LAND IN AFRICA
Market asset or secure livelihood?

Proceedings and summary of conclusions from the Land in Africa Conference held in London November 8-9, 2004

Edited by: Julian Quan, Su Fei Tan and Camilla Toulmin

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Natural Resources Institute
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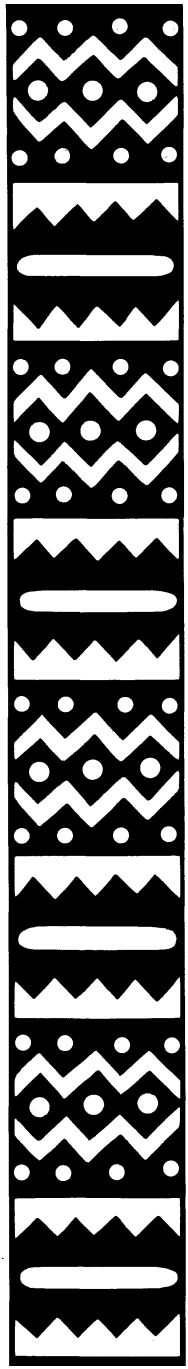

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LAND IN AFRICA: MARKET ASSET OR LIVELIHOOD SECURITY? CONFERENCE PROCEEDINGS[1]

PREFACE

Land lies at the heart of social, political and economic life in most of Africa, where agriculture, natural resources and other land-based activities are fundamental to livelihoods, food security, incomes and employment. Land also continues to have major historical and spiritual significance for Africa's people. At one time land seemed an almost inexhaustible asset in Africa, but population growth and market development are creating mounting pressure and competition for land resources, especially close to towns and cities, and in productive, high value areas. Customary land management is under pressure, and the coverage of formal land institutions is generally very limited.

As a result, land tenure and shelter are insecure for many ordinary Africans in both urban and rural areas. Property rights are weak or unclear, and this is widely regarded as a major obstacle to African development. Land competition can trigger and exacerbate wider conflicts. In southern Africa, particularly, the unresolved historical legacy of colonial land alienation underlies the risks of social and political conflict. Bound up with ethnic identity, and political and economic power, and of critical importance for the livelihoods of the poor, the management of rights to land is a core issue for African governments today.

In this dynamic and challenging context, a conference entitled *Land in Africa: market asset or livelihood security?* organised by IIED[2], NRI[3] and the Royal African Society[4] in November 2004 brought together a wide

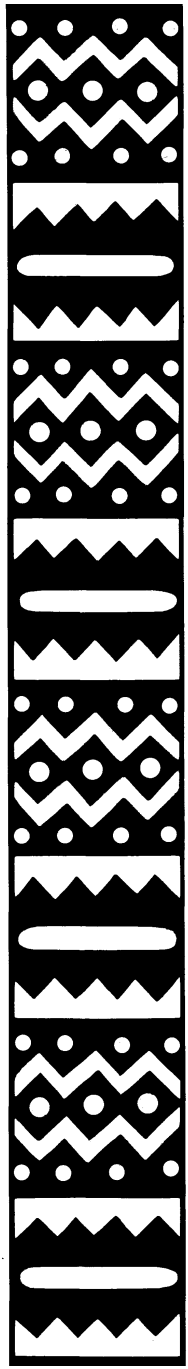
1. Held on November 8 and 9, 2004, Church House, Westminster, London, UK
2. International Institute for Environment and Development, 3 Endsleigh St. London WC1H 0DD www.iied.org
3. Natural Resources Institute, University of Greenwich, Central Avenue, Chatham Maritime ME4 4TB www.nri.org
4. Royal African Society, SOAS, Thornhaugh Street, Russell Sq, London WC1H 0XG, www.royalafricansociety.org

range of interest groups including, African policy makers, academics and civil society representatives, as well as representatives of the private sector and international agencies to debate the way ahead for land rights and land reforms in Africa. The event addressed two key dimensions of land and property rights in Africa today and their implications for future stability, prosperity and poverty reduction.

- The links between property rights, investment and the generation of economic opportunities in the context of global integration.
- How best to secure access to land for farmers and the urban poor as the basis for improved livelihoods and food security.

Participants discussed the conditions under which different approaches to securing rights over land are successful taking into account dynamic change at local, regional and international levels. Emphasis was placed on sharing experience from a range of African countries and a series of thematic discussions focussed on:

- Formalising and securing land rights: diverse approaches from Africa
- Gender, land rights and inheritance
- Urban and peri-urban land development and land use conflict
- Global and local markets, changing land relations
- Securing collective rights to land and natural resources



EDITORS' INTRODUCTION

Julian Quan, SuFei Tan and Camilla Toulmin

This volume contains the main papers presented at the conference, delivered as keynotes, and as overview papers for the working groups. These constitute a series of fresh analytical perspectives and factually informative accounts of land issues across the continent and in particular countries by African political and intellectual leaders concerned with land, together with reflections by international researchers. All have been actively engaged in advancing research, debate, policy development and implementation to address African land issues in recent years.

In addition to these main papers, participants presented a number of short responses and commentaries on the conference's main themes, and a series of country focused case studies for the thematic working groups. These are included with summaries of the working group findings on the accompanying CD-ROM, together with an electronic version of the proceedings.

The papers are followed by the organisers' summary of main findings, conclusions and how the donor community can help African nations in practice to provide secure tenure arrangements and equitable distribution of property rights over land.

1. THE KEYNOTE PAPERS

Securing rights to land: a priority for Africa **by Rosebud Kujawila (Commissioner for Rural Economy and Agriculture at the African Union) sets out the overall case for an equitable approach to delivery of secure land rights to Africa's small farmers, and the poor in general, through customary tenure systems, and for fairer land distribution**. The African Union's perspective is that agriculture and land are central in the socio-economic development of the continent and that rights to land are fundamental for the participation of women and disadvantaged sections of society in the

development process. Africa's socio-economic development is still dependent on agriculture and exploitation of natural resources. Agriculture and livestock production is largely carried out by smallholder farmers under increasing pressure of scarce land resources managed under unsecured customary land ownership and communal grazing land. African governments are seeking to address tenure insecurities to promote both rural and urban development, and to address inequalities in land ownership between different social groups. The paper argues that to be successful such reforms must address equitably the needs of smallholder farmers, the private sector, women and the urban poor and slum dwellers, respect customary patterns of land holding, and provide fair compensation in cases of nationalization of land for public good. Equitable and transparent land distribution is arguably a pre-requisite for social and political stability at community and national level in every country.

In *Property rights, investment, opportunity and growth: Africa in a global context*, Adebayo Olukoshi of CODESRIA[5], provides an independent analytical, rather than a land practitioner's perspective on the issues. Contrary to the dominant view that secure property rights are the *sine qua non* of growth and investment, he argues that investment flows to developing nations have not in practice been driven by property rights and tenure regimes or by the wider governance environment. While there has been an over-emphasis of the need to attract foreign investment into Africa, little of which has materialised, the drive for foreign investment has facilitated widespread land alienation and concentration in different parts of the continent in the name of "good governance". In reality, the challenge is to mobilise domestic African capital formation and investment. Olukoshi contends that there is no single valid policy mix for achieving growth and securing property rights, and that Africa's great mistake has been to seek universally applicable models transferred from elsewhere. Moreover, decisions about property rights are not purely economic and in view of their social, political and cultural as well as economic aspects, the state has a fundamental role to play beyond simply providing an enabling environment for land markets. No society has achieved effective reforms based on the market alone, and effective land policies and reforms require broader approaches.

The paper also contends that the widely perceived dichotomies in matters of property rights: between the public and private; statutory and customary; state and market; individual and collective; and urban and rural; are not distinct and exclusive categories. They frequently break down in practice and in people's everyday experience, struggles for livelihoods involve efforts to negotiate and straddle these contradictions. Africa has its own history of property markets and land transactions, tied into livelihoods at multiple levels. Consequently an excessive emphasis on formalising property rules is diversionary and irresponsible. It shifts attention away from the unfavourable terms of trade and extensive use of subsidies in the north which constrain African smallholders' development, and from the thoroughgoing agrarian reforms which are necessary to avoid reinforcing an unjust status quo. While small minorities may have gained from titling programmes, they have not enabled smallholders to access funds for investment, while undermining communal ownership systems and failing to reduce land litigation,

5. CODESRIA – Council of the Development of Social Science Research in Africa, BP 3304, Dakar, Senegal

as people have challenged the basis on which property rights are acquired through titling. In practice Africa's smallholder farmers have more to gain from investments in improved productivity, rural food security and infrastructure and technology than from a rush to land titling.

Olukoshi concludes that the classic land question of reversing colonial land alienation in East and Southern Africa has become complicated by new land uses in the white commercial sector such as game farming and tourism, and the willing seller – willing buyer approach has manifestly failed to address problems of land concentration. At the same time, a "new land question" has emerged throughout the continent, where formerly, surplus land was available. This can be characterised by increased population pressure, new incentives driving different interest groups to establish formal property rights, popular asset building strategies in the context of great economic uncertainty and legal pluralism; the channelling of remittances from migrant labour into landed property; extensive land degradation; the growth of niche market agriculture and artisanal mining; uncontrolled urban development and a booming urban housing market; and enclosure of large areas for commercial logging, ranching and other purposes. These developments are leading to land concentration, inequality and increasing landlessness, narrowing the gulf between the former settler and non-settler countries and raising a range of land related citizenship issues regarding the nature of ownership, the rights of indigenous groups and migrants, women and youth which are central to the defence of livelihoods in an era of unprecedented change. This requires a policy focus not on formalising land rights and markets but on equity and distributional issues, and economic development responding to internal opportunities and the need for domestic investment.

The two subsequent papers, by African land ministers illustrate in practice the aspirations and challenges which governments face in grappling with these new land questions, and seeking effective policy and legal frameworks whereby the issues of land access and security of land rights can be addressed to capture the complexity of rights and livelihood struggles on the ground, while not repeating the mistakes of earlier attempts to formalise property rights. These papers provide in depth information on the land question in the counties in question, Ghana and Rwanda, and illustrate an optimism and determination to resolve the problems through new approaches, despite the constraints and complex issues involved.

The paper by Prof. Dominic Fobih, Ghana's Minister for Lands, Forests and Mines, *The significance of secure access to land for the livelihoods and food security of Africa's farmer and urban poor*, discusses the challenges with reference to the land questions of Ghana. Here, population growth, while stopping short of intense land pressure in rural areas, has led to competition for the fruits of the land in terms of economic and livelihood opportunity. In addition there is land competition between locals and migrants and in peri-urban areas, a context in which the poor are vulnerable, and financial resources have become more significant than membership of land holding communities in gaining access to land. Boundary conflicts between land holding groups, complex sets of rights within land holding groups, the prevalence of oral contracts, failures to distinguish between the jurisdictional and proprietary rights of traditional authorities and family heads and the breakdown of principles and structures

for managing customary lands have led to widespread insecurity and a pervasive culture of land litigation. The absence of clear registries of land interests is now becoming untenable and a major constraint on development. With the aims of promoting modernised agriculture, private sector development as well as good governance to enhance social justice and equity, the long term, multi-donor supported Land Administration Programme (LAP) takes a stakeholder participatory approach. It seeks to simplify the process of accessing land while making it fair and transparent. Key elements include the documentation and demarcation of land holders' (customary authorities and kin groups) boundaries, the establishment of Customary Land Secretariats, and streamlining state land administration institutions to support effective decentralised land rights management.

***Land conflict: addressing land issues in post conflict setting: the case of Rwanda*, by Patricia Hajabakiga, Minister of State for Land and Environment in Rwanda, suggests some critical issues for reflection and debate, and offers a framework for analysing land conflict at grassroots level and the pitfalls in the design and implementation process of related policies**. The root causes of the land conflict today lie in the history of land tenure in Rwanda. The key problems have been high rates of population growth leading to extensive land competition and land degradation, together with the recent history of civil conflict and violence, in particular the genocide of 1994, which has generated successive waves of refugees and returnees, leading to overlapping land claims and difficulties in resettlement. In addition low rates of urbanisation and industrial development mean that agriculture will remain the primary source of livelihood for Rwandans for years to come, despite the difficulties of land access and competition. The paper outlines the measures taken after 1994 to mitigate the conflicts, including the difficult but necessary measures of requiring land sharing and creation of grouped settlements. Principles underlying Rwanda's new land policy and law seek to introduce low cost decentralised registration of leasehold titles for all land holdings, so as to strengthen security of tenure of all Rwandans, and provide a basis for ensuring greater social stability, greater investment in land and access to credit. The new policy aims to facilitate land consolidation to enable adoption of more commercial farming opportunities, and the use of customarily based mediation systems for the resolution of land disputes.

Despite current low institutional capacity, and the inevitable pitfalls of land registration, titling and consolidation processes, and the risks that not all Rwandans will be satisfied, the government hopes that through involvement of all stakeholders, and good communications the policy will lay a secure basis for economic development and the avoidance of future land related conflicts.

In his paper *Land rights and administration in Africa*, Klaus Deininger,[6] outlines the diverse ways in which land and land institutions are important for broad economic growth and poverty reduction, and the challenges these impose. Secure land rights are needed for a favourable investment climate. It enables access to credit markets and provides both revenue for government and social safety nets. Accountable, transparent land administration is required to eliminate corruption and maintain confidence in the

6. Author of the World Bank's 2003 Policy Research Report

rule of law. The need for African countries to confront land issues is urgent because of continuing population growth, rapid urbanisation and the drive to reorient subsistence production towards higher value crops. Moreover the African context is characterised by: a high potential for conflict; dualistic legal systems and low enforcement capacity; outdated inefficient land registries; limited land rights for women; large amounts of land remaining under state control; overly complex inappropriate regulations; and continuing land inequality in the former settler economies. Despite the long-term nature of these challenges, recent experience demonstrates a number of clear opportunities. Policy makers are now aware of the importance of land, beyond the need for legislative reforms alone, and in a growing number of cases have initiated broad based land policy dialogue. Broader institutional reforms are now underway. These aim to develop accountable, decentralised systems of land administration, including the devolution of land rights to land holding communities and measures to promote change in social values towards gender equality. Finally, technology can modernise land registries and expand their coverage, and in combination with local expertise and participation, can reduce the potential for land conflicts and social exclusion. Moreover donors are now starting to realise that long-term engagement in support of Africa's own solutions to its land problems are required. Development partners need to help awareness-raising and provide the analytical basis for proper incorporation of land into PRSPs, provide appropriate new technology, enable access to international expertise, and support monitoring, lesson learning and innovation across land reforming countries.

Thiendou Niang and Salla Dior Dieng in *Land tenure and family farming in Africa: with special reference to Senegal* present a farmers' perspective on land tenure issues. They explain the complexity of the problems facing Africa stemming from the nature of agricultural production, and that the inability to resolve these problems is in large part due to a lack of support for family farming. Although family farms are the predominant production units in Africa, there has been a longstanding refusal to accord much importance to them. Farmers' access to land is increasingly being threatened especially in areas of high economic potential. The land-related issues at stake create conflicts of interests between various groups, such as the state, local governments and local people. Different communities, including customary rights holders, other indigenous groups, non-indigenous groups and agri-business, have divergent interests land tenure laws are not suited to modern context and there is limited support for Land Action Plans. Until these issues are resolved, agriculture in Africa will continue to fall below expectation.

Together, these papers provide a broad overview and context for questions of land tenure in Africa. The inter-relation between agriculture and the land, the importance of securing land rights and of investment in land, increasing incidence of conflict and gaps between rich and poor, issues of equity of access and governance are themes which cut across the land question.

2. THE THEMATIC OVERVIEW PAPERS

In order to deepen understanding of these issues, the conference tackled a range of more specific issues through thematic papers and group discussions. These focused on: approaches to the formalisation of land rights; gender, land rights and inheritance;

urban and peri-urban land development; global and local markets, and changing land relations and finally, securing collective rights to land and natural resources.

There is clear recognition at policy level both within African governments and international agencies that market based approaches alone are insufficient. Approaches to securing land rights must recognise the realities of evolving customary practice, the demands of elites, and of social conflicts over land. It is also apparent that there is a renewed, albeit more nuanced and diverse drive to provide tenure security through new forms of registration of rights. However the jury is still out as regards the poverty and equity impacts of this new wave of land-administrative efforts to resolve Africa's new land question. The overview and case study papers for the thematic discussions address some of the issues.

Nowhere are the continuing risks of inequity inherent in the new wave of decentralised and customary based approaches to land administration more apparent than in considering gender. ***Securing women's land rights: approaches, prospects and challenges*, by Dzodzi Tsikata discusses the issues involved in women's land interests and inheritance, with reference to recent land tenure reforms in Ghana, Tanzania and Uganda**. The paper reviews debate among gender justice activists about how related issues should be addressed, in particular the problems of customary law and land titling and registration and statutory law. A dominant trend has been the concentration of land in male hands as a result of processes of socio-economic differentiation and individualisation of land rights: these have tended to erode daughters' inheritance claims. Women's rights are subject to their changing status at different stages of their lives, they lack the abiding security of tenure which men generally enjoy, and marriage has become the principle means of access to land.

Recent land and tenure reforms in Africa seek to improve women's representation in land administration bodies: while this is not in contention, current policies also seek to build on customary systems instead of breaking with them. This frequently ignores the equity issues at stake, and more needs to be known about how customary systems operate in practice. Tsikata finds that the relationship between statutory and customary law is closer empirically than has been realised, and that the two systems in practice are interconnected, with men and women, using both to sustain their land claims. An underlying feature of these systems is that the processes by which claims are negotiated are socially embedded, and thus subject to gendered power relations. This imposes major constraints on gender justice, and as a result, whether customary tenure management is left in place, or replaced by a titling process, change must be consciously managed to secure equitable outcomes.

Unequal gender voice and power also means that women have limited access to mechanisms of statutory justice, and moreover, that gender inequalities are reflected in the interpretation and operation of formal law. This raises questions about how far the codification of customary law or even the constitutional protection of women's rights can protect women's socially embedded land access in practice. Nevertheless the state can be a source of security for women. This requires greater democracy and accountability in the representation of women's interests. While women's interests may be advanced by reforms which protect the rights of poor communities as a whole, explicit attention to women's rights is needed. Unless the [unwritten] rules of customary

law can effectively be rewritten, requiring a strengthening of women's voice at every level, the new generations of tenure reforms will be subject to the same pitfalls as the old.

***Formalising and securing land rights in Africa*, by Julian Quan and Camilla Toulmin, land specialists from two of the conference's organising institutions, NRI and IIED, provides an overview of contemporary African approaches to land rights management**. The paper revisits the emergent consensus that decentralised approaches and the recognition of customary rights are required as an alternative to individual land titling, and surveys new experience and evidence in relation to the range of approaches now being employed. It is now widely accepted that land titling programmes in Africa have tended to favour local elites, failed to capture the complex patterns of subsidiary and secondary rights on the ground, and involved prohibitive costs for the state and for the poor, while not leading to significantly increased credit supplies or levels of farm investment. Nevertheless, despite the advantages of customary systems in enabling social access routes to land for the poor and vulnerable, there is no guarantee that they will continue to do so, particularly where customary authorities are reasserting their claims in order to transact in community land. Consequently there is a new emphasis on the need for accountable and transparent systems of recording land rights and transactions, which aim to protect land rights while stopping short of full-blown individual titles. However the authors find that approaches to local land rights registration in Niger and Cote d'Ivoire have suffered from similar problems of simplification, high costs, induced insecurity and elite bias as have more conventional titling programmes elsewhere. Alternative approaches under experimentation include the legal protection of customary rights accepted as socially legitimate (Mozambique), community or corporate demarcation and titling (Mozambique again, Tanzania, and one element of the tenure reforms due in Ghana); devolution of responsibility to local collective bodies in which customary authorities may play a greater or lesser role (Ghana, Malawi, and recently Niger), and systems of land registration by local government (Tigray in Ethiopia, Botswana, Uganda). A host of practical and policy issues remain however, in particular in defending the legitimate claims of vulnerable groups and of women. In all cases governments need to define clear principles to help ensure equity, sequence reforms carefully so as to learn from experience, and monitor the accountability and impacts of local land administration bodies.

Urban land issues are addressed by Anna Kajamulo Tibaijuka, Executive Director of UN Habitat and member of the UK's Prime Ministerial Commission for Africa, in *Security of Tenure in Urban Africa: were we are and where do we go from here?* It is estimated that in 2001 almost one third of the world's urban population lived in slums, the majority of them in developing countries. Excluding a significant proportion of the urban population from legal shelter reduces the prospects for economic development as well as for sustainable livelihoods. People who fear eviction are not likely to operate to their maximum potential. In addition, local and central governments are not able to generate revenue from property taxes and service charges when people live in extra-legal settlements. Land titling alone will not address the problem. It will require the development of innovative approaches to security of tenure. Tibaijuka suggests the following process to stabilise the existing land tenure situation and provide a foundation

for longer term options. Provision should be made for short-term security for all households in slums and unauthorised settlements. An inventory should be made of all extra-legal settlements to identify those in areas prone to hazards such as flooding or landslides. Residents of these settlements should be given priority for relocation. Finally all other extra-legal settlements should be designated as entitled to medium-term forms of tenure. However, improving tenure for the existing urban populations will not be enough unless measures are also taken to reduce the need for new slums and informal settlements. Tibaijuka concludes by reminding us that many tenure regimes; including statutory, customary and informal, discriminate against women, either formally or in practice. Property rights therefore need to be seen in terms of the extent to which women enjoy equal rights with men.

The paper by **Kojo Amanor, University of Legon, Ghana, *Global and local land markets* argues that while neo-liberal market reforms are inappropriate in the African context, customary transactions including various forms of rental and sharecropping are widely established in practice**. However, the role of customary authorities in relation to land has largely been a construct of colonialism, which independent states have failed to reverse. In the forest belt of West Africa, customarily based sharecropping transactions also embody power relations and have been used by family heads and customary "land controllers" to allocate land preferentially to sharecropping migrants from the Sahel as a source of income and power. This has led to land scarcity and competition particularly amongst indigenous youth, and has proved to be a source of conflict. Current tenure reforms in the region tend to reinforce the powers of control over land which were attributed to customary authorities and power holders in colonial times, reversing earlier "land to the tiller" reforms, whereby tenant farmers and sharecroppers gained secure rights. This process can take place both through the creation of customary land secretariats, as in Ghana, or through the inventories of land holdings compiled by the *Plans Foncier Rurales* in neighbouring francophone countries, which tend to register the interests of primary rights holders and exclude those with secondary or derived rights. Amanor argues that the reforms in Ghana favour commercial interests in land, risking entrenchment of the powers of the chiefs to allocate land to peri-urban developers and village farm land to agribusiness investors. Although local realities are socially diverse and involve a variety of different interest groups, powerful interests tend to impose their own definitions of the "customary" to meet their own interests and those of their business allies.

***Securing the commons in an era of privatisation: policy and legislative challenges* by Lorenzo Cotula of IIED sets out the main problems facing the governance of common property**. Historically, powerful groups have used policy processes and legal systems to secure their access to valuable common resources, yet in spite of this the commons have not been a priority for policy makers. Poverty reduction strategy papers, key instruments for development aid, rarely acknowledge the importance of the commons. An important challenge for policy makers is how to value the commons. Economic benefits from common property resources are difficult to value. How do you value the social, cultural and environmental importance of these resources? Local systems for managing the commons also need to be taken into account in policies that govern the commons to ensure that greater security of access can be provided. This

brings about many challenges as definitions of communities are fluid and local users of the commons are rarely homogeneous groups. Mechanisms to address competition over resources are therefore vital to the sustainability of the commons. Finally, the accessibility of policy processes and legal systems governing the commons to those who depend upon them is important for poverty reduction. Where the policy and legislative framework is not accessible to ordinary citizens, it becomes possible for the elite to use these mechanisms to appropriate formerly common resources. The challenge for policy makers is to design systems through which they themselves, together with legislators can learn from local process and institutions and build on them in order to secure the commons in a sustainable manner.

3. THE DEBATE

A key ingredient of the debate was the presentation by and response to Norway's former state secretary, Olav Kjorven. Kjorven advocated strongly de Soto's thesis that systems must be devised to formalise the property rights of the poor so as to empower them by unlocking their hidden capital assets as a basis for entrepreneurship and economic development. The attractive simplicity of this approach drew widespread comment, for the most part concerned to stress the implicit oversimplification of the realities of African land holding, and the risks that it would lead to the re-invention of individual land titling programmes that have yielded little benefit in Africa, at very high costs.

The main criticisms, articulated by Ben Cousins (Director of the Programme for Land and Agrarian Studies at the University of Western Cape in South Africa) are that in de Soto's approach the poor are treated as an undifferentiated group, property rights are equated with individual private property, and issues of communal property, complex and overlapping sets of rights over natural resources, and distributional issues are all ignored.

These views echoed some of the opening remarks by the Kenyan Minister of Land, Amos Kimunya, reflecting on the realities of land registration in Kenya where in almost 50 years one third of the land has been registered. Registration documents are generally issued in the name of the male household head, without providing security for women and children, and the registration process has aggravated land disputes. People have been dispossessed of land as a result of politically orchestrated violence and intervention by banks where farmers have failed to repay loans raised against land titles. HIV/AIDS has increased the number of dispossessions. In addition land fragmentation has created plots too small to be economically viable, while much land lies under-utilised by absentee landlords.

An individual property rights approach also neglects the role of the state as a landowner, an issue addressed by a number of the papers. While this has been controversial, leading to alienation of land from its legitimate customary owners, as occurred in Ghana, it remains an underlying feature of land policy in many African countries, with a clear rationale, as described in the papers discussing land in Rwanda, Senegal, and Mozambique. While the state retains ultimate ownership of land resources, secure rights of tenure and subsidiarity in land management remain perfectly possible, where the state devolves rights and responsibilities to land holding groups and creates a

framework of heritable, transferable usufruct rights held by individual households and land owning individuals and groups. Moreover, state ownership of land creates a clear role for democratically elected local government in the management of land rights.

Although there is broad consensus, reflected at the conference, that the law should protect legitimate customary rights, and that customary and formal tenure systems should be integrated there was less agreement about how to do so in practice, and how to devise appropriate decentralised land administration systems. There were particular concerns about the risks of customary authorities abusing their powers by accumulating land assets, and of the state extinguishing customary rights and mechanisms by registering them. The diversity of approaches to decentralised land administration and the recognition of customary tenure and practice, the ongoing difficulties faced by women and by minority groups in securing land claims and land based livelihoods, and the need for institutionalised learning to understand and disseminate equitable good practice within the experimentation underway across Africa were important themes of the conference recognised by participants as a whole.

4. SOME EMERGING ISSUES

A number of important convergent elements emerge from amongst the conference papers and the ongoing debate. Firstly there is a clear consensus that imported solutions of tenure individualisation and titling are not workable in the African context. Second, more distinctively African approaches are now emerging which respect the social and cultural functions and values associated with land, in addition to its economic role, and which recognise the complex and changing realities of customary rights and claims. Nevertheless, the centrality of land to Africa's economic development is of fundamental concern, and the need to secure rights through some form of registration and formalisation process continues to preoccupy both policy thinkers and politicians. Africa's evolving approaches to tenure reform are diverse and instructive, yet they remain in their infancy, and there are clear risks that without adequate safeguards, the risks and pitfalls of social exclusion and gender discrimination which have bedevilled imported land titling programmes may to a degree be repeated, especially if customary authorities are ascribed with unconstrained powers in land matters.

An underlying problem is that of equity, and the inequitable power relations inherent in socially entrenched African land relations, not least those between men and women, and between both powerful private land owners and indigenous land holding authorities and their subjects or tenants and migrant groups. As market relations spread, and governments seek to promote investment and growth by intervening in land, social differentiation and growing inequality inevitably accompany capitalist development. These can at best be attenuated, but not entirely prevented by more nuanced, informed, decentralised and participatory approaches to the design of land allocation and administration systems. The degree to which these approaches can protect the poor and vulnerable in practice is not known, and may well depend on the degree to which complementary reforms can achieve effective voice, representation, and social and economic empowerment of the poor. In the face of this reality, there is a certain note of pessimism amongst the more reflective, analytical critiques of contemporary tenure reforms in this volume. At the same time it is clear that African

politicians seek to grasp the nettle of *real-politique* in promoting reforms which have the potential both to facilitate rural economic growth and development, while preserving a degree of equity, aware that there will of course be both winners and losers. An unstated conclusion is that Africa's contemporary land reforms are becoming an arena of struggle to secure livelihoods and models of economic development which fairly include the poor and vulnerable, and which are gender-equitable.

The reality is that social differentiation, inequality and land use diversification and development are all growing in Africa. Africa's land question is now much broader than that of racial justice which faced the former settler economies of East and Southern Africa on independence, and which they still face today. The issue of reversing racial inequality in land holding in these countries, while acknowledged by a number of the papers and by participants as a whole to be critical and deserving of new approaches, was not an issue which the papers or the conference itself addressed in any detail. Whatever progress can be made on this front, the wider challenges of the "new land question" as set out by Adebayo Olukoshi, will remain. Amongst the dynamics and trends in land relations, and the policy specificities in different nations, some common elements are now emerging.

In practice, and right across Africa, much depends on the attitudes and social commitments of the state. A number of papers reflect on the role of the state, and there is consensus that this must go beyond the mere provision of an enabling environment for markets to operate. The accumulation of land, and power over it by the state itself represents an alienation of rights of land holding groups, which merits either restitution or compensation. However, the state can also act to restrain the widespread tendencies of land-grabbing private appropriation, gender discrimination, destruction of the commons and widening land inequality which developing land and commodity markets engender, drawing on the inherently unequal power relations which characterise post-colonial African societies. As ultimate landowner, the state can inhibit the use of these power relations to concentrate land and expropriate the poor and the powerless – or as we have seen in many cases across the continent it can facilitate these processes. But more democratic local government, and constitutional principle, can help establish frameworks which require decentralised land administration bodies to act equitably, and help enforce the land claims of women and of minorities at risk of exclusion.

Complementary democratic reforms and investments in support of smallholder farmers can help ensure that Africa's future economic development is genuinely broad-based. African smallholder farmers represent one of the continent's greatest assets in moving toward sustainable rural economic growth. As such they require a favourable policy environment, which includes greater trade justice and investments in appropriate technology and access to markets, as well as land rights. What will not serve their interests, is a rush to land titling or a reinvention of the drive for private individual land rights in the interests of the few, in the guise of empowerment of the many.

Keynote Presentation

SECURING RIGHTS TO LAND: A PRIORITY FOR AFRICA

Rosebud Kurwijila[7]

1. INTRODUCTION.

With an area of about 30 million km^2 (20% of the earth surface) and about 800 million inhabitants, Africa is the second largest and most populous continent after Asia. Africa is endowed with an abundance of natural resources, including inland fresh water lakes (Lake Victoria, the world's second largest, Lake Tanganyika, the world's second deepest), the River Nile, (the world's longest), 30,539 km of coastline, and the tropical rain forests of the River Congo Basin and Gulf of Guinea, and about 184,898 million hectares of arable land (13% of the world's arable land- FAOSTAT, 2004). It is therefore not surprising that Africa's socio-economic development depends heavily on agriculture and exploitation of natural resources including forests, rangelands, wetlands and inland fresh water rivers and lakes (World Atlas, 2004).

In a situation where agriculture still accounts for 70% of fulltime employment, 33% of GDP and 40% of export earnings, more than 60 – 70% of the population live in rural areas and 80% of the rural population depend on agriculture for their sustenance, land is undoubtedly the most important asset for the majority of people in Africa.

Access to land and secure tenure is fundamental to the livelihoods of both rural and urban populations. However, because of its universal importance, land is often at the centre of civil and political conflict within and between different local communities as

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well as nations. Land ownership in many African countries is characterized by dualism; i.e. the co-existence of large-scale commercial farms, owned by the elite and the powerful, and small customary holdings mainly owned by poor local peasants who constitute the majority in all African countries and contribute the bulk of domestic food, cash crop and livestock production. Customary law and practice govern most of the land owned by smallholder farmers. This customary ownership was not legally recognized during the colonial era and post independent Africa has done little to correct the situation. Consequently land tenure remains a contentious issue and a challenge for the African Union and member states.

