for redistribution, and within the context of political and economic liberalisation. What are the forces behind this? Who is making policy?

Often these processes are confused, sometimes secretive. Confusion makes it possible for a few people to retain control over policy direction (as in Tanzania). And yet however much the issue may seem to disappear from the national agenda, it will

always be a major issue at village level. But how much of our research takes place at that level? Are we inclined to look at things too much from the perspective of the capital?

The issue of centralisation versus decentralisation may not be central (after all, in Tanzania both Shivji and the World Bank agree on decentralisation). The key issue may rather be how easy it is to purchase land. External forces are interested in land reform because it will create land markets and allow speculation and trade in land. This links with the focus of adjustment policies, in that foreign capital in Africa has been most active in the areas of agricultural production and export crops.

## Session Two

### Land Redistribution

#### Elizabeth Francis - Kenya

The Swynnerton Plan of the 1950s was a major programme to restructure African agriculture in Kenya, the aim of which was to produce through a process of land accumulation and freehold tenure a class of full-time yeomen farmers, which would serve as a bulwark against rural radicalism.

After Independence a programme of land redistribution began, through which 64,000 families were given access to 670,000 hectares of land, and a process of tenure reform was instituted in the former African reserves.

The programme attempted to create a tripartite structure:

- i) some large farms were transferred intact to urban elites and those with political connections. These "telephone farmers" had little interest in agriculture. Productivity was therefore low, although even today this sector still produces 50% of the country's agricultural output.
- ii) large-scale resettlement schemes aimed to create a class of smallholder farmers, although again many of those who benefited were members of the urban middle class. The landless poor lost out in the process of redistribution as land again went to those with resources and connections.
- iii) the smallholder boom in the former African reserves was most marked in those areas which were closest to Nairobi (and therefore closest to production and labour markets) and which were ecologically suited to high value cash crops. Poorer migrant areas of West Kenya did not develop in the same way, although land is still crucial there as a backstop for people.

What were the key lessons of this experience?

- How land gets redistributed (i.e. the process and the choice of beneficiaries) affects who gets land. In Kenya much of the land went to the urban middle class and to those for whom agriculture was a subsidiary activity.
- The aim of full-time smallholder farming was unrealistic, because it did not take account of the fact that urban resources are crucial sources of capital and income. People need to be able to combine farming with other sources of livelihood.
- The process of providing access to markets was arguably more important than the process of land redistribution.

The Kenyan redistribution programme was expensive, financed by loans rarely repaid in full, and is still cited by the World Bank as a successful model, particularly for smallholder farmers. There are many parallels with South Africa today - a substantial white farming sector, with Africans pushed into reserves. In particular, if the land reform programme in South Africa takes place on a smaller scale than initially planned, then questions of who gets access to land (and under what kind of tenure), to credit and to markets will be equally critical.

### **Jocelyn Alexander - Zimbabwe**

The resettlement programme post-Independence was formulated very quickly, largely by powerful technocratic bureaucrats working within sectors such as agricultural extension. Beneficiaries were defined in terms of need, and land could only be acquired on a "willing seller, willing buyer" basis. In general terms the process was economically successful.

In recent debates the focus has shifted and productivity, rather than need, has become the defining factor. The position of large-scale black commercial farmers is now also more significant and associated with broader questions of indigenisation.

The most successful group has arguably been squatters, who occupied white farms at a time of transition and began a process of self-restitution. On what basis were these claims made? As individuals or as communities? On the basis of history, politics, or need? Claims can conflict with each other.

Two current issues concern the state's lack of capacity to sustain policy implementation, and the importance of recognising the unintended as well as the intended effects of policy.

### **Chris de Wet - South Africa**

The process of land redistribution may be driven by several different factors:

- on political and moral grounds, i.e. a move towards a more equitable distribution of resources.

- on productivity grounds, i.e. to increase income from agricultural activities.
- on social and moral grounds, i.e. to support the establishment of viable settlement on new land.

All three must be taken into account if any programme of redistribution is to succeed. What matters is the way in which reform takes place and the institutional context within which this happens. For example, the process through which people readjust and re-establish themselves in new areas is lengthy and painful, both socially and economically. Their ability to do so is affected by factors such as the provision of facilities, the culture of planning at various levels of government, and the extent to which the authorities allow people to choose their own residential pattern.

There will always be a hierarchy of beneficiaries, of whom some will gain at the expense of others. Redistribution can itself therefore create new injustices. Is redistribution a political act and a one-off transfer, or is it a process of ongoing rural development? In general, current plans lack vision.

