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# Innovation in Securing Land Rights in Africa: Lessons from experience

### Introduction

Securing land rights is a process embedded in history and politics. Land tenure systems change in response to population growth, patterns of urbanisation and urban expansion, technological development, wars and conquests, and changes in governance. Systems are therefore diverse and constantly changing. African land tenure has been an object of policy intervention from colonial times to the present. Colonialism has left very unequal patterns of land ownership in much of Africa and imposed statutory land laws, which have little to do with customary law

and practice. At the same time, inequity prevails in most customary systems, particularly for women, and especially as these institutions lose indigenous mechanisms for accountability. In Africa, most land is not titled, and resource users obtain access to land through diverse combinations of both customary and statutory principles, and on the basis of kinship, social status, monetarised transactions, government allocation, and other means. The growing predominance of market mechanisms results in significant problems for both the urban and rural poor in securing tenure.

*Tigray, Ethiopia*



There is broad agreement that secure tenure is a “good thing” for economic, environmental and equity goals. In most countries in the world, several layers of interest in property are recognised to be legitimate, and tenure rules may recognise a bundle of multiple, overlapping rights over the same land. For example, an individual or group may have the right to farm the land or build houses, but not to dispose of land; or to bequeath land but not to sell it; to use pasture land at certain times of the year but not others, and so on.

This paper examines current trends in land tenure and sources of insecurity, and then moves on to describe innovative policy and practice to secure various kinds of tenure rights. Rather than providing a comprehensive review, it seeks to gather insights and lessons from seven case studies. These experiences were discussed at an IIED workshop, held in London on 25-26 May 2006, which brought together researchers and practitioners actively engaged in land tenure policy research, debates and implementation. This briefing paper aims to inform current policy debates and initiatives to support land tenure security for low-income, resource-poor and vulnerable groups who make up the majority of the population in Africa. The sources used are listed at the end for further reading.

### Trends in land tenure policy and sources of insecurity

What are the current trends in land rights and security? Recent experience from many parts of Africa shows that growing population pressure and the development of market economies have given rise to significant changes in land tenure practices. The combined effects of population growth and increasing commercialisation of land-based activities have increased pressure on land and raised the monetary value of land, undermining its social, cultural and spiritual significance. The process of and pressure for privatisation and efficient land use have increased the individualisation of tenure. Different forms of land sales also take place more and more. When indigenous forms of property undergo formalisation, exclusivity of rights tends to be strengthened benefiting the primary right holder at the expense of others. When rights are formalised, some right-holders are privileged, others marginalised.

As the Ghana case illustrates (Box 1), changes in land tenure security are taking place at different levels. At the micro-level, intra-household competition between men and women and between generations often leads

#### Box 1: Trends in land tenure security in Ghana

Land sales have a long history in Ghana dating back to the early 19th century when Krobo and Akuapem farmers engaged in export production of palm oil began purchasing unoccupied land from Akyem town chiefs. Boundaries between the lands of the various chiefs were often not clearly defined and chiefs often sold land in indeterminate places to migrants to stake out chiefly claims. By the late 19th century, many of the land sales were drawn up in written documents, which stated the understanding of the transaction between parties, rather than being a document with legal validity. By the 1950s some of the chiefs, in collaboration with local government, began to appoint land secretaries that collected records related to land sales to migrants.

After the 1920s, transactions in secondary rights (leasing, sharecropping) became more common. Farmers either paid the landlord a percentage of the crop obtained from farming, a proportion of the cocoa plantation created, or an annual payment or ‘tribute’, usually made at harvest time. In some instances, migrant farmers understood this payment to be the purchase price of the land but the chiefs insisted they had not sold the land but only given it to migrants to use. Sometimes, these arrangements were recorded in written contracts between tenants and chiefs. The rapid alienation of customary land by chiefs led to resentment of the migrants by local youth who found themselves without sufficient land of their own, leading to encroachment on migrants’ land, occasional land seizures and conflict. Chiefs took advantage of local resentment to make increasing exactions from migrants.