While access to land is the ultimate form of social security for many people in Africa, the sustainability of customary land tenure systems, including communal land ownership, is threatened by modern concepts and practices of land use, which emphasise private and secure forms of land ownership. Nomadic pastoralists, because of their lifestyle, are especially disadvantaged. Over hundreds of years in the event of droughts or seasonal weather changes, migratory and transhumant land use systems have been the cornerstone of survival and a coping strategy for millions of livestock owners who inhabit the marginal lands of the African continent. Increasing population pressure and frequent droughts have put the sustainability of such extensive production systems in question. As a consequence of their mobility these communities also lack the necessary linkage and access to government services, including education and health.

The need to introduce the necessary policies to reform the ownership, use and management of land presently constitutes one of the most compelling challenges of our time. While a number of approaches to land reform have yielded successful results, their impact on the livelihoods of many rural and urban poor people has been limited, suggesting the need for future efforts to be integrated into each country's poverty reduction strategy. This paper reviews some of the reasons why ensuring access to and secure land ownership is a priority for Africa.

2. LAND TENURE IN AFRICA: A HISTORICAL PERSPECTIVE

To understand the reasons why African countries have the kind of land tenure systems they have today, it is necessary to revisit their historical background to bring into focus the issues at stake.

First and foremost, the advent of colonialism in sub-Saharan Africa, with its orientation to large commercial farming, discriminated against customary tenure. It limited the possibility for the economic advancement of the small landholder by constraining access to fertile land, as happened in many Eastern and Southern African countries such as Kenya, Zimbabwe and South Africa. Since the colonial laws did not govern the ownership and management of the customary lands, this situation compromised the ability of the customary holders to enter into formal land transactions. It also limited governments' ability to mediate in land conflicts. Access to credit and use of land as collateral, were limited due to the lack of laws that recognized and ensured security of rights to customary ownership.

Secondly, the situation was further complicated by the policies of many independent African countries that encouraged the nationalization of land, making it difficult for

community members to access new land to improve livelihoods. This has resulted in the parcelling of land into smallholdings as family size increased. The resulting land fragmentation has not been matched with intensification of agricultural production, a factor that has led to falling productivity, soil erosion, land and environmental degradation in many localities. Consequently, over the last 30 – 40 years, the farm-family's ability to feed itself and to produce for the market has been falling as reflected by decline in per capita food and cash crop production in Africa (FAOSTAT, 2004).

Thirdly customary land owners have little incentive to develop the land, due to uncertainty about future ownership, but more so due to lack of financial resources. Guaranteed security of tenure, through appropriate policy and legislation, will promote socio-economic development by enhancing investment in land development and access to credit facilities. These and many other issues make securing rights to land for the majority of the African people a priority for the continent and for the African Union.

3. POVERTY REDUCTION STRATEGIES AND LAND REFORMS

3.1 Current efforts, successes and constraints

The focus that is being given to land issues by African countries (some as part of their poverty reduction strategy programme under the World Bank) is necessary for reasons of social justice, economic development and political stability. However not all such World Bank driven land reform policies were successful.

The Southern African Regional Poverty Network (SARPN), in one of its papers of September 2004 noted the following, amongst other, important land issues in the Southern African region.

BOX 1: SALIENT LAND ISSUES, SOUTHERN AFRICA COUNTRIES

- Highly unequal distribution both in terms of area and land quality, and a system of dual land rights resulting from massive alienation of land to white settler communities.
- Severe land shortage and problems of landlessness in communal areas and certain land scarce countries (Malawi).
- Severely eroded land in communal areas caused by overcrowding, pass laws, inadequate infrastructure, erratic rainfall, and inaccessibility of disadvantaged population to input and output markets.
- Weak and uncertain rights of tenants operating under permits on resettlements schemes, certain households and individuals (particularly women) on customary lands, and beneficiaries of land reform schemes operating under various forms of equity sharing.
- Inadequate protection of farm worker rights against eviction and substandard farm worker housing on commercial farms. Inadequate protection of rights of citizens and communities against certain traditional authorities.
- Land resettlement by large populations displaced by war and colonial occupation.
- Loss of high quality arable land to urban and peri-urban settlements.

Source: Southern African Regional Poverty Network. (SARPN) Sept. 2004

3.2 Secure land ownership as a tool for poverty reduction

Falling agricultural productivity has compounded food insecurity and poverty in rural Africa. More than 45% of Sub Saharan Africa's population is now estimated to live on less than one dollar a day (Jayne *et al* 2002; FAO, 2003). Consequently, Africa is home to 213 million chronically malnourished people (25 per cent of the total in developing countries). By 1995, over one-third of the continent's grain consumption apparently depended on imports (Aileen Kwa, 2001). Each year some 30 million people require emergency food aid, which in the year 2000 amounted to 2.8 million tones (FAO Statistics, 2004)

The development of the agricultural sector, on which most of Africa depends, is regarded as a prerequisite for poverty reduction and socio-economic development. Given this dependence on agriculture, the ability to increase production and productivity is largely influenced by the "sense of ownership" of the land being cultivated. With most lands, including those under customary holdings, falling under state ownership, investments in the enhancement of the productive capacity of the lands are in many cases limited by this uncertainty and lack of financial resources. There is need for governments in Africa to recognize customary rights of ownership under state laws in order not only to provide farmers incentives for land related investment but also to permit them to engage in formal land transactions, such as mortgaging, for investment in other productive sectors for more income.

3.3 Secure land ownership and private sector development

While Africa recognizes that land is one of its primary resources, it is important that we put in place policies that will help our people turn this basic resource into an asset for socio-economic development. In various countries, a number of land policy issues and options are either under discussion or consideration by policy makers at various levels.

1) In addition to legally recognizing customary rights to land, for those that already exist under that kind of arrangement, it is imperative for governments to make it possible for the African private sector to have guaranteed (access) ownership of land either for agriculture or for other production purposes. African private sector involvement will promote commercial agriculture to help the continent regain its competitive advantage on the world market. It will also help create employment for the local communities thereby contributing to poverty eradication.
2) In the light of the need to allow access to land by the private sector and for equity in land distribution and ownership, the "absentee farmer" phenomenon, where landowners hold onto land for purposes of speculation, should be strongly discouraged.
3) Customary lands should not initially be the targets for private sector access. Instead unclaimed public lands should be opened up to the sector and the landless, bearing in mind the need for environmental protection. Unless progress is made in this direction land availability to the poor and the landless will continue to be limited, with the consequential perpetuation of poverty amongst vulnerable social groups.

4) It is also important to bear in mind that although market-based approaches to land ownership may be desirable, the bulk of Africa's agricultural products come from smallholder farmers whose right to ownership under the traditional system is often not legally recognized. There is a need for land reforms to empower smallholder farmers, skilled and those with requisite resources, by way of secure rights of ownership in order to attract investment for increased agricultural production. Where arrangements exist for clear and secure ownership, farmers can save money by not being dragged into litigations on land ownership and in the demarcation and security of their properties. Secure rights guarantee the ability to bequeath land and thus encourage investment in the development of the land for better economic gains for the farm family.

5) Where governments see the need to expropriate land from customary holders to convert this for public good, appropriate land policies and laws should be in place to ensure adequate compensation for the rights of the alienated so that the affected families do not fall deeper into poverty. Such compensation would be better grounded in recognized and secured ownership rights.

6) Recognizing that access to land for all is important for the economic empowerment of the landless and the economically underprivileged, many African countries, particularly in Southern Africa, have made land tenure reform a priority. In the table below, the Southern African Regional Poverty Network shows some recent initiatives undertaken by countries in the sub region to address land issues.

RECENT LAND REFORM PROCESSES IN SOUTHERN AFRICA

COUNTRY	POLICY FORMULATION
Botswana	New Agricultural Policy, 1991
Lesotho	Draft National Land Policy, 2001
Malawi	National Land Policy, 2002
Mozambique	National Land Policy, 1995
Namibia	National Land Policy, 1998
South Africa	White Paper on South African Land Policy, 1997 Draft
Swaziland	National Land Policy, 1999
Zambia	Draft National Land Policy, 1998
Zimbabwe	Draft National Land Policy, 1998/9

Source: Mbaya, 2002, Southern African regional Poverty Network

It must be underlined that given the limited resources of most of these countries and the difficult political conditions that some are experiencing, implementation of new policies is likely to be constrained and therefore protracted. However the fact that work is being done underlines the commitments of these governments to correct skewed land distribution in order to address chronic poverty among the majority of the population.

3.4 Elements of good land reform policy

3.4.1 Targeting the smallholder farmer

Elements of the land reform of some of the member states of the African Union go to strengthening the economic base of their citizens. In Mozambique for example, while permitting state ownership, the 1997 land law also recognizes and protects existing customary rights. It also encourages private sector investment in land and other natural resources. A similar recognition is given to customary users of natural resources under the 1999 Forestry and Wildlife Law. Following recent land policy reforms, Tanzania similarly has provision for the legal recognition of customary rights through a land policy that provides for the registration of village land and the designation of trustees. Individual ownership is also recognized under the umbrella of the village. These policies will allow communities to engage in land transactions.

3.4.2 Securing land rights for women

Women in Africa play a significant role in agriculture. In sub Saharan Africa, rural women produce up to 80% of basic foodstuffs (FAO 2002). Yet, women suffer discrimination in all matters related to land, water and property rights. In other words, women's benefits are not commensurate with their inputs and contribution. The land market still remains inaccessible to women due to their low purchasing power. Worse still, customary law often poses a problem and hinders enforcement of law that positively considers women's rights to land (IFAD, 2001; IIED 2003). The impact of HIV/AIDs has worsened the position of women in Africa with respect to land rights and inheritance due to the stigmatisation and isolation of widows and orphans (Englert and Palmer, 2003; Strickland, 2004.). Introduction of formal legal rules, through land reforms and titling and registration projects, often failed to recognize the rights of women. Women's rights may also be eroded when the resource they were using becomes more valuable due to the commercialisation of agriculture, the introduction of more productive cropping techniques, or following investments.

It is only through the introduction and systematic endowment of land policies and law that recognize the individual's right of ownership, regardless of sex, that the situation of women with regard to land ownership can be corrected.

3.4.3 Securing land rights for the urban poor and slum dwellers

In one of its papers on "Land Policies for Growth and Poverty Reduction", The World Bank noted that "While early work in the urban sector has often underestimated the importance of land tenure (Werlin 1999), development practitioners now recognize that lack of secure tenure and the associated threat of eviction and poor access to basic services are important determinants of poverty in urban areas." Many African cities and towns provide examples of this situation. Without secure rights to the pieces of land on which they are 'illegally' settled, settler/squatters in the city suburbs are not encouraged to invest in permanent structures for fear of losing their investments. Governments on the other hand do not feel obliged to extend basic utility services to them as their settlements are regarded as illegal while government resources are overstretched. Consequently the majority of these settlers live in sub optimal conditions without access to clean water and sanitation, a situation that tends to exacerbate their already poor

economic status. Good land governance requires that such people's access to land for settlement be facilitated. Many African countries are conscious of this and are working toward it. However financial and other constraints, limit their ability to undertake land use planning, provide services, and support resettlement.

3.5 Access to land for the promotion of peace and security

Some of the salient land issues reported above for Southern Africa, and unequal land distribution in many traditional systems in other African countries pose serious threats for social stability unless they are addressed in a transparent and accountable manner. Ethnicity and occupation can cause tension where land ownership and use is contested (e.g. between pastoralists and arable crop farmers). The absence of clear land ownership (and use) rights and land use policies, as well as corrupt and un-transparent land distribution practices, tend to disproportionately alienate the poor in favour of the elite and the politically and economically powerful. This bias in land distribution and ownership is a recipe for social unrest in some countries in Africa. The need to avert such unrest makes securing rights to land for the majority an important priority for Governments in Africa. Africa's social, economic and environmental development prospects risk setbacks unless timely and serious efforts are made to address issues of land rights and use.

Secure and long-term ownership of land by the under privileged is in the interests of the elite powerful bureaucracy. Africa's land reform policies should avoid targeting the ruling or other privileged classes in land allocation, and the confinement of the underprivileged to marginal areas if domestic conflicts are to be avoided. Clear institutional arrangements that are simple and accessible are therefore needed to win the confidence of the majority in the land reform processes. Securing rights to land requires that the holdings are properly demarcated and registered under land laws that are fair to all.

Ill-defined boundaries, as is often the case in customary holding systems, can result in conflicts over ownership long after the demise of those with the institutional memory/knowledge and the disappearance of the natural boundary marks that are traditionally relied upon. This, however, is no reason for the imposition of 'alien, demarcation processes that do not respect traditionally recognized borders. Land reform policies should, therefore, recognize customary systems, as necessary, and not alienate them. Where a need arises for the conversion of customary land to public ownership, the reform process should recognize the ownership rights of the customary owners and compensate them accordingly, not only in order to appease them and to avoid the disgruntled amongst them from creating unrest, but also as recognition of their rights and in the interests of good governance. Such policies will go a long way in promoting equity and, enhancing peaceful co-existence.

The need for equitable land distribution as a means to ensure social stability is not limited to the agricultural sector. Access to land for permanent settlement in the ever-growing towns and cities needs equal attention. The urban slums, a feature of many African cities, constitute sources of social unrest unless appropriate, pro-poor land use and settlement schemes are devised and implemented. While it is recognized that such schemes are expensive for many countries, temporary measures that do not antagonize

the settlers, but which also make them aware of the need for planned settlements would need to be put in place. Secure access and ownership of land is a human rights issue.

3.6 Land for environment and natural resources management and development

In order to promote environmental protection, African land reform policies should give clear ownership rights to small holders especially under customary arrangements. Traditional slash and burn, which is practiced to a lesser extent today, was a means of gaining access to land in settings where the practice confers usufruct ownership rights to the farmer. By allowing customary ownership of land by individuals and communities (including forest lands), government's ability to ensure protection of resources and the environment could be enhanced. This arises from the fact that the local farmers and communities, as opposed to commercial farmers, keep trees and other protective vegetation on their farms, on which they grow many types of crops. The monoculture orientation of commercial farming tends to remove all forms of competitive natural vegetation, especially trees. Secured rights to farmland will also increase the planting of long-duration crops, such as trees, which help to protect the environment.

4. THE AFRICAN UNION'S PERSPECTIVE

The Commission of the African Union is committed to building an integrated Continent of Africa amidst a number of challenges facing the continent today. This is reflected in its vision "*to build an integrated, prosperous and peaceful Africa, an Africa driven and managed by its own citizens and representing a dynamic force in the international arena*." The global objective of the African Union Commission is to "*consolidate institutional pillars and build the human network and strengthen the body work of integration*.'

In a bid to translate the vision into concrete action, the Commission has developed its strategic framework for the period 2004/2007 envisaging an invigoration of its own capacities, those of its organs, specialized institutions and technical offices of the African Union, those of Member States, particularly the national structures responsible for integration, and those of the Regional Economic Communities (RECs).

The issue of land is at the top of the agenda in the Commission's planned programme of work for the next three years. Consequently, it has been proposed, in the Commission's Strategic Plan for the Rural Economy and Agriculture Department, to undertake comprehensive land policy studies with a view to advocating for appropriate land policies that will ensure access to land and secure tenure for all and for sustainable economic development. Furthermore, in their commitment to gender equity as enshrined in Article 4 (1) of the Constitutive Act of the African Union, the third Ordinary Session of the Assembly of the African Union held in Addis Ababa, Ethiopia, from 6-8 July 2004, agreed to actively promote the implementation of legislation to strengthen women's land, property and inheritance rights including their rights to housing and education. The African Union Commission is aware of the difficulties that lie ahead in the implementation of these plans and commitments but remains resolved, with the support of the Member States and development partners, to tackling them.

5. CONCLUSION

The issue of securing rights to land will remain one of the most pressing social and political challenges for African governments during the 21st century. Thus making it a priority for the African Union Commission. This is because of the dependence of the large majority of the continent's population on land and, therefore, its inextricable link to sustainable development, poverty reduction and the practice of good governance. Land reform policies should recognize customary rights while making access to land and the institutions that administer land matters accessible.

Africa should therefore make equitable land distribution and guaranteed ownership rights for the poor and the underprivileged, such as women and the landless, the focus of reform policies. Given the centrality of land to the emergence and/or avoidance of social instability, policies for its equitable distribution and security of its tenure should be integrated into a country's development programme. Moreover the current spate of land degradation, which partially has its roots in insecure tenure and the desire to own land, could be addressed if Africa ensures security of tenure for its small farmers and urban settlers.

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Keynote Presentation

PROPERTY RIGHTS, INVESTMENT, OPPORTUNITY AND GROWTH: AFRICA IN A GLOBAL CONTEXT

Adebayo Olukoshi[8]

1. INTRODUCTION

The last two and half decades of African economic history have been devoted to exploring the best framework for securing property rights, attracting investment and unleashing growth. The immediate context for this quest is the prolonged economic crisis that most African countries have faced since the early 1980s, which has taken a huge toll on social livelihoods across the continent.

In seeking to overcome the economic problems of African countries considerable attention has been paid to the structure of incentives, understood in terms of the package of rewards and penalties targeted at economic agents, and the way in which this has impacted on prospects for growth. Overall, the dominant view has been that the pre-existing structure of incentives has slowed or even inhibited growth. Policy energies have, therefore, been devoted to the articulation and implementation of measures aimed at improving the incentive system in a manner and direction that it is hoped will unlock the growth potential of African countries and enable them to emerge from this prolonged crisis.

A given point of general economic theory is that investment is necessary to achieve growth – any growth – and that the kind of growth whose benefits are properly distributed and foundations carefully sustained through balanced policies is also good for

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creating opportunity. It is by creating opportunities for broad-ranging social inclusion, equity and improved livelihoods that growth becomes developmental. Or, to put in another way, while investment is necessary for growth, not all growth is necessarily developmental.

If investment is good for growth, the question that has historically exercised the minds of economists and policy makers is how to generate, attract, secure and sustain investment. There are no easy answers to this question, although there are plenty of economic models seeking to identify the determinants of growth and propose universally applicable principles. One view that has become dominant in policy circles in many developing countries suggests that "secure" property rights constitute the *sine qua non* for investment generation, increased productivity, income and growth. However, another school of thought argues that there is very little evidence to support the correlation between the rights regime or governance environment and the direction and pattern of investment flows. China is one of the most frequently cited examples in this connection, and Nigeria and Angola are two of the most important destinations for foreign investment flows in Africa. Investor behaviour is frequently based on subjective sentiments, hunches about existing possibilities and herd mentality, rather than *a priori* calculations about the security of property rights.

A review of historical and contemporary data on the international flow of investments will reveal the small share of foreign capital receipts accounted for by Africa. Correcting this situation has been a long-standing preoccupation that has resulted in policy being formulated with the express goal of attracting investment. In practice, this has invariably been interpreted as securing foreign capital, and has always consisted of seeking to create the conditions that foreign investors are thought to desire. Over time these conditions have varied in their detail and mix, with the focus on particular issues shifting as frequently as the mood of economists and fund managers. Over-emphasis on attracting foreign investment has left many African economies wide open to external impulses and with little domestic logic to their economic policies.

In the early years of independence African countries were told, and accepted, that a favourable tax climate was critical to attracting foreign investments. Virtually every country adopted a set of tax holidays as an inducement to foreign investors – often in competition with one another, but to little positive effect. As the nationalist coalitions that inherited power from the colonial authorities later began to unravel and conflicts of varying dimensions broke out, the emphasis shifted to the need for political stability to draw in foreign investment. To this was added the necessity for democracy, the rule of law, press freedom, governmental accountability and transparency, and judicial independence – in sum, good governance. More recently, concerns about property rights have been added to the list – along with issues such as contracts, social capital and trust, which now form part of the magical "winning" formula that various authors and policy institutions have identified as determinant or necessary (Fukuyama, de Soto, the World Bank, etc.). Despite the various measures adopted, however, Africa's quest for foreign investment has yielded very poor results, amounting to little more than an endless wait for Godot. If anything, the continent has not only suffered a flight of capital, but also enjoys the dubious distinction of being a net exporter of capital. In the meantime, a process of large-scale land/property alienation and concentration is being

facilitated in different parts of the continent under the guise of "good governance".

One element that has always been missing from discussions about promoting investment in Africa concerns the place and role of domestic investors, and how they might be promoted to help give the accumulation process an internally driven logic that is also propelled by a developmental ethos. The reasons for the academic and policy silence on domestic investors are many and multidimensional, and need not detain us here. Suffice it for now to note that Africa has paid a heavy price for the failure of its policy makers to establish credible and enduring frameworks that nurture domestic investment capacities, and for not recognising from the outset that all that is needed to attract other investors is an adequate incentive structure that will stimulate local investment and promote local investors.

It is clear from the foregoing that agreement on the basic principle that, in common with every other region of the world, Africa needs investment to promote growth has been the easier bit of the policy equation for overcoming the continent's economic crisis. Much more complicated is the appropriate mix of policies required to achieve and sustain growth, a question that requires continuous reflection and has polarised opinion.

2. UNDERLYING ASSUMPTIONS

This reflection on property rights, investment, opportunity and growth in Africa is premised on a number of assumptions that deserve to be tabled upfront. The first of these, and one this author holds very dear, is that there is no single, universally applicable and valid model of policy mixes for achieving growth or securing property rights. Economists may hazard informed guesses on the policy combinations that could, under certain conditions, at different points in time and in different places, generate growth. Commercial lawyers, sociologists and political scientists may attempt to aggregate from different experiences to understand the framework of rights that is in place. Historians will remind us that the rights regime in operation and dominant policy framework applied are both products of historically specific struggles that leave their imprint on the content, tone and tenor of practice, which is, moreover, itself in constant evolution. The tragedy of Africa has been the all too frequent temptation to lift policies from the historical experiences of other peoples and apply them to the continent, out of context and in an ossified form, in the guise of a universal model that works for all and for all time. This approach to "doing" development in Africa is itself part and parcel of a broader methodological flaw in the study of the continent by which, as Mamdani observed, most scholars and policy-makers are conditioned into thinking and acting by analogy in order to address the numerous challenges facing it. I underscore this point particularly in relation to the Land Question in Africa, where the last 25 years of debate have largely been dominated by the search for models that deny governments and communities the creativity and originality warranted by their context and history.

Property rights have important economic elements, dimensions and consequences that need to be taken into constant consideration in the policy process. But it is equally important to remember that decisions regarding property rights are not exclusively about economics as narrowly defined, nor are economic considerations always at their

core or their sole determinant. Critical decisions by individuals, communities and governments about property and its underlying rights regime are products of a complex set of considerations, of which economics is only one element – albeit an important one. Other considerations that often loom large concern the correction of historical injustices and reduction of social polarisation that may underpin or spark violent conflicts, attaining political stability or sustainability, increasing governmental legitimacy, improving social equity as part of an enlightened approach to social policy, advancing environmental sustainability, improving minority rights and increasing the level of access enjoyed by women, as well as the spiritual values attached to land by households and communities, respect for the cultural values and institutions of different ethnic groups, etc.

To be sure, these non-economic considerations do carry costs, but key social actors, the citizenry or the State may well consciously decide that the short- and long-term social, political, cultural and other benefits for the polity far outweigh any immediate and long-term economic costs. In any case, in the medium- and long-term, the ends for which they are introduced are bound to be refracted into the economy in ways that could benefit the process of accumulation. Furthermore, we need to challenge the tendency to assume that any non-economic considerations regarding property rights are not rational, since rationality in the policy process is not reliant upon decisions emanating from economic considerations, nor is there any guarantee that economic decisions will be rational. In fact, the very notion of economic rationality is debatable, since what is rational to one economist may seem irrational to another.

The state has – and should play – an important role in securing property rights, promoting investment and reviving growth. In my view, this role ought to go way beyond the earlier minimalist functions that first-generation neo-liberalists sought to allocate it, and beyond the responsibility to provide an enabling environment that more recent neo-liberal perspectives have tried to assign it to accommodate critics of minimalism. Historically, there has been no reform of property relations, enforcement of the ensuing rights or sustained growth without a strong, capable state that is both willing and able to take a proactive role. So although it is true that the radical title exercised by the African state has been extensively misused and abused by various post-independence governments, this does not justify the wholesale denial of a central role for the state in the land management process. Worldwide, redistributive reform has been achieved through either revolutionary appropriation or strong, direct and proactive state action. To re-emphasise this point: no society has ever achieved land redistribution and reform solely on the basis of the market, and attempts to employ a market-based, willing-seller-willing-buyer approach to achieve reform in Africa have been a signal failure, eloquently demonstrated by the current situation in Zimbabwe and South Africa.

When we reflect on property rights issues in Africa and other Southern countries, it is often tempting to apply a set of rigid, mutually exclusive and even explicitly opposed dichotomies: public vs. private, statutory vs. customary, state vs. market, individual vs. collective, urban vs. rural, etc. If properly handled, such dichotomies may be useful for highlighting particular characteristics worthy of special attention, but all too often they are absolutised to the point where they become obscurantist and mystifying. To a

greater or lesser extent, for better or worse, livelihoods in every society represent a constant effort to negotiate and straddle different types and levels of these dichotomies. Treating them as distinct and exclusive categories fails to capture the complex ways in which they are articulated, blended and combined in people's lives and practices. Of course, this process is rife with contradictions, but such contradictions also constitute part of people's experience. Furthermore, the prevalent method of treating each category as an exclusive sphere invariably fails to take account of their internal diversity and differentiation.

Since formal and informal property markets of varying levels of maturity have always existed, it is not altogether correct to suggest that Africa neither knows nor has a history of property markets in which assets are managed through various terms of access and use, transfers of user rights, leases of differing tenures and exchanges emanating from a variety of considerations. However, arguing that there is a long history of property market relations in Africa is one thing; suggesting that property relations should be driven exclusively by market forces is quite another, whose implications should be closely studied. In the main this is because Africa is not the *tabula rasa* for freewheeling market experimentation it is assumed to be. Since existing systems of asset building, sustenance and transfer are intimately tied into livelihoods at multiple levels, what is needed is policy heterodoxy, not the orthodoxy of the neo-liberals.

The interconnection between property rights, investment and growth in Africa has long been a focus of policy interest and scholarly debate, and has acquired new significance in the context of the economic crisis and structural adjustment experienced over the last two and half decades. The dominant, prevailing policy approach is based on the assumption that there is a close causal relationship between the property rights regime, investment flows and growth. On the basis of history and experience, I would suggest that causal relations are far less clear-cut than is assumed, and that there are cases where investment has flowed or slowed and growth accelerated or decelerated despite the property regime in place. I would also suggest that we should be cautious about the conclusions drawn by scholars and policy-makers regarding an approach built on a wholesale instrumentalisation of the property rights regime.

Despite its justification on the grounds of enhancing productivity, there are many ways in which the excessive and one-sided emphasis on formal property rules, registration and individual titling at the heart of current policy approaches may be as diversionary as it is irresponsible. Diversionary because it is now accepted that the unfavourable terms of trade for African commodity exports and extensive use of subsidies by Europe and the United States are detrimental to African smallholders, and a key aspect of the productivity problems bedevilling African agriculture. And irresponsible because it diverts attention away from the thoroughgoing land and agrarian reform that should be the starting point for socio-economic change in Africa. In contexts that are already characterised by extensive differentiation and inequality, the decision to anchor policy exclusively on the rules and security of title could easily become a recipe for reinforcing an unjust *status quo*. In other words, the development and application of an abstract set of rules will not in itself necessarily achieve the security of tenure that is the purported objective of current policy. Attention should, therefore, be paid to other critical variables that can make for a socially sustainable property rights regime.

3. THE DEBATE ON PROPERTY RIGHTS, INVESTMENT AND GROWTH IN AFRICA

Recent discussions on property rights, investment and growth in Africa have polarised the intellectual and policy communities along two broad lines. The first, dominant approach is anchored on the centrality of the free market and imperatives of establishing private property rights in order to attract investment and generate growth. According to this school of thought, Africa's development has been stymied by the absence of a coherent and enforceable set of property laws that could stimulate market growth. The lack of coherent property regime has resulted in an underdeveloped market and private sector, limiting growth. Even where property laws do exist, they discriminate against the private sector and are loaded against the free market, with the same adverse outcomes for investment and growth. The scope for trading in property and property instruments ranges from non-existent to highly limited or over-regulated, as are funding for the domestic property market and the legal framework for contracts. If African countries are to succeed in attracting the very substantial investments required to generate growth, they will have to establish property regimes that are friendly to the private sector and driven by market forces. In practice, this has translated into policy efforts designed to establish market-based property regimes and institutions, encourage registration of titles to property, promote legal/judicial reform to protect private property rights, set up a framework for enforcing contracts, and recast the role of the state and divest it of its landed assets and property.

Exponents of the market-based approach to reforming property relations in Africa have also suggested that one of its most intractable difficulties, particularly with regard to land rights, is the existence of multiple rules of tenure and use. Rationalising these rules through the establishment of formal, private and registered titles was seen as a policy priority. Through such registered titles, it would not only be easier to ensure security for holders of land and landed assets, but also to facilitate access to funding, strengthen investor confidence, reduce costly litigation over ownership and user rights, stimulate the development of all aspects of the property market and contribute to stable economic growth. In a sense, the core preoccupation of this approach dates back to the colonial period, when all land and mineral rights were vested in the State, and private rights and titles then selectively allocated as part of the strategy for building the colonial economy.

This dominant perspective is challenged by a second school of thought, which rejects the suggestion that Africa did not have a coherent property regime prior to the introduction of ongoing reform efforts, and contests the view that the only way to attract investment and stimulate growth is to liberalise the property market and then establish formal, private titles. It also argues that the marketisation of property and property rights along the dominant neo-liberal lines that have informed policy produces a new generation of inequalities characterised by a concurrent process of alienation, concentration, dispossession, loss of access and landlessness. Establishing private property rights not only produces more rigid forms of ownership and undermines a long history of popular access, but also does not guarantee private property titleholders can access funds for investment. This is hardly surprising, given the fact that smallholders farm so much land in Africa.

Although a small minority have benefited from the speculative bubble fuelled by the privatisation and marketisation of land, its main effect has been to undermine much of the small-scale farming sector. Furthermore, the one-sided policy emphasis on creating and/or enhancing a free property market as a way of securing rights, and the push for privatised ownership, have undermined the communal ownership systems that were central to household social security and rights of access and use. The expected reduction in land litigation has failed to materialise as various interests challenge the basis on which private title rights are acquired; and in addition to undermining household food security, privatisation and titling seem to have worsened both gender and class inequalities. Possibilities that previously existed for women to access and use land have been closed off, and many poor farmers have been forced to subdivide and fragment titled land in response to the lack of finance and other problems created by privatisation and individualisation. The reform process has increased economic vulnerability and dispossession and created a new wave of landlessness. According to this school of thought, marketisation and privatisation have failed to deliver the economic benefits promised by their advocates, and instead created widespread social upheaval.

The issues raised in criticism of the principles of privatisation and marketisation driving recent policy in Africa resonate in many of the empirical studies undertaken across the continent over the last fifteen years. The widespread assumption that the private sector has been absent from land matters has been questioned, in view of the fact that the numerous smallholder farmers who define the African economic landscape are themselves private economic agents par excellence, even if the instinct has not been to treat them as such. Furthermore, the available evidence seems to suggest that in their daily struggle to secure a livelihood, many people straddle a variety of property regimes ranging from the highly formalised to the informal, and the customary to the "modern", rendering the assumptions that underpin the ongoing drive towards privatisation and marketisation highly questionable, and certainly open to debate. In any case, it is not at all evident that individualisation, titling, registration and privatisation are a priority for the local agricultural population in many parts of Africa. Studies from various parts of the continent seem to suggest that they stand to gain much more from improving productivity, household income and rural food security through simple measures such as investment in basic agricultural infrastructure (water, feeder roads, etc.) and upgrading technology, than from a disproportionate rush to titling. The evidence collected indicates that titling has not produced the promised access to finance from banks, but resulted in an intensive process of land alienation, concentration and landlessness. The discontent aroused by these reforms has prompted citizens to press for state intervention, which is imperative if sustainable social peace is to be achieved in the face of other underlying economic and social trends. Insofar as the Land Question is concerned, there are several dimensions which deserve close attention.

