

“Land - the soul of a nation.....”

Land Rights and Sustainable Development in Sub-Saharan Africa

In February this year, the UK’s Department for International Development (DFID) hosted a workshop for African delegates on land rights and sustainable development in sub-Saharan Africa. This event arose from the high level of interest in land tenure and land policy across the continent, and the need to share experiences, lessons and examples of good practice. The enthusiastic participation of all delegates proved the timeliness of the workshop. As the Hon. Baguma-Isoke, the Ugandan Minister for Land, claimed in his response to Clare Short, UK’s Secretary of State for International Development’s opening address “*the concern for land policy reforms in Uganda is home grown but there is a wish to move forward on the basis of mutual cooperation*”. Clare Short stressed DFID’s goal of halving world poverty by 2020; recognising that land tenure arrangements are vital for underpinning the livelihoods of the poor.

Many African nations are now addressing the need to develop new land policies and legislation. They do so against a difficult background - a dual, often conflicting heritage of statutory and customary tenure systems, the pressures of economic and demographic growth, and sporadic conflict. On the positive side, however, there is a growing recognition of the need for democracy, good governance, enhanced livelihood opportunities, protection of the vulnerable, equal rights for women and the restitution of alienated land rights.

Discussions among the 75 participants took place in smaller workshops and focused on issues of land and economic development, the relationship of customary and statutory tenure systems, common property resource tenure, women’s land rights, administration of land rights, governance and decentralisation, and implementing legal reforms, as discussed below.

Tenure, economic development and poverty

Dessalegn Rahmato from Ethiopia argued that equal access to land cannot be provided for all, and risks land fragmentation, and a reversion to subsistence production. Periodic redistribution of land by the state has created great insecurity, and undermined any incentive to invest in improving land. Creation of non-agricultural employment will be central to poverty reduction. Shem Migot-Adholla spoke of how the World Bank’s land policy has changed and no longer emphasises land titling as essential for agricultural development. Communal forms of resource tenure are now regarded more favourably, as are tenancy and sharecropping as means to provide access to land and employment. The Bank now advocates decentralised approaches to land reform, based on assistance to land redistribution through the market and by negotiation with landowners. According to economist Jean-Philippe Platteau, there are no grounds for believing that titling significantly increases investment in land or improves access to credit. More important is tenure security which can be provided under customary systems. Land titling does not automatically activate land markets, which can also thrive through informal customary arrangements.

Participants' views - What are the effects of land markets on economic growth?

- The advantage of land marketability for gaining better access to credit markets has been seriously overstated. This applies only to larger landholders and where the banking system and formal credit markets are well developed. For smallholders, borrowing from within the community is a more reliable and efficient way of getting credit.
- Land markets do not always ensure land is allocated to the most efficient users. Those with money to purchase land, often using remittances from family members in urban areas, are often 'banking' land for the next generation, leaving it uncultivated, rather than using it as a productive asset.

Integrating Customary and Statutory Tenure Systems

European land law is still the dominant system in many African countries into which customary rights and transactions do not easily fit. Patrick McAuslan suggested that new laws which reflect African realities must be developed; one such approach could be codification of customary law. Rose Mwebaza described Uganda's 1998 Land Act which provides for the registration of customary rights, a role for customary authorities in dispute resolution, and the formation of communal land associations. In Malawi, although customary tenure is still in place, much land has already been converted to leasehold and the cultural basis for customary rights has been greatly disturbed. While some argue that customary tenure should be abolished, others believe that large estates should be re-distributed to the landless. In Kenya land has been consolidated, adjudicated and registered under individual title, but with very uneven impact across the country. Customary tenure has often been overridden, but in many places adherence to customary norms still persists.

Participants' views - Integrating Customary and Statutory Tenure Systems

- The principles and rules of customary law vary and evolve over time.
- Some formalisation of customary law is possible, through recognition of certain principles and processes.
- Each African nation could establish a common law which reflects its socio-economic and cultural circumstances.
- Statutory law could acknowledge the existence of local mechanisms for dispute resolution.
- Customary and statutory tenure systems do not necessarily conflict provided it is clear the circumstances under which each applies.

Threats and Opportunities for Women's Security of Tenure

Women's land rights need to be strengthened and protected. Uganda provides an example of best practice in this field. Irene Odida explained how affirmative action ensures that at least one woman is appointed to each Land Tribunal, although complete gender balance has not

been achieved. Throughout much of Africa, women's access to land is regulated through male relations. Stella Longway described how the Tanzanian Land Act presumes co-ownership of family land as well as the right of women to acquire and register title. Thus, where land is disposed of by a man, his wife or wives should be given first opportunity to offer. In southern Africa, few women have benefited from land reform and, in general, it was felt that women's groups need to make allies in the government, media and donors in order to improve networking and gain influence.

Participants' views - Women's Tenure Rights

- Law has a key role to play in improving women's rights in land and property, and setting standards of good practice
- Ensuring women's access to land is not enough; secure ownership or co-ownership should be the aim.
- Women's representation in the policy process is critical, as well as on land boards and other local bodies.
- Inheritance and family law, as well as business and commercial law need attention.
- There are risks of contradiction between new gender-equitable land laws and religious and customary law.