In recent years, there has been an increase in transactions between local people concerning family land, particularly in areas of land shortage. In some cases, agribusiness companies working with government, and in alliance with chiefs, have expropriated family farming land. In other cases, with the development of profitable oil palm plantations, elders look for sharecroppers with capital with which to convert their land into plantations. Inheritance rights over land are no longer guaranteed, with many family members competing for less and less land. Where youth do not have capital of their own, elders increasingly give out family land to outsiders on a tenancy basis, resulting in growing landlessness and exclusion for young people. Formal systems of land titles and land deeds remain inaccessible to the majority.

Source: Amanor, 2006.

to the edging out of women and young men from control over productive resources, and family property is effectively privatised by older men. On a larger scale, the encroachment on common land by commercial agriculture, and the marginalisation of smallholders, for example by large scale foreign investors, are widespread phenomena. Such processes may often be backed by the state when it perceives pastoral and smallholder land use to be “backward” and unproductive.

In most urban areas, the opportunities for low income households to access land for housing through non-commercial channels have declined. The supply of land in public sector ownership has been reduced, as governments have used up the land they had at independence for housing, public facilities and industry. There are few suitably located sites available for squatting which, in the past, enabled low income families to secure a toe-hold in the city and negotiate for land security. Urban expansion coupled with the commercialisation of land, in part as a result of economic growth, has led to pressures on informal settlements and other land used for livelihoods by low-income residents in both urban and peri-urban areas. In practice, widespread informal subdivision of land is taking place in urban areas, with wealthy outsiders buying up land and land changing hands within families and kinship groups. Whilst such informally divided land is still available, it is increasingly expensive, forcing the poor into rental arrangements.

Land tenure policies express, implicitly or explicitly, political choices and the distribution of power between the state, its citizens, and local systems of authority. Governments can provide legislation and enable institutional arrangements that will positively influence the land tenure situation for poor and marginal groups. Or they can do the opposite. There is innovation in the institutional landscape in many countries, although not often at a significant scale, and the rest of this paper tries to capture lessons on processes and instruments which promote productive and equitable systems of land tenure. However, it is important to bear in mind that the critical risks to tenure security come from different sources in any particular context. For example, women may lose land rights when land is being titled or peri-urban farmers may lose rights as urban centres grow, given policies to expand urban infrastructure and to attract export-

oriented agriculture and industrial investment. Although there are many common issues, including development policies that favour agri-business and foreign investment, an analysis of context calls for differentiated policies and instruments. Urban dwellers often accept the need for resettlement due to essential infrastructure investments, but seek to negotiate compensation. Those with insecure tenure face a particularly difficult situation in this respect.

## Innovation and evolving practice

Current efforts to strengthen land users' claims include combinations of: clarifying the content of those claims (e.g. nature, object and duration of land rights), and improving the tools with which those claims are documented and upheld – typically, through some kind of formalisation in terms of deeds, contracts or registration. However, for such rights to be upheld and enforced, the institutions that issue or formalise them have to be seen as socially legitimate and have the power to enforce the rights. As such, formalisation of tenure is a governance issue as well as a technical one. Tenure security is not only a function of “objective” elements (content and enforceability of rights), but also of subjective perceptions – land users have to be confident that their rights will be upheld by those institutions responsible for enforcement. Outside of some of the formal programmes described below, people are consistently seeking ways to improve their tenure security. Usually, they aim for security that is ‘good enough’ rather than perfect and much depends on the strength and reliability of institutions which intervene in land matters. In the case of poor and disadvantaged groups, local enforcement institutions are very important, as is the level of trust they command.

## Innovative policy and practice in land registration in Ethiopia

In Ethiopia, land is state property and citizens have user rights. Inheritance of user rights is allowed, but land use rights may not be mortgaged. Foreign investors are permitted to mortgage leased land. Systematic registration and user right certification have taken place in four regions: Tigray (since 1998) and Amhara, Oromia and SNPPR-Southern Nations, Nationalities and People's Region (since 2002). Structures have been created from regional down to community level to implement the programme. The



*A farmer defending his property with this makeshift sign!  
(Peri-urban Accra, Ghana)*

key stated objectives of the new land administration system are:

- improving tenure security for land users;
- promoting land conservation; and
- facilitating investment.