4. LAND IN THE CHANGING POLITICAL ECONOMY OF AFRICAN PROPERTY RELATIONS

Outside the settler colonies in particular parts of East Africa and most of Southern Africa, it was generally assumed that there was either no Land Question, or that it arose

only insofar as it was connected to the Agrarian Question. This assumption has been seriously undermined by recent developments, however. While the "classic" Land Question continues to be played out in East and Southern Africa, largely in terms of seeking the restitution of land forcibly alienated under colonial guarantee, a "new" Land Question is developing in parts of the continent where there used to be a surplus of land. To be sure, the terms in which the "classic" Land Question is posed have not remained static: all over East and Southern Africa, new uses have been found for a significant proportion of the arable land appropriated to support large-scale, commercial farming by a predominantly white minority. These uses include game farming (particularly ostrich) and a range of tourism-related activities, such as animal ranching in privately developed parks, holiday campfire sites and cheap holiday accommodation, etc. Furthermore, large-scale investment in hotel developments on prime lands place this land beyond the practical reach of governments seeking to resettle dispossessed families. This has complicated the task of reform and redistribution, insofar as hitherto fallow land that could have been acquired to resettle victims of historic injustices has been put to new uses that are partly connected to changing international trends, such as the growth of adventure and ecological tourism. The development of new forms of land use at a time of intensified pressure for restitution and redistribution has also fuelled new patterns of land concentration, as various large-scale commercial farmers merge their vast holdings and incorporate the new consolidated holdings as offshore companies with an established shareholding structure. They are also connected to the abject failure of the willing-seller- willing-buyer approach, which is based on market-determined prices that are invariably unaffordable not only for those whose lands were alienated, but also for their government.

Various factors lie behind the "new" Land Question in parts of Africa where there used to be a surplus of land. These include:

i) Increased all-round population pressure, combined with a reduction in available farmland and grazing, accelerated migration out of rural areas and the onset of land speculation in rural areas;

ii) Growing pressures associated with an altered structure of incentives that is driving different interest groups to seek to establish their statutory rights to land through individual titling and registration;

iii) Popular asset-building strategies at a time of prolonged economic crisis, unending currency instability, devaluation and inflation, and generalised uncertainty;

iv) The growth in tourism, which generates property development targeting prime land such as beaches that is privatised once acquired by developers;

v) The acquisition of prime arable land by industry as part of government campaigns promoting commercial farming in order to reduce dependence on imported raw agricultural materials. This development is connected to broader processes of corporate land acquisition within a favourable structure of state incentives;

vi) The emergence of niche agricultural activities, mainly oriented towards the exotic export market for flowers, organic beans, pineapples, etc.;

vii) Extensive land degradation, which has reduced the amount of arable land available for shifting cultivation and grazing zones for pastoralists;

viii) A rapid and largely uncontrolled process of urbanisation that has increased pressures on urban and peri-urban landed assets and housing, and led to the spread of peri-urban – and even urban – agriculture;

ix) A spate of private large- and small-scale (artisanal and non-artisanal) mining activities across the continent, which has fuelled struggles over the ownership and control of land, and displaced people;

x) The channelling of remittances into landed property as the most viable and durable investment from overseas migrants at a time when the policy climate is still strongly tilted against the manufacturing or agriculture sectors of the economy;

xi) A booming urban housing sector fuelled by funding from a variety of domestic and foreign sources;

xii) The enclosure of vast tracts of land for "sustainable" commercial logging, to the detriment of local farming, hunting and pastoralist communities.

The factors and processes behind the "new" Land Question have also stimulated the development of *formal* land transactions and increased concerns about the legality and legitimacy of title and security of tenure. A large number of the battery of professionals at the centre of this process of formalisation – lawyers, estate valuers, accountants, insurance brokers, architects, surveyors and building engineers – have entered the property market in order to escape the high youth and graduate unemployment rife in many African countries.

As observed earlier, the gulf that once separated former settler and non-settler colonies of Africa with regard to the Land Question has narrowed considerably. In essence, the historic experiences of the former are not dissimilar to the land alienation, concentration and enclosure affecting the latter, along with spiralling land and landed property prices and pressure for registration, individualisation and titling. The gross inequalities associated with these processes are fuelling disputes and conflicts across the continent, in both resource-rich and less obviously endowed areas.

Central to these land disputes and conflicts are a host of citizenship issues that have come to the fore across Africa. They are articulated in terms of rights of ownership, access and use, the very nature of ownership itself (individual vs. communal, freehold vs. fixed leases, etc.) and the rights of "indigenes" and entitlements of "settlers", etc. That is why the Land Question in Africa today is also an issue of citizenship, which touches directly on the role of the state and the social policies underpinning economic reform choices.

5. CONCLUDING REFLECTIONS

The way in which the processes related to the current Land Question have proceeded leaves much to be desired. These largely unplanned processes are producing disturbing patterns of property concentration, increasing landlessness and social inequality, and making it difficult for the working poor to gain access to land. The primary challenge

they present is not so much how land markets can be made more efficient, but how livelihoods can be secured and the principles of equity defended in the face of radical change. For the foreseeable future the peoples of Africa will continue to live and function within multiple tenure regimes, which, while they do not necessarily obstruct growth in themselves, could well benefit from the disciplines of a wider public and developmental purpose. This will only happen if attention is paid to the numerous problems associated with equity and distribution, and energy invested in ensuring that African economies are more responsive to domestic impulses.

Keynote Presentation

THE SIGNIFICANCE OF SECURE ACCESS TO LAND FOR THE LIVELIHOODS AND FOOD SECURITY OF AFRICA'S FARMERS AND URBAN POOR

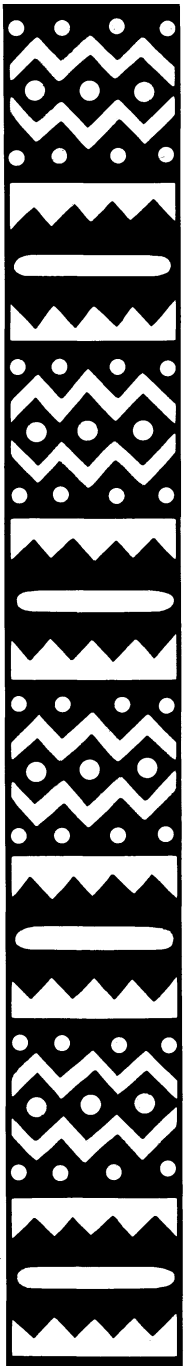
Professor Dominic Fobih[9]

1. INTRODUCTION

Land is the basic source of livelihoods for most of the African population. Subsistence farming, small-scale mining, pastoralism, reliance on timber and non-timber forest products provide sustenance to the majority of African farmers and the urban poor.

Poverty, disease and ignorance have been described as the greatest enemies of progress in developing countries, and they are especially keenly felt in rural areas, where over half the population live. It is obvious that denying large segments of rural society equitable access to land and the benefits of secure land tenure will lead to unanticipated costs and sometimes conflict. Property rights to land constitute one of the most powerful mechanisms for enabling people to increase and expand their asset holdings beyond land and labour to the full portfolio necessary for sustainable livelihoods and poverty reduction.

However, access to land, land tenure reforms and land resource management continue to pose problems for many African countries, governments and communities. They are recent arrivals on the development agenda, as various land reforms are pursued across the



9. Minister of Lands and Forestry, Ghana

continent in Ghana, Uganda, Mozambique, Tanzania, Zimbabwe, South Africa, Malawi, Zambia, Namibia and other countries.

Insecurity of tenure, restricted access arising from government policies and the operation of laws in a legal pluralistic environment have been cited as some of the critical issues affecting access to land for development, livelihoods and food security. Food security is a function of several factors, the most obvious being yield, which itself may be a function of security of tenure.

Lessons from recent research on land tenure indicate that countries that have invested in the technical and institutional infrastructure required for efficient and equitable land tenure administration, and which have been in the forefront of ensuring property rights for both men and women, have developed much faster and achieved higher levels of food security, health and welfare. It is in this broad context that this paper analyses the significance of secure access to land for the livelihoods and food security of Africa's farmers and urban poor. This paper is structured around the following key issues:

- The challenges posed by population growth;
- Access to land and security of tenure for livelihoods;
- Peri-urban transformation and pressure on agricultural land;
- Government responses to tenure challenges; and finally
- Conclusions on the subject.

This paper draws on the Ghanaian experience, where rapid population growth and high urbanization have not been matched by an expanding urban economy; also, on the current land reforms implemented by the Ministry of Lands and Forestry under the Land Administration Project (LAP).

2. THE CHALLENGE OF POPULATION GROWTH

The population of sub-Saharan Africa was estimated at 688.9 million in 2002, with an annual growth rate of 2.7%. It is one of the world's fastest growing populations, having doubled since the 1960s, and looking set to double again in 22 years at its current rate of growth. At the same time, recent economic growth in sub-Saharan Africa has been disappointing, with per capita GNP increasing at only 0.2% or so per annum between 1965 and 1988. Africa's development problems cannot all be directly attributed to its expanding population. Simply reducing the rate of population growth will not be sufficient to improve quality of life, but it is disturbing that rapid population growth is constraining the development of the continent. Its rapidly expanding population, high levels of poverty, conflict, climatic changes and the increasing threat posed by HIV/AIDS constitute formidable challenges to governments all over Africa, and severe constraints on resource mobilisation and utilisation.

The population of Ghana is also growing fast. According to the 2000 population census, it stands at 18.9 million, representing a 53.8 % increase on the 12.3 million recorded 16 years earlier in 1984. The current population is estimated at 20.3 million, an inter-censual growth rate of 2.7% per annum. This is lower than the rate for West Africa (2.9%), but higher than the global rate (1.5%) and gives a population density for the entire country of 79.3 people per square kilometre.

While this density may not constitute great pressure on land, the same cannot be said of pressure on resources and what the land can generate, which has a direct bearing on livelihoods and food security. Ghana is still a predominantly rural country, even though the level of urbanisation has increased from 32% to 43.8% since 1984. Urbanisation is concentrated in the Greater Accra and Ashanti regions, (of which 87.7% and 51.3% respectively are urban), where the rate of change in tenure and livelihoods in peri-urban areas has been particularly intense.

Rural livelihoods in general, and food security systems in particular, are very important indicators for survival and significant factors in national socio-economic development and poverty reduction. This is particularly true in more vulnerable rural areas, where women face acute problems gaining access to land.

3. ACCESS TO LAND AND SECURITY OF TENURE FOR LIVELIHOODS

Land ownership in Ghana falls into three broad categories: customary lands (about 78%), state lands (about 20%) and vested land (about 2%). Thus, most land is owned on a communal basis by the customary sector, and tenurial arrangements are usually driven by customary practices. It is also important to point out that the customary system of land ownership operates in both urban and rural areas, unlike some sub-Saharan countries, where the customary system is not recognised or does not operate in urban areas. The land owning group may be a stool, a clan or a family. Customary land ownership and practices occur where the right to use or dispose of land use rights rests neither on the exercise of brute force, nor on the evidence of rights guaranteed by government statute, but on the fact that they are recognised as legitimate by the community; the rules governing acquisition and transmission of these rights usually being explicitly and generally known but not normally recorded in writing. Such ownership may be acquired through variety of means:

1. Discovery and long uninterrupted settlement;
2. Conquest through war and subsequent settlement;
3. Gift from another landowning group or traditional overlord; or
4. Purchase from another landowning group.

Other, lesser interests flowing out of allodial interest are rights of use for members of the landowning community, tenancies, licences and pledges. Customary lands are managed by a custodian (chief or head of family), who manages the land with the principal elders of the community. Any decision taken by the custodian affecting rights and interest in the land, especially the disposal of any portion of communal land to non-members of the landholding community, require the agreement of the principal elders and consultation with those using the land. Custodians of customary lands therefore hold the land in a fiduciary capacity, and are accountable to members of the landowning community.

In the past, members of landowning groups had unfettered access to land and retained control of any portion of the group land that they were able to cultivate. Population growth and the introduction of cash crops and tree farming resulted in people leaving their own communal land and moving to other areas to acquire land, where the most common form of tenurial arrangement with landlords was share cropping. These

arrangements worked well when land was abundant, but the amount of available land diminished over time as the population increased.

Large-scale plantation systems are not feasible in certain parts of the country where land holdings are very small, a situation exacerbated by the inheritance system. In fact, any attempt to develop large-scale farming will involve depriving certain landholders of their means of livelihood and economic survival, and has the potential to cause conflict. It also makes it difficult to change farming methods in order to break the cycle of poverty and create wealth, even for landowning families. And even if farmers have the capacity to develop larger holdings, communal land ownership also restricts the size of holdings that can be developed.

It may seem that Ghana does not face any serious problems because of its low population density per square kilometre, but this is not the case, as soil fertility varies across the country and soil types that can provide good yields on a sustainable basis are limited. Land in these areas is becoming scarce, and members of indigenous landowning communities are having to compete for it with migrants who are prepared to pay for land. In recent times financial considerations have proved to be a stronger factor in obtaining access to land and in the allocation of rights than mere membership of a landowning community. As the competition for land is often won by migrants, it becomes increasingly difficult for indigenous people to sustain their livelihoods.

Some of the general characteristics of customary land ownership present considerable challenges to tenure security, sustainable agriculture, sustainable livelihoods and food security. For example, boundaries are not generally surveyed and may not even be defined. Conflicting claims to ownership are not helped by difficulties in ascertaining exactly who has allodial interest in a piece of land or distinguishing between the jurisdictional right of the custodian and proprietary land rights. Proper records of the judgements, dispositions and other records relating to land are rarely kept by its custodians, so litigation over land is common and insecurity rife. And with no legal recognition of land through registration, there is no guarantee that landowners can unlock their potential wealth by using land as an asset to be used as collateral on a loan.

The nature of tenurial arrangements and control over tenure can also pose problems for land owners and users alike, particularly in rural areas. Many of these arrangements are oral and are enforced according to how the exact terms agreed upon are remembered, which may become a disputed issue over time. The dynamics of agricultural and economic decisions made by land users can also cause disputes. For example, someone granting a piece of land for cocoa cultivation may assume that the agreement excludes any marshy areas unsuitable for cocoa production, and try to assign them to a third party for rice production. The land user, however, may assume that the transaction includes these marshy areas and any decisions as to how they might be used.

The complexities of rural land tenure are complicated by the possibility that use of assigned land may change. Following the laws of economic development and principles of entrepreneurship and prudent economic management, farmers aiming to maximize their returns will switch from one cash crop to another where the economics allow. There has been a considerable shift from cocoa cultivation to oil palm production, and from cocoa to tree plantation. These changes of land use are usually made without any

reference to the party assigning the land, and are a source of tension between land owners and users.

Another critical challenge to rural livelihoods is the use of forest reserves by fringe communities. Over the years, local communities have been excluded from the management of forest and wildlife resources, making it very difficult to solicit their collaboration in enforcing forest and wildlife laws.

Tree tenure is not always synonymous with land tenure. In various parts of the country where this is the case, this means that access to land does not guarantee access to naturally occurring trees, which instead are vested in the state. In the past, local communities were not involved in tending young trees on their farms, and with no incentive to care for them, some saplings were destroyed by farmers. The adverse long-term effects of this practice on the environment and on food security are enormous.

Equitable sharing of the benefits derived from land and forest resources also has implications for sustainable livelihoods and food security. Current legal provision for the disbursement of revenue from land and forestry is limited to the state (59.5%), land custodians (22.5%) and traditional councils (18%). Nothing goes to the people who daily work the land and protect its resources through various farming practices.

Population growth and the expansion of settlements at the fringes of forest reserves and national parks have resulted in farming within forest reserves, as well as illegal tree felling and game poaching. These are serious issues affecting the proper management of forest and wildlife resources, which cannot be resolved through legislation alone, but through a combination of legislation and an effective programme of collaboration and co-operation with the local communities involved. An acceptable strategy for dealing with this problem would be to find a mutually beneficial way of integrating these communities into forest management programmes, in order to secure and sustain their livelihoods and ensure that they enjoy the benefits of these reserves.

4. CHANGE IN PERI-URBAN AREAS

Tenure and land use in peri-urban areas of the major cities in Ghana (and many other African cities) are changing at an alarming rate. The inter-censual growth rate in peri-urban areas of the capital Accra is 4.4% per annum, compared with a national growth rate of 2.7%. Fertile agricultural lands are being converted for urban use at an estimated rate of around 6,000 hectares per year, depriving indigenous members of these communities of their livelihoods. Weak mechanisms for conserving, controlling or integrating urban agriculture into urban land use and land management systems have allowed urban users to appropriate fertile agricultural land for residential development and undermine the importance of peri-urban areas as a source of food.

According to the principles of customary land ownership, access to land can only be granted to non-indigenous individuals with the prior consent of the person using the land. There are indications that this principle is no longer observed, as decisions on granting land to incomers are made without reference to the persons occupying it. They are excluded from the decision-making process and negotiations, and rarely benefit from its exchange value.

Land rights are further eroded by the growing desire for home ownership that has fuelled a construction boom in cities and other urban areas. There are few productive uses for the hard pan left around major settlements once sand and topsoil have been removed for construction and landscaping, and the combination of this type of development and current tenurial arrangements have direct consequences on the tenure and food security of farmers and the urban poor. Their security is largely dependent on opportunities for increased access to assets such as land, as well as markets and other economic opportunities.

Mining activities, particularly surface mining, are a major cause of tenure insecurity and environmental degradation. Landowners may occasionally be paid for their land, but the usufruct rights of farmers displaced by mining activities tend to be disregarded, and they receive no compensation for the loss of their livelihoods.

As farmers lose their lands and livelihoods to urban developers, high levels of insecurity and uncertainty regarding land rights in peri-urban areas, around surface mines and in some farming areas have resulted in the use of "land guards" and other unorthodox methods of protecting acquired land and interests. In some areas there has been a complete breakdown of established structures for holding and managing customary lands.

Prompted by this and other challenges, such as lack of effective land management by indigenous land owners and difficulties in switching from indigenous subsistence practices to more commercially oriented agriculture, reducing the large number of land cases that end up in court and curbing tenure and boundary disputes, the New Patriotic Party Government introduced the Ghana Land Administration Project in order to tackle the constraints to tenure and food security. Before discussing this, however, it is necessary to discuss the broad development agenda for the country.

The high incidence of poverty highlighted in this presentation is a source of concern to the Government, whose policy framework to reduce poverty led to the adoption of the Ghana Poverty Reduction Strategy.

5. THE GHANA POVERTY REDUCTION STRATEGY

The GPRS represents a comprehensive set of policies aimed at supporting growth and poverty reduction over a three-year period and beyond. It is informed by the conviction of the current government that the economy of Ghana needs to be managed effectively to permit wealth creation and poverty reduction. The goal of the strategy is to transform the nature of the economy in order to achieve growth, accelerate poverty reduction and protect the vulnerable and excluded within a decentralized, democratic environment. To this end, the GPRS has identified policies, programmes and projects that seek to realise the following objectives:

a. Sound economic management for accelerated growth;
b. Increased production and the promotion of sustainable livelihoods;
c. Enhanced development of human resources and the provision of basic services;
d. Intensification of the provision of special programmes to support the vulnerable and excluded;
e. Good governance and increased capacity of the public sector;

f. Effective promotion and stimulation of the private sector as the main engine of growth and as partners in nation building.
These objectives were used to identify five core areas as priorities:

i. Infrastructure – principally the construction of roads, improving the development of ports and improving telecommunications;
ii. Modernised agriculture based on rural development, including a reform of land acquisition to ensure easier access to land and more efficient land ownership and titling processes;
iii. Enhanced social services, particularly with regard to education and health services;
iv. Good governance aimed at ensuring the rule of law, respect for human rights and attainment of social justice and equity;
v. Private sector development aimed at strengthening the private sector in an active way to ensure that it is capable of becoming an effective engine of growth and poverty reduction.

In line with the lessons of economic history, we believe that socio economic development over much of the world is associated with investment in secured lands, be it for trade, commerce, agriculture, mining or services. Appropriate institutional innovations to provide secured land can lead to a virtuous cycle of economic growth and improved welfare; while failure of the institutions administering land rights to respond to these demands can lead to a vicious cycle of land grabbing, conflict and resource dissipation that can, in extreme circumstances, undermine societies' productive and economic potential. The GPRS identifies land constraints as one of the major obstacles that need to be overcome if the goals of the strategy are to be met.

6. THE GHANA LAND ADMINISTRATION PROJECT

The active participation of key stakeholders such as customary land owners, users, public agencies, civil society organisations and the judiciary is a sine qua non in our effort to address issues of land ownership, tenure, vulnerability and food security. Therefore, Ghana has embarked on a complex land administration project with the clear objective of stimulating economic development, reducing poverty and promoting social stability, by improving security of land tenure, simplifying the process of accessing land and making it fair, transparent and efficient, developing the land market and fostering prudent land management. This will be achieved through implementation of a long-term (15 – 25 year) land administration reform programme, which is also the vehicle for implementing the National Land Policy launched in 1999.

The first phase of the programme is aimed at developing a sustainable and fully functional land administration system that is fair, efficient, cost effective and decentralised, and which enhances security of land tenure. Critical areas for consideration and intervention in this first phase are:

i. Harmonising land policy and the regulatory framework;
ii. Institutional reform and capacity building for comprehensive improvements in land administration;
iii. Establishing an efficient, fair and transparent system of land titling, registration, land use planning and valuation;

iv. Developing innovative methodologies for improving land administration, including community-level mechanisms for resolving disputes over land.

The Land Administration Programme recognises the important role played by land tenure in achieving sustainable rural development. We believe that sustainable agriculture and rural development are critical areas of activity, where improving access to land by the poor is the key to food security, improved livelihood opportunities and wealth creation.

Expected outputs of the LAP include:

(a) Systematic compilation and documentation of landowners and rights of holders, demarcation of allodial boundaries;

(b) Establishment of Customary Land Secretariats to complement the efforts of the Land Registry, with the aim of:

- Strengthening the customary system of land rights management, which provides a relatively secure system and is less expensive than state-run administrative structures;
- Ensuring security for the most vulnerable, who are always the first to lose their land – tenant or migrant subsistence farmers, subject usufructs, women, etc.;
- Reducing the risk of landlessness and exclusion, and helping fight poverty;

(c) Improved security of tenure, certainty of ownership, reduced land litigation, easy access to land and transparent procedures, among other things, to create a favourable environment for the promotion of agricultural growth, investment and development in land. This will also impact positively on:

- Sustainable livelihoods, food security and the creation of agro-based industries, which receive a major boost when agricultural productivity increases;
- Ghana's longstanding agricultural strategy of promoting a dynamic, market-oriented small-holder farming sector;
- Curbing rural-urban migration – a pragmatic land policy practice that will provide a good platform for attracting direct foreign investment and development;

(d) Restructuring land administration institutions to make them more service delivery oriented and increase their collaboration and co-operation with structures responsible for the administration of customary lands. The functions of public sector land agencies will be streamlined to avoid duplication, and services decentralised to bring them closer to local people. The capacities of these agencies and customary institutions are being developed for more effective service delivery.

7. FORESTRY SECTOR REFORMS

Efforts to improve forest management have been based on collaborative forest management principles aimed at securing tenure of forest resources, protecting and developing forest resources and equitable sharing of the benefits derived from these resources.

Realising that illegal activities within forest reserves, national parks and at the interface between human settlements and the fringes of these reserves cannot be controlled by the state alone, the Ministry of Lands and Forestry introduced the Community Forest

Management Project. The aim is to develop integrated programmes involving communities from the fringes of forest reserves and national parks in resource management.

Farmers from these communities have been identified as resource co-owners and stakeholders, and are involved in managing them in a variety of ways. One is the modified *taungya* system, where they are remunerated for including tree planting and care in their farming practices. They retain their interest in the trees long after the canopies have closed, and will benefit when the trees are harvested. Elsewhere, farmers plant trees to restore degraded forest reserves, inter-planting with non-timber forest products that mature early to secure an income while the timber trees are maturing. These initiatives are helping establish the conditions for long-term, sustainable management of forest and wildlife resources, and support the government programme for equity and poverty reduction by contributing to the sustainability of livelihoods and the environment.

8. CONCLUSION

Secure access to land plays a significant role in agrarian economies like that of Ghana. In fact, it is fundamental to social and economic processes, and to the achievement of sustainable livelihoods, food security, poverty reduction and national development. Land issues usually require a deliberate government policy to include land and all its ramifications in the broader national development agenda. Ghana has taken a critical look at its national land issues, and is developing a framework that will provide for a sustainable land policy aimed at poverty reduction and economic growth. It is essential that we get every key stakeholder on board and engaged in all major activities. Even though stakeholder involvement may tend to slow the pace of programmes, the results will be well worth the effort.

Keynote Presentation

LAND CONFLICT: ADDRESSING LAND ISSUES IN POST CONFLICT SETTING: THE CASE OF RWANDA

Patricia Hajabakiga[10]

1. INTRODUCTION

The present paper is not the first to deal with land conflict in Rwanda. In the light of past experience, previous debates and findings on land conflict in Rwanda, this paper suggests some critical issues for reflection and debate. It also offers a framework for analysing some realities about land conflict at grassroot level. Some theoretical explanations are provided to deepen the understanding of pitfalls in the design and implementation process of related policies.

Section two of this paper covers the effects of the Rwandan conflict and provides general socio-economic information in relation to land. Section three looks at the history of land tenure in Rwanda and the root causes of the land conflict today. Section four addresses the measures taken after 1994 to mitigate the conflicts, the principles underlying land policy and the way forward. Finally section five considers the conclusions and lessons that can be drawn from the Rwandan experience.

2. MAJOR LAND ISSUES IN RWANDA

As in many African countries, land in Rwanda is a precious resource and constitutes the basic foundation of the national economy and will remain so for a long time. From a socio-cultural point of view, Rwandans are also attached to land as it has a social, cultural and spiritual value.

10. Minister of Land, Rwanda

However, Rwanda's precious land resource is threatened by a number of problems conjunctural, structural and man made. They include:

a) High population growth rate and density leading to land resource scarcities

- Rwanda's population is predominantly rural and lives mainly on subsistence agriculture,
- Rwanda's land area is 26.338 km^2, 60% of which is arable land,
- The population is 8.1 million (2002 national census) people with a population density of 308 inhabitants per km^2,
- Family holdings (the main source of access to land is through inheritance) have become extremely fragmented (the national average is 0.5ha),
- Landlessness.

b) Environmental issues

- Weak land use systems and management,
- Increasing use of fragile and marginal lands (wetlands, protected forest...),
- High rate of land degradation and soil erosion,
- High rate of deforestation and wood energy crisis.

c) Weak policies, legislation and institutional framework

- Dual customary and statutory systems of land tenure,
- Poor systems of land management and weak systems of land administration,
- Gender imbalance in matters of land tenure,
- Weak human, financial and material resources.

d) Political and economic related issues

- A long history of conflict since 1959 including the 1994 genocide resulting in multiple claims of ownership of land,
- Rwanda is landlocked and located in conflict ridden region,
- Weak off-farm opportunities to reduce the pressure on land,
- Poverty and underdevelopment.

3. HISTORICAL BACKGROUND TO LAND TENURE IN RWANDA

3.1 Land tenure system in pre-colonial period

The pre-colonial land system was characterised by collective ownership of land, and was based on the complementary links between agriculture and livestock. This system facilitated economic production, stability and harmony in production. Families were grouped together under lineages, and these were in turn grouped under clans. A chief ruled each clan and clans were normally spread throughout the national territory, in different proportions according to region. Livelihoods were based on the liberty to occupy any territory as well as the complementary links among types of production. Land was managed at the top level by the King in the general interest of Rwandans.

The main aspects of land tenure were as follows:

- The "**Ubukonde**" or clan law, enacted by the chief of the clan first to penetrate the forest. This chief usually owned vast tracts of land, on which he would resettle several

families, henceforth known as “Abagererwa”. The latter enjoyed certain rights over the land they occupied, subject to customary conditions.

- The “**Igikingi** “ or right to graze, accorded by the King or one of his chiefs known as “Umutware w’umukenke” to any family that reared livestock. Right up to the advent of the colonialists, the “Igikingi” was the most common land tenure system, especially in the central and southern parts of the country.
- The “**Inkungu**” or custom authorising the local political authority (on his own, and on others’ behalf) to dispose of abandoned or escheated land. These lands were grouped into a sort of land reserve from which the ruler of the time accorded plots to any who required one.
- The “**Gukeba**” was the process of settling families onto grazing or fallow land. “Gukeba”, or “Kugaba”, as it was sometimes called, was the responsibility of the customary authorities.

As the socio-political and administrative structure became stronger and better organised, land resources became more important. The proper management of these resources was symbolised by the presence of a chief in charge of the land, “*Umutware w’ubutaka*” and a chief in charge of livestock “*Umutware w’ubukenke*”, both considered to be at the same level as the chief of the army, “*Umutware w’ingabo*”. All of these chiefs were under the authority of the King.

Land rights were respected and transmitted from generation to generation according to Rwandan tradition and custom. This was the system colonial rulers of Rwanda found when they arrived. Over this system, they added a new layer of land administration governed by written law. This was no smooth co-habitation but based on both the King’s powers, and those of the colonial government.

3.2 The land tenure system during the colonial period

Colonisation introduced new elements to Rwandan society. These led to changes and distortions in the social fabric. The German colonisation, started after the end of the 19th century and lasted till 1916. The German authority recognised the King’s authority over land. The first Catholic and Protestant missions bought properties to secure ownership in exchange for gifts rather than money.

Political management was centred on controlling Rwanda’s economy which was based on 3 pillars: proper land management for agriculture, livestock, and security. The purpose was to guarantee prosperity but the Belgian colonisers introduced deep managerial changes, which destroyed the traditional leadership system. The traditional trilogy, a well-balanced system, was completely dismantled and transformed into a centralised administration.

The Belgian Colonial administration established the land occupation decree of 1885. Two main ideas can be drawn from this decree:

I. Only the Colonial Public Officer could guarantee the right to occupy land taken from indigenous Rwandans. Colonialists or other foreigners intending to settle in the country were to apply to the colonial administration, follow its rules for obtaining land, as well as the rules for settlement.

II. Occupation of land should be accompanied by a title deed. Indigenous people should

not be dispossessed of their land. Vacant land was considered as state-owned. It was this provision that triggered the dual land system of administration.

All occupied land remained subject to customary law, and only the colonialists and other foreigners could benefit from the new system, ensuring the protection of the colonial administration. The written law was also applied to Catholic and Protestant Missions (decree of 24 January 1943 concerning free transfers and concessions to scientific and religious associations, as well as para-statals), urban districts, as well as trading centres.

The 1926 reforms divided the country into chiefdoms and did away with chiefs owning vast tracts of land in different parts of the country; even though this had underscored the chief's importance in the country's hierarchy. The removal of traditional structures, aiming at more effective territorial control by the colonial administration greatly disrupted Rwandan society. Nevertheless this land system continued to borrow from traditional principles.

The colonial government also introduced the written law into the "*Codes and Laws of Rwanda*". They imposed this legal structure to protect the interests of colonialists and any other foreigners who desired a plot of land in Rwanda.

Due to the high population density, and the need to exploit new areas, the colonial administration introduced the system called "*paysannats*", which is similar to the traditional system of "*Gukeba*". It was mostly applied in regions with a lot of grazing land, and other land reserves, and involved giving each household two hectares for cultivating crops such as cotton, and coffee. Thus a new aspect of economic development was introduced, based on agriculture.

Between 1952 and 1954, King Mutara III Rudahigwa abolished the *ubukonde* system and decreed that all *abakonde* would henceforth share their land with their tenants, known as "*Abagererwa*".

From 1959 onwards, the land system became a source of conflict for the population. The chaotic political situation brought ethnic division among Rwandans and the first ever refugees from Rwanda were registered. Having fled to neighbouring countries, or resettled in new sites allocated to them, the displaced families had no choice but to forget about their properties.

3.3 Land tenure system after Independence

As compared to the colonial period, the situation after Independence did not change much. 90% of the country's arable land was still governed by customary law and written land law only applied to very small numbers of people, in the urban areas, trading centres, and religious communities.

At the start of the 1960's, the regime redistributed land which had belonged to the 1959 refugees. And during 1970-1980, an intensive migration took place from the densely populated areas of Gikongoro, Ruhengeri, Gisenyi and Kibuye to the semi-arid savannas of the East (Umutara, Kibungo and Bugesera) in search for vacant land. The Government attempted to reintroduce the agrarian system called "*paysannat*", to enforce a more even distribution of plots, which were becoming more and more scarce.