There are critical shortages which will affect the process - shortages of political will, funds, trained staff, co-ordination and time. The success of any redistribution programme will depend on the extent to which these shortages are addressed, the ability to learn lessons from the mistakes of others, and the development of a longer-term process within which redistribution can take place.

## **Discussion**

There were two processes of redistribution taking place in Kenya: the formal, World Bank/ODA-funded government programme, and an informal process of commercial land purchase through private deals. We should remember that the second process continues after the first ends, and also that land does not always remain in large commercial units. Sons of white farmers do not necessarily want to keep the business, leading to farms being put on the market. This is beginning to happen in Zimbabwe too and it has lessons for Namibia and South Africa.

We must take a disaggregated view of land in this debate, for example recognising differences between pastoralist and cultivated areas. The more politically contested processes tend to be in environmentally marginal areas, such as Maasailand and West Pokot in Kenya. The interface between pastoral and agricultural environments has sometime falls outside the reach of the statutory process.

As rights become more defined on an individual basis, may this endanger the collective rights of groups such as pastoralists? The Tanzanian National Land Policy explicitly states that shifting cultivation and nomadism will be prohibited, although there have been recent court cases which have given some protection to customary land rights of pastoralists.



In Kenya the Swynnerton Plan assumed that the introduction of freehold title would replace some kind of ahistorical customary law. Moreover, the only rights addressed were those to the allocation of land and not to its use. Rights to the use of land can be particularly important for women, who make up the majority of farmers.

It was noted that the World Bank's position is not consistent: in Tanzania, for example, it has taken a position close to the Shivji Commission, whereas elsewhere it has advocated outright individualism. Moreover, some of the more radical proposals for land reform (e.g. in South Africa) have come from the World Bank, although their level of interest has often been inconsistent.

What are some of the different driving forces behind reform and redistribution?

- enlightened developmentalism - an ideological fashion
- the development of capitalism, production and the market
- the desire for restitution
- ensuring the viability of certain social groupings
- political patronage
- environmental sustainability

These different claims may be contradictory. The "community" may be a vehicle for claims to land in a very specific sense, often defined by allegiance to a certain chief. But communities change, and those of today are very different from those of one or two generations ago. The issue of social differentiation is also crucial, and often overlooked in debates.

Restitution is an important feature of the move for reform in South Africa, which has developed partly from a moral position post-apartheid, and partly out of people's fear that they may otherwise lose out under a more prolonged process of agrarian reform. There are also doubts expressed about the potential for small-scale farming in South Africa, hence a greater focus in debate on the right to restitution than on the potential for production. The work of NGOs is largely organised around restitution claims. But what are the budgetary limits? Moreover, there is an exponential increase in the potential rights to restitution as the population continues to grow.

Given experience elsewhere, the likelihood is that in South Africa the beneficiaries of land reform will not be full-time farmers and will probably not be the poorest.

### **Session Three**

#### **Land Tenure and Title**

**Fiona Mackenzie - Kenya**

There was an assumption that land reform would replace the previous system, but in fact the situation is now very complex, moving between both statutory and customary legal systems. Customary law was not replaced but has become a political vehicle with which to legitimise rights to land.

There are also differences between the possession of certain rights and the ability to exercise them, which is often an issue for women farmers. Title is not always recognised and there is massive litigation. Areas of Central Kenya are now characterised by extreme insecurity of both tenure and access.

### **Diana Hunt - Kenya**

Land titling will have a differentiated impact depending on the types of physical environment and population pattern. In certain circumstances - such as semi-arid Mberere in Eastern Kenya characterised by low but clustered population densities and shifting cultivation - it may preempt the exacerbation of erosion in areas subject to localised stress, or it may accelerate types of technological innovation, such as in soil and water conservation or selective breeding of stock. Long-term ownership, and the possibility of exclusion which this provides, can serve as an incentive to improve and experiment.

Women's rights to the use of land were thought to have been ignored under the Kenya programme, but in the long term the status of women with regard to land is not necessarily worse now than it was before. Fathers, for example, are now bequeathing part of their land to daughters as well as sons and titling is a contributory factor in this. Women can also now buy land, if they have the resources.

The titling process may generate an increase in land disputes, and hardship for some. It may also increase social differentiation as people begin to see the long-term advantage in speculation. But perhaps titling is also causing people to anticipate tensions which would otherwise have arisen.

One issue in land sales is how to protect the poor. The Swynnerton Plan proposed a series of District Land Boards through which District Officers were supposed to protect people from selling if they had no equivalent source of income. This suggests an important role for NGOs in supporting the development of local income opportunities.