Most land registration is carried out through a decentralised system, using simple and traditional measurements and involving elected local land committees working on a voluntary basis. Extensive community consultation takes place to decide on boundaries and resolve conflicts. More sophisticated and expensive technology has also been piloted, which enables a more precise definition of boundaries, and may be useful for high-value land. With the exception of Tigray, the other regions have registered the land in the names of both spouses, strengthening women's rights to land, and reportedly already having the effect of reducing divorce (Amhara, Oromia and SNPPR) and polygamy (SNPPR). In Amhara, the participatory demarcation of common property resources has also been piloted. Farmers may rent or lease out their land, but the time period allowed varies in different regions.

In Amhara it is 25 years, in contrast to Tigray, which allows for a lease of two years if the land is to be tilled using 'traditional' technology and 15 years if 'modern' technology is to be used.

The decentralised system has allowed flexibility and learning between regions and has built on existing and well-developed governance structures. However, the level of confidence and trust which people have in local authorities varies and is a major factor in enabling the system to work as designed and in resolving conflicts at the local level.

Continuing sources of insecurity are:

- Before 1991, land redistribution by the state was a major cause of insecurity, and fear of further redistribution still affects perceptions of tenure security;
- Land expropriation by government for infrastructure and investment, urban expansion, large-scale commercial ventures and land speculation, with limited compensation are particular threats to peri-urban low-income residents;
- A user's absence from land in rural areas (the period varies from two to ten years in different states) leads to a loss of rights.

Areas for improvement have been identified:

- in record-keeping and updating mechanisms;
- in capacity building of local land committees and women's participation in them;
- in conflict resolution mechanisms and in the accuracy of boundary markers and maps;
- in systematic demarcation of common land to avoid encroachment by individuals;
- in compensation values and claim procedures;
- and perhaps most difficult of all, in building the information, resources and confidence of poor groups to defend their rights.

About six million households have received title certificates in a cost-effective way, which is

unprecedented in scale and low cost for household titling in Africa. While it is too early to say if key objectives of the programme have been met, increased demand for certificates (Oromia) is a positive sign. However, competition over high value land for export enterprises in flowers, mining and manufacturing, and for real estate development, have to be well-governed if they are not to undermine land tenure security for poor groups. The periphery of Addis Ababa is a particular case requiring attention, as large numbers of smallholder farmers are now losing land to the large-scale production of flowers for export.

### **Demand-led innovation in Namibia and South Africa**

It is not only governments, as in the Ethiopian case, which are promoting the formalisation of land rights. As we saw in the case of Ghana (Box 1), citizens use instruments such as contracts and witnessing to formalise rights, and draw on a range of forms and processes of ‘official’ practice to strengthen their claims to land. Such innovative, socially legitimised practice has helped deliver land for housing in Namibia and South Africa, as described below.

The Namibian Shack Dwellers Federation brings together 361 savings schemes and a membership of 14,000 people, mainly women. Group savings are the means to bring low-income people together to acquire and develop land. When members have belonged to a saving scheme for at least one year, they can approach the Federation to help them negotiate for a block of land from the municipality. This model was developed by the City of Windhoek in the late 1990s. The municipality accepted the need to radically change their approach to improve the quality of tenure options for both existing urban dwellers and the substantial influx of new migrants following the dismantling of the apartheid system. During the policy review, City officials and politicians looked closely at pioneering experiences of savings schemes belonging to the Federation and became convinced of the need for policies that supported incremental community-led development. The methodology addressed multiple needs, most notably the wish of the officials to have a strategy to address in-migration to the city within the policy of cost recovery, and the commitment of the politicians to offer land to low-income households in a way that addressed the demands of grassroots activists whilst also maintaining fiscal responsibility. It should

be noted that existing mechanisms provide some subsidies to the poor in terms of the distribution of development costs, rates and service payments, and housing loans.