In 1976, decree No. 09/76 of 04/03/76 concerning the purchase and sale of customary rights on land, or the Right of Soil Occupation gives the right to purchase and to sale the customary property land with the condition of having the permission of the Minister in charge of lands and the obligation to retain an area of 2 ha minimum. The buyer may also justify that he does not have property of at least 2 ha. Since this decree, the state has only recognized right of ownership based on land registration.

At the beginning of the 1980s, serious problems of land scarcity began to emerge. From 2 ha in 1960, the average surface area of a family's cultivation plot was reduced to 1.2 ha in 1984.

Since the beginning of the 1990s, the country experienced a deadlock in the land issue. The problems included insufficient agricultural production, increasing population pressure on natural resources, a growing number of landless peasants, and sharp competition among agriculture, livestock, and natural resource conservation. The government strengthened its role in the appropriation of vast stretches of land prioritising reforestation of cultivated areas, as well as marshlands.

3.4 The land situation after 1994

The massacres and the Genocide of April – July 1994, decimated over one million Rwandans and resulted in millions of refugees and displaced persons.

The return of the 1959 refugees had been stipulated in the framework of the Arusha Peace Accords. Article 2 of the Arusha Accords between the Government of the Republic of Rwanda, and the Rwandan Patriotic Front, concerning the Repatriation of Rwandan refugees and the resettlement of displaced persons states the following: "*...each person who returns is free to settle in any area, within the country, of his/her choice, as long as he/she does not infringe upon somebody else's rights*."

Article 3 of the Accords states the following, "*in order to resettle the repatriates, the Rwandan Government should release all unoccupied land, after identification by the Repatriation Commission. The commission will be at liberty to prospect sites for resettlement in any area within the national territory*". Afterwards, the mixed Government and RPF Commission travelled throughout the country, and identified potential receiving sites. On the other hand, Article 4 of the Accords stipulate that "*the right to property is a fundamental right for all Rwandans. Consequently, the refugees have a right to return with their belongings: However, the two parties recommended that "with a view to promoting social harmony and national reconciliation, refugees who fled the country over 10 years ago should not claim their property if it has been occupied by other individuals. To compensate them, the Government will put land at their disposal, and will assist them to resettle*".

However, the return of the "1959 refugees" gave rise to some serious land problems, and difficulties in applying the Arusha Accords.

As they returned, some of the former 1959 refugees briefly occupied land and property that had been abandoned by the refugees of 1994. Other former refugees were granted public state land, and vacant land on which they could resettle and produce.

These were the results:

• The Mutara Game Reserve, two thirds of the Akagera National Park, and the Gishwati

Mountain Forest; as well as land belonging to certain state-owned projects were partitioned and distributed to the 1959 refugees,
- Communal land, woody areas on fertile land, pastures, and areas near the shallow sections of marshlands were allocated to the 1959 refugees.
- Also, in some provinces, the government policy of sharing plots was encouraged to allow old case refugees of 1959 to get a piece of land in order to earn a living.

3.5 Summary of land related conflicts

Low levels of urbanisation (about 12%) and a rapid increase in population density has resulted in smaller and fragmented farm holdings, an increase in land related conflicts within households and between neighbouring families, increasing pressure on marginal land, shorter fallow periods and longer cultivation periods and increasing soil erosion.

Since the late 1950s until the mid 1980s many people were dispossessed of their land rights through politically and ethnically motivated reasons and many ended up as refugees in neighbouring countries. The rights of these refugees to return was one of the key issues for negotiation in 1993.

In the aftermath of the genocide most of the “old case” refugees returned. Many were resettled in grouped settlements on excised parts of the Akagera National Park but others did return to the lands that they had lost in previous decades. Others occupied properties abandoned by “new case” refugees in towns. During the same period, many people from inside the country had fled mainly into the Congo and Tanzania and when the “old case” refugees returned some found their former lands which had been allocated to other subsistence farmers vacant. In the late 1990s most of the “new case” refugees returned and in some cases land was occupied by the original owners, particularly in Kibungo, Umutara, Cyangugu and Kigali Ngali (provinces at the border with neighbouring countries (Tanzania, Uganda, DRC and Burundi).

Facing these complex and potentially conflictual situations, the new transitional government attempted to resolve the differing land claims and land needs by either persuading competing claimants to share the land or by settling people in grouped settlements and allocating them vacant state land. Although land sharing and grouped settlement helped resolve an immediate emergency, issues of land shortages and land disputes, which were already big problems prior to the genocide, continue to be a challenge.

4. THE LAND REFORM PROCESS

As clearly indicated the land tenure security issue is one of the most complex and socially sensitive questions faced by the Government of Rwanda and ordinary Rwandans. It is within this difficult context that the Ministry responsible for Lands has formulated, after widespread consultation, a new Land Policy and Land Law. These have been presented to Cabinet and approved in February 2004. The Land Law was also adopted by Parliament (Chamber of Deputies) on 2nd November 2004 and will soon be submitted to the Senate.

4.1 Key elements of the Land Policy and draft Law

Promotion of the registration of all land holdings: The objective is to strengthen security of tenure of all Rwandans as a basis for ensuring greater social stability, encouraging greater investment in land and improving people's access to credit. This would be done by providing land titles to all land owners.

There will be two levels of land registration: *local level*, with minimum cost for rural people who have 5 ha or less; the survey will be done smoothly without any complicated or conventional surveying instrument and the boundaries will consist of natural markers (for example, trees). The process will be done using a community participatory approach. There will be the participation of CDC (Community Development Committee), District Land Office's technicians, District and Sector Land Commissions and beneficiaries. Community mapping will be used. The use of established techniques based on high resolution/large scale photomaps will help in the process; *at national level*, with maximum cost for those with more than 5ha which suppose a land development and exploitation for a high economic value; this will use conventional methods of surveying and registration. This will be done by a proposed new Land Centre to be created in the near future.

Promotion of rational and improved land-use planning and management: Taking into account that land is a vital and scarce national resource, the objective is to improve land management from the local to national level.

The grouped settlement programme (*imidugudu*) is an important option in a situation of land scarcity whereby more land may be released for agricultural production. By grouping people into villages an exit strategy from agricultural dependence may eventually be effectively instituted. Utilisation of farm inputs, marketing and transport all need basic infrastructure and facilities, which can be provided more easily in imidugudu than in scattered settlements. This form of settlement can also be a basis for socio-economic development. One of the possibilities to be considered could be micro-credit technology, which enables savings and skills formation among the people. However, the challenge is to produce a successful policy through devising a mechanism for better group settlement planning that is provided with both financial and technical support.

Promotion of land consolidation: Land consolidation processes will be encouraged but not forced. The land consolidation will be focused on productive purpose. This means that no body will lose his plot; plots would be consolidated to facilitate adoption of cash crops like tea, coffee, flowers rice etc. but each person will have the possibility to register his plot and receive a certificate.

Development of land dispute resolution mechanisms: Land commissions will also be established at national, provincial and District levels. They will work closely with the "Mediator Committee /ABUNZI", a judicial institution at Sector level with a mandate to resolve conflicts and disputes, especially those related to land. It is recognized that land scarcity and competing land needs can lead to land disputes and accessible, transparent and appropriate land dispute resolution mechanisms are required at the local level.

Decentralisation of land administration: Here it is recognized that effective land administration will be best achieved through decentralisation to the local level.

4.2 The way forward

The implementation of the Land Policy and Law need to take into account other government Policies, notably vision 2020, the PRSP Programme.

- The decentralisation and the community development initiative;
- Creation of required land institutions for effective land administration (land commissions, district land offices and the National land information management Centre) ;
- Mainstreaming gender land concerns in the overall implementation of the Policy and Law;
- Developing strategies and mechanisms for land registration, land use planning and management and conflict management;
- Develop strong public awareness and sensitisation programmes on the Policy and Law;
- Capacity building of the institutions and human resources concerned with the implementation of the Policy and Law.

5. CONCLUSIONS AND LESSONS

Rapid provision of security of tenure creates both challenges and opportunities for developing countries' ability to achieve **a sustainable future free of conflicts**.

Land Policy is a political issue; it is not possible to disentangle its determinants and impacts from the material and political interest of the individual and groups involved.

Being a product of politics, Land Policy and Law can never satisfy all the constituent parts of a national population (e.g.: gender, class, age, occupation etc...)

Making Land Policy choices cannot be avoided because a country needs clear policies to be governed.

It is important to introduce reforms within a clear overall framework in order to avoid controversy.

A wide range of stakeholders should take part in the reform and get involved in making decisions of issues concerning their lives.

All decisions and initiatives should be promoted, communicated and supported in practice as a means to resolve and manage conflict while addressing the objectives of sustainable future.

The application of these principles and the type of regulatory measures put in place are major policy issues that need attention if we as Africans are to achieve sustainable livelihood.

Keynote Presentation

LAND RIGHTS AND ADMINISTRATION IN AFRICA

Klaus Deininger[11]

1. THE IMPORTANCE OF SECURE LAND RIGHTS

A significant body of research demonstrates that the importance of secure property rights to land is a precondition for land-related investment in many settings. Farmers who have only insecure or short-term land rights are unlikely to invest their full effort, to make long-term improvements related to land (including services), or to exchange it with others who may be able to make better use of it, thereby reducing productivity and possibly hindering the emergence of a vibrant non-farm economy. The same is true for urban residents. It is now increasingly recognized that land and the institutions governing its ownership and use are of great importance for broader economic growth and poverty reduction from a much wider range of perspectives.

Investment climate: Setting up or expanding a business requires physical space, i.e. land. Non-transparent, corrupt, or simply inefficient systems of land administration constitute a major bottleneck making it more costly for small and would-be entrepreneurs to transform good ideas into economically viable enterprises. Investment climate surveys indicate that access to land was the *main* obstacle to conducting and expanding business by 57% of the enterprises interviewed in Ethiopia as well as 35% in Bangladesh and about 25% each in Tanzania and Kenya.

Access to credit markets: Well functioning land institutions and markets also improve the investment climate. The ability to use

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easily transferable land titles as a collateral reduces the cost of accessing credit for entrepreneurs. This contributes to the development of financial systems. Even in developed countries, more than two thirds of small business loans are secured against land and real estate. In Eastern and Central Europe, formal land titling, especially in urban and peri-urban areas, helped to start the mortgage markets that now comprise a large part of overall lending.

Revenues for local governments: With economic development, increased demand for land, together with public investment in infrastructure and roads tends to increase land values. In many cases, however, lack of well-functioning mechanisms to tax land implies that the potential for society, especially local governments, to benefit from these increases is limited. Instead much of the gains fuel speculation or end up as bribes. Colombia illustrates the potential for quick increases in land taxes that can contribute significantly to local government revenue, thus helping to match decentralisation of responsibilities for service delivery with the needed resources.

Social safety net: The importance of land for economic development does not mean that it is irrelevant for poverty reduction, quite the contrary, access to even small plots of land to grow crops can greatly improve food security and quality. The case of China illustrates that broad-based land access can provide a basic social safety net at a cost that is much below alternative government programmes, thus allowing government to spend scarce resources on provision of productive infrastructure instead of safety nets. Also, having their basic subsistence ensured is likely to have allowed Chinese households to take on greater risks in non-agricultural businesses and, with policies to foster lease markets for land, contributed significantly to the emergence of a vibrant non-farm economy.

Accountability and transparency: In many developing countries, more than half of a household's wealth is in land and associated real estate. If the system to administer such a significant part of national wealth is perceived to be corrupt, overstaffed, and not trustworthy, it will be difficult to maintain confidence in the rule of law and the competence of the state. Improving land administration can thus contribute to broader public service reform as in the state of Karnataka (India) where computerisation of 20 million land records within a short period of time resulted not only in a reduction of corruption and improved satisfaction with public service delivery but, because it was financially self-sustaining, also provided a basis for reforms beyond the narrow realm of land.

2. SPECIFIC CHALLENGES FOR AFRICAN COUNTRIES

In addition to the general characteristics mentioned above, a combination of:

- continuing population growth;
- rapid urbanisation (estimates suggest that more than 72% of inhabitants in African cities belong to the informal sector);
- and the need to re-orient the focus of the rural economy from low-value subsistence towards higher value added crops;

all imply an urgent need for African countries to confront land issues. At the same time, the intimate links between land access and ethnicity, race, and gender, and a legal and

institutional legacy that was often highly discriminatory in these respects, imply that in doing so, there are a number of characteristics that distinguish land tenure in Africa from that in other regions. These have to be borne in mind in when addressing questions of security of land tenure.

High potential for conflict: Increasing land scarcity and the associated rapid changes in land use are linked to a significant increase in the potential for conflict. This is especially true at the interface between nomadic and sedentary land use, in areas of rapid expansion of export crops, and at the peri-urban fringe. Even in cases where traditional institutions have remained intact, the fact that they were not originally designed to address these types of conflict (which often cross ethnic lines) puts them under considerable stress and they are not always able to cope. In many countries, including Cote d'Ivoire, Rwanda, Burundi, and Zimbabwe, conflicts that originated in questions of land access have escalated into much broader clashes, often with very damaging humanitarian and economic consequences.

Dualistic legal systems and limited enforcement capacity: A history of colonial occupation means that in many African countries, secure formal land rights are available only to a small part of the population on a limited part of the total land area. The remainder is either state land or, where the state institutions lack outreach, be governed by "customary laws". This often reflects the need to co-opt local elites rather than the wish to adhere to traditional practices and therefore provide little tenure security. This dualistic structure deprived large parts of the population of formal protection and created a multiplicity of institutions, often with conflicting goals and overlapping competencies. Regulatory frameworks that fail to take account of complexity, such as group tenures, and an emphasis on individual use rather than ownership rights (key elements of customary systems) are important factor contributors to the high rates of informality in Africa's rural and urban sectors.

Outdated, incomplete, and inefficient registries: Even in those areas characterized by

- high land values with potential for land markets,
- the use of land as collateral for credit,
- established, documented and registered formal land rights,

the potential for using land as an economically valuable asset is often constrained by the fact that inefficient operation of the registry, and possibly additional corruption, considerably increase the cost of registering and transacting land. In Nigeria, for example, registering a land transaction requires at least 250 days and payment of official fees equivalent to 39% of the property value. Such high transaction costs force people into informality with all its undesirable consequences.

Inappropriate land rights for women: In most parts of Africa, women traditionally gain access to land only through male relatives. This restriction on obtaining ownership constrains both their ability to use land as collateral and their bargaining power within the household. The recent increase in HIV/AIDS-related mortality rates further exacerbates the impact of such arrangements. Studies show that women whose husbands have died must spend considerable resources on defending their claims to land at a time when the loss of a household member already threatens their economic survival, with negative impacts on their and their children's welfare.

Large amounts of land under state control: In many African countries, problems introduced by the declaration of large areas as "state land", during the colonial period, were compounded after independence by the nationalisation of land or the introduction of legal provisions that make it easy for government to expropriate land without adequate compensation and for a wide variety of reasons other than provision of public goods. This has often led to excessive taking of land by the state, with negative impacts on equity. The threat of expropriation has not only undermined tenure security and investment but also led to informal sales in anticipation of expropriation inviting corruption and shady property deals involving state agencies. Productivity was impaired as the state apparatus had often neither the means nor the incentives to invest in or effectively use the land acquired, thereby leaving the potentially most valuable land undeveloped. Competition between central state structures, local governments and the actual occupants/users of areas designated as state land increases conflict and limits tenure security. In Ghana, about 40% of urban and peri-urban land is estimated to be controlled by the state. In Kenya, the state's ability to acquire and distribute land is now recognized to have helped to maintain an unpopular regime's grip on power.

Unequal land distribution: Although colonial occupation has had a lasting impact on the ownership and distribution of land in many parts of the world, the fact that in some African countries such measures were abandoned only recently and had been unusually severe led to very inefficient patterns of land, negatively affecting households' access to economic opportunities. Programmes to provide access to land -through a variety of mechanisms- to those who have been deprived of their rights through historical injustices may thus be warranted not only from a point of view of historical justice and equity but also as a means to improve productivity of land use. The symbolic value of land and the attached emotions imply that addressing unequal land distributions may be of considerable political importance.

Inappropriate regulations: In many African countries, outdated regulations make it more difficult and costly for small entrepreneurs to use land optimally. Some of these regulations, such as town and country planning acts, were designed with the explicit purpose of segregating property markets. There is little controversy over the need to amend them. Others, which include price and rent controls, restrictions on the ability to transfer land, land ownership ceilings, and prohibitions on land ownership by institutions or foreigners, may have been introduced with more benevolent goals in mind. Although it would be dangerous to generalise too much, in practice the effect of these regulations is often conducive neither to poverty reduction nor growth. The only reason for their continued existence is limited knowledge on alternatives that would allow the achievement of the desired goals in a more effective way or the fact that powerful vested interest groups derive considerable benefits from their continued existence.

3. OPPORTUNITIES

The above suggests that, to maximize the contribution of land policies and administration to growth and poverty reduction, African countries have to overcome a number of obstacles specific to the region. Although doing this successfully will require a long-term commitment, addressing these issues now may be easier than in the past

for a number of reasons. First, many legal initiatives demonstrate that there is now much greater recognition of the obstacles that can be caused by inappropriate land administration systems. Second, macro-economic reforms and decentralisation, provide a better basis for undertaking the needed changes and increase the potential for them to be sustainable. Finally, improvements in technology can greatly reduce the cost of land administration and, if adapted to the social reality of African communities, offer tenure security at reasonably low cost.

Awareness of the importance of land: Policy makers all over Africa are now aware that the legal basis for land administration, which often was adopted from colonial masters at independence without much revision or review, is no longer adequate and poses an obstacle to economic development. A large number of countries have enacted innovative land legislation offering the opportunity to give formal recognition to land rights to households who have traditionally been outside the realm of the law. This suggests that the topic is no longer taboo and that a technical discussion of the issues is indeed feasible. There is also growing recognition that, even though it is necessary, legal reform by itself will not be sufficient to improve tenure security and transferability of land. Successful reform will require a vision of the overall goal, a country-specific prioritisation of issues, and a long-term commitment that is part of a national consensus. This has led a number of African countries to initiate a broad-based policy dialogue in an attempt to establish a well-prioritised and sequenced land policy.

Broader institutional reforms: A number of wider legal and institutional changes suggest that the opportunities for addressing land issues are now much better than in the past. First, decentralisation and greater attention to accountability provide elements for a land administration system that is sufficiently flexible, one that can draw on communities and local authorities to accommodate a diversity of situations rather than relying, as in the past, on rigid top-down structures. Second, even though there is debate about how to do so most effectively, the benefits of transferring at least land use rights from the state to individuals or communities are no longer disputed. Third, numerous grass-root initiatives to provide legal aid and educate land owners are helping to bring about the change in social values required for greater security and (gender) equality in land rights (which is now anchored in the constitutions of many African countries). Finally macro-economic policies or subsidies, which in the past often supported inefficient forms of land use, have in many cases been eliminated, strengthening the case for more effective land use.

Technology to modernise registries and expand coverage: There is little doubt that updating registries that are no longer up to date and expanding their coverage to include those whose land rights have traditionally lacked formal recognition can have high economic and social benefits. However, the high cost of doing so, especially in African settings, has often precluded this from being put into practice. New technology makes it simpler to provide broad access to records, update them, or, where no previous records exist, to establish a registry through systematic and community-based processes of demarcation and adjudication. Pilots for the latter in Uganda illustrate that use of transparent procedures to do so, that draw on local expertise, can greatly reduce the potential for conflicts, strengthen the rights of women and others who traditionally had only weak land rights, and provide a basis for land transfers.

4. HOW CAN DEVELOPMENT PARTNERS HELP?

A number of reasons, including their political sensitivity and apparently low macro-economic relevance, the complexity and long-term nature of involvement, and the lack of good examples of best practice, have in the past prevented donors from providing support to land policy formulation and its implementation in Africa. They are now starting to realise that the cost of ignoring land may be much higher, and more broadly distributed, than originally thought, and that, even though significant support will be required to develop "African solutions to African problems", the opportunities for doing so exist. A number of areas are particularly relevant in this respect.

Awareness raising: Even though many African countries have started to address land issues, such awareness is by no means universal, resistance to reforms by vested interest remains an issue, and in some cases the scope as well as the policy dialogue supporting them remain narrow. Even though land touches upon issues of equity, investment, financial markets, governance, local government revenue, gender, conflict, environmental sustainability, and the productivity of the economy, analysis of the related policy issues is largely absent from documents such as the Poverty Reduction Strategy Papers. Donors can help broaden the policy dialogue and provide the analytical basis to transform general awareness of the importance of land into specific policy recommendations based on empirical study. The fact that a number of multilateral institutions have recently developed land policy guidelines and that collaboration between them and with bilateral donors on the issue is a useful first step that should be followed up with additional action in this respect.

Capacity building: Donors are aware that efforts at institutional reform will not be sustainable unless they are home-grown and local capacity to maintain them is available. The complexity of the technology, the large number of professionals required, and the history of past neglect and mismanagement that has affected institutions of land administration in Africa implies that this will be a challenging task – although some examples demonstrate that it can be done. For example, collaboration and exchange of experience among about 30 Eastern European countries with those from Western Europe and the rest of the OECD under the auspices of the UN Economic Commission for Eastern Europe's working party for land administration has allowed countries, which only slightly more than a decade ago were steeped in a tradition where no private property to land existed, to catch up to the level of skills in developed countries. African networks (e.g. AERC) in other subject areas have successfully built used this principle and demonstrate that to achieve this goal, a sustained effort will be needed.

Provision of technology: In the many countries that have passed new land legislation recently, the key constraint to a more effective system of land administration is the roll-out and implementation of these provisions. As GPS and other technology which is now increasingly used in developed countries can significantly reduce the cost of doing so in many ways, G8 countries are particularly well placed to offer assistance the case for which is strengthened by the fact that considerable efforts will be needed to adapt this technology to local social and economic realities in a way that fully realises its advantages. Embedding technology transfer in programmes for capacity building and

long-term institutional support is thus particularly important and a number of promising examples for this exist.

Access to international experience: Since land-related institutions are deeply rooted in a country's history, solutions have to be developed locally and cannot just be imported uncritically from other contexts. Still, the common heritage of African countries, the breadth of the issues touched upon by land policy, and the fact that no off-the shelf solutions exist all imply that exchange of experience among African countries and a debate on which elements of other countries' experience can be used can help to strengthen the momentum for reform, can improve the quality of technical solutions, and can achieve the scale that is needed to deliver sustainable security of tenure to the majority, including the poor. Developing countries are well placed to provide such access and, in the process, strengthen professional networking among those charged with formulating and adapting policy as well as implementing it.

Monitor progress across-countries: The technical and political complexity of land policy issues carries the danger that specialists spend large amounts of time on debating issues which, although interesting, will not help to meet the challenge of implementing systems that deliver tenure security rapidly and at a large scale. Also, following recognition of the fact that individual land titling may not always be the most appropriate or affordable way to achieve coverage, a number of African governments have, since the 1990s, been adopting innovations in the field of tenure and land administration. There is much to be gained from rigorously evaluating these models in terms of their cost and impact on poverty, and where appropriate scaling them up and disseminating them more widely within the region. Defining a set of indicators for the services provided by land administration systems, establishing ways to monitor them regularly and on a cross-country basis, and making the results available to the broader public can help to (i) focus attention on the need to produce results on the ground; (ii) concentrate policy-makers' and bureaucrats' attention and improve the quality of the policy debate; (iii) determine the type (and to some extent magnitude) of assistance that is likely to have the biggest impact; and (iv) demonstrate that such assistance produces good value for the money spent. It may be a logical next step to move from a general awareness about the importance of land policy in Africa towards concrete actions to tackle specific problems affecting the poor.

Keynote Presentation

LAND TENURE AND FAMILY FARMING IN AFRICA: WITH SPECIAL REFERENCE TO SENEGAL

Dr. Thiendou Niang[12] & Dr. Salla Dior Dieng[13]

1. INTRODUCTION

Forty years after Independence, agriculture in Africa is still plagued by a number of unresolved and highly complex problems. While their complexity stems from the nature of agricultural production, the inability to resolve these problems is in large part due to a lack of understanding about the aims of agriculture.

Different African states set various objectives for the agricultural sector when they attained Independence. Many of them are still valid today.

The first is to be able to feed the population. Despite favourable agro-climatic conditions over much of Africa, this continent still imports most of its food. It is true that this is an overall picture that takes no account of different countries, zones (West Africa, Central Africa…) or eating habits. Several countries meet the need for traditional cereals like millet, maize and sorghum, but are unable to produce enough rice, which has become the staple food of a large proportion of the population. Data from the last five years (CILSS, FAO, World Bank) show that only about 60% of food needs are met by local production, which means that African agriculture is still not feeding its people.

The second objective is to provide work for local people. This sector employs the vast majority of people in Africa: up to 70% in

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some countries. However, two factors need to be taken into account. The first is that farm labourers are mostly unpaid family members (women, children, nephews, etc.) who are financially dependent on the head of their family. Secondly, many farm workers earn less than the minimum wage of around 33,000 francs CFA per month. Wages in the agricultural sector are rarely enough to support a family.

So even though 65% or more of the African population is engaged in agricultural activities, this does not constitute gainful employment because it pays so little.

The third objective is to help improve the balance of trade through export. This raises two problems.

The first concerns the value of exports, disregarding the amount of produce leaving the country. While this value primarily depends on how much is sold, the price it fetches is equally important, as it may influence national production strategies. Until now, however, Africans have had no decision-making powers in setting the price of their own produce.

The second problem is the volume of exports. This mainly hinges on production, which in turn depends upon factors of production. Apart from cocoa, coffee and, to a small extent, cotton, Africa plays virtually no part in world agricultural trade, producing only 3% of the global volume of goods.

Thus, in terms of volume, agriculture contributes very little towards improving the balance of trade.

The fourth objective concerns the opportunities that agriculture presents as a source of investment for other sectors and as a means of purchasing manufactured goods.

Although perceptible advances have been made in the agricultural sector all over Africa, these four objectives have yet to be fully met.

In terms of progress, African agriculture is now more diversified and even more productive than before. This productivity can partly be attributed to the results achieved through training, usually in local languages, which has helped subsistence farmers improve their output; and partly to the fact that it is now the stakeholders themselves who decide what direction farming will take as the sector becomes increasingly and irreversibly professionalised.

Many of the problems affecting agriculture stem from the way in which farmers, technicians, states and even donors understand the aims of a sector whose specificities begin with the basic unit of production, which is the same across the continent: the family farm.

2. DEFINITIONS OF FAMILY FARMING

2.1. As defined by farmers

We should start by re-examining **the notion of the agrarian system**. In his 1946 publication "*Problèmes de structure agraire et d'économie rurale*", André Cholley stated that the agrarian system is a combination of several factors that are so closely intertwined it is inconceivable that one can change radically without affecting the others and altering

the dynamics of the overall structure. This system is a combination of physical, biological and human factors.

Thus, there are two aspects of an agrarian system: one structural and the other functional. The first reflects the fact that it is a spatial organisation of elements at a given moment, and the second that it is also a process, a succession of phenomena over time. The second notion is the system of production. This is the overall life of the family (its physical, human and biological resources and objectives, strategies and methods), which closely corresponds with agricultural production.

BOX 2: DEFINITIONS OF TERMS

To work, exploit resources, farm: This signifies production, and the different processes employed to obtain a product.

Family. Genetically related biological beings that organise themselves as a unit in order to achieve a particular aim.

Considered as family. One or more households, which may not necessarily be involved in farming or live in the same homestead, which are linked by a system of social protection and a body of values, under the moral authority of the head of the family.

Known as head of the family. An authority figure invested with the power to decide how the family farm is managed. These powers are agreed at family meetings.

Family meeting. The highest decision-making authority regarding management of the farm. Its decisions are freely accepted by everyone who considers themselves family members.

Considered as a family enterprise. All family-type production: farming and non-farming activities undertaken in rural or urban areas.

Family farming or production signifies that the family is the primary decision-making and management structure in this production system.

Thus, family farming is the point at which two factors – decision and management – combine, underpinned by a significant social relationship. We have two units – the farm and the family – whose respective reproduction is closely intertwined. This production system operates at the level of the family, not only as a structure, but also as a continually changing element. All other elements (State, land, market, etc.) are seen as factors of this change.

For farmers, agricultural production is one factor in a system in which every element is part of a dynamic process geared towards a single goal, under the authority of one person.

2.2 As defined by the state services

For agents of the state services, the family farm is simply a plot of land cultivated by people from the same family. They have always seen family farming in terms of the plot, i.e. the unit of production corresponding to the farming system; and therefore tend to understand the concept of family farming in rather simplistic terms.

2.3 Observations and implications

In the eyes of the state services, family farming is primarily defined in terms of the plot of land under cultivation. As far as they are concerned, they are dealing with an entity that is defined by its mode of production: the plot. This mode of production is characterised by the cultivation of small areas, low productivity and modest harvests, which are simply the logical outcome of limited factors of production. Some say that investment in production factors is limited because of the small scale of the farms, while others maintain that farms are small because opportunities for investment are limited.

In any case the result is the same: low production. This can only generate very modest returns and small savings, meaning that there is no opportunity for investment.

Agricultural production cannot simply be summarised in a series of production workshops. In Senegal, for example, there has been a major change in the perception of rural affairs, and interventionism is pretty much a thing of the past. One important characteristic of family farming is sustainability, which is based on four fundamental principles:

- The **participation** of all family members in family meetings;
- **Equity**, i.e. sharing of income and resources;
- Activities for each family member, signifying shared **responsibilities**; and finally
- Good **management**, which implies that all resources – human, financial, material and natural – must be well administered.

The family organises itself in order to achieve a specific goal. The whole group has to set clear objectives, and make appropriate decisions regarding the objectives and methods used in relation to the resources available: what should be grown, when and how much of it?

Family members may live more or less autonomously and have different needs, preferences and objectives. Decisions, and the manner in which family members make them, depend upon their knowledge, the relationship between the number of men, women and children, the nature of their relationships and their age, health, skills, experience, needs, etc.

The family farming approach, commonly known as LEFA (l'approche exploitation familiale), sees the family as the first point of decision-making, planning and actions. It has been adopted by the Federation of NGOs (FONGS) with the aim of building a production system that will stimulate sustainable economic and social development based on the family unit, through the diversification and intensification of activities and recognition of the importance of social cohesion and equitable sharing of responsibilities and income. This family farming approach is a more appropriate way of using rural resources productively, as it corresponds to the interests and realities of the rural world, with a system of production and reproduction that maintains and improves the life of the family group and embodies the most positive values of our societies.

The level at which farmers can influence the social order is the family. Power relationships are negotiated around family networks, with family meetings providing a forum for farmers to assert their authority and views on all production activities.

The family farm is the point at which farmers produce, reproduce, protect and preserve their values and cultural norms. It is a coherent and global whole, an entity that takes account of local realities, a mode of using resources productively and in accordance with local customs.

From a production perspective, the primary objective is to have enough food to survive. The second objective is to have enough to put aside for food security, the third to be able to help the poorest members of society (particularly the extended family and neighbours), and only then, if there is enough, does selling produce in order to satisfy certain specific needs become an objective.

Although family farms are usually small or medium in size, very large farms can be run along the same lines. In fact, family production is not restricted to agricultural activities. It reflects a way of life, an attachment to a way of doing things that includes emotional elements and, since family members cannot be dismissed, avoids social exclusion. A family farm should be organised so as to ensure the security of its members, but above all to make sure that every one of them is fed.

Family farming is part of a system. What characterises and constitutes the strength of a system is not only the individual value of its components, but the mutual support between its different elements.

There has always been some form of integration between agriculture and livestock rearing, as this is the best defence against all types of hazard. Farmers understand the importance of complementarity and synergy, constantly trying to get the most out of the land available to them by combining genetic resources and exploiting the interactions within and between different types of vegetation and livestock.

The mix of plants and animals on a farm is not a random collection of genetic resources. Every space that is used must be adapted to the biophysical and socio-economic environment of the farm and fulfil a productive, reproductive, protective or social function, and, in certain cases, combine several of these. Every space, every genetic resource has a meaning that justifies its presence on the farm.

