

# **Land reform North and South**

**Camilla Toulmin and  
Simon Pepper**

Simon Pepper is the Director of WWF-Scotland, and Camilla Toulmin is the Director of the Drylands Programme, International Institute for Environment & Development. For further information, please contact the authors by e.mail: [spepper@wwfnet.org](mailto:spepper@wwfnet.org) and [camilla.toulmin@iied.org](mailto:camilla.toulmin@iied.org)



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While MPs are debating land reform in Edinburgh, Scotland, much the same is happening in national assemblies across Africa. Despite differences of history, climate and economic development, there is a lot which looks remarkably similar - whether it is arguments about who can claim to be part of 'the community' or the need to clarify multiple and overlapping rights to resources. Many of the land laws which are now subject to reform in Africa are the creations of British and other European colonial powers. Many African nations are starting to question the legacy of past laws, which had entrenched within them an inequitable system of land ownership and power, with consequent impediments to social and economic development. Learning lessons and exchanging experience about land reform across the world could be of great value to all parties - throwing light on new ways of looking at the issues, the variety of the options to be considered, and ways to engage civil society more effectively in consultation and building consensus<sup>1</sup>.

## **THE ROLE OF LAND**

Land continues to be an asset of enormous importance for the majority of people in most African countries. Often 70-80% of the population relies directly on agriculture for incomes and employment, while national governments benefit from this sector for export earnings and sources of revenue. Settlement and use of land provide a central element of people's identity, as well as bearing strong spiritual and cultural associations. The African landscape provides a range of valuable environmental services, such as wild products, biodiversity and water resources. Land is of particular importance to many poor people who rely on access to land - often as tenants or share-croppers - as well as to fruits, wild game and wood from the commons, in order to make ends meet.

Land is also a major asset to the Scottish economy. Although farming of land in Scotland generates a direct income to a very small percentage of the population, one look at any local newspaper shows the importance of land to the rural economy of the area. The Scottish landscape and scenery are also principal

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<sup>1</sup> See 'Evolving land rights, policy & tenure in Africa' edited Camilla Toulmin & Julian Quan, DFID/iied/NRI, 2000 & 'An Agenda for Land Reform? A review of experience in South Africa and Scotland' Alison Brown & Vicky Lubke, Community Learning Scotland, 1999.

components of the tourist industry which is now one of Scotland's largest economic sectors, and is particularly vital for many more outlying communities. The Scottish landscape and environment provide water for drinking and fisheries, as well as electrical power generation. Despite the relatively low proportion of people who live in the Scottish countryside, many town-dwellers