Savings scheme members make a payment to the municipality to cover basic infrastructure which reaches the border of the block. Members then sign individual agreements for occupation rights and are involved in a collective mapping and layout exercise, dividing the land into equal shares for housing. Within such communal developments, individual plot size has been cut and is now permitted to be about 150 square metres, which has increased affordability, although the national housing policy stipulates a minimum of 300.

The group has to reach consensus about which services they want to prioritise, and extend these services, such as water and sewerage into their plots. The difference between this and previous arrangements is that communities can reduce infrastructure costs by installing services themselves and they are allowed to wait until this is affordable. Committees are set up to approve loans from a Federation fund, managed by a local NGO, and are also responsible for repayments. Loans are also available for housing and income generation. If a member does not pay, there is a warnings procedure which ends up in confiscation of land if the member does not heed it. There is a much greater demand than supply of plots, so it would not be difficult to replace a member, but this has not occurred to date. Individuals cannot sell plots, but they can be inherited.

This approach depends on the availability of land and services which are affordable to low-income urban dwellers. The strength of local organisation, the political will of the government (including planners) to redress inequalities from the apartheid system, an incremental approach to upgrading living conditions, and support from international civil society organisations have resulted in tangible benefits in the lives of historically disadvantaged groups. Learning visits have been organised between urban centres in Namibia and internationally.

Similar initiatives, which use a phased and flexible approach, are growing in South Africa. Two examples of alternative approaches are highlighted in Box 2.

### Box 2: Alternative approaches to land registration in South Africa

The **New Rest** site is an informal settlement in Cape Town whose residents, after lengthy negotiations, are working with the local authority to upgrade their services. The city of Cape Town and representatives of the New Rest community decided to explore a new approach to tenure upgrading. A phased approach to ownership was advocated. Rights holders receive substantive tenure rights, although not quite full ownership which is retained by the city council. Rather than registration in the central Deeds Registry, the city holds and maintains records, which are also locally managed and controlled by street committees and neighbours. The community thus monitors new admissions and departures. It is user friendly, flexible, affordable and incorporates local tenure practices. Contracts between the council and the rights holders reflect both the local reality and practices, and fulfil the needs of the formal system. The legal arrangements of the tenure agreement are currently being prepared.

In **Ekuthuleni**, a land rights NGO, AFRA, has been helping the community to develop legal, affordable and accessible records as an alternative to the inflexible registration system offered by current state policy. Working at multiple levels (social, technical and legal), and with diverse stakeholders (government, private sector and NGOs), some important milestones have been achieved. Landholdings have been demarcated on colour orthophotos (aerial photographic maps) showing existing tenure arrangements. A recording system was built around local practice and knowledge. Spatial data were digitised using modern geo-spatial technology to produce mapped layouts of land rights and land use. However, without an appropriate legal framework to provide state support to local land administration systems, it is difficult to achieve the community's desired goal of gaining legal recognition of their land rights. AFRA and the community are seeking to pilot their approach under the government's *Communal Land Rights Act* (Act No 11 of 2004), but to date agreement has not been reached.

A singularly successful legal intervention, the *Interim Protection of Informal Land Rights Act* (IPILRA, Act No 31 of 1996), underlies these approaches in South Africa. It was intended as a short-term measure to arrest dispossession of people with rights of customary-type occupation on state-owned land in the former homelands. However, it has also protected existing rights in a manner that recognises and legalises informal land occupation. While IPILRA does not provide for a new land tenure and administration system, the concept of "adverse possession" has helped to shape a new understanding of those land rights not covered by the common law concept of "ownership". Rights holders cannot be deprived of their land rights without their consent, other than by formal expropriation, an action that requires the quantification of their rights and in effect means these rights achieve a value previously unrecognised in law. These laws have provided a base for developing a concept of ownership through possession that diverges from the dominant common law concept of ownership in South Africa.