3. THE SIGNIFICANCE OF LAND FOR FARMERS

“The land is female” say some Senegalese farmers.

Land is central to family farming, which is built with and around a resource whose principal element is female. Women create life, nurture it, maintain, embellish and transform it. This can be understood on two levels.

Firstly, land has a mystical significance. Therefore it is not surprising that in some ethnic groups (such as the Sérère) certain nephews had a higher claim to land than the direct heirs of the deceased, who were assigned the remainder of his estate. However, this only applied to the sons of sisters who shared the same the biological mother as the deceased. The philosophy behind this practice stems from a Wolof saying that in our polygamous families the father belongs to everyone (including half-brothers), but not the mother.

Like mothers, land is a source of refuge and security, the solution to all our problems. Mother Earth carries all God’s creatures within her.

Land is synonymous with perpetuation and durability. In traditional religion many genies live in trees, which must therefore be protected, and practices that lead to deforestation discouraged. The land should be revered and respected.

For some Senegalese farmers, land is life: it signifies production, reproduction, security and the propagation of the species in time and space.

Some farmers say that land, like women, arouses jealousy and other emotions. This is the underlying reason for the violence sparked by wandering livestock, whose incursions not only cause material damage, but violate and sully what is closest to the farmer's heart.

In material terms, land represents many things for the farmer. It is above all an element of identity and social status, which confers political and economic power. It defines his origins and the status of his family.

Land is a tool for perpetuating the family. Through it we subsist, and weave, maintain and consolidate links between different members of the family. It is the basis of all investment, economic expansion and development, safeguarding the family by providing security and material and spiritual refuge. Land is the natural pharmacy for the individual, where medicinal plants grow.

It also signifies durability and the ability to reproduce. Planting a tree must be understood as a sign of attachment to life, a means of preserving it. And we must preserve for future generations that which our parents bequeathed to us.

4. LAND POLICIES

4.1 National Land Law (LDN)

The colonial land law inherited after Independence in Senegal found little favour with either the State or the people. The State baulked at the fact that land could only be registered as state property once it had been amicably established that it was free of all customary rights, while the French legislation and European-style property rights based on Roman law were neither appropriate to nor understood by people in rural areas.

When France colonised Africa, colonial legislators found the land regime so strange they never even considered using it: a land tenure regime that did not involve ownership was inconceivable for Latin lawyers, who saw land tenure as the right of ownership and its associated benefits. What mattered to African farmers was not ownership in the European sense of the term, but to be able to continue to use the farmland and pastures that the community made available to them.

The national land law passed in 1964 was one of the most important decisions taken by the new state. This legislation was conceived in response to the authorities' desire to rekindle the community aspect of African land tenure, which had not been recognised by colonial legislation; and to adapt traditional rules and uses to the demands of economic and social development. To this end, the national land law was supposed to give everyone equal access to land while restoring its traditional community dimension. Like French law, Senegalese land legislation recognises public and private lands, but unlike these lands, the national land assets covering over 95% of the country are owned by neither the state nor any public body.

To help establish its development policies, this original solution to the newly independent nation's land and agrarian problems gave the State rights of use over national land assets. The aim of the legislation was to rationalise traditional customs and practices while introducing a modern and unifying dynamic into the national land regime. Through this new system the state, as heir to ancient customary powers, became the sole landholder.

However, the June 1964 land reform anticipated the creation of *communautés rurales*[14] to act as a framework for the application of the law. On April 19 1972 Law No. 72-75 was passed, establishing the rural institutions responsible for managing public lands. This made rural councils responsible for democratic land management, under the control of the administrative authorities representing the state (governors, *préfets* and *sous-préfets*).

4.2 Local government law[15]

Laws 96-06 and 96-07 cover local government law in Senegal (*Code des collectivités locales*), which is also known as the law on decentralisation. Decentralisation is legally defined as recognition, by the state, of other public bodies with decision-making powers that are authorised to intervene in certain arenas with a degree of autonomy. Unlike deconcentration, where local representatives of the state (governors, *préfets*, etc.) remain directly accountable to their superiors in central government, decentralisation is intended to express and address the concerns of local groups – even though decentralised authorities remain under the ultimate control of central government.

Its initiators and supporters hope that these laws will establish decentralisation as a standard for good governance, giving local governments a better chance to be actors and managers of grassroots development, rather than simply following and directing centralised policies. It is essential, however, that development managers have the capacity to deal with change at every level.

4.3 Framework agricultural law[16]

The aim of the Agricultural Bill is to modernise agriculture and improve performance so that this sector can meet the nation's needs. Recognising that it will be hard to attract and secure investment until the status of land has been clearly defined, this bill pays particular attention to the Action Plan for Land (*Plan d'Action Foncier*, PAF), among other issues.

The PAF presents three scenarios: the first maintains the status quo established by the National Land Law (LDN), the second is based on total land privatisation, and the third is a mixture of the first two options.

The first option, maintaining the status quo, is manifestly inappropriate (otherwise it would not even be challenged!), given the limited application of the LDN and the need to secure investments agreed for priority zones, such as irrigable areas like the valleys of the Rivers Senegal and Anambé. Some of the shortcomings of this option are outlined below.

14. Administrative grouping of the population: rural community.
15. Loi sur les collectivités locales, LCL
16. Loi d'orientation agricole, LOA

a) It is important to note that the LDN has never been a guarantee for good land management. Evidence of this can be seen in the millions of hectares of the River Senegal delta that now lie abandoned and severely degraded after cursory cultivation by private farmers, who were more interested in marking their presence on the land than using it for genuine agricultural purposes.
b) In certain cases where land has been reclaimed by local traditional and political elites, the LDN has even accentuated inequalities, something that is clearly contrary to the basic principles of equality underpinning this law.
c) Until now, the LDN has hindered financial transactions and limited opportunities for farmers to secure their investment in the medium and/or long term.
d) Finally, productive land use has been hampered and restricted by the failure to clarify exactly what constitutes productive land use. People always manage to invest something in the land assigned to them in order to retain it, but their investment frequently falls short of their production objectives.

The LDN has not encouraged people to invest because it is not sensible to invest in land that belongs to someone else.

The second, supposedly liberal, option is based on giving everyone who has invested in the land assigned them the opportunity to register it. Thus, land becomes an asset and farmers are encouraged to develop its potential. However, this option also has many drawbacks:

a) It may create tensions because it ignores customary rights holders.
b) There are high risks even for the state, if, for reasons of public utility, it finds itself in the embarrassing position of wanting to reclaim land that has already been registered. This could entail very high compensation costs and lengthy procedures.
c) Lack of clarity about the notion and definition of a minimal level of investment could create the same kind of difficulties that the concept of productive use caused the LDN. This is important, because land users can only register the land they have been allocated once they have made this minimal investment.
d) There are no real measures that the state or local governments can take against private investors who fail to comply with the norms for development and productive use. To be sustainable, land use must comply with these norms, and there is a risk that bad practices may cause the loss of certain lands in the delta or make them hard to reclaim (lack of drainage, accumulation of toxic salts in the soil).

The third, mixed, option is based on the principle that "the State reserves the right, at all times and in all areas, to withdraw land assets from public lands and register them in its name". This could facilitate a gentler transition towards a land ownership regime, helping reduce the risk of it being rejected and causing conflict.

4.4 Constitutional aspects

Certain constitutional aspects of decentralisation and land legislation warrant particular attention.

The first concerns the constitutional establishment of local governments in Senegal. From now on the existence of our local governments is constitutionally guaranteed by Article 90, which specifies the three levels of local government in the Republic: the

region, the *commune* and the *communauté rurale*. These three levels of local government can only be removed by the constitution that created them, not by law or by decree. This is an established political fact.

The second aspect concerns the transfer of competences to local governments. Although this is to be commended, its application has been patchy and beset by difficulties. For example, the regions, which are supposed to approve, assist or pilot all development projects within their territory, posses no land, and conflicts have already broken out between certain regions and *communautés rurales*!

The third point is that analysis of all the options shows that the State has actually ceded nothing! Is this a way of preserving this land for future generations? Whatever happened to the right to ownership enshrined in our constitution?

4.5 Implications

a) Reading through the Law of 22 March 1996, regarding Law 96-07 on the transfer of powers, it is clear that some powers have not been transferred in the sectors of agriculture, livestock rearing, fisheries and tourism.
   The failure to transfer powers over agriculture and livestock rearing is particularly hard to understand, given that on the one hand, most of the activities in these sectors are undertaken in *communautés rurales* and not in *communes* such as Dakar; and on the other, the potential benefits arising from the complementarity between these sectors. A similar situation exists with tourism and fishing, which are of particular interest in areas such as Saint-Louis or M'bour.
b) There have been difficulties in applying the transferred powers. With regard to land and land assets, it is not a matter of transferring competences to local governments, but ceding a right (Articles 16 and 17). Public lands have not been transferred to the regions, which means that although they are supposed to develop regional development plans, they can do nothing without the backing of the *communauté rurales*. So while the regions may have well defined territories, they do not actually have any land.
c) The same applies to mines and quarries: the State has a complete monopoly and gives nothing to local governments. There are numerous examples, such as the *communauté rurale* of Ross Béthio in Saint-Louis region, which has one of the largest laterite quarries in the country, but derives absolutely no benefit from it.
d) Decentralisation and conflict management: With regard to conflicts related to power and natural resource management, decentralisation is a paradox, as it carries within it the seeds of the conflicts it is supposed to help manage and resolve. The changes that are occurring at every level are accompanied by increasingly pressing claims from farmers, herders, young people, women and development associations. In certain specific cases, regionalisation seems to be fraught with conflict.

The first example of conflict concerns natural resources.

With regard to land tenure: the creation of public lands with the introduction of Law 64-46 of 17 June 1964 has made land a major issue. It is a resource that polarises all sorts of desires and arouses the territorial instincts of individuals and groups.

The notion that land is an asset that belongs to the nation implies that every citizen has

equal access to and, in certain cases, equal control over this shared asset. However, while the underlying logic may seem perfectly reasonable, application of the power to manage and control land has caused serious imbalances.

As each *communauté rurale* puts in place its own strategy, certain actors will be excluded. The traditional land tenure authorities that have become managers of rural councils now hold all the power over land, allowing them to combine the spirit of the laws of the Republic with customary mechanisms for controlling land. This has consequences at various levels and causes conflicts around this resource. Pressure on land is so strong that competition for it can become very violent…

The most acute conflicts concern management of land for pastoral purposes. The implementation of decentralised land management policies in rural areas has caused serious imbalances through the refusal to recognise, in policy or practice, pastoralism as a productive form of use for public lands.

Land allocation in *communautés rurales* focuses solely on agriculture, relegating herding to a residual category of land use and land and resource management. Rather than helping redress the balance, the text of Law No. 80-268 of March 1980 reveals that its real objective was to secure agricultural holdings by restricting grazing lands to a single area and thereby limit wandering livestock. In fact, this 'grazing land' is simply land that is not used for farming. The confinement of livestock rearing to this reduced area, and the expansion of farmland encouraged by State and community policies are the most serious and frequent causes of conflict between farmers and herders.

Local governments not only provoke these conflicts by refusing to manage pastoral lands, but are also unable to resolve them because they lack the necessary legal and political tools to do so. Failure to balance the management of agricultural and pastoral activities also constitutes a tacit choice by the State to encourage the development of irrigated agriculture, as in the region of Saint-Louis. Once this happens, local governments lose all power to control land management, access to land becomes exclusive, and access to water becomes a major point of contention. Herders are driven back into the sandy areas of the *diéri*[17] because most of the access routes to the river are under irrigated cultivation.

So, has decentralisation actually helped resolve the problems it is supposed to address? This assumes that they can be resolved, or at least that some kind of proposed solution is possible. Often it is not, since there are as many texts whose application will create potential conflict as there are possible solutions.

Land and land assets are particularly fertile ground for potential conflict. On close observation, it is clear that there has been no transfer of power in this arena. Articles 16 onwards show that powers over public land have yet to be wrested from the claws of the State. For local governments, simply managing their land heritage cannot be compared with an exercise of power in the legal sense of the term, although this is less paradoxical than it seems since the powers involved usually pertain to the State.

The most serious problems are likely to arise over public lands. No further powers over these lands have been transferred. The *communautés rurales* were accorded a certain

17. Poor quality sandy lands traditionally used by herders in the rainy season.

amount of power by Law 72-75 and then Law 96-06, meaning that the power to allocate and withdraw lands within home territories has not changed under decentralisation. As a result, entities such as the regions have no management powers over public lands, and their development projects may be blocked by *communauté rurales* if the latter do not support them. This is a double-edged sword, as regions can then respond by blocking *communauté rurale* projects, as is happening now in the region of Saint-Louis.

The local government law has not addressed the underlying issues causing conflicts between farmers and herders, ministerial departments, or natural resource users and local governments.

Although certain powers have been transferred, they have not only proved difficult to apply, but are also likely to generate conflict. Looking at the attributions of the regions, Article 28 states that regions have the power to create woods, forests and protected areas. This immediately raises the question of where to plant them! Who ever heard of regional forests?

Another potential source of conflict is park management. There has been no transfer of powers over parks as yet, and although it is not causing any problems at the moment, their management could create tensions between local governments and the State. If properly shared, the resources in these parks could act as a lever to develop protected areas. The fact that the State has ignored this issue up to now has encouraged *communautés rurales* to encroach upon these lands. There is some evidence of conflict in the parks of Djoudj and Niokolo Koba.

Communautés rurales allocate and withdraw land for agricultural purposes from both public and state lands, although they do not actually have the right to assign any part of state lands.

e) Women and land

Neither the National Land Law nor the national constitution discriminate against women with regard to access to land, which means that their marginalisation is due to the perpetuation of longstanding customary practices. However, since women and young girls are now educated at school (which was previously considered a hotbed of atheists and miscreants), it is possible that their access to land resources could soon be regulated. Senegalese women have fought to get where they are now, and many *communautés rurales* have begun to give them the recognition they are due. Few here dare forget that women constitute the largest and most cohesive electoral fringe group, or how easy it is to get on the wrong side of voters!!

4.6 Security of tenure

In addition to the fact that most *communautés rurales* know very little about conflict management, the difficulties of applying the national land law will, in the long term, also create problems with tenure security. This is something that needs to be dealt with as a matter of urgency, in order to encourage private investment.

The first objective of tenure security is to safeguard a limited and degradable resource. This involves putting in place mechanisms that will bring together all stakeholders, particularly the State, so that they can reach consensus on how this resource can be preserved.

The next step is to secure productive use, which will involve improving conditions of production. Appropriate measures in river valleys, for example, would include irrigation, drainage, enforcement of development norms and a minimum level of productive use.

This two-pronged approach to improving security should be appropriate and applicable everywhere, especially in areas where significant investments have been agreed. However, it needs to be backed up by the ongoing land reform, which will determine the legal status of land users.

In the region of Saint-Louis, the measures needed to obtain dual tenure security are formulation of a land use and development plan (*Plan d'Occupation et d'Aménagement des Sols*, POAS), a charter on irrigated lands (*Charte sur le Domaine Irrigué*, CDI), funding for infrastructure maintenance (*Fonds de Maintenance des Infrastructures*, FMI) and water development plans for Podor and the delta, to help the region adapt to the demands of sustainable irrigation.

The objective of the land use and development plan (POAS) is to provide local governments with an institutional and technical tool that will help them manage their affairs and work with other actors. This will involve everyone through a very broad participatory approach, starting at the village level and bringing together women, the young and the elderly in a completely non-discriminatory manner. Through the POAS it will be possible to:

- Clarify the situation with regard to land tenure;
- Establish and reinforce complementarity between agriculture and other economic activities in order to make them sustainable;
- Promote local democracy and enable local people to make decisions about land, then implement, monitor and evaluate them.

Having heard about the success of the POAS developed by the *communauté rurale* of Ross Béthio, several zones are currently in the process of developing their own.

The charter on irrigated lands (CDI) is a draft agreement between different public and private partners (the State, SAED[18], private bodies, SONEES[19]) regarding sustainable water and land use. In effect, this recognises the lack of overview or coherence between the legislation on land and on water (Water Law). In view of the shortcomings of both types of legislation with regard to irrigable land, the objective of the CDI is to use the official texts to develop consensual rules that will enable *communautés rurales* to set the conditions for land allocation and productive use, as well as possible sanctions for non-compliance with the rules established.

There are several points worth noting with regard to the CDI:

- The fact that the largest users are *communautés rurales*, and that the sole aim of this charter seems to be to permit them to better manage their potential land resources.
- The draft agreement is of limited legal value, and the strength of this CDI lies in its consensual nature. Therefore, it should be formulated in a participatory manner, through broad and more detailed consultations.

18. Société d'Aménagement et d'Exploitation des Terres du Delta du Fleuve Sénégal
19. Société Nationale d'Exploitation des Eaux du Sénégal

- Its application will be based on a PAOS, which should be included in the conditions for the allocation and withdrawal of lands.

The region of Saint-Louis should provide a useful (if specific) example of securing tenure.

5. RECOMMENDATIONS AND CONCLUSIONS

Farmers' living conditions have changed; some say for the better, others for the worse. However, it is hard to compare current conditions with those before and after Independence, given that globalisation did not exist before and terms of trade were not so bad, while the rules of the game were clearer because there was no cheating through backdoor subsidies. If Senegalese farmers are still largely dissatisfied, it is mainly because this supposedly priority sector has yet to deliver the benefits expected of it, despite the many millions invested. They have a point.

There are two fundamental issues that still need to be fully resolved:

The first is the longstanding refusal to accord much importance to family farming, despite the fact that this type of production is inseparable from the farmer and all his values!

It is also time to face up to certain truths. How is it that countries like Vietnam, which recently suffered so much from the effects of war, famine and shortages, can become rice exporters in less than twelve years? The answer is not complicated: it is their cultural values that have enabled them to get to this position, values that have been exploited for productive ends, and in which family values and discipline are held in high esteem. That is all we are asking for in this country.

Everything should proceed from what farmers know and control: the family. It is this unit that is the basis of everything connected with agricultural production, remotely or otherwise.

The second issue concerns land, the sole asset that farmers possess. There are real dangers with regard to land, particularly in zones of high economic potential, such as the River Senegal valley.

The land-related issues at stake create a conflict of interests between various groups, such as the state, local governments and local people. Also, different communities may have divergent interests, such as customary rights holders, other indigenous groups, non-indigenous groups that have lived in the locality for a long time and, last but not least, agri-business.

Central to land issues are the problems of sustainable agricultural development, and the preservation of soils and other related natural resources.

The traditional vision of land tenure permeates the National Land Law of 17 June 1964, which is a biased synthesis of African and Western concepts, the latter entirely centred around private property.

The hybrid character of the law, or rather, its tacit bias in favour of the community rather than the capitalist approach, seems unsuited to the requirements of a modern economy focused on maximising the profitability of production, because the significant

investments that farmers are prepared to make give them important rights over the resource.

There is limited support for two variations of the Land Action Plan currently being formulated, the status quo and the liberal option. The third, and most popular option is a middle way. There three are variants of this:

The first advocates "the transformation of public lands into local government lands"…This would enable local governments to become more involved in land management, but raises the difficulty of what is meant by government (*collectivité*) – as though decentralisation didn't raise enough problems already!

The second variation suggests that all public lands be registered in the name of the State.

The third proposes that registration is restricted to land that has been or is to be developed.

This has the advantage of avoiding a mixture of several modes of land ownership.

The second of these proposals seems the most suitable, because:

a) It makes it possible to preserve the spirit of decentralised management, which makes *communautés rurales* genuine arenas for development.
b) It allows the State to preserve the uniqueness of the law throughout the land.
c) It gives local governments the power to allocate land for ownership, rental or use, which will help broaden and facilitate access to land by both indigenous and non-indigenous people.
d) It will also limit the cost to the State of compensating landowners.

Finally, we should remember that land and water have always been factors in conflicts.

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Working Group 1

FORMALISING AND SECURING LAND RIGHTS IN AFRICA OVERVIEW

Julian Quan[20] and Camilla Toulmin[21]

1. INTRODUCTION

African land practitioners and policy makers last came together in the UK to discuss issues of land tenure, at a workshop sponsored by DFID at Sunningdale in 1999. There was then consensus among participants that secure land rights are of fundamental importance to Africa's rural poor. It was also agreed that the conventional process of formal land titling was not generally the way to secure rights and in fact risked undermining security. Consequently alternative and more decentralised approaches were needed that gave proper recognition to customary rights.

This paper revisits the arguments about how to provide land rights security in sub-Saharan Africa, examines what has changed, and reviews new experience and evidence arising from the Sunningdale conference (Toulmin and Quan, 2000). At the time, our discussions were informed by the work of Bruce and Migot Adholla (1996), Platteau (1998), analysis of land titling in Kenya, the pioneering experience of the Land Boards in Botswana, and a number of case studies commissioned from conference participants looking at experience in Uganda, Mozambique, Kenya, Niger and Côte d'Ivoire.

There was evidence in many cases that adequate security could be provided by customary tenure systems, and that attempts to introduce freehold land titles could actually undermine the land

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rights security of poor and vulnerable groups. At the same time, conventional titling programmes had proved so costly and time-consuming that in practice it would be impossible to achieve universal coverage or replace customary rights. Moreover, there was little evidence that issuing land titles led to higher rates of agricultural investment and productivity. However, customary rights are becoming increasingly more insecure. Largely unrecognised by formal law, subject to uncertainty and conflicting claims exerted through formal land allocation by the state, most customary land users have no documentation whereby rights could be protected or used as evidence to gain access credit and other services.

The need to grant formal recognition to customary land rights so as to protect and secure them is now established. This would require both legislative reforms to overcome the duality existing between the formal and informal or customary sectors, and the development of institutions to manage land rights that could link with customary systems of tenure and land management. This would likely involve some form of localised recording and documentation of rights. In practice, however, there is very little experience of doing this. Cutting-edge new land laws granting formal status to customary rights appear to offer a way forward in Mozambique (1997) and Uganda (1998), but implementation is not far advanced. Programmes in Niger and Côte d'Ivoire to document and register existing land rights with a view to eventual upgrading to title show how practical issues can be tackled. They also demonstrate some of the major challenges to be faced, such as the rights of incomers versus first settlers, the roles of chiefs in relation to local government, and how best to design hybrid institutions involving the two in new systems of land administration.

Since the Sunningdale meeting of 1999, experience with implementation has moved ahead in Uganda, Mozambique, Ethiopia, Benin, Côte d'Ivoire, and Burkina Faso. In a number of countries, land policies and laws have been passed which aim to integrate customary and formal land rights and tenure systems. The role of property rights and systems of documentation in facilitating enterprise development and economic growth has received new emphasis as a result of the work of Hernando de Soto (2000), now widely influential in government circles North and South. Information systems for mapping and land information systems have become more widely available, bringing automated cadastral systems within closer reach. New projects have been designed to pilot decentralised land registration. In some cases, such as Ghana and South Africa, traditional authorities have re-asserted their roles as managers and owners of land rights. In other cases, where land holding is highly individualised, such as Rwanda and the central highlands of Ethiopia, governments are moving towards systems for inexpensive registration of individual household rights.

Below we review,

- The context of demand for land rights security in Africa;
- The evidence relating to conventional land titling and registration processes;
- The lessons learned from land rights registration in Niger and Côte d'Ivoire;
- The broad range of responses by African nations to the challenge of formalising and securing customary rights;
- The key practical questions in designing appropriate systems for land registration, and the policy and research issues.

2. DEMAND FOR SECURE LAND RIGHTS

Securing access to land and natural resources is a matter of increasing concern for many people in Africa (Rahmato, 1999). Good quality arable land and common pool resources are becoming scarcer and more valuable due to greater market engagement, population growth, migration, changes in production systems and environmental change. Non-rural actors are also seeking to gain access to land for commercial and speculative purposes, such as urban dwellers, traders, government officials and foreign companies. Politicians at national and local level increasingly see control over land as a major asset in negotiating other forms of political allegiance. The impacts of globalisation are likely further to strip land of social constraints and turn it into a commodity to be bought and sold (Amanor, 1999).

At the same time, secure access to land remains central to rural livelihoods, social equity, sustainable use and conflict management in Africa (Bevan & Pankhurst, 1996). Claims over land generally differ according to social and economic status, such as age, wealth, gender, length of settlement and links to systems of customary authority. Customary tenure systems have proved remarkably adaptable to changing circumstances, such as increasing land scarcity and commercialisation of agricultural production. They can provide means of access to resources for groups with weaker traditional claims, such as women and young people, as well as migrants, pastoralists and other mobile groups. These secondary rights bring greater equity and flexibility within land and resource management systems (Colin, 1995). However, customary tenure systems provide no firm guarantee that the rights of poorer groups will be assured, as can be seen in a number of countries where traditional chiefs have been amongst the first to sell rights over what their kin would consider to be 'family land' (Woodhouse et al., 2000; Amanor, 1999). Indeed, the notion of 'customary' chiefdom is increasingly contested by those who argue that many of the prerogatives claimed were a convenient colonial invention (Olivier de Sardan, 1984; Berry, 1993).

Rural producers throughout Africa are seeking to strengthen their claims over land, using both customary and more formal means to establish their claims. This may involve planting trees or making other visible investments (Platteau, 2000; Coulibaly and Hilhorst, 1994). It may equally follow a path towards more formal, 'modern' methods, such as seeking to register holdings and record transactions on paper, even when these are not legally recognised (Edja, 2001; Amanor, 2001). So far as natural resources are concerned, the use of village management plans and local by-laws, often drawn up with the help of projects, NGOs or government structures, is becoming widespread in attempts to secure common property rights (Hesse and Trench, 2000; Hilhorst and Coulibaly, 1998; Shitarek et al., 2001).

3. LAND REGISTRATION AND TITLING

Land registration is a system of documenting land rights that can take various forms, from a centralised system of land titles to a village-based register of claims to land. In practice, land registration is generally associated with the process of issuing formal land titles. There are other forms of land registration that record existing statutory and customary rights to land, but these processes may confer less security.

Land registration systems can vary greatly in their level of sophistication and cost, the means used to check the legitimacy of rights claimed by the registering party, accessibility of the process to different rights-holders, and administrative responsibility for the procedures. Most registration systems combine both a plan or survey map of the land in question, with a written document specifying the name of the rights holder and nature of the rights held. The design of the process for registering land rights has important implications for its effectiveness, in terms of distributional impacts, speed of operation and cost of issue and maintenance.

Freehold titling

Freehold title provides secure, exclusive and freely transferable private property rights guaranteed by the state, and is generally considered to be strongest form of tenure. There has been relatively little freehold titling of land in Africa outside the former "white settler" economies of southern Africa. In other parts of Africa, and even within many urban areas, the coverage of formal land administration systems is extremely thin. In West and Central Africa, it is estimated that less than 5% of the land area has any form of paper documentation. The small share of registered land is located in urban areas or areas where irrigation or other schemes have been established. Until the 1990s, however, the conventional wisdom among both governments and donors was that comprehensive land titling was a desirable means of introducing unambiguous individual property rights to land, according to the model used in developed countries, to replace the uncertainties of customary tenure and create the basis for development of a land market. There have been several programmes aimed at registering land rights, such as the Rural Land Plans (*Plan Foncier Rural*) in Benin and Côte d'Ivoire, and titling by the Land Commissions in Niger. Various lessons have been learned from these experiences with regard to the high level of demand from rural dwellers in areas covered by such pilot projects to get their land rights registered, the very slow and costly process of issuing titles associated with current systems, and the uncertainty created by pilot schemes when the underlying legislation securing such rights is not in place.

Arguments in favour of registering title to land have been put forward for many years. They normally involve reference to the following perceived benefits (Quan, 2000):

- More efficient use of land, because disincentives to invest in its longer-term management and productivity will be removed once title has been granted;
- Land transfers from less to more dynamic farmers and consolidation into larger holdings;
- Greatly reduced transaction costs, increased land transactions and the development of land markets;
- Farmers better able to raise loans to invest in improving their land, since they can use the title as collateral with financial institutions;
- Governments provided with information on landholdings that subsequently can be used to develop a system of property taxes.

Replacement of customary tenure in Africa by systems of private property rights based on individual land titles was once regarded as an essential step to promote economic growth. However, a number of fundamental obstacles exist in African systems of landholding.

Firstly, many African nations have nationalised land, and land rights are ultimately vested

in the state. Secondly, whether or not land rights are formally vested in the state, in practice they are widely derived from historical occupation of designated areas by specific peoples and kinship groups. These principles restrict the transferability of land, particularly its permanent alienation outside the customary group, thereby restricting the development of freehold land markets. Thirdly, African land holding is frequently characterised by complex, overlapping sets of individual and collective rights, including secondary rights created through customary transactions and inheritance. This restricts the practical extent to which land rights can be individualised without undermining a range of other rights that are socially legitimate. These problems are reflected in the range of difficulties experienced by land titling and registration programmes, which are discussed below.

As a result of this experience, and through better understanding of the durability and adaptability of customary tenure systems, many African countries have sought to formalise customary rights through the issue of customary titles or certificates. Where people are granted secure, inheritable and transferable (even with certain restrictions on permanent transfer outside the group) rights of occupancy and use in perpetuity, backed by formal documentation, these rights are more or less equivalent to freehold title. Nevertheless, depending on how it is pursued, the formal registration of customary land rights may face many of the same difficulties as conventional titling processes.

Land registration programmes in practice

Most land registration programmes in Africa to date have been designed to support programmes of land titling. However, the evidence from research would suggest that many of the benefits expected to arise do not accrue automatically from land registration and titling and, in some circumstances, the impacts may be the converse of those anticipated (Platteau, 2000). Only in certain circumstances does the formal registration of land rights seem to make sense – such as where customary systems have become extinct, where major tensions exist between different groups which cannot be handled by local conflict management institutions, in resettlement or newly settled areas, and in areas of high value land, such as urban and peri-urban areas where competition for land is fierce (Bruce & Migot-Adholla, 1994; IIED, 1999). While land registration is often proposed as a means of reducing disputes, the introduction of central registration systems seems, if anything, to exacerbate disputes by introducing added areas of uncertainty (Atwood, 1990; Chauveau et al., 1998; Lund, 1998). Thus, for example, elite groups aware of impending registration may seek to assert claims over lands that were not theirs under customary law. The mass of people without access to education, information and contacts may find that the land they thought was theirs has been registered by someone else. Where there are significant costs to registration, in cash, time and transport, smallholders are particularly vulnerable to losing their rights over land (Platteau, 2000). Moreover, registration tends to penalise holders of secondary land rights, such as women and herders, as these rights often do not appear in the land register and are thus expropriated.

Registration may not be enough to improve access by smallholders to credit since high transaction and other costs hinder credit supply in rural areas. Small farmers are generally not considered a good credit risk by formal financial institutions, whether or not their land is titled, since their plots are not readily marketable in practice (Shipton, 1988), and an unpredictable, fluctuating environment makes farmers risk-averse and hence reluctant to apply for loans.

Finally, where monetary and other costs for registering land transactions are high, land transfers tend not to be recorded. This means that the register rapidly becomes outdated, limiting the potentially positive effects of registration (Shipton, 1988; Atwood, 1990; Migot-Adholla et al., 1994; Lund, 1998; Firmin-Sellers & Sellers 1999; Platteau, 2000). As for incentives to invest, tenure security is largely dependent on the right-holder's own perception. Where farmers consider their rights under customary law as sufficiently secure, registration may not result in higher investment.

On the other hand, research has shown that perceived tenure security may be increased through simpler means than fully-fledged titling procedures. For instance, in Cameroon, where land can be registered under the 1974 Land Ordinance, very few non-urban plots have been registered. Many farmers initiated the registration procedure only to abandon it after the preliminary boundary demarcation phase. Demarcation had no legal value in itself, but it did increase tenure security in the eyes of village communities, as it was extremely unlikely that land rights that had received this initial form of official recognition would be contested by other villagers (Firmin-Sellers & Sellers, 1999).

As a result of recent research pointing out the shortcomings of titling, institutions like the World Bank, previously a vocal advocate of land titling, are now more cautious, recognising that it may not be appropriate in many circumstances (Deininger, 2003; Quan, 2000).

Even strong advocates of the registration of claims to land recognise the need to base the formalisation of rights on community-based procedures that are considered legitimate by local people (de Soto, 2000). Hence, much recent work has examined actual practice in rights registration, and the emergence of the many ways in which people seek to strengthen their claims over land, even where these are not formally recognised by government as constituting a legal title to land (Lund, 2000; Lavigne and Mathieu, 1999; Lavigne *et al*, 2002).