Tenure, Governance and Decentralisation

Several countries are attempting to decentralise the management of land tenure. Moussa Yacouba presented Niger's Rural Code which provides a synthesis of different legal rules operating in the country. Pilot Land Use Commissions (LUC) have been established in 11 districts (*arrondissements*) with membership from the different technical services, the traditional chief in the area, and a representative from groups such as farmers, herders, women, and young people. The LUC perform various functions, to survey land holdings, establish and maintain a register of rights, issue titles to applicants, allocate land in the form of concessions, and mark out transhumance routes. Given the promising start made with the LUC, they will now be extended over the whole country.

South Africa is facing the challenge of establishing a system of land administration which is both effective and seen to be legitimate. Lungisile Ntsebeza described how the past history of collaboration between tribal authorities and the apartheid government, and the autocratic abuse of traditional powers have led to loss of confidence in such structures. Yet, at the same time, given the pace of change in South Africa, and the growing lawlessness relating to land transactions in rural areas, there is a need to be pragmatic, and work with existing systems of land administration where they function reasonably well. To reduce problems of corruption in future, land administration will be separated from local government.

Participants views - Tenure, Governance and Decentralisation

- Various models of local government exist with differing consequences for representation, accountability, and legitimacy – elected district assemblies, customary councils, appointed bodies, village assemblies.
- How do local bodies acquire legitimacy? - from customary principles or from the democratic process? How long does it take for new institutions to establish their legitimacy?

- The tasks of local government should be separated from land administration to avoid conflicts of interest.
- There are a number of threats to democratisation including bureaucratic power, political parties (when one party is dominant), and unelected traditional chiefs, who may be resistant to change.
- In peri-urban areas there are particular risks of mismanagement, appropriation and corruption as a result of the rapid increase in land values.

Land Rights Management Systems

In most regions of Africa, mechanisms to manage land rights are being developed, particularly in the context of decentralisation. Jean-René Okoin presented Ivory Coast's Rural Land Plan (*Plan Foncier Rural*) maps the boundaries of landholdings and records existing rights of individuals and groups, based on interviews with landholders, and neighbours with validation by village committees. The aim is to recognise customary practice and help develop a rural land tenure code. South Africa is developing proposals for land rights management to enable individual or group rights to be registered and protected. The Botswana Tribal Land Act allows tribal land to be granted to individuals either under customary law or leases for residential, arable, or grazing use. A Land Board administers the Act. In Mozambique, implementation of the 1998 Land Law and surveys to register land rights have begun. Priority is being paid to areas of potential conflict, where development projects are planned, and areas where private investment is sought.

Participants views - Land Rights Management Systems

- Land rights should be managed at the lowest level, consistent with general principles and legal frameworks established at national level.
- The creation of new institutions for land rights management should be avoided; it is better to build on the roles of legitimate existing institutions
- Customary authorities have an important role to play in tribunals, and resolution of land disputes.

Main conclusions

A diversity of approaches to land administration, and the management of land rights at local level is now emerging, involving government, civil society and traditional leaders. In all cases, transparency, accountability, and stakeholder representation are critical - more needs to be learnt about what approaches work, where and why. Vesting of land title in the state, the president, or in traditional chiefs has been a source of abuse. Instead, it is necessary to separate ownership and the powers to allocate land so that ordinary people's land rights are not sacrificed to powerful private interests.

In terms of practical follow-up, the ***principal recommendation*** was that *donors facilitate active African-driven networking on land tenure and land policy*, within and across different

regions of Africa. Enhanced networking should provide a basis for meeting other needs identified by the workshop, including:

- *more focused thematic and regional meetings on specific topics,*
- *knowledge development through collaborative research,*
- *capacity building and training activities, and*
- *information and awareness raising on land rights for the poor.*

Finally, while extensive capacity development may be needed, contributions to the workshop demonstrated that there is great energy, expertise and ability within Africa to rise to challenges.

Links

Selected papers from the above workshop have been collected and edited with insights from the detailed discussions at the workshop in a DFID Issues Book entitled *Evolving Land rights, policy and tenure in Africa*. See [ordering information](http://www.iiied.org/bookshop/pubs/7461.html) < <http://www.iiied.org/bookshop/pubs/7461.html> > for this book.

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***Do you have an interest in land tenure and land policy in Africa?
Let us know who you are!***

The main recommendation from participants at the above workshop was for donors to support active African-driven networking initiative on land tenure and land policy. Regional studies are already underway to identify and canvass institutions, both governmental and non-governmental, and individuals with an interest in land and resource tenure. The first meeting of the LandNet Africa was held in Addis Ababa in January 2000. See the [LandNet workshop summary](http://www.iiied.org/drylands/landnet.html) <<http://www.iiied.org/drylands/landnet.html>> which includes contact details of the regional coordinators.