### The role of informal institutions in securing land in Kampala, Uganda

Since the late 1980s, following a period of political instability and economic crisis, there has been a renewed influx of migrants into Kampala from rural

areas. Where possible, people have taken advantage of the collapse of formal institutions to access land informally, while the absence of state controls has accelerated the need to devise local mechanisms to control land access and development, and secure rights.

This account is drawn from a study of three informal settlements to examine the nature of informal institutions in providing access to land when formal mechanisms fail. The process to gain access to land involves:

#### 1. Obtaining information on land availability

Issues of trust, cost and social norms mean that kin networks are the main way in which information is sought. Informal land brokers are a small, but growing, source of information.

#### 2. Negotiation of a land transaction

This is often undertaken directly between buyer and seller, although absentee landlords or non-resident buyers may appoint agents (often family members, friends and occasionally brokers). Negotiations are usually secret and only made open on conclusion. Bargaining centres around price and mode of payment and key factors determining price include: existence of land title, plot size, physical location, terrain (whether 'wet' or 'dry'), level of servicing and nature of tenure.

### 3. Plot adjudication and demarcation

Almost all landholdings have their boundaries defined in one way or another and the process is undertaken mainly by 'original' rights holders (e.g. sellers or those bequeathing). Different types of boundary marks are used, the commonest being plants (particularly a plant called *Olwanyi*).

### 4. Evidencing land rights transfer and acquisition

Close to 90 percent of landholders in the surveyed settlements had some form of documentary evidence. The most commonly used is a 'letter of agreement', referred to locally as *endagaano* (literally translated as a 'pact'). Members of the village council often act as witnesses and append their signatures (and stamp where available) to the agreement, as do two to five other witnesses. The agreement contains a sketch of the land in question and a written description of its boundaries.

These written agreements may be used as a basis for upgrading to title once a proper cadastral survey has been conducted. The desire to 'upgrade' is born mainly out of the fear that these agreements are only enforceable when the parties are still alive. Many landholders want to acquire a title to ensure tenure security for their children and as a means of getting adequate compensation if their land is compulsorily acquired for public purposes. Benefits, such as use of the title for collateral against a loan, do not feature as motivation for seeking title. However, even households that are relatively well off only rarely see the process through to title acquisition. The reasons for this are common throughout Africa: the expense and complexity of procedures to title land and failure to meet regulations such as plot size and standards.

These examples from Kampala show that institutions which, in practice, structure and regulate access and secure land rights, are not formal but have socially evolved rules. They are pragmatically developed by drawing from different sources, including state rules, custom and the market. Formal courts recognise such land transactions, oral testimonies and informal dispute resolution. As such, strong linkages exist between formal and informal institutions, but whereas formal institutions are inaccessible to all disadvantaged groups, informal systems are socially embedded, although they do discriminate against some groups, typically women and incomers.

## Innovative policy for individual and collective land tenure in Mozambique

Mozambique's land legislation (1997) is especially innovative in that it recognises both individual and collective tenure rights and acknowledges customary norms and practice. Land in Mozambique belongs to the state, which can allocate rights to other users for a period of 50 years renewable in the case of investors, and for an indeterminate period in the case of rural and urban communities. In law, the land cannot be sold. Rights over land are recognised through good faith occupancy for at least ten years, inheritance through customary laws, or allocation by the local authorities. Absence of formal land registration (to obtain the DUAT, *Direito de Uso e Aproveitamento da Terra*, land use and benefit right) does not preclude acquired rights through occupancy. Therefore, registration is a choice by citizens who wish to formalise and document their rights.

Rights of local communities are further protected by the provision of consultation in the case of proposed investment projects within their landholding. This consultation process is seen as an opportunity for negotiation between those seeking to use individual land registration processes for business (individual and corporate investors), and the community (which has the right of refusal) and a means to encourage investors to take responsibility for local development through employment and infrastructure.