BOX 3: TITLING OF LAND IN GHANA

The Land Title Registration Law of 1986 provides for the registration of all interests in land – under customary and common law. It also provides that land held by stools, skins and families should be registered in the name of the corporate group. However, the registration scheme has, as yet, only been implemented in the urban centres of Accra, Tema and parts of Kumasi. The Land Registry has been able to process less than half the number of applications made in 2000, and has had a negligible impact since its introduction over a decade ago. Its failure has been attributed to several defects in design and implementation, including inadequate funding and human resources, the uncoordinated nature of the process, and the registration of individual interests in areas of continuing dispute. Furthermore, because insufficient time is taken to publicise these processes, some potential claimants are unaware of them and are therefore failing to register their interests.

As a result of these difficulties Ghana is now experimenting with a new approach, the Land Administration Programme (LAP), which is supported by the World Bank and other donors. The aim is to modernise and consolidate Ghanaian land institutions and develop the role of Customary Land Secretariats in land administration at the local level, acting as land custodians in rural and peri-urban areas.

Sources: Kasanga & Kotey, 2001; Toulmin, Brown and Crook, 2003.

4. REGISTERING LAND RIGHTS IN NIGER AND CÔTE D'IVOIRE

Several West and Central African countries are in the process of registering land rights at both individual and community levels. Two have been chosen for discussion here because of their relatively well-documented approach. In each case, establishing a register of individual plots is seen as a means of providing greater security to land users, reducing conflict and thereby encouraging further investment in managing and improving the land in question. These registers also allow governments to identify more clearly where land is potentially available for other uses, and provide a means by which it can be acquired and transferred.

Côte d'Ivoire and Niger have adopted different approaches to the registration of land rights. Both involve drawing up a map and register of the relevant area to identify the site of the holding, the rights holders and the nature of rights held by different claimants. But in Côte d'Ivoire, the rights registered by the Plan Foncier Rural (PFR) do not constitute a claim to ownership, and must be transformed within three years of registration to become a fully legal title of property.[22] In Niger, the certificate granted by the Land Commissions constitutes a title of 'ownership'. Both countries piloted a system to test out the tools and approach as the basis for an eventual nationwide programme: in Côte d'Ivoire the PFR involved systematic, village-by-village coverage of all rights holders, while registration in Niger is done at the request of the land user. Despite these differences, a number of similar issues and lessons have emerged from both countries, which are outlined below.

Generating insecurity. Rather than increasing security, the process of registering customary rights may generate increased uncertainty and stir up dormant conflicts (Stamm, 2000). While reports of the PFR process in operation speak of an absence of open dispute when land is being registered, it is likely that outstanding conflicts were sorted out prior to the team's arrival (Okoin, 1999; Chauveau et al., 1998). The conjunction of the new law of 1998 and implementation of the PFR in Côte d'Ivoire seems to have opened up considerable uncertainty regarding the rights of migrant populations, since non-Ivorian people no longer have the right to hold land. The land issue lies at the heart of political tensions between incomers and local people, fuelling the current civil war, and there have been many incidents of local farmers seizing lands that migrant settlers had planted with perennial crops. The registration process can also act as a means for certain people or groups to get their rights re-interpreted in ways that allow them to exclude others.

Simplification of complex rights. Programmes aimed at providing written title to land have been widely criticised for their damaging impacts on many groups, due to the simplification of rights that may occur through these titling activities, and the very skewed abilities of different groups to take advantage of such opportunities. Typically, the people who benefit are those with the right contacts, a high level of education and income to acquire titles. The rights to a piece of land are frequently complex, largely

22. It was originally intended that land users would be given a piece of paper with their plot marked on it, providing confirmation of their occupation as tenant or landowner. However, this option was dropped early on due to worries among indigenous landowners that tenants might take these pieces of paper as guaranteeing firm rights to the land. Subsequent legislation in Côte d'Ivoire has sidelined the PFR approach and civil conflict has brought the registration process to a halt.

dependent on the nature of the relationship between the land owner and user, and subject to renegotiation over time as conditions change and new opportunities develop. However, the process of registration demands that rights be simplified in ways that mean they then lose many of their most important elements, as well as their ability to evolve over time.

Time pressures within a long-term process. Clarifying the relationships through which people gain access to land and other resources is a very long process, as noted with regard to Niger (Yacouba, 1999). It takes a considerable amount of time to investigate the complex, overlapping claims of different individuals and groups, particularly in areas that have accommodated significant numbers of migrants. It also takes time to establish the legitimacy of new institutions with the different parties concerned, so that people understand how they work and are willing to abide by the decisions made. Yet complex issues may be treated with undue haste because programmes to register rights are often under pressure to work speedily and meet certain targets.

The financial implications of registration. Money is needed to establish and maintain land registers. Estimates from Niger suggest that the annual cost of running a Land Commission is around 40 million francs CFA (equivalent to US$ 64,000), with the rough cost per plot of approximately 1,000 francs CFA (US$1.60) (Yacouba, 1999). The overall cost of the PFR project in Côte d'Ivoire to the end of 1998 was estimated at 3,447 million francs CFA (equivalent to US$ 5.5 million), an average cost of 4,700 francs CFA per hectare (Okoin, 1999). Although much less expensive than establishing a full-scale cadastral survey, these sums are considerable. The registration process could be funded by charging land rights holders, but there is a danger that this will exclude poorer farmers from the process. Another alternative is to seek funding from Western donors, although this can result in countries accepting programmes that fit the views of the donor, are not entirely appropriate to their needs, and which may also require loans that ultimately have to be repaid.

The ambivalent role of customary chiefs. In Niger, there is continued reliance on the administration of justice by the customary authorities (mainly canton and village chiefs), to whom land disputes are brought for reconciliation. As the state only pays them a minimal salary, they have a vested interest in arbitrating conflicts and imposing fines, to the point where they may even actively provoke disputes (Yacouba, 1999). Previous attempts at progressive land legislation in Niger failed due to the opposition of customary chiefs, who held around 60% of the seats in the National Assembly. The latest attempt is proving more successful because the association of traditional chiefs has been involved in all stages of the process, while the new law has established the right of chiefs to be members of the Land Commissions. However, because the Land Commissions are very slow in issuing titles, traditional chiefs are filling the administrative vacuum and providing their own documents and authentication of land transactions – for a fee.[23]

23. While customary chiefs are a particular focus of concern because of the considerable powers they are often able to retain, local government administrators may also be tempted by the potential financial benefits to be derived from mediating between conflicting groups.

5. RESPONSES TO THE CHALLENGE OF SECURING CUSTOMARY RIGHTS

Since the mid 1990s African nations have developed a range of responses to the challenge of formalising and securing customary land rights. These approaches are not mutually exclusive and can be combined in various ways, with different elements assuming greater prominence according to the circumstances. The main approaches and examples are summarised below:

Legal protection of legitimate customary rights: One option is for the law to protect customary rights that are considered socially legitimate, independently of any specific registration or documentation process. This has been done under the South African Constitution and the 1997 Land Law in Mozambique, while other countries, such as Rwanda and Malawi, have developed land policies that imply the need for similar legislation. Although formal registration of rights is not required, some sort of quasi-judicial system is needed to resolve land disputes. Informal, alternative systems based on customary justice systems tend to be more appropriate, in that vulnerable groups whose rights may need the most protection have limited access to the formal courts. Mozambique has introduced a system of land tribunals in which oral evidence, such as the testimony of neighbours and elders, is acceptable alongside documentary evidence. There are powerful arguments supporting the view that land rights for the poor are better secured by investing in systems for conflict resolution and access to justice than through technical procedures to register land rights.

Community or corporate land demarcation: A number of countries have made provision for corporate land holding by local communities, which are represented by traditional authority institutions, as in Ghana, newly created legal bodies such as communal property or land associations, or trusts, as in South Africa and Uganda, village assemblies, in Tanzania or, as in Mozambique, a broad and flexible definition of "the local community". A first step usually involves demarcation and mapping of the boundary of lands pertaining to these groups. The collective rights of the group in question can be subsequently entered into a land register, conferring a degree of formal protection on the rights of members, which would take much longer to document on an individual basis. A final step might be to issue some form of title to the corporate body or make a detailed inventory of specific rights held by members in a decentralised land registry. The group then decides how household and individual land rights should be managed, whether under established customary arrangements, procedures established by legislation, or through the constitution of the corporate group. The LAP in Ghana and land policy implementation plans in Malawi view the demarcation of traditional land management areas as a necessary first step in an incremental process of developing local land administration systems and constructing a comprehensive national cadastre, which might eventually include rights to individual plots.

Devolution of responsibility to collective bodies or traditional authorities: Community or corporate land demarcation is usually associated with the devolution of responsibility for land administration to a village, local community or traditional authority structure. This relieves central land administration institutions of the responsibility for registering land rights at local level, something they generally lack the

capacity to do. Ghana is planning to introduce Customary Land Secretariats, which will operate as the lowest tier of land administration under the aegis of the traditional authority, with the backing and support of the formal land administration system. Another option, planned in Malawi and recently introduced in Niger, is to establish a system of village land commissions in which traditional chiefs are represented together with elected members of the community. These bodies are responsible for considering and publicising requests for land, providing adjudication of disputed claims when necessary, maintaining a village land register, and witnessing the various types of local transactions such as rental, loans, pledges, gifts and mortgages. This type of approach seems to be reasonably simple, inexpensive and accessible to all community members (Lund, 2000b). It can provide a framework that enables people to upgrade to certificates of title through the formal land registration system, allowing them to gain access to credit or, if community rules permit, enter into land transactions with outsiders. In Niger the local process is linked to the formal land registration process through higher-level land commissions. The general procedures for local land registration systems like this need to be set by national land policy and legislation that confer authority on the elected body, although it would also be sensible to pilot local approaches before prescribing detailed regulations.

Land registration by local government: A related approach is the development of decentralised land registries by local government, usually at district level. This is more likely to be appropriate in cases such as Rwanda and the central highlands of Ethiopia, where land holding is already highly individualised and where, although tenure is subject to customary rules and practice, traditional authority figures are largely absent. Tigray provides an example of land use registration at the lowest level of local government, the *tabia*. Another variant of this approach is seen in Botswana, which introduced District Land Boards composed of government officials, traditional authorities and community stakeholders. These Boards are linked to the machinery of local government, and have overall responsibility for land allocation and management, maintaining a land register and issuing certificates of title or customary rights. There are considerable costs involved in setting up district land registries or land boards, and they need support from village-level systems. In Uganda the 1998 Land Act created a complex hierarchy of Land Board and lower level bodies intended to register customary rights. This proved very difficult to resource, creating a temporary vacuum that rendered rights insecure until the system became operational. Rwanda urgently needs to develop a system to improve tenure security and provide documentation for credit purposes, in response to diminishing agricultural productivity, land fragmentation and rising number of informal transactions and land disputes caused by severe population pressure. Proposals have been developed for a system that will use high resolution maps derived from aerial photography as the basis for land rights documentation and land use planning at the lowest levels of local government. Locally documented rights would subsequently be registered at district level as resources become available.

6. PRACTICAL, POLICY AND RESEARCH ISSUES

Many Africans, rich and poor, are seeking to document their rights to land through various informal procedures as a means of making their tenure more secure. This

implies a clear interest in the registration of land claims in many areas. However, formal titling programmes have run into considerable problems due to their cost, slow delivery, over-simplification of complex rights and inaccessibility to poorer groups. Given the emergence of informal registration activities, governments need to consider how best to build on and legitimise this evolution in local practice. Titling programmes might do well to follow a phased approach, starting by focusing on priority areas and experimenting with a range of different models in the design of titling programmes. Locally based systems have many advantages over centralised cadastral systems, as they are more accessible, less expensive and easier to maintain.

If land registration and titling programmes are to meet their objectives and help secure the rights of poor and rich alike, attention to their design is critical. Key characteristics of a system designed to serve the poor include accessibility, cost, location, procedures for checking the legitimacy of the claims presented, language, and use of local terms to describe the rights being recorded. These characteristics are best guaranteed by strengthening intra- or inter-village institutions. If these bodies are to work effectively, they need to be carefully conceived, supported and trained to ensure a transparent process is followed. This will require the definition of clear principles by government to guide their activities, and monitoring to ensure that local bodies behave in an accountable manner.

A great deal of experimentation in land rights documentation and management is under way in Africa, through government programmes and as a result of spontaneous initiatives at the local level. There are many lessons to be learned, which will require further resources for monitoring, research and the development of systems for good practice.

Key issues for research and monitoring are:

- How the design of land registration processes and governance of the institutions responsible for its management affect the distribution of land rights;
- How to develop land registration procedures that systematically address the risk of bias against poorer and more marginal groups, by considering location, technology, registration fees, language used, recognition of secondary rights, etc;
- What types of mechanisms for formalising customary rights and securing land rights in general are appropriate for different social groups, contexts and circumstances?
- Given the potentially high and recurrent costs of extensive land registration, how can it be made cost effective in terms of the investment made and the outcomes for livelihood opportunities, economic development and reduced social conflict?

There are a host of subsidiary issues for monitoring and investigation that will help us understand and promote good practice in securing land rights. These include:

- How is land being registered, by which institutions and at what level?
- Where this is being done at village level, what are the rules and procedures on which registration is based, and who draws them up? What are the variations in land administration practice between villages?
- When land is registered, how are boundaries demarcated on the ground and when recording rights, what forms of technology are used (paper, maps, aerial photos, GPS, etc.)?

- Where are these forms of registration stored, in what language, and how accessible are they to the general public? Is local terminology used to describe the rights concerned?
- How do formal processes of rights registration interact with informal processes for securing rights (social relations, paper contracts, etc.)?
- How do local land institutions deal with disputes? What political and legislative framework governs their actions? How is accountability to a broad constituency assured?
- Who is seeking to register their land rights, and why? Are some groups more eager to do so than others?
- Which groups are the winners and losers in this process? What happens to the claims of weaker groups in society? What means do they have of making their voices heard, locally and at higher levels? Do they have the means to protect themselves against unjustified claims on their assets?
- What happens to secondary rights as a result of registration? Are they recognised, and in what terms?
- In what way can collective rights, such as access to grazing land, wetlands or woodlands be secured? Do legal texts and documentation systems allow for the registration of collective rights? How should the registration of collective and individual rights be sequenced?
- Have special precautions been taken to ensure equitable access to the registration process, such as cost, language used, place of registration? Has this made a practical difference in terms of access?
- How accessible are land registration processes to women? Is land registered in the names of both spouses, and can women register land in their own right?
- Are the land rights and interests of minors and vulnerable family members protected, especially in the context of HIV/AIDS?

There are many important questions to be addressed and experience exchanged to encourage more secure land rights for Africa's smallholder farmers.

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Working Group 2

GENDER, LAND RIGHTS AND INHERITANCE SECURING WOMEN'S LAND RIGHTS: APPROACHES, PROSPECTS AND CHALLENGES

Dzodzi Tsikata[31]

1. INTRODUCTION

This paper touches on some of the issues raised in the literature about women's land interests and inheritance rights. Also discussed are the debates and approaches emerging in the context of ongoing land tenure reforms in countries such as Ghana, Uganda and Tanzania, as well as the prospects for securing women's land rights. I also attempt to tackle, in some cases tangentially, some of the questions raised by the conference organisers for our deliberation, namely:

- How to translate constitutional provisions into reality at the ground level?
- Will increased security for women translate into increased agricultural investment and outputs?
- Is joint registration of land rights an effective means of strengthening the position of women?
- What complementary measures might strengthen women's rights of access to land?
- How best to ensure the representation of women in new decentralised bodies?

This paper draws heavily on a joint article written with Anne Whitehead on policy discourses on land tenure; also on my account

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of the Tanzanian land tenure system and ongoing research and writing on gender and land tenure issues in Ghana.

My paper starts with a discussion of the issues involved in women's land interests and inheritance. This is followed by a discussion of recent land tenure reforms in several African countries, and a review of the debate among gender justice activists about how certain related issues should be addressed, particularly the problem of customary law and land titling and registration and statutory law.

2. WHAT EXACTLY IS THE PROBLEM?

Women's land interests have to be seen in the broader context of land tenure issues. Land-related problems in sub-Saharan Africa include increasing land concentration and scarcity, which is more or less acute in various countries and locations, competition over land use, and environmental and land degradation. Growing indiscipline in land markets, indeterminate boundaries of customarily held lands, weak land administration systems and lack of equity in land tenure systems also need to be taken into account, as does the complicated impact of legal pluralism on land tenure systems. All these problems vary within and between countries, in ways that I will not detail here.

The colonial and post-colonial processes and policies that directly and indirectly shaped land tenure and related problems have also influenced women's interests. Anthropological work on this issue has tended to argue that women did have some significant interests under customary land tenure, and that these have been eroded by agrarian change and predominantly male out-migration, as well as colonial and post-colonial processes and policies such as the codification of customary law. While various factors affected the outcomes of these processes and their implications for women's interests in land and other resources, it has been the judgement of commentators that in the main, women were adversely affected by theses changes, although not in a simple linear fashion (Mbilinyi, 1997; Odgaard, 1997).

Post-colonial policies have tended not to address the core land tenure problems of access and equity. More recently, policies under the Structural Adjustment Programme have resulted in a massive expansion of mining, commercial farming, industry and real estate. In urban areas, the expansion of private and state housing has created many problems, as the buying and selling of land has resulted in increasing land concentration, numerous land conflicts and much litigation.

Growing differentiation in land control and questions of access and equity are important issues in all these matters. A combination of state policies and agrarian change has created various forms of differentiation that have had an impact on land relations. Processes of differentiation, the individualisation of land rights and land shortages have resulted in land increasingly being concentrated in male hands, and the emergence of reports from several countries that the inheritance rights of daughters are being contested and eroded (Odgaard, 1997). On the other hand, the growing incidence of divorce, single parenthood, male labour migration and increased opportunities for formal education mean that more women have had to take responsibility for family members in the countryside. As a result, many fathers are supporting their daughters' claims, thereby underlining the argument that inheritance goes with responsibility for

the welfare of the living (Odgaard, 1999; Omari & Shaidi, 1992; Lusugga & Hidaya, 1996).

Part of the problem is that women's rights have been determined by their status at various stages in their lives, and the changing rights and obligations afforded them as girls, married women and widows within different (natal and marital) communities. These differ from the more established and abiding rights enjoyed by men as members of one community. As clan and family elders and village leaders, men are also often in sole charge of decisions regarding the allocation and disposal of land.

Despite these processes of erosion, some practices have been identified as reducing women's insecurity of tenure. Women have also made their own efforts to safeguard their rights through recourse to favourable traditional practices and, less commonly, to legal processes. Such practices include the institution of female husbands and the distribution of land to children during the parents' lifetime as a social security device. Village authorities are also reported to be supportive of daughters' claims, although the courts have a taken a more ambivalent attitude (Mbilinyi, 1999; Amanor, 2001; Butegwa, 1996).

As their inheritance rights have been eroded, marriage has become the most important source of farmland for women. The interests of spouses in each other's lineage land are quite well established and offer some measure of tenure security, although claims on land acquired through marriage are often weaker than those on land acquired through family membership. Furthermore, access to a husband's land depends on marital residence, the continued existence of the marriage, the goodwill of the spouse and the amount of land to which he is entitled. Situations of marital conflict or divorce render a wife's interest in land belonging to her husband even less secure; if she returns to her family compound, she loses out on the land she farmed and developed during the marriage because customary law does not recognise marital property or non-monetary contributions to the acquisition of property during marriage. Widows may benefit from their children's inheritance, but the fact that they cannot inherit property from their husband increases their social vulnerability and poverty. These changes in land tenure systems are occurring despite the constitutional provisions across sub-Saharan Africa protecting women's land rights.

3. LAND TENURE REFORMS

Land tenure reform has been undertaken recently or is under way in a number of countries, including Tanzania, Uganda, Malawi, Côte d'Ivoire, Niger, Ghana and Zimbabwe. International donors have been heavily involved in the design of these reforms, and in many countries government proposals have sparked considerable NGO and civil society activity around land issues, which has been picked up and commented on by international NGOs. These reforms typically involve the titling and registration of land and legislative and institutional reform, prompting concern in several countries that they could increase tenure insecurity among groups whose interests in land are already not very secure, such as women, tenants, pastoralists and young people. In countries such as Uganda and Tanzania, this has resulted in advocacy to ensure that the reforms address some of the concerns expressed by women.

In addition to uncontroversial demands regarding joint registration of land titles and the representation of women on land boards and other adjudicative structures, these reforms have generated debate on questions such as the role of customary law, the use of legislation and the courts to secure women's interests, and whether women's demands should tackle the broader problem of the overall thrust of approaches to land reform. It is to some of these issues that we now turn.

Customary law

The issue of customary law has arisen within the debate on land reform for two reasons. Firstly, because the majority of feminist scholars believe that customary land law has not favoured women; and secondly, because these reforms are taking place in a context of a positive re-evaluation of customary land tenure. Recent policy discussions have emphasised the importance of building on customary systems rather than breaking with them. The World Bank and local intellectuals believe that allowing customary systems to evolve will deliver land markets and efficient land allocation in a cost-effective and trouble-free manner. However, this analysis tends to ignore the equity issues in the outcome of this evolution. Not surprisingly, most land reform programmes only tackle customary law in very specific terms, such as making provisions to protect women as occupants of customary held lands. This positive re-evaluation of customary systems raises the question of what we know about how customary processes actually work. Although there is agreement that such systems are historically constructed in form and content, are flexible and embedded in local social relations, and that conflicting claims are negotiated on the basis of a series of principles rather than a series of rules, more still needs to be known about customary land tenure institutions within the modern nation state (Okoth-Ogendo, 2000). To explore some of the issues raised by the actual operation of customary laws, we will briefly explore legal pluralism and the politics of the customary.

Recent local level studies, especially those undertaken by gender specialists and feminists, have shown that the empirical relationship between statutory and customary law is much closer than was previously realised. The legal centrist model of separation does not hold true, even for law enforcement officers. In reality, statutory and customary law systems are interconnected, and ordinary citizens (male and female) use arguments from both systems to sustain their claims to resources, with concepts and objectives from one system seeming to slip quite easily into the other (Stewart 1998, and Griffiths, 2001). A more appropriate model of legal pluralism would see them as mutually constitutive.

Apart from the content of a set of interests, the processes by which interests and claims are made and secured are also critical. These decision-making processes and negotiations, and their intersection with rural power relations, can be a major constraint to customary systems delivering gender justice. Land claims are socially embedded, not only in the sense that the network of social relations gives rise to interlinked claims and obligations, but also in that the processes of allocation and adjudication are themselves socially embedded (Mackenzie's study of a Kikuyu area in Kenya, 1993). This point also applies to titling and registration, according to the argument that once registered titles become an issue, local social relations emerge more

clearly as sites of gender power in which women are no longer simply passive victims, but are able to negotiate, bargain and challenge, sometimes successfully.

On the other hand, a case study from Uganda (S. Kigesi) suggests that women's claims to land will not be protected in the face of economic change if local level systems are simply left to muddle along. Their lack of voice may not have affected women's access to land in situations where land was abundant and tenure not such an issue, but played out in a modern context of evolving individualised ownership, the unequal power relations in rural societies are the mechanism by which women lose their claims to land. This implies that leaving customary rural systems to muddle along will only widen the gap between men's and women's access to land. Change must be consciously managed in order to bring about greater gender justice in resource allocation for rural women.

The use of the term "customary law" has been challenged on a number of grounds: because it suggests an unchanging, timeless entity, because it is used in the context of Structural Adjustment Programmes to legitimise marketisation and liberalisation, because it masks contemporary power relations, and because it is used to justify inequalities. Thus, as institutions, as social relations and as discourses, customary practices generally allow men more power than women, although the extent of economic and political inequality varies greatly within and between rural African societies. Even the most egalitarian societies have been shown to contain significant relations of inequality based on gender and generation.

Constitutions, statutory law, titling and registration

Constitutional provisions provide an important justification for trying to improve women's interests in the context of reform. How the constitution is used largely depends on which strategies a country adopts to secure women's rights. However, constitutional provisions themselves require scrutiny, while the processes that challenge the constitutionality of laws and practices or re-examine the constitution itself in the light of its principles raise questions about the use of the courts and state processes. Certain feminist lawyers have highlighted critical limitations in the use of law to produce gender equity. Firstly, there is the problem of access. The point made time and again about women's distance from legal processes and their inability to access the courts is underlined by the publicity given to the few who do go to the courts. While Wambui Otieno and Unity Dow are "household names" in international and African feminist circles, repeatedly cited by academics commenting on women and the law in Africa, it is important to remember that they are a tiny minority. There is also the question of the legitimacy of local level legal forums. Women have been reported as saying that they need ways of resolving disputes that are accepted by male relatives and members of the community (Odgaad, 2000; Leonard & Toulmin, 2000).

Another limitation is the fact that formal legal cultures and institutions are not women-friendly, despite their supposed impartiality and neutrality. Worldwide, women and feminist lawyers have exposed gender bias in legal cultures and the law, criticising not just lawmakers and legal practitioners, but many legal concepts. One of the paradoxical features of Africa's legal cultures and law is that some of the gender bias in formal law arises precisely from the construction of "lawyers' customary law". Moreover, women's claims under the modern legal systems of African states are undermined when men

argue that their positions are contrary to "custom". Feminist lawyers and female litigants are left with little room for manoeuvre when the language of custom is used politically in national level discourses to undermine the legitimacy of women's claims to rights within modern legal frameworks (Stewart, 1996).

A final limitation of the law is that some of the tenets of the formal discourses of law and legality, such as formal equality and individual rights, do not sit easily with customary practices that are embedded in social relations. Furthermore, those principles, when applied to conflict adjudication or law making, may lead to outcomes that ignore social relations. This is particularly important when we consider that both the World Bank Land Policy Division and independent land policy advocates are making a case for codification, and that the World Bank is currently involved in several pilot codification projects. Whether codification can (or under which circumstances it will) protect women's socially embedded land claims is one of the issues currently being debated by women's groups in Zimbabwe (Whitehead, 2001b).

Women in Africa have many reasons to be disillusioned with the state. Many countries have a history of resisting women's demands, and there is a poor record of women's participation in government and politics at national and local levels. Recent manoeuvring around Uganda's new land legislation is instructive on several counts. Highly effective lobbying and alliance building strategies by Ugandan women's groups and lawyers resulted in a spousal co-ownership clause being included in the draft land legislation, but despite assurances that this clause would be passed, the final late-night parliamentary sittings passed the new land law without it, and to this day it has still not been reinstated.

However, the dangers that we have identified in the shift towards customary systems suggest that, as Stewart pointed out (1996), we should not ignore the state as a source of equity for women in relation to land issues. Rural African women will not find it any easier to make claims in a climate of anti-state discourses. While it is true that many African states lack legitimacy, and that women find it difficult to get justice in male-dominated states, the answer lies not in flight to the customary, but in democratic reform and state accountability, particularly with respect to women's political interests and voices.

Given the foregoing discussion about customary and statutory laws, it has been argued that the issue facing women, in terms of law and their rights, is not whether to choose statutory or customary law, but how to maximise their claims under either, or both (Stewart, 1996). The question for gender policy advocates is what stance on the issue of the complex relationship between the customary and the statutory – as discourses and practices – can best underwrite these claims.

The main problem is that women have too little political voice at every level of decision-making related to land issues: in local level management systems, in formal law and also within government and civil society itself. Indigenous institutions are open to potential abuses of power, while the operation of "new" or "modified" institutions does not take place in a vacuum, but depends on the way in which local and indeed national power relations feed into the new structures. Moving to community-based management and dispute settlement systems does not necessarily undermine these power relations.

However, the potential for making new or modified local level institutions a site of greater gender equity is noted in a recent study by Odanga-Mwaka. She found that Masaka Resistance Council courts were rather more progressive on gender issues than other local legal forums. She attributes this firstly to the stipulation that one third of their members should be women, and secondly to the position adopted on gender issues by the Museveni government. There needs to be explicit discussion about how new functions for existing local level institutions or new local level land management systems will ensure that women's land use claims are not systematically undermined.

4. WILL WOMEN'S LAND RIGHTS RESULT IN EFFICIENCY?

Some feminists have argued that African governments cannot afford not to utilise all available resources to tackle the serious problems facing their economies, and therefore need to put other incentives in place to ensure equitable access to land. They claim that one such incentive would be to promote a more gender-neutral system of land ownership and control, so that women, who are the lynchpin of smallholder agriculture, can have the power to make production choices. Without this, many women are unable or unwilling to risk investing in long-term agricultural ventures or grow cash crops (Butegwa, ibid, p. 46; see also Himonga & Munachonga, 1991, pp. 60-61; Karanja, 1991; and Knowles, 1991). There is no empirical proof establishing this issue of efficiency, which is itself contested in social science, particularly in livelihoods approaches. Until such time that it is proven, a more reasonable strategy would seem to be to focus on issues of equity and discrimination, and to rewrite the rules of customary law.

5. THE BROADER CONTEXT OF LAND REFORMS

Discussions around women's interests in the context of land reforms have raised the issue of the breadth and depth of approaches to women's interests in land: whether to focus solely on gender equality, or whether more general issues that could undermine women's gains should also be taken into account. The implication here is that law reforms have to be judged by multiple criteria, and that women's interests are best served by simultaneously addressing broader local and community interests as well as gender discrimination. Within such an approach, commentators have suggested that the Land Acts of Tanzania have been a setback for local communities, despite what women have gained. As Mbilinyi notes, "the irony is that whereas women's rights to land e.g. as wives seem to be protected under the new Village Land Law, their rights as members of communities are at risk given the liberalisation principles and the administrative structure established" (Mbilinyi, 1999, p. 5). Similar concerns have been voiced regarding the land tenure reforms in Ghana, in that, as conceived, they are likely to hurt the interests of groups with insecure land interests (Alden Wily & Hammond, 2001).

Not all women's advocates share this dim view of liberalisation. Some of the most influential groups in the GTLF supported the liberalisation of land markets, land titling and registration, on the grounds that it creates opportunities for women to purchase land on their own account and have it registered in their own name, to be inherited by their descendants.

6. CONCLUSION

While there is agreement that women face specific challenges when trying to secure their land interests, there is continued debate about how to achieve this security. These disagreements stem from the varied and contextually specific concepts and acceptable standards of access to land. There are different views on the use of the various approaches or strategies to secure land access for women, for example, whether it is better to focus on women's rights or to situate them in the broader context of reforms and their possible implications for different groups within a community. One of the issues currently debated by women's groups in Zimbabwe is whether codification can (or under which circumstances it will) protect women's socially embedded land claims (Whitehead, 2001). And the questions remains: do the systems of land titling and registration promoted under current land tenure reforms differ sufficiently from the old systems to avoid their pitfalls?

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Working Group 3

SECURITY OF TENURE IN URBAN AFRICA: WHERE ARE WE, AND WHERE DO WE GO FROM HERE?

Anna Kajumulo Tibaijuka[25]

The subject of land in Africa is both a critical and a sensitive one. UN-HABITAT's global mandate covers all human settlement, although we are often known as the agency for cities. In the cities of the developing world, slum upgrading is one of our key tasks where security of tenure and land are of critical concern.

In 2001, 924 million people, almost one third of the world's urban population, lived in slums. The majority of these people are in the developing regions, accounting for 43% of the urban population. Sub-Saharan Africa had the largest proportion of the urban population living in slums in 2001, at over 70%. It is projected that without serious mitigating action in the next 30 years, the global number of slum dwellers will double to about 2 billion.

There is growing concern about slums, as clearly stated in the year 2000 United Nations Millennium Declaration. In light of the increasing numbers of urban slum dwellers, governments have recently adopted a specific target on slums. It is contained in Millennium Development Goal 7, Target 11, which aims to significantly improve the lives of at least 100 million slum dwellers by the year 2020. Given the enormous scale of predicted growth in the number of people living in slums, the Millennium Development target on slums should be considered as a bare minimum that the international community should aim for.