### **Discussion**

The biggest problem in Africa is the lack of employment opportunities, and therefore the difficulty for those selling land is how to ensure that they have alternative sources of income. The sale of land by the poorest, who may have no other sources of income, as in Malawi, is the biggest danger in the reform process. Moreover, the assumption that people who buy land are going to innovate is not necessarily true - people also buy solely for financial gain. And the reverse may also be true - for example in Rwanda and Zaire people who first invested in the land or who built houses obtained title subsequently.

In northern Zambia there are cases of exclusions without any consequent improvement. Titling effectively excluded villagers from activities such as honey collection, with serious consequences for their livelihoods.

Security may be important for innovation but is titling the only means of achieving it? Can security be found in other forms? We shouldn't look at land and its titling in isolation from other factors. Land is a much broader social and cultural issue.

"Whatever makes people plant trees is OK": i.e. security is important, but its forms can differ. We should remember that in rural areas the majority of people actually get the majority of their livelihoods from the non-agricultural sector, and also that one-third of households does not benefit from the contribution of an adult male member. A key issue is how to protect peasants' rights to land.

Titling may bring out conflict, but it cannot deal with it - it cannot put it away again. It can also be a major source of insecurity for some. We should be looking at the issue of access to land, and at whether it is possible to acquire access through different mechanisms, particularly for women.

Titling also reduces complex systems to one legal and visible right (i.e. the right to allocate). African peasants are differentiated by both class and gender, but most titles go to men. Increasingly there are moves to ensure that women are registered as title holders, thus recognising and rewarding them for their labour, and so increasing productivity (e.g. sugar companies in Natal).

Titling requires centralised systems of tenure, but if it is to succeed these systems must function, and increasingly in many countries they do not.

What do the alternatives to individual freehold title offer?

- Lesotho: rights to land are recognised, but the leasing of land has been encouraged, which helps to prevent its outright sale and also increases the share of resources reaching the poor, who are able to rent out land to the resource rich.
- Eritrea: the proposed legislation includes titling, but also emphasises land use rights for all members of a rural community, which again limits land sales.
- Ethiopia: the constitution recognises the issue of ethnicity through the institution of a federal system, and this is reflected in the outline land legislation.

There is a crucial distinction between land rights and water rights. The two are often conflated, but can be acquired separately. Water rights can exist alongside property rights, but without the former the latter is meaningless. One problem with titling is that it conflates and confuses land and water rights. Fencing also excludes people from exercising their rights to transhumance.

We should also be distinguishing between densely occupied areas, and those of less population pressure. What system gives people greater protection: individual

registration or customary tenure? A key issue is the extent to which people have tradable rights: for example, over the last 100 years in South Africa there has been a 60% move from rural into urban areas, of people moving from the reserves and from white farms. But in neither of these places did they have any rights, and therefore had nothing tradable from which to gain any benefit in their new areas. It was noted that some of the major land seizures in South Africa have not been on the highveld but on the edges of the cities and small towns.

Customary systems are not static but are evolving. We need to look at how they are changing, and at new ways to respond to these changes (e.g. increases in social tensions and the evolution of markets). Participatory techniques, bringing together modern technology and local knowledge, have been used in some cases to develop a locally-endorsed agreement as to rights over disputed areas of land.

The reintroduction of the role of chiefs in several countries, such as Mozambique and Tanzania, is noteworthy. In colonial Zimbabwe their power over allocation of land was connected with their power over women and marriage. In general in the colonial era they exercised a variable role in land allocation. They were brought back by the Smith regime in Rhodesia when it was in dire straits. This has modern parallels; they can be seen as an easy, quick solution to complex problems. Traditional chiefs are also a diverse group, with different political and religious beliefs.

The issue on the research agenda should be that of local politics, not chiefs alone. We are in a new environment, and are not going back to 50 years ago. In certain countries moves towards regionalisation and decentralisation of power mean that local forces and authorities will have increasingly significant roles to play.

## **Session Four**

### **Facilitating Land Reform: Governments, NGOs and Academics**

#### **Robin Palmer - NGOs**

This session looks at what kind of collaborative action might be taken. The situations in South Africa and in the rest of Africa are different. In South Africa many NGOs have been working on land issues at national and local levels for some time. Will they get involved in any way in the administration of land reform? If they do, to whom will they be accountable and from whom will they derive their legitimacy and obtain their funds?