From 1997 to mid 2005 there have been 10,070 requests for land by investors, of which 66 percent were approved (over 3 million hectares). These are large tracts of land which the private sector has registered for agriculture, forestry, tourism and other activities. On the other hand, community land delimitation has been conducted in 185 communities with 88 holding land use certificates and a further 24 acquiring titles (registered in the national cadastre). The size of communities can range from less than 1,000 people to 10,000 and cover thousands of hectares of land. Provincial Services of Geography and Cadastre (SPGC) and District Directorates of Agriculture play an important role in the process of registration, and in facilitating the delimitation and demarcation process in the case of community land. Given high levels of illiteracy and poverty, and the centralised registration process, NGOs working on

rural development have sought to assist rural communities to delimit and register their land, using participatory mapping and working with elected local land committees.

Consultation processes with incoming investors have been much more problematic than community land registration. Community representatives (three to nine) are required to sign the consultation report, but numerous cases have been documented of wealthy business people buying off local leaders with paltry sums of money or gifts to get them to sign and thereby acquire rights to land. There are many cases of ongoing conflict between private business and community members over land and natural resource use, and in general, the private sector is not meeting its responsibilities as agreed during the consultation processes. At the moment, large-scale agriculture and timber companies are pushing smallholders onto less fertile lands or engaging them in contract farming (e.g. tobacco and cotton) where they do not get a fair price for their produce, or providing extremely poorly paid employment on forest concessions, while limiting community use of forest products.

Both women and men have the same land rights in statutory law. Women can also give testimony in favour of other people who seek formalisation of their rights. However, customary law views the man as the head of the family and the custodian of all family assets. This means that married women still face problems in securing rights to land and, in the event of the husband's death, conflicts often follow.

Although the legislation applies equally to both rural and urban areas, the registration process in urban areas is extremely cumbersome and expensive, with 64 steps in the case of Maputo city, of which 27 are for land registration and 28 for the registration of buildings. The land market is thriving and is widely recognised to benefit the elite (although some farmer associations have managed to register peri-urban land). Poorer people are being pushed away from urban centres and landholdings are being subdivided into ever smaller plots. NGOs and donors have shown much less interest in the plight of urban poor groups than in smallholder farmers in rural areas.

Community land registration is providing some defence of smallholder rights, but the extent of such registration is limited. Building representative local

organisations and more decentralised land administration systems with effective conflict resolution mechanisms is essential for making real progress. Lessons have been learnt and proposals made by NGOs to inform government about how to make the process more effective, for example, by having preliminary inventories in resource-rich areas where concessions are being granted. This would also equip the government with adequate data to monitor the implementation of investor management plans. In addition, NGO-supported processes of land registration have to be much better linked to community-based management and development of natural resources to have any real impact on people's livelihoods. About 70 such projects exist which can serve as demonstration cases of how to develop a range of local enterprises based on natural resource products. In addition, a new community land fund will provide support to registration and natural resource use, initially in three (of ten) provinces.

### **Shared management of common property resources in Niger**

One of the key challenges in land tenure is providing a system to meet the needs of pastoral groups, which rely on common property resources. Pastoral livelihood systems, based on mobility, have developed to cope with and adapt to climatic uncertainty in drylands. Such systems depend on flexibility in land use and management, with the need to negotiate the use of land on a seasonal basis with other users. Although the process is fraught with prevarication and delays, the Niger case study provides useful lessons. It is based on Niger's framework law on rural development, the *Code Rural* of 1993, which encourages just such negotiation processes.

Specifically, the *Code Rural* gives pastoralists priority, though not exclusive rights over resources in their "home areas" as well as rights to compensation in the event of losing their lands to public interest needs. In addition, the Code elevates customary law to the same level as statutory law, recognises existing verbal and written agreements, explicitly recognises collective user rights for pastoral resources and takes into account the role played by traditional chiefs in conflict resolution. Fostering social relations and maintaining inclusive, but regulated, access regimes to resources is a key feature of Sahelian pastoral tenure systems, which have evolved in response to uncertain and ever-





Dense low income housing scheme in the outskirts of Cape Town (Fingo Village, Cape Town, South Africa)

changing environmental conditions. Formal recognition of these adaptive strategies by statutory laws is very encouraging.