To reach the Millennium Development Goal of improving the lives of 100 million slum dwellers by 2020 in Africa will require the

25. Executive Director, UN-Habitat

development of innovative approaches to security of tenure that are not based on land titling alone. UN-HABITAT's Global Campaign for Secure Tenure has a dual focus on advocating change and assisting Member States to introduce innovations that strengthen the tenure security of the majority of people, especially the urban poor. The Campaign promotes negotiation as an alternative to forced evictions, and the establishment of innovative tenure systems, such as rights of occupancy and adverse possession, that minimise displacement by market forces. By focusing on security of tenure, UN-HABITAT promotes the progressive realisation of housing rights and specifically the goal of 'affordable shelter for all'.

These activities of course contribute directly to the realisation of the Millennium Development Goals. The focus of the Campaign is unambiguously aimed at promoting a set of policies, strategies and tools that will directly benefit the urban poor throughout the world. It addresses the issues of forced evictions, secure tenure for both men and women and, equally important, the right of women to equal inheritance. It enables UN-HABITAT to engage with organisations of civil society, local authorities, professionals and policy makers in order to promote policies and practices favourable to the urban poor.

Excluding a significant proportion of urban populations from legal shelter reduces the prospects for economic development as well as for sustainable livelihoods. People who fear eviction are not likely to operate to their maximum potential, or invest in improving their homes and neighbourhoods. That is, they cannot take full advantage of the key asset that underpins their livelihoods, namely a place within commuting distance of a city. Cities supply an opportunity for employment (formal and informal) and services (such as health and education).

Also, when people are excluded, local and central governments are denied the revenue from property taxes and service charges that could help improve urban living environments and stimulate local and external investment. In addition to this, uncertainty associated with insecure tenure may hinder investment in more durable housing, and the improvement of other services, such as improved water and sanitation, etc.

When approaching security of tenure issues anywhere in the world, including Africa, it is clear that land for the urban poor is a highly political and complex issue. My view is that, given the complexity of the land issue, we have to look at a range of tenure types and legal instruments, as well as an incremental approach that makes it possible to upgrade the rights of the poor over time. That is, we should not focus only on land titling, instead seeing it as very important, but not sufficient on its own. Brazil, for example, has both a land titling system and legal instruments that allow the poor to access land in an affordable fashion, by acquiring rights of occupancy and through adverse possession. They also have special planning instruments that allow planning to be undertaken in a way that accommodates the land rights that poor people have established in informal settlements.

The following steps can help to stabilise the existing situation in urban areas and provide a foundation for longer-term options.

Firstly, provision should be made for basic short-term security for *all* households in slums and unauthorised settlements. This can best be achieved through land

proclamations or moratoriums. A simple statement by the relevant minister is often sufficient to reduce uncertainty and stabilise situations.

Secondly, an inventory should be made of all extra-legal settlements to identify any that are in areas subject to environmental hazards (floods, landslides, etc.), or required for strategic public purposes. These should be subject to independent review.

Thirdly, residents of all settlements in areas that are required for these purposes should be offered priority for relocation to sites that offer close access to existing livelihood opportunities (e.g. street trading) and services (i.e. not out of the city). Temporary occupation licenses or permits can be provided for a limited period, depending on how long it takes to agree with the local community on moving to alternative sites.

Fourthly, all other extra-legal settlements should be designated as entitled to intermediate forms of tenure with increased rights, but not necessarily full titles. Where possible, the precise form of tenure rights should be based on tenure systems already known to local communities. Customary or communal tenure options, such as communal leases, may be acceptable to residents and can reduce the administrative burden on land management agencies. This will allow such areas to receive services and environmental improvements through a participatory process of physical and socio-economic development. It will also increase security without stimulating rapid increases in land prices that could lead to increased demand from higher income groups and the displacement of very poor tenants. For unauthorised settlements on private land, options can include land sharing, under which settlers may be provided long-term tenure on part of their site while the landowner develops the remainder. Local authorities can assist this approach if they permit relaxation on planning or building restrictions so the landowner can recoup any lost profit or income. Temporary land rental is another way of reconciling conflicting interests.

These measures can provide a sustainable, practical and socially progressive way of improving tenure security and rights for millions of the urban poor. They can also improve the functioning of urban land and housing markets, stimulate economic development and improve the effectiveness of government in urban management.

Improving tenure for the existing urban populations will not be enough unless measures are also taken to reduce the need for new slums and informal settlements. This requires a parallel approach to increase the supply of planned, legal and affordable land on a scale equal to present and future demand. This can be achieved by such measures as the revision of planning regulations, standards and administrative procedures to reduce entry costs and accelerate the supply of new legal developments, as well as the introduction and collection of property taxes on all urban land, whether developed or not. Another important approach is to allocate permissions for the incremental development of land construction and services provision, as well as by allowing households to obtain basic services, such as water, sanitation and electricity, irrespective of their tenure status.

Finally, it should not be assumed that tenure security and property rights are equally available to both men and women. Many tenure regimes, including statutory, customary and informal, discriminate against women, either formally or in practice. Cultural traditions often make women dependent on fathers, husbands or sons for tenure

security, and deny basic rights to divorced or widowed women. All too often property rights are vested in men, and women are denied legal protection. Such discrimination is both unjust and contrary to good management, in that women are generally considered a lower risk against default than men, and female-headed households frequently form a high proportion of low-income groups. Property rights therefore need to be seen in terms of the extent to which women enjoy equal rights with men, and addressing any gap should be a priority of tenure policy.

To conclude, with regard to tenure security in Africa, especially urban Africa, we know we have a problem regarding security of tenure for the poor. However, having said that, other areas of the globe have similar problems. In Africa we are not only aware of our problem, but we are already innovating to address those problems. At UN-HABITAT we want to assist member states to be aware of the new innovations so they can start innovating themselves. We are doing this by also building partnerships with other global organisations that share similar objectives, such as the World Bank. Let us hope that through such pioneering efforts the urban and rural poor will come to know what adequate shelter for all really means, and that in addition to this, their livelihoods will be secured through having secure tenure.

Working Group 4

GLOBAL AND LOCAL LAND MARKETS: THE ROLE OF THE CUSTOMARY

Kojo Amanor

1. THE CONCEPT OF THE LOCAL

The concept of the local is abstract. In reality, the local can only attain significance when it is illuminated and projected by the global transnational business sector and global policy and donor organisations. The local can only attain significance when it is integrated into world markets and articulates with market forces. Outside of this scenario, the local has no identity and no platform for articulating itself. This is not to say that people living in rural areas and communities do not have autonomous identities or social movements, but that when their identity is articulated as local it is a product of categories imposed by the nodes of power that classify themselves as global. That which comes to constitute the customary and the significance of the customary as an expression of the local is essentially defined by international markets and policy circles. The concept of the local is a product of global markets and much of the contemporary interest in the local and customary in Africa is generated from outside the continent. This paper explores the relationship between new patterns of neoliberal land management in Africa and new forms of agricultural accumulation and how concepts of the local and customary may operate as rhetorical devices to disguise new forms of expropriation.

In recent years there has been a resurgence of interest in the land question in Africa. This new found interest has been largely influenced by a neoliberal framework that seeks to reorganise the world economy and redefine the role of the state. Institutional reform has sought to roll back the state's control of the economy and create larger spaces for private sector and transnational capital. The rolling back of the state has not, however, guaranteed a favourable environment for financial investment. In many instances the opening up of African markets to transnational investment has been hampered by institutional structures, and slowness in registering land transactions, which are fundamental to the creation of business investment. A major concern influencing the land agenda has been to ensure stability and transparency of land

transactions, binding ethical codes, efficient and speedy transactions that do not hinder business investment, and lower transaction costs. In promoting institutional reforms that create stable land rights neoliberal reform has sought to decentre land administration away from cadastres run by central government. These concerns have given rise to a framework of community based land administration, which gives increasing recognition to customary land rights and a role for "traditional authorities" in land administration and attempts to harmonise formal state-run land administration and informal customary arrangements (Lavigne Delville, 2000; Toulmin and Quan, 2000). This explores ways of integrating local land management institutions with national land administration to find cost effective ways of registering customary land and according recognition of property rights to customary systems.

This reform process has also been influenced by agricultural sector restructuring and the questioning of models based on the allocation of subsidised inputs and favourable credit to large scale estate agriculture, to whom the state allocates expropriated land, which can be registered for collateral for investment in estate agriculture. This has been replaced by agribusiness models in which smallholder family farms are seen as the most efficient productive units, particularly when supported by contractual relations with agribusiness, which can provide large scale investment for agricultural processing, marketing, and infrastructure development (Lipton, 1993; Binnswanger and Deininger, 1993; Deininger, 2003). Contract farming has been promoted by neoliberal models of agricultural development, since the Berg Report, and is growing significantly in many African countries. Watts (1990) reported that in Kenya 12 percent of all peasant farmers grew sugar, tea, tobacco, fresh fruits and vegetables under contract, and producing 17 percent of total farm output or 30 percent of total marketed output.

International capital is increasingly interested in developing linkages with communities and customary institutions and traditional authorities. These types of arrangements are seen as lowering the transaction costs of production, or creating conditions in which community participation opens up avenues for accumulation. Direct corporate relations with communities prevent middlemen firms and traders from capturing parts of the profit. It enables the corporate sector to exercise greater control over production. These arrangements require community structures and institutions to be in place, through which communities absorb the transaction costs of exchange. International companies can work through focal agents within the communities, who build up community networks and institutions or through traditional authorities. The added advantage of working through traditional authorities is that they are able to use coercion (including symbolic, moral, cultural and physical coercion) to enforce compliance of the population and discipline. In return for their services, both focal agents and traditional authorities may gain a share of the profits.

This coercion can be passed off as cultural or customary, or as community participation. This enables the corporate sector to impose moral compliance on communities, something which is important in today's politically correct markets, in which moral concerns may lead to the boycotting of products. The contemporary corporate sector is anxious to show that its modes of production and accumulation are "environmentally friendly", "sustainable" and "equitable". Many companies are now proclaiming themselves to be concerned with sustainability, equity are poverty producers, who in the

past have gained their land through the expropriation and suffering of many farmers in the peasant sector and who have introduced new production sectors that have changed the environment for the worse. However, this frequently arises from concerns with image rather than deep felt sympathy for peasant producers and the need to end exploitation. It represents investment in public relations, rhetoric and advertising in an era of flexible accumulation rather than a new commitment to ending the exploitation of the rural poor.

Many of the community participatory arrangements that are heralded today are not new but go back to the early 1970s in Africa when they were implemented as state agribusiness schemes, in sectors such as oil palm, cotton and irrigation schemes. These involved the parcelling out of land to peasant farmers with contractual obligations to produce crops and use inputs determined by the project authority. The farmers had to sell the crop to the project marketing authority at predetermined prices. Many of the schemes originated as World Bank supported projects, which later evolved into joint state private sector agribusiness, before being privatised in the years of structural adjustment. In these schemes the main concern of international capital has been both to gain access to land and to the products of the labour of smallholder farmers through contract farming arrangements, in which in return for loans in cash and kind farmers agree to provide particular products produced in a particular way at a particular time. The violation of the contract can result in the land of the farmer being possessed by the company. Contracting enables companies to accumulate without tying up assets in land, and the hiring of formal labour with associated welfare payments and social infrastructure expenditure. Although contract farming can produce new wealth for those who become partners of the corporate sector, it can produce deteriorating livelihoods for those outside of this sector, who may find their land becomes expropriated as demand for land for new crops increases and they become transformed into labourers. Watts (1990) reports that in West Kenya the expansion of sugar production over twenty years on contract relations did not translate into improved nutrition of women or of pre-school children. Morbidity and malnutrition remained high, the result of inflationary squeezes on the land-poor and landless classes.

The local is frequently projected as an undifferentiated subaltern category in opposition to the state. Community empowerment is seen as an antidote to state elitism and corruption. However, in reality the local is usually socially differentiated. The powerful and rich within communities frequently are able to present themselves as the representatives of the community, and support policies that further their interests at the expense of the rural poor. The expansion of global markets frequently empowers groups within the communities who support the projects of global capital and marginalises those who are not in favour of these projects or are engaged in forms of economic activity that run counter to these global trends. In many rural areas an alliance of traditional authorities and modern agricultural elites with support from national elites are able to capture representation of the community. Another trend is for wealthier farmers to be represented in global policy circles as small farmers, and their investments to be seen as successful poverty reduction strategies. Watts (1990:155) argues that while contract farming is often presented as helping smallholders, in reality this is mere rhetoric:

> There is a marked social differentiation within the outgrower schemes between land-rich capitalist growers who employ wage labour, and a substantial middle peasantry who may earn invisible surpluses but who depend largely on household labour. The possibility of accumulation contributes of course to land speculation, the emergence of absentee farmers, growing differentiation among growers (and between regions) and the further marginalisation of poor peasants increasingly employed as casual labourers on central estates and on the farms of large growers (p.156).

The rural poor become invisible and increasingly marginalised, and processes of land expropriation and impoverishment are not documented, since the contemporary concepts of community participation and agrarian populism with their attack on political economy attempt to eliminate the conceptual tools that enable processes social differentiation to be examined.

2. THE PROBLEM OF THE CUSTOMARY IN A HISTORICAL CONTEXT

The notion of the customary is problematic historically, since it has frequently been generated by the peculiarities of colonial rule. There exists a large historical body of literature on the invention of tradition, which shows how much of the customary originated under colonial rule or was reinvented (Ranger 1983, 1993; Chanock, 1991; Cowen and Shenton, 1994). It is surprising that this literature does not figure in contemporary research into customary land tenure, which tends to regard the customary as an autonomous sector with a life of its own, which has adapted to changing conditions within the logic of its own cultural system. Cowen and Shenton (1994) show how in Lagos Colony land tenure was made to fit a particular reading of communality. Lagos housed a large community of migrants who purchased lands under its jurisdiction, including the large community of Saro (ex Brazilian slaves who had set up home there in the nineteenth century). By 1910 half the land of Lagos had been sold. However, in a landmark case on the nature of land tenure in Lagos carried to the Privy Council in London, the Privy Council rejected the development of land markets in Lagos as an aberration, as a product of English ideas. The pure native custom was established by recourse to missionary and travellers accounts of land tenure in West Africa, which established that land was not vested in individuals but in communities and vested in chiefs as trustees of the community. This particular reading of the customary suited the framework of Indirect Rule. This case established precedent for the nature of communal land tenure within the British Empire.

Under colonial rule, the colonial powers sought to rule in alliance with dominant precolonial ruling classes, through the concept of *Indirect Rule* in British colonies or *association* in French colonies. Where centralised authorities did not exist, chiefs were created. These chiefs were responsible for collecting taxes, recruiting forced labour, and organising export crop production. Land was vested in these traditional authorities as a way of controlling land markets and their development, controlling labour and assuring supplies of migrant labour for the colonial enclave economies, the settler farm economy, the mining sectors and peasant export sector production.

By making chiefs trustees of land, the colonial authorities were able to exert control over rural producers. In this context customary tenure did not arise as a right of

individual producers, but as the denial of that right. The chief had the right of allodial ownership and by extension the rights of the cultivator flowed down from their allegiance to the chief. Chanock (1991) argues that under colonialism land rights were seen as flowing downwards, as derived from the chief rather than as residing in the peasantry. This empowered local political authority to control the peasantry and the land. Shivji (2002:2) argues that customary rights are "fragile and insecure", and this has enabled both colonial and postcolonial states to appropriate land when they want. Through asserting the mythical principles of communal land tenure, the colonial and postcolonial state has been able to undermine peasant rights to land.

This vision of customary land tenure politicised land and enabled land markets to be constrained to fit into the overriding design of colonial policy. In labour reserves, land was protected as a social fund to maintain the families of migrant labour and prevent the emergence of viable commercial sectors that provided alternative avenues for migrants. In export crop regions the power of land sales was confined to chiefs, enabling control to be exerted over the movement of labour. Although colonialism created a concept of an ideology of communal land tenure that prevailed all over Africa, different tenure arrangements developed in different areas, which reflected pre-colonial systems of production and social differentiation and the nature of incorporation into colonial markets. Clearly, land relations in Kano were very different from those among acephalous societies such as the Tiv, the Tallensi or the pastoral Nuer, and the native reserve areas in Southern and East Africa operated under different strictures than customary tenure in West Africa.

In the export crop zones of West Africa land sales occurred regularly. However, since in many of these areas citizens had rights to clear land freely or to inherit family land, chiefs could only commoditise land by selling it to migrants. In many areas land sales to migrants formed the basis of a process of land commodification, which would result in growing scarcity of land and the emergence of land markets. A familiar pattern in both the cocoa producing areas of Ghana and Cote d'Ivoire is rapid sales of land by chiefs to migrants, resulting in scarcity in following generations, and conflicts between land hungry youth, elders and migrants (Amanor, 1999, 2001; Chauveau, 2000).

Direct land sales to migrants were not the only form of land transactions. In many areas sharecropping formed another type of transaction through which migrants could get land and chiefs and powerful landholders, gained access to labour for the transformation of uncultivated land into farms and plantations. Again this is common in both Ghana and Cote d'Ivoire. These arrangements involve either the tenant gaining access to a portion of the land he clears and puts under crop, or to a proportion of the crop. Sharecropping can also emerge as a labour arrangement in which the tenant works on an existing farm as a caretaker and gains a share of the crop for the input of labour in maintaining the farm, and harvesting and marketing the crop (Hill, 1956, Amanor with Dideretuah, 2001). In the cocoa belt of Ghana, migrants from the labour reserves of northern Ghana, Burkina Faso, Mali and Niger, usually worked as sharecrop labourers, and those from the south acquired land through outright purchase, gained a portion of land as sharecrop tenants or worked as labour sharecroppers .

The existence of sharecropping markets has enabled elder farmers to play off their obligations and demands from their kin against giving out land to sharecroppers. This

can result in conflicts between youth, elders, women (wives) and migrants over land. In Ghana, in 1969, many farm youth took advantage of the Aliens Compliance Act to eject farm labour, and moved in to replace them as sharecroppers and wage labour (Amanor, 2001). Many of the Sahelian migrant labour then relocated from Ghana to Cote d'Ivoire, where they could gain land on more favourable terms. However, in the 1990s similar conflicts erupted between migrants and autochthonous populations (Chauveau, 2000).

Presently, in Ghana, sharecropping is becoming a dominant land relationship in land scarce areas with well developed commercial agricultural sectors. In some areas of the oil palm belt in Ghana over 50 percent of land arrangements involve sharecropping, and sharecropping even occurs between close relatives. These arrangements are particularly prevalent with tree crops which result in the appropriation of family land for long periods of time by individual members for private investment. The family head, who usually allocates land to family members, frequently makes demands to gain a portion of the profits. The development of large plantations on family land often results in bitter interfamily conflicts. Therefore, investors prefer to transact land elsewhere. Sharecropping frequently emerges as the dominant land transaction, which enables land to be transacted without raising controversies over rights to sell lineage land. In some areas, members of families wishing to develop plantations may gain land from the family elder on a sharecropping arrangement, securing clearly defined rights to land. As the plantation sector expands and increasing social differentiation sets in, the poor increasingly gain less rights to land, as increasing areas of lineage land are allocated on the basis of sharecropping and transactions of cash, making less land available for family members to claim on the basis of membership (Amanor with Diderutuah, 2001).

Sharecropping can function as a market transaction between individuals, between autochthonous landowners and migrants from poorer areas, or between youth and elders. In many areas it also embodies power relations based on caste and conquest, in which the sharecroppers are the descendants of slaves and bonded labour. This is a factor which is overlooked in neoliberal economic theory on sharecropping. In areas characterised by bonded labour, colonial authorities often formed alliances with the dominant political class to ensure that bonded labour could be used as forced labour for public works and as farm labour for export crops. In these areas customary land tenure arrangements were adapted to ensure that bonded farm labour would not emerge as free peasant cultivators with no constraints to produce for the market. In northern Nigeria the colonial government placed land under the crown to control the movement of former bonded labour. In the Hausa emirates freed slaves could not move away from their former masters without purchasing manumission. This ensured that they worked within the export groundnut sector (Lovejoy and Hogendorn, 1993).

In many of the labour reserve areas, land markets were deliberately constrained as was commercial agriculture. Land in the labour reserve functioned as part of social welfare, as the home to which migrants would return after their sojourn in the wage labour sector, and as the home in which their families would reside and gain sustenance from the land. In these areas women often played a dominant role in agriculture and elders and chiefs controlled the land. Alliance with land chiefs enabled the colonial administration to control the labour of youth and commoners. Access to land was based on labour service, and chiefs recruited labour for the colonial sectors. In labour reserve

areas, policies that deliberately constrained agricultural development and the introductions of taxes assured that young men would be forced to migrate to the main colonial enclaves to gain income and pay off their family tax obligations. This artificially constrained the development of commercial agriculture and land markets within these areas.

The role of land in the political economy of many African societies is totally at variance with the legalist concept of customary land tenure. Land relations have been influenced by the peculiar economic and political structures created by colonialism and have continued to evolve and be transformed. Again, the concept of the customary largely operates as a rhetorical device, which hides and mystifies power relations. The concept of an essentialist African spiritual concept of land preserving itself through the great economic and political transformations that have occurred in the nineteenth and twentieth centuries is unlikely to be anything other than a political ideology masking inequity.

3. CUSTOMARY LAND ADMINISTRATION AND SOCIAL DIFFERENTIATION

In recent years a number of approaches have been introduced to strengthen customary forms of administration and create linkages between them and land policies. This involves a focus on either creating institutions that recognise and mange customary rights and norms, or focusing on the institutions of traditional authorities for land management.

One of the dominant approaches in West Africa has been Rural Land Plans (*Plan Foncier Rural*). Rural Land Plan projects have been introduced in Côte d'Ivoire, Benin, Burkina Faso and Guinea. The objective of the Rural Land Plan projects is to contribute towards the security of customary land rights by identifying and topographically mapping all identified locally recognised rights and creating local institutional structures in villages for keeping documentation on land tenure and putting them into practice (Chauveau, 2003). The Rural Land Plan is presumed to be a neutral technical tool that records the current situation without intervening in resolving disputes. While the Rural Land Plans are concerned with recording customary arrangements for the benefits of the local people, they are also a tool through which investors can identify areas with secure tenure arrangements and no go areas characterised by disputed ownership. The main rights of ownership registered by Rural Land Plans are rights of appropriation that links the land to a land manager even when the rights are owned collectively. This frequently leads to the exclusion of groups who own secondary or devolved rights in land, including migrants, women and youth. During the 1970s, many migrants from Burkina Faso and Mali were invited into Côte d'Ivoire to participate in the expansion of cocoa cultivation into new frontier areas and rights to land were recognised for the tiller. The implementation of the Rural Land Plans in Côte d'Ivoire were based on some conception of ownership that has enabled the rights in land of migrants to be challenged by those who claim to be the autochthonous settlers. This has resulted in serious conflicts between indigenous and migrant populations, which eventually spilled over into the expulsion of Burkina migrants and civil war (Chauveau, 2003; 2000).

In Guinea the implementation of community land rights has also undermined the position of cultivators. In the Fouta Djallon area, the land was cultivated by Djallonke agriculturalists, who were conquered in the eighteenth century by Fulani invaders. The Djallonke were forced to work as slave labour for the Fulani aristocrats in slave hamlets (*rounde*) located in valley bottoms. Although French colonialism banned slavery it introduced forced labour and colluded with former slave owners to extract labour services for public works from the former slave owning class. These cultivators were formerly bonded labour of conquering Fulani. The descendants of slaves who remained in the rural areas found it difficult to get farmland and were forced to work on the land as sharecrop tenants providing rents and labour services for their former masters. Boiro (1996) writes that it was not until 1957 with the coming to power of the Partie Democratique de Guinea (PDG) that the plight of the former slaves improved. The PDG abolished traditional chieftaincies, nationalised land, made customary ownership of land null and void and recognised the rights of the tiller to the land they cultivated. However, the land question was not resolved in a satisfactory way since customary privilege was replaced by bureaucratic privilege and cumbersome procedures that involved different authorities in the management of land emerged. With the advent of the second republic and approaches to land administration based on strengthening customary rights, land has reverted to its former status and Djallonke cultivators have had their lands re-appropriated, although socio-economic conditions have changed. This has resulted in insecurity and conflicts, which are sometimes violent (Boiro, 1996).

In Tanzania land administration has been devolved to elected Village Councils that enact bye-laws with the consensus of the community. They govern on behalf of the Village Assembly to which the council reports quarterly. They are responsible for working out community based land administration and ensure that the rights of villagers are protected. The Tanzanian Land Act of 1999 recognises existing customary rights. However, customary rights are not clearly defined, particularly since they have changed through time, and powerful sections within the communities are able to define and redefine notions of the customary in accordance with their narrow interests. While areas under cultivation are delimited, unused and unoccupied land is defined as General Land and can be acquired by investors. Thus, accompanying a reform process that recognises customary rights has been the massive appropriation of land. Pastoral peoples have found their livelihood threatened by this policy of demarcating existing holdings and appropriating common land. Similarly, in Mozambique, the 1997 Land Law creates procedures by which communities can delimit and register communal land rights. Community lands are regulated by chiefs (*regulo*) and elders who define access to land and represent the communities. These chiefs are also responsible for negotiating community contracts with foreign investors. In some areas large concessions have been released to foreign investors at the expense of peasant cultivators (Suca, 2001; Lahiff and Scoones, 2001).

In Ghana, the Land Administration Programme focuses on building the capacity of Customary Land Secretariats to administer land, as a form of decentralised land administration. This recognises the roles that chiefs were accorded in land administration in the colonial period as timeless customary rights. It ignores the fact that the anti-colonial struggle originally emerged as a struggle against Indirect Rule and

the abuse of power by chiefs, in which chiefly control over land was a major issue. While chiefs are being presented in some policy circles as a social force that has been maligned by the state, and as an antidote to state abuse of land appropriation, the notion of the customary rights of chiefs is loaded with political inventions. During the course of the twentieth century the concept of stool (chiefly) land, the land under the authority of chiefs has changed. Originally, stool lands were the lands farmed by the retainers of the chiefs. In the colonial setting stool lands became the unfarmed lands under the domain of the chief, which chiefs could transact as concessions or with migrant farmers. In recent years many chiefs are attempting to redefine their customary rights to land and appropriate lands farmed by citizens. With the expansion of urban areas and the boom in real estate land values for peri-urban land have increased rapidly. Chiefs are appropriating farm land in peri-urban areas and selling them to private buyers for housing development, arguing that the farmers had rights to cultivate rather than of ownership (Ubink, 2004). Since the purchasers of the land are often the wealthy and politically well-connected, peri-urban cultivators have few channels to protect their land. Since independence chiefs have also been expropriating land from small cultivators for allocation to the capitalist sector and foreign investors and in the "national interest". Many chiefs are important businessmen in their own right, with closer ties to the international business world than to their peasant "subjects". Many chiefs have used the resources under their control to accumulate wealth and engage in business investment. Businessmen have also invested their wealth in power, often manipulating to gaining access to chiefly office. Traditional authorities frequently have close ties with national elites. Thus, chieftaincy can operate as a conduit for the expropriation of land from peasant cultivators to the capitalist sector.

4. CONCLUSION

Local or customary rights are constructed in two different ways. The first stresses customary rights and norms and the second stresses traditional institutions and authorities. Both concepts are problematic, since the local is not autonomous but links into national and international politics. Where customary rights are emphasised, powerful sections of the community may come to the fore to impose their own narrow version of what constitutes customary norms as the perspectives of the wider community. These factions often have ties to the rich and powerful, the state, and capital who accord them the recognition of representing rural society. They control rural platforms and links with the wider world. Where the emphasis is on traditional institutions, those who control these institutions are able to manipulate and redefine what constitutes the customary norms to meet their own narrow interests and the interests of their allies who constitute the rich and powerful in society, the state and capital. Where the local is socially differentiated and made up of complex social formations and the coalescing of different populations and social groups and categories, the definition of local interests is likely to be politically constructed to meet the needs of a narrow section in society and their interests in capital accumulation.

The interests of the rural poor cannot be met by sweeping notions of the local as the repository of opposition to state elitism and corruption. The local also embodies the state, in the form of local elites who call upon the state to introduce policies that favour

their narrow interests and who are willing to exploit the openings created by the state for accumulation, and who participate in the building of political alliances for accumulation.

Rather than work with prefigured notions of what constitutes the local and the customary, it is necessary to open these concepts to debate in rural areas. How do the rural poor want to be represented and what is their vision of the future? Do customary rights protect their interests or do they require other modes of ensuring their rights?

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Working Group 5

SECURING THE COMMONS IN AN ERA OF PRIVATISATION: POLICY AND LEGISLATIVE CHALLENGES

Lorenzo Cotula[26]

1. SETTING THE STAGE

For the purposes of this document,[27] the "commons" are very broadly defined as natural resources over which several users have overlapping rights of simultaneous or sequential use, irrespective of the economic nature of the resource (whether "common pool" or not) and of the property regime formally applicable to it (i.e. even if legally owned by the state). This includes, among other things, water, fisheries, forestry, wildlife, pasture and genetic resources. Within this context, land rights and tenure are key: a) because land itself may be held/used in common (e.g. grazing lands); and b) because, even if it is not, rights over land and rights over the "common" natural resources located on it (e.g. forestry) are closely linked. In practice, rather than a dichotomy between common and private/state property, many systems to manage the commons entail a blend of different property regimes, including elements of common, private and state property.

The report covers the commons in both Africa and Europe. Indeed, far from being "backward" systems relegated to Africa, as often

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27. This document is the report of a workshop held in Nakuru, Kenya, from the 25th to the 28th of October 2004. The workshop was hosted by Reconcile, a Kenyan NGO based in the same town. It brought together some 45 participants, mainly from East Africa and the Horn, but also from West and Southern Africa and from Europe. The workshop took place within the context of a networking programme funded by the European Commission ("Co-Govern"). The programme aims to promote informed policy debate about the management of the commons in Europe and Africa, and to facilitate the sharing of ideas and experience among practitioners working on the same issue. The intellectual contributions presented here are those of the workshop participants. For those contributions coming from papers presented at the workshop, this is explicitly acknowledged in brackets.

assumed by some in development circles, the commons are also alive in Europe, where they contribute to the livelihoods of many people in rural areas (interventions by Wightman and Marin, on Scotland and Norway, respectively).

The focus here is on the policy and legislative challenges raised by the commons in an era where many vocal actors see privatisation as the only way forward. Such challenges are examined at different levels – local (e.g. local agreements for the shared management of natural resources), national (government policies, legislation), regional (protocols for the management of transboundary resources; treaties on cross-border transhumance) and international (e.g. the Convention on Bio-Diversity). Can policy and legal frameworks help secure the commons against resource grabbing by elites? If so, how can they best do it? How can they ensure equitable participation in benefits by and within local communities? What are the linkages between policy/legislative frameworks and local practice?

2. POLICY/LEGISLATIVE FRAMEWORKS AND THE COMMONS

Throughout history, the more powerful have used policy processes and legal systems to enable or ratify their grabbing of valuable common resources. In colonial Africa, for instance, law was used to dismantle customary land tenure systems based on common property and to expropriate land and other natural resources. The tools used to do so included protectorate agreements (e.g. the Maasai treaties), legislation and case law. Despite these interventions, customary systems have proved very resilient, and are still widely applied in rural areas (intervention by Okoth-Ogendo). In 17th century Scotland, the legal system – through features such as land registration, rules of prescription and use of Latin – served to legitimise the grabbing of common lands by local elites (intervention by Wightman). In other cases, legal interventions aimed at regulating common property systems ended up paving the way to individualisation. For instance, in Kenya, the Land (Group Representatives) Act 1968 enabled the registration of collective property for the creation of "group ranches"; however, most ranches were individualised after registration.

As for policy frameworks, the commons do not seem to have been a priority for policy makers. This is in stark contrast with the importance of the commons for the livelihoods of many people in rural areas, especially in Africa. Here, with the exception of a few countries, only a tiny portion of land has been formally registered to individuals, while the vast majority belongs to the state and is used in common by several users (farmers, herders, hunter-gatherers, etc.), either simultaneously or sequentially. Poverty Reduction Strategy Papers (PRSPs), the cornerstone of development aid, are a telling example. They rarely acknowledge the importance of the commons, and even more rarely do they aim to secure them. In Burkina Faso, for instance, while the first PRSP largely ignored the issue, the second one makes a (qualified) attempt to address it. However, the document is based on flawed premises, as it indicates that the solution lies in providing greater tenure security through the full implementation of the Land and Agrarian Reform Act (RAF). This policy directive is not supported by a proper assessment of the impact of the Act on the ground – indeed the Act is seen by many as one of the very causes of existing tenure insecurity (intervention by Thieba).