Elsewhere in Africa there are very few NGOs working actively on the issue. The balance of power is very unequal. In such a situation, international NGOs such as Oxfam and concerned and practically minded academics have a key role to play.

Oxfam has received requests for various kinds of support from people in central and local government, from land commissions, from pressure groups, from partner

agencies and from local NGOs. However, the struggle for information, open debate and accountability is often a very unequal one.

The World Bank appears to be more open than might be expected, but their analysis is often flawed and their prescriptions ill-informed, lacking good knowledge of the local context. There are opportunities to be heard and to influence, and one of the aims of this workshop is to make more people more aware of the need to exploit such opportunities.

### **William Beinart - NGOs in South Africa**

The NGO sector is potentially more powerful in South Africa than in any other place. There has been a rapid movement of people from NGOs such as the Legal Resources Centre and the Border Rural Committee into government. Some of the effects of this have been firstly, a higher degree of incorruptibility, since key players have grown out of the university/NGO community, which makes it more difficult for them to service their own interests, and secondly, greater attention to the detail of research.

Further, the crux of the legislation in South Africa is restitution and the protection of tenure, which again is a consequence of the ethos within which individuals have been working. It is likely that a wider range of claims will be opened up and that legal provisions will aim to protect the less powerful, for example the protection of tenants' rights and of common property rights.

Academics have had a long, though sometimes uneasy, contact with the NGO network, and it is important for both parties to remain open to each other. However, the situation is slowly changing, as legal and technical expertise becomes more important and as a greater level of political re-engagement develops (for example, from commercial farmers, who have largely held off in recent years).

### **Discussion**

In South Africa the transfer of people into government is also happening from the civics movement. Is this leading to a weakening of civil society, through the loss of expertise and continuity, or is the development of a coherent South African state perhaps more critical at this point? Some NGOs view the transfer of staff as both positive and inevitable.

In other parts of Africa NGOs have been much weaker and demonstrated less capacity to influence national policies. Oxfam has become increasingly aware of the importance of building this capacity and linking with national universities.

In general, Northern academics could give greater support to their southern colleagues, which would also help to inform their own analysis. Academics have a role to play in bringing out the issues and better informing agencies, both donors and NGOs.

However, research capacity within the university system outside South Africa is weak. In Nigeria, for example, it has virtually collapsed, and an independent research outfit has been established which aims to service the 3 universities nearby. There are also examples of exchanges between South African academics and their colleagues in the rest of the continent.

It was noted that in the general debate over land issues so far there has been an absence of people from disciplines such as economics and agricultural sciences, and a dominance by lawyers and sociologists. This has meant that sufficient attention has not yet been given to issues of production.

In terms of greater collaboration, what kind of influence do we want to bring to bear? There is no consensus on the broad issues, and therefore what policy changes would we be advocating? Are we just trying to generate discussion, or to promote a particular view?

Although the precise prescriptions may differ, there are in fact a range of community directions which we should be promoting which by and large are anathema to larger economic and political interests. However, different views as to how best to protect the poor will remain. In terms of engagement in this debate, and the contradiction of policy prescriptions, each individual will find their own political path. The most we can do collectively is to expose some of the ideological nonsense all too often propounded.

## **Conclusion**

Gavin Williams thanked Robin Palmer for all the preparation which had gone into the workshop.

He noted that land is now suddenly on the agenda, from a variety of angles - litigation and uncertainty; past appropriation; the implications of redistribution; and attempts by ministries to secure control over the land allocation business.

The analysis contained within the Shivji report in Tanzania is recognised as being exemplary, although eventually unimportant in terms of policy.

It has been good in this workshop to bring out the experience of Tanzania and Malawi, since previous attention has largely been focused on Kenya, Zimbabwe and South Africa.

Redistribution can seem deceptively simple, but it raises a whole range of questions, such as who decides what land is given to whom and why. Moreover, the issue may not be what happens within the next five years, but what kind of processes are being set in place and their implications for future generations. The Kenya case shows that it can be reopened and mobilised on ethnic lines.

There are differences of opinion about land titling, and there are a set of unanswered questions around it. We should also be looking more closely at ways other than titling in which women, in particular, can get access to land.

As well as NGOs and academics we should be looking at the nature and forms of the state, trying to understand better its limitations and capacities.

How we relate to land is a political issue. There are key questions concerning accountability and the need to accept responsibility for the consequences of actions.

This workshop has been very useful for the way in which it has established a network of connections.

Resources: Lionel Cliffe mentioned that a computerised bibliography on land tenure and land reform in Africa is available on disk at a modest charge from the Centre for Development Studies, University of Leeds.