A *dossier rural* (rural land register) brings together tenure information, from loan arrangements, or property rights to individual fields, through to common property resources and forest reserves. Certificates and other proofs of tenure arrangements may be issued at community level by village-based land tenure commissions, then compiled for the *dossiers*, which in turn contribute to a regional land management plan. The district land tenure commissions are responsible for ensuring that land is being put to productive use and are empowered by law to withdraw land if they consider it is not.

The newly established local structures for administering the *Code Rural* have taken much longer than expected to put in place, and the coordination with ministries has been slow and uneven. A handful of village level commissions were set up initially, and

then there was a long period of inactivity followed by a recent phase of sudden expansion. However, training and support for these new organisations have been inadequate, with most left to sink or swim.

Government definitions of rational and productive pastoral land use (*mise en valeur*) are an area of major concern. The *Code Rural* has defined what constitutes the productive use of natural resources by listing “positive” and “negative” land use activities. Most of the former involve some form of material or physical investment (e.g. fencing), which favour more intensive forms of livestock keeping. Furthermore, most district-level land tenure commissions are largely composed of civil servants (rarely aware of the dynamics of pastoral systems) with only one “seat” reserved for a pastoral representative. These provisions weaken pastoral tenure rights, particularly over high-value resources such as wetlands in drylands, areas that are critical for the survival of pastoralism in the Sahel. Political support for the *Code Rural* has waned and wealthy influential individuals have been given titles to large

### Box 3: Innovation in the management of common property resources in Niger

#### Example 1: Kou Tayani Association after seven years of operation

The Association Kou Tayani was created to manage the Forest Reserve of Takiéta and has been completely autonomous since mid-1999. The consultative process amongst stakeholders started with a major workshop in early 1997. By November 1998, the elected Local Management Structure (LMS) delegates were united and approximately 15 months later the LMS had become a functional and legally recognised 'Association' of local stakeholders. Members of the Association share the collective aim of rationally managing resources for the benefit of all user groups. The Association has its own internal rules and regulations and a locally defined resource management plan, recognised by the State.

Though the preparatory work by the project and initial round of collaboration involved a serious investment of time and effort, the resulting structure lost very little time in organising itself and producing encouraging results and the Association is recognised by local and national authorities. It was treated with curiosity by outsiders, with pride by the communities involved, and was tolerated but feared by certain groups (e.g. some local leaders) within the local socio-political environment. The exclusive rights to manage the forest reserve in a non-exclusive way were conferred to the association by Prefectorial Decree in 2000 and were laid out in an agreed management document. The experience was used as a case study in the formulation of the new Forestry Code, which now includes clear dispositions for shared management of common resources, including Forest Reserves.

Since then, much has happened: general assemblies have come and gone, delegates have changed, elections have taken place, there have been problems and successes and a great deal of learning. The members have continued to hold regular meetings, make decisions, plan, budget and carry out numerous activities (such as local seedling production, planting, pasture improvement, soil and water conservation work). They have done so in collaboration with the local population which regularly mobilised itself behind the Association on a purely voluntary basis. Local natural resources were further developed, such as honey production, fishing and the creation of rural fuelwood. In short, local stakeholders through their Association have carried out more effective and serious management activities in six years than the Forest Department has since the forest was reserved in the 1940s.

#### Example 2: The Sylvo-Pastoral Sites (PAGCRSP)

The local management structures at the four sylvo-pastoral sites of Moa, Mairemi, Mai Salka and Kup Kup are in the process of having their formal status recognised while putting into action management plans related to resource improvement (reseeding, planting, soil and water conservation). Each structure has developed positive working relations with administrative actors in its environment: the Mayors and commune representatives, authorities, technical services and traditional chiefs as well as other civil society partners. The process of establishing Associations has been lengthy but they are now autonomous and visibly confident in managing local resources. It is too early to draw lessons on how resources will be technically improved by local management. However, because of the collaborative nature and quality of the process, common property has been secured through decentralised management as set out in the *Code Rural*.