In recent years, some policy and legislative interventions have provided encouraging signs that the wind may be starting to change. In Scotland, the Land Reform (Scotland) Act 2003 enables communities to register an interest in land, which gives them a right of pre-emption, i.e. the right to buy the land if and when it comes on the market (intervention by Wightman). In South Africa, the Communal Property Associations Act enables communities established as legal entities to hold land in common (intervention by Saruchera). Mozambique's Land Act 1997 provides for the demarcation and registration of community lands and for a community consultation procedure that investors must follow in order to obtain forestry concessions. Ongoing land tenure reform processes in several African countries provide an excellent opportunity to secure the commons (intervention by Okoth-Ogendo). The following sections identify some key challenges that policy makers and legislators face in attempting to do so.

3. HOW TO RECOGNISE THE VALUE OF THE COMMONS?

The first challenge concerns recognising the value of the commons. On the one hand, this entails taking fully into account the importance of common resources for local livelihoods and other goods. The economic benefits stemming from the commons are notoriously underestimated due to their often non-monetarised nature. As a result, short-term economic gains from individualisation tend to outweigh the less visible but no less important potential benefits of maintaining resources in common (e.g. equitable access, local peace, cultural identity, etc.). While some call for "proper" economic valuation of the commons, so as to make a convincing case with policy makers and legislators, it must be remembered that the social, cultural and environmental importance of the commons may be very difficult to translate into monetary values. As already noted, key policy processes such as PRSPs do not seem to acknowledge the strategic importance of the commons for the pursuit of goals such as poverty reduction and environmental sustainability.

On the other hand, acknowledging the value of the commons entails recognising the validity of local systems for resource access, management and use. Very often, governments have used "tragedy of the commons" arguments to undermine local management systems and claim control over natural resources. For instance, in sub-Arctic Norway, government authorities have blamed overgrazing by the Saami reindeer herders for the degradation of lichen ranges. Although the Saamis contest this view and point at different causes, such as climate change and greater pollution, this has resulted in government agencies assuming more direct control over rangeland management (intervention by Marin). Similarly, where protection of land rights is conditional upon "productive land use" (e.g. the concept of "*mise en valeur*" in Francophone West Africa), common use is often not recognised as fulfilling this requirement. This has been used by government services, for instance, to justify the conversion of common pastures to other uses considered more productive for national and local economies (e.g. irrigated farming, commercial ranching). In this regard, the past decade has seen a promising shift, with several Sahelian countries passing "pastoral" legislation that recognises – to a greater or lesser degree – pastoralism as a form of *mise en valeur* (Mali, Niger). However, the concept of *mise en valeur* pastorale remains ill-defined, and generally involves investment in infrastructure (wells, fences, etc.) that is not required for agricultural forms of land use (intervention by Cotula).

4. HOW TO GRANT SECURE TENURE TO LOCAL COMMUNITIES?

The extent to which the policy/legislative framework grants secure access and use rights to local communities depending on the commons is a crucial variable. Even where customary systems seem to work well without any legal backing, they may be undermined when "outsiders" come in. For instance, the Ogiek – hunter-gatherers of Kenya – have been pushed away from their lands by the progressive encroachment of newcomers (intervention by Makenzi). This raises a series of issues, such as:

- **Who are the "communities"?** Local users are rarely homogeneous groups, and tend to be differentiated on the basis of income, power, gender, age, professional groupings (farmers, herders, etc.), etc. The field trip to Lake Naivasha showed how "local communities" may include very different actors with very different bargaining power (commercial flower farmers, landowners, fishers, pastoralists). Also, membership of user groups may be fluid and include non-resident users (e.g. transhumant pastoralists). This creates challenges in identifying the right holders and in establishing checks and balances at the community level to prevent elite capture. In Scotland, land legislation defines communities on the basis of postal codes. Communities are to be established as limited companies under the Company Act; all individuals of age, registered on the electoral roll and residing in the postcode area are eligible for membership (intervention by Wightman). In South Africa, communities may own land through Communal Property Associations. Mozambique's Land Act adopts a very broad definition of communities, which allows flexibility but may create confusion.
- **What rights should be secured?** Key rights to be protected concern access, management and use. Recognising local tenure systems may present challenges, especially where the national legal system is based on "imported" legal traditions. For instance, in Francophone West Africa, the French legal tradition seems more geared to protecting private property, rather than the flexible, collective property regimes characterising most customary rangeland management systems in the Sahel (intervention by Cotula). As for the object of these rights, this includes not only land and other "tangible" natural resources, but also "intangible" goods such as indigenous knowledge and genetic resources. In many cases, these resources are being privatised and commercialised by bio-prospectors (pharmaceutical companies, etc.), with no benefits reverting back to the local communities that identified and nurtured them. Addressing this issue may entail the creation of "sui generis" intellectual property rights that could be collectively enjoyed by local communities (intervention by Dhliwayo).
- **How can greater tenure security be provided?** Recognising customary rights and building on local practice is key, as it helps address the chaotic superposition of different tenure regimes (statutory, customary or combinations of both) that characterises the commons in much of Africa. While some workshop participants called for a codification of customary law (intervention by Okoth-Ogendo), most advocated more flexible ways of recognising customary rights and integrating them in the formal legal framework. Also, some drew a distinction between recognising customary rights, which are the means through which most peasants gain access to the commons, and endorsing traditional authorities, which are often unaccountable

and politicised institutions raising concerns over gender equality and other issues. Many workshop participants also stressed the importance of clarifying the interface between the sectoral laws applicable to the same resource (e.g. land, forestry, water and pastoral legislation; laws on decentralisation; etc.), and the roles and responsibilities of different government institutions (ministries and agencies responsible for land, water, agriculture, forestry and environment).

5. HOW TO RECONCILE COMPETING RESOURCE USES?

Because of their very nature, the commons are characterised by multiple users and/or uses, either simultaneously or sequentially. This requires institutional arrangements to regulate the interaction between these different, and possibly competing, uses, and peacefully to solve disputes when they arise.

An example is provided by the pastoral legislation recently adopted in several Sahelian countries. This aims to reconcile different land uses coexisting over the same territory, namely pastoralism and agriculture, particularly by allowing and regulating herd mobility. At the local level, access and management rules negotiated by local stakeholders with support from development agencies ("local conventions") pursue the same objectives (intervention by Cotula).

Another example of competing resource uses concerns the relationship between conservation, tourism and local livelihoods. In many parts of East Africa, the establishment of natural parks and game reserves entailed the eviction of local communities, particularly Maasai herders. For instance, in the Ngorongoro Conservation Area, Tanzania, although a 1959 Ordinance protected the interests of the Maasai, such Ordinance was amended in 1975 without local consultation in order to create the Ngorongoro Conservation Area Authority. This has worsened the situation of local communities, as decisions concerning entry and residence are taken by the Authority, and local people have been evicted and grazing rights restricted (intervention by Sillevis).

Another aspect of the conservation-local livelihoods equation concerns the obligation for the government to pay prompt and adequate compensation for loss of life and property caused by wildlife (which is usually considered by law as state property). For instance, while Kenya's Wildlife Act mandates compensation for loss of life, it does not require it for damage to crops caused by the passage of large animals such as elephants. This places a heavy burden on the livelihoods of local communities (video shown by Sydney Quntai).

6. HOW TO CREATE AN ENABLING FRAMEWORK FOR PARTNERSHIPS BETWEEN LOCAL COMMUNITIES AND THE PRIVATE SECTOR?

In areas such as tourism/conservation and genetic resources, local communities may benefit from partnerships with private sector entities. However, in order for this to happen, policy and legislation should provide an enabling framework for negotiations between communities and private sector operators. This includes granting secure resource tenure to local communities (see above), who would otherwise be deprived of a

key asset in negotiations. This was an issue in a case from Zimbabwe, concerning the production and commercialisation of a variety of herbal tea having medicinal properties. The partnership involved a community of growers and a private investor responsible for the packaging and marketing of the produce. Because the community lacked secure tenure over the resource, its bargaining position vis-a-vis the investor was weak (intervention by Dhliwayo).

Providing an enabling framework also entails establishing mechanisms to ensure community consultation and benefit sharing with regard to revenues generated by the private entity through its use of the resource. An example of this may be the Land Act of Mozambique, although shortcomings in its implementation have been reported, and the African Model By-Laws concerning sui generis intellectual property rights.

7. HOW TO MAKE POLICY PROCESSES AND LEGAL SYSTEMS MORE ACCESSIBLE?

Where the policy and legislative framework is not accessible to ordinary citizens, it may be manipulated by elites to legitimise their grabbing of common resources. This is what happened in Scotland with the "enclosures" of the 17th century, which were made possible by complex rules formulated in inaccessible language (Latin) by legislative bodies representing the interests of the elites (intervention by Wightman). Greater "access" to the policy and legislative framework concerns: the formulation of policies and laws (public participation in the formulation process; use of clear and accessible language; etc.); and their implementation (activities to raise legal awareness; access to courts; etc.).

Making the policy and legislative framework more accessible also entails bridging the gap between policy and practice. At the workshop, several NGOs working in East Africa presented their work to support the shared management of the commons on the ground. This includes activities such as capacity building, awareness raising, etc. Similarly, in West Africa, many development agencies support processes through which resource users can agree on a set of rules and institutions to manage their resources in an inclusive way ("local conventions"; intervention by Cotula). The challenge is to design mechanisms through which policy makers and legislators can learn from these local processes, and build on them in order to secure the commons in a sustainable manner.

SUMMARY OF CONCLUSIONS FROM THE *LAND IN AFRICA* CONFERENCE HELD IN LONDON, NOVEMBER 8-9, 2004.

International Institute for Environment and Development (IIED)

Natural Resources Institute (NRI)

Royal African Society (RAS)

1. CONCLUSIONS

Secure land rights are now recognised by most African governments as critical for peace, stability and economic growth. The African Union also sees better governance of land and natural resources as central to peace and stability across the continent. There are increasing demands for land and tensions stemming from competition for this valuable resource. African governments must take the lead in land policy and tenure reform, since political interests are at stake. A diverse array of approaches to strengthening land rights is now emerging, from which stem valuable lessons to be shared between governments, civil society groups and land professionals. Important questions concern how pan-African and South-South exchanges can strengthen such a learning approach.

2. ISSUES DISCUSSED AND POINTS OF CONSENSUS

Equitable access to land – at the heart of democracy and sustainable development

Land is not just an economic asset, and market commodity, but has strong political, social, cultural, and spiritual dimensions. Because

land is a key asset for most rural and urban populations, there are strong links between democracy and equitable access to land. Control over land is a means by which the rich can exert power over their poorer neighbours, in a range of areas. Where land distribution is very unequal, programmes to title land will further entrench such unequal property rights. Sharp inequalities in land distribution need to be addressed. Decisions concerning land, whose rights count and how those rights will be managed are not just technical choices, but are highly political. The choice of structure to manage land rights and resolve land disputes and resource conflicts will have consequences for different interests and groups of people. Some will win and others lose.

Land and natural resources are key assets for economic growth and development. Most African economies continue to rely heavily on agriculture and natural resources for a significant share of GDP, national food needs, employment, and export revenue. Such dependence is likely to persist for the foreseeable future. Reductions in poverty must therefore build on the agricultural sector. More equitable patterns of land ownership generate higher levels and broader based patterns of economic growth. Hence, securing rights for all should serve multiple goals – greater equity, reduced poverty, income growth, and economic efficiency.

Secure tenure is a key to promoting economic development and investment, since security is essential if people are to invest in the long term management and improvement of this asset. There are multiple ways of registering rights to land, from short term certificates of occupancy, to more formal registers and titling procedures. Rights can be secured at different levels, such as the individual or family, and at collective levels, such as the village or clan. The state plays a fundamental role in managing or facilitating the process, and this is best done in a decentralised way, in partnership with local institutions which can check and validate claims. In some places, the registration of rights has been carried out in systematic fashion, with all land in a given village or area being adjudicated and registered at the same time. There are advantages to such a method, as it is more efficient and less liable to fraud. In other cases, registration of land has been done on demand, leading to a patchwork of registered and unregistered land. *There are many ways to secure property rights, whether at individual or collective levels. Blueprint solutions should give way to locally appropriate initiatives and actions.*

Historical change, current context and future prospects

Land issues need to be understood in historical context. This history is often centuries old, with people laying claim to land on grounds of settlement, conquest, or market acquisition by distant ancestors. The colonial past in Eastern and Southern Africa has left behind a very unequal pattern of land ownership. Efforts to re-distribute land and settle historic injustices have moved slowly. At current rates of progress, dependent on a full market price, the South African government's target of redistributing 35m hectares by 2015 will not be achieved. Other quicker, cheaper means to redistribute land may need to be taken, such as expropriation of land which currently is not being used. Otherwise land invasions are an increasingly likely outcome. *Donor support for the land redistribution process in South Africa has slackened and needs reinvigorating. Given the strong historic responsibility for current inequities in land ownership, there are arguments for some of the costs of land redistribution to be borne by the donor community.*

While history certainly colours land issues, countries must also look forward and think how best to address the rapid changes they face from a mix of global and local forces. These include trade liberalisation, rapid urbanisation, world commodity price trends, and the devastating impact of HIV-AIDS. Such processes have varying consequences for pressures on land, its value in different uses, and the strength of conflicting claims. Land users need practical, accessible mechanisms to secure their rights in the face of such challenges. For example, as cities grow, and land values escalate, those farming land in the peri-urban zone face high risks of dispossession, unless their rights can be confirmed.

Promoting economic growth

As the 2004 World Development Report emphasizes, ensuring a favourable climate for investors is vital to generate higher levels of growth. African governments have usually been far more interested in attracting foreign direct investment (FDI), through advantageous tax regimes, than seeing how best to promote local enterprise. But improving the investment climate is also key to domestic investors, whether they be smallholder farmers, traders or entrepreneurs. Investors – big and small – need assured rights to the land and property in which they invest. These do not have to involve full ownership, but can involve tenancy and leases. Indeed, the law in many African countries does not allow for foreign ownership of land. Instead foreign investors can get leases of anything up to 99 years. *Securing land and property rights constitutes a core element in generating a favourable investment climate for small and large land users alike.*

Land rights and agricultural "modernisation"

African agriculture faces many challenges in a globalising world, in which access to markets, both local and global, is hotly contested. In Africa's domestic markets, cheap foodstuffs produced by heavily subsidised farmers are being dumped, displacing the harvests of local producers. In European and US markets, imports from Africa are facing rising barriers, through imposition of new standards and norms from governments, and private sector actors, such as supermarkets. Smallholders are fighting a hard battle against such unfair practices. Smallholders have been central to the agricultural economies of most African nations, and have shown themselves to be highly productive, and very responsive to new markets and opportunities. But what is the longer term picture?

Some argue that farmers need to be encouraged to leave the agricultural sector, to help consolidate larger holdings, better able to cope with the demands of the global economy. According to this view, larger holdings will lead to higher incomes and productivity. Former smallholder farmers should seek employment as farm workers or shift to the industrial or service sectors. But others ask whether this is realistic in the current context, in particular where there is little sign of a developing industrial sector to create jobs. Instead, they say government should provide greater support so that smallholders can remain a central part of the farm economy.

The debate about the future of smallholder farming is often argued in economic terms, with evidence brought about yields, efficiency, and growth. But there are also many other dimensions, which relate to stability, social cohesion, identity, and equity. The social safety net issue is significant if one compares experience from China, where smallholders cannot sell-off their land for cash, and where there is no landlessness in contrast to India, where land can be bought and sold, generating a large landless group who rely on state provision

of benefits to keep them from destitution. For some, access to land and shelter is seen as a fundamental human right, conferred on all citizens of a country. Others see this as unrealistic. *There are multiple benefits associated with smallholder production. In the push for "modernisation" of the agricultural sector, governments need to reflect on the consequences of opting for large scale farm development, at the expense of the smallholder sector. Rich country governments must also urgently address farm policy, export subsidies, and market barriers which are making it ever more difficult for smallholders to access domestic and international markets, from which to gain a livelihood*.

Growing cities and the challenge of urban land management

Africa's urban settlements are growing apace, both large cities and many small and medium towns. Such growth has major impacts on peri-urban land values, and rising insecurity for those living on and working such land. Within urban areas, squatter communities are usually not recognised by the state and hence have no access to basic services. Their rights to the land and housing which may have sheltered them for many years are frequently swept aside when more powerful interests seek to acquire this land. Evictions are a constant threat, given the rapid increase in land values for building plots. However, city governments are increasingly recognising the need to strengthen rights for slum dwellers, as a means to bring them more effectively into the urban economy, and ensure better provision of water and sanitation. Neighbourhood associations and federations of the urban poor are playing a major role in some cities, to survey, enumerate and negotiate their rights to occupy urban land. The commitment of governments to significantly improve the lives of slum dwellers, enshrined in the Millennium Development Goals, provides further impetus for more innovative approaches to securing urban land rights. *The rapid increase in land values in and around urban settlements generates high levels of insecurity, especially for poorer groups, unable to withstand the pressure of market forces. Innovative tenure systems are needed to strengthen their rights and enable a negotiated solution instead of forced evictions. A phased approach makes best sense in which it is possible to upgrade the rights of the poor over time. Equally, a revision of planning procedures and norms would help provide affordable land on an adequate scale, as well as allowing households to obtain basic services irrespective of tenure status.*

Making government more accountable

In many countries, the ultimate ownership of land remains in government hands, with land allocated administratively, rather than through the market. This brings serious risks of rent-seeking and corrupt behaviour. Compensation is often not paid when land has been taken by government for public purposes. Many large land holdings remain in government hands, and constitute a valuable asset for gift to political allies. Regardless of legal provisions, in practice the law may not protect the rights of poor people. *It is vital to democratise access to justice and address weak institutional and legal frameworks. Reforms are needed not only at central government but also lower levels such as rural councils, and village committees. Institutional strengthening means developing better checks and balances, to make structures accountable both upwards to central government but also downwards to the people they are meant to be serving. For land, it means establishing open processes, with publicly accessible land registers and information about how and to whom land is being allocated.*

Strengthening public dialogue

Because land issues involve political choices, broad public debates of the options at stake

are essential. Drawing up new legislation is usually not the first thing to be done. Rather government needs to engage with different parts of society, to understand diverse interests and priorities. Taking time to consult effectively and following a flexible calendar are key to ensuring confidence between government and people. Political leadership and key statements matter a lot in providing assurance about the process to be followed, which will likely take several years. In the cases of Uganda and Ghana, it took several years to design the land policy. By contrast, the case of Côte d'Ivoire, where the land law of 1998 was written largely behind closed doors, illustrates the risks of not taking a broad based approach and the time needed to consult. Many African countries have seen a flowering of networks and civil society groups with contributions to make to such debates. *The importance of land rights for political stability, economic development and social identity highlights the need to support development of civil society actors and networks with knowledge of land issues – at national, Pan-African and global levels.*

Land, peace and security

Conflict is widespread in many parts of Africa. Security is key to any real prospects for development and poverty reduction, as people struggle to gain control of resources and the power and revenue they yield. While land may not always be at the source of this conflict, competition for land often serves to inflame tensions between groups, since politicians find it an easy issue with which to mobilise emotions and support. Land seizures, eviction of migrants, and ethnic cleansing have characterised a number of conflicts in Africa. Several countries – such as the Democratic Republic of the Congo, Sudan, and Somalia – were absent from this Conference on Land in Africa, a consequence of ongoing conflict which prevents them from resolving these critical issues. Even those countries at peace face major problems spilling over from neighbouring conflicts, such as large numbers of refugees who need to be accommodated. *The role of land and resource conflict in generating wider insecurity makes it vitally important to find means to resolve disputes early before they can escalate.*

In post-conflict settings, establishing legitimate institutions governing access to land for re-settlement of migrants and refugees becomes hugely important, as do questions of restitution. In countries like Rwanda, where there have been several waves of conflict and associated refugees, there are many difficult questions to be addressed. For instance, those people displaced in 1959 who have returned home recently, find that their former land has been worked for 40 years by others. In such circumstances, whose rights count? How can a sharing of the land as asset and source of income be achieved? The new land policy in Rwanda demonstrates that even in difficult circumstances such as these, progress can be made, though this may involve making difficult choices between interest groups. *Establishing new institutions for managing access to land is key to providing more accountable governance of resources in post-conflict settings.*

Innovation and change in land rights management

Great progress has been made in testing out new approaches to securing land rights. Twenty years ago, much emphasis was placed on formal land titling programmes, which have proved slow, expensive, and difficult to keep up-to-date, and hard for poor farmers to access. Evidence shows that titling is neither necessary nor sufficient to generate tenure security. Indeed, programmes to title and register land may generate conflicts

rather than resolving them. Pilot cases from Ethiopia, Mozambique, and Benin show how rights can be registered at much lower cost and in simpler ways. In many places, titling and registration of land may be much less important than working to strengthen local institutions with responsibility for managing land rights and related disputes. The recent shift towards decentralising government has been valuable as a means to get land rights management much closer to the field. This better understanding of the diverse options available to government allows approaches to be tailored to different settings, and for upgrading of rights and systems over time. Ways of securing rights work best when these are based on tenure systems already known to the community concerned. The costs and techniques of land administration also need to match the value of land. New technologies, such as Global Positioning Systems, computerisation of records, and Geographic Information Systems can help. But technology is no substitute for a locally legitimate process to adjudicate disputed claims. The local knowledge of neighbours is essential to clarify rights and boundaries. New approaches to land bring a need for new skills, such as simple, low cost survey, and innovation with registration methods. *Key lessons for equitable and accessible rights management are – make it simple, use local knowledge, and refine it over time. Learning lessons from elsewhere provides ideas and experience from which to build. These mechanisms for shared learning need strengthening. Technical capacity in different skills should be built in-country, through training and networks.*

Much attention has recently been paid to the work of Hernando de Soto, the Peruvian economist who argues that titling the property of the poor will generate the basis for more equitable and sustained economic growth, through mobilisation of savings and credit. De Soto's approach, which is being taken up by several African governments and donor agencies, is generating some concern, because it is seen as being parachuted in from outside, rather than building on existing experience. Worries also relate to the fact that de Soto takes "the poor" as an undifferentiated group, rather than recognising the diverse rights and claims of poor people. In many settings, property rights are complex and overlapping, so that their registration in the form of an individual property title would risk many secondary rights holders losing access to the land. *Although opportunities to formalise property rights need to be made more accessible for all, care is needed in interpreting de Soto's arguments as the only model for securing land rights for the poor. In some settings, his approach may be ideal. Elsewhere, other methods make more sense, especially where existing work shows promise. If unlocking access to credit for poor people is the key objective, then thought could usefully be given to other means to achieve this end, such as building on the growing experience with micro-finance schemes.*

Women's rights are particularly vulnerable

Customary practices for managing land are outmoded and not working in many areas. Interpretations of "customary rights" are disputed, with chiefs stretching the interpretation of their powers for personal gain. Customary practices regarding land are particularly adverse for women, who rarely have full rights in land but must negotiate as secondary claimants through male relatives – their father, brother, husband or son. Succession and inheritance rights remain problematic, since women usually cannot inherit the matrimonial home, on the death of their spouse. Women's rights are often affirmed in the Constitution in unequivocal terms, but in most cases, customary law tends to be more important than what the constitution says. New legislation needs to

strengthen women's formal rights to land, through spousal co-ownership, and a bar on sales of family land if no agreement by both husband and wife. But law is not enough. *High level political statements in support of women's rights need accompanying by a range of supporting measures, such as ensuring women are represented on land committees, informing local government staff of new legislation regarding women's rights, legal clinics, and encouraging community leaders to take women's rights seriously. It is especially urgent to provide legal protection for women now, since the rising incidence of HIV/AIDS has put widows and orphaned children even more at risk of dispossession of their house and land by their dead husband's kin.*

Conserving the commons

Common property resources (CPRs) – such as grazing, woodlands, ponds and fisheries – are still vital for many peoples across the continent. Yet there are growing pressures on these resources, and trends towards privatisation and enclosure. In many cases the breakdown or absence of access rules has led to a free-for-all, leading to unsustainable levels of use and degradation.

CPRs are of special significance to pastoral herders who need assured rights to access grazing and water when away from their home area. Mobility and flexibility are key to the survival of such livestock keeping people, who continue to provide a major part of the meat and milk produced in much of Africa. Finding ways to maintain and strengthen such mobility matters not only at national but also sub-regional level, given the extensive patterns of movement found in West and East Africa. Sometimes there are calls for the pastoral herders to "modernise" and settle down – yet this would be death to livelihood systems which have proved productive and sustainable, despite harsh and risk prone environments. Instead, ways should be found to reduce risks of conflict between herders, neighbouring crop farmers, and other land users. This may involve locally agreed rules for rights of passage for animals along agreed pathways, access to water and compensation for crop damage, etc.

Group management and ownership of community rights are possible options, though not always successful as in the case of group ranches in Kenya. More successful examples exist, and include Conventions locales for resource management in the West African Sahel, hillside enclosures in Ethiopia, and community land registration in Mozambique. *Some see the disappearance of the commons as an inevitable part of economic progress. But access to the commons is especially important for poorer communities, who rely on such resources for their daily livelihoods, as well as when coping with stress. Management of the commons works well when two factors come together: the establishment of secure legal rights for local communities over the common resources on which they depend; and support to enable those communities to manage these resources in an equitable and sustainable manner.*

3. WHAT CAN BE DONE?

Recognise that land reform and security of tenure require political support and long term commitment

Policy dialogue at all levels should recognise the importance of secure land rights for sustained development, growth and peace. Land issues need a more central place within bilateral policy dialogue and Poverty Reduction Strategies. Support from donor nations

could help those countries in Africa who wish themselves to take forward the land agenda. Further donors could provide support to the Africa Union, Regional Economic Communities and NEPAD to catalyse pan-African thinking and action on ways to address land issues. There is an essential need for coalition building and advocacy at the national, regional and international levels.

Donors should acknowledge that tackling the challenges of land reform in Africa is a long term process and requires long term and consistent commitment. Significant harm can be done through short term project-based approaches. The land reform agenda must be driven and owned at the individual country level and donor countries should recognise that whilst lessons of good practice can be shared across Africa, simple, single solutions cannot be applied across the continent.

Current donor mechanisms present barriers

The Poverty Reduction Strategy (PRS) process is currently at the heart of relations between donors, international development agencies and African governments, bringing in substantial financial flows through government to government budgetary support. The PRS process has many merits in terms of bringing all partners around the table, to agree how to fund the priorities established by government. However the PRS, and the resulting funding commitment, has tended to focus on service delivery in key areas, such as health, education and water. Whilst these are necessarily high priorities, given their prominence in the MDGs, strategic support to the institutions and processes that underpin economic growth, peace and stability must not be neglected. Better governance of land and natural resources is a core element for building accountability between citizens and their government. Donor countries could assist governments and civil society in identifying these long term institutional reforms which are essential for growth and development.

Mainstream land issues into the wider economic development agenda

A lack of attention to land tenure and security of land rights will increasingly hamper growth in Africa by discouraging local and foreign investment, because of the perceived risks involved where property rights are poorly secured. Further inaction can potentially impact on agricultural growth and productivity, whether for domestic or international markets, as well as food security and hunger, through disincentives to invest in farming for both small and large scale farmers. G8 nations are now focusing more attention on investment in infrastructure, especially transport, to improve market linkages. But such investment will also bring major changes to land values. Planning for investment in infrastructure requires transparent and effective land administration to be in place, with acceptable mechanisms for compulsory purchase, compensation and rights of appeal.

Donors can be a valuable source of technical support

Donors can help provide technical support at country and sub-regional levels through the Regional Economic Communities (RECs) and the African Union (AU) for a range of services, including land administration. In some countries, land records are effectively inaccessible. Often dispersed in different government offices, and in poor physical state, these written claims to land need to be ordered and made public. Outdated, inefficient and incomplete land registers generate conflicting claims and fuel disputes. Simple methods to bring together existing records and make them open to public scrutiny are key to establishing transparent and accountable management of land and property rights.

Training and capacity building – essential and new skills

New approaches to land bring a need for maintaining core and building new skills including surveying, land registration, land use planning, and lawyers specialised in land, community based planning and management etc. Donors can provide support to develop capacity nationally and sub-regionally (through RECs and the AU etc), and strengthen centres of excellence including at the University level through support to research, skills training, education and professional development. Support to national and regional networks of policy makers, practitioners and civil society provide the means for lesson sharing, capacity building and policy influence. Specific opportunities exist for capacity building at the University level, in centres of excellence and through learning networks and platforms.

Build and share models of innovation rooted in locally developed innovation

The highly diverse history, environment and cultures of African nations demand that approaches to land be tailored to local circumstances. Fortunately, there now exists a growing body of sound, innovative local practice on which to build new institutional innovations. These include public and private partnerships in urban housing, ways to link customary with formal systems, strengthening of local conflict and dispute resolution mechanisms, new forms of land leasing and promotion of rental markets. Islands of innovation and success at the cutting edge of change, such as in slum upgrading, and areas under intensive agricultural use – need to be validated and shared for wider adaptation and adoption as appropriate.

Engage in policy dialogue to achieve radical, new solutions to land issues in southern Africa

Land has been and continues to be an intensely political issue, with strong historical roots, which still influence the agenda today. The urgency of addressing land reform and redistribution is evident in southern Africa, notably in South Africa, Namibia and Zimbabwe. Many from the southern African region perceive donors as having pulled back from firm commitments to support new solutions to land redistribution, which could make faster progress. But such a pulling back is no substitute for addressing such issues. Political sensitivities may be easier to handle when there is joint funding of the land reform process by a number of the major donor agencies.

Strengthen civil society groups and networks

The distribution and management of land has important political aspects. Civil society organisations can play an important role in providing checks and balances on government decision-making and the implementation of land policy. Donors should find means to build on existing civil society initiatives, such as alliances and networks, at local, national and sub-regional levels. Given that the PRS process has led to a concentration of funds in central government, alternative mechanisms are needed to provide funds to a range of civil society actors active on land issues.

Recognise that good governance of land is key to peace and security

While land issues may not be the major cause of civil and military conflict they are very often a part of the picture which need to be carefully understood, and land conflicts between groups can spill over into wider political conflict, insecurity and war. Building

equitable land institutions to create a foundation for democratised access to assets, and enable negotiated solutions to conflicting claims is an important element of post conflict reconstruction.

Integrate land with broader trade, agriculture, urban development and governance issues

If improvements in trade rules and access to markets are to benefit Africa's smallholder farmers, complementary action to safeguard their land rights is needed. Equally secure land rights, accessible land institutions and management systems are essential to enable people to move in and out of agriculture and to find secure homes and livelihoods in Africa's cities. As such, action in the land sector is an essential complement to the broader agenda of making globalisation work for the poor.

The new emphasis on investment in infrastructure requires sound land management

The renewed attention to the importance of investment in Africa's economic infrastructure is likely to bring rapid changes in land values, for building development as well as for agriculture. The changes that this will bring create further need to strengthen democratic land management institutions to protect existing land rights and find fair solutions so as to minimise the conflicts and risks that new development will bring.

LAND IN AFRICA
Market asset or secure livelihood?

Land lies at the heart of social, political and economic life in most of Africa, where agriculture, natural resources and other land-based activities are fundamental to livelihoods, food security, incomes and employment. At one time land seemed an almost inexhaustible asset in Africa, but population growth and market development are creating mounting pressure and competition for land resources, especially close to towns and cities, and in productive, high value areas. As a result, land tenure and shelter are insecure for many ordinary Africans in both urban and rural areas. Property rights are weak or unclear, and this is widely regarded as a major obstacle to African development.

In this dynamic and challenging context, a conference entitled *Land in Africa: market asset or livelihood security?* organised by the International Institute for Environment and Development (IIED), the Natural Resources Institute (NRI) and the Royal African Society in November 2004 brought together a wide range of interest groups including, African policy makers, academics and civil society representatives, as well as representatives of the private sector and international agencies to debate the way ahead for land rights and land reforms in Africa. This volume brings together the proceedings from this conference.

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