Source: Vogt *et al*, 2006.

tracts of pastoral land. Although customary chiefs were fully included in the *Code Rural*, in part to contain anticipated resistance to a reduction in their influence, some of them have tended to sabotage the new local organisations, by continuing old systems of land distribution and social control, or by blocking decisions and guidelines in the making. Donors have tended to support local structures to carry out 'physical' mandates in the field, such as delimitation of natural resources, without ensuring organisational capacity and consensus building approaches.

The problems and delays in implementing the *Code Rural* have resulted in a *de facto* privatisation of common property resources. Both government and

donors currently seem to be buying into a privatisation strategy. However, some local initiatives have used the openings provided by the legislative framework to adopt successful models of collective management of common property resources (Box 3).

### Conclusions and key lessons

The general trend, in the national contexts which were discussed at this workshop, is one of increasing land tenure insecurity for low-income city dwellers, smallholder farmers, pastoralists and other marginalised groups. Land is becoming concentrated in the hands of a few, there are fewer opportunities to acquire land due to greater commodification, and

land rights are increasingly individualised and privatised. Whilst informal land markets are continuing and appear to be growing in at least some contexts, low-income buyers and sellers usually get a raw deal. In addition, pastoralists, women and youth are losing overlapping and negotiated rights to land. With population pressure and the increasing concentration of land, plot size is falling for small farmers and low-income urban residents. In an urban context, contravention of regulations (for example, minimum plot size) results in illegality and hence greater vulnerability. These trends raise serious concerns for livelihoods and well-being, for peaceful development and for the sustainable use of land and natural resources in Africa.

Formal land tenure registration systems, particularly titling, tend to be expensive, badly tailored to local contexts and inaccessible for poor groups. Yet, the innovation documented in recent land tenure reform in Ethiopia, Mozambique and Niger shows how more enabling pro-poor frameworks can be developed. These and the localised initiatives documented in Uganda, Namibia and South Africa, illustrate more appropriate and more flexible land tenure systems, which build on positive aspects of socially embedded rules and on group organisation. In Ethiopia, Niger, Mozambique and Uganda, verbal as well as written evidence is accepted for registering land rights. In both Mozambique and Niger, collective rights may be registered and build on the principle of collective management of common property resources. Collective management options appear to be significant in reaching some of the poorest and most disadvantaged groups, such as pastoral groups in the Niger case.

Protecting the land rights of women is a key issue and in both Ethiopia and Namibia, women have rights registered in their own names. The case of Namibia also illustrates the need to reduce standards to increase the affordability of individual plots, thereby reaching poorer groups.

In terms of mechanisms associated with registration, the significance of local government is evident (Ethiopia, Niger, Namibia) with potential benefits from phased approaches to tenure (South Africa, Mozambique, Ethiopia, Namibia, Uganda) and from new registration technologies (South Africa, Mozambique, Ethiopia). To build on and scale up such

approaches, the capacity of government has to be increased and land professionals have to be re-trained. If the poorest are to be included then access to finance, savings, loans and/or subsidies is needed to cover the associated costs. More transparent systems of governance, including conflict resolution mechanisms, are also critical.

While more research is required, there is little evidence in the case studies that poor groups seek to use land titles as collateral. The members of savings schemes in Namibia are not required to use their title as collateral for their loans and even in this situation many groups choose to use savings to make infrastructure investments so as to avoid unnecessary financial risks. In general, the risk of losing land is felt to be too great, and employment and income are key factors in obtaining loans. In Kampala the point was made that some seek to lend money as a strategy to acquire land through repossession. There is little evidence that smallholder farmers or low-income urban residents use land titles to secure capital. Only distress sales of land are common and security of tenure is sought above capitalisation of assets. Poor groups often develop land or property (usually incrementally) to increase their security of tenure (and reduce the risk of eviction) and to enhance their livelihoods.

Finally, land tenure systems cannot be considered in isolation. Many factors including service provision, revenue generation, socio-cultural factors and compatibility with other forms of legislation, such as inheritance law, influence the outcomes. Much more needs to be done to promote better governance of land and to build mechanisms for accountability to land users. The examples documented here show that there is valuable knowledge and experience to build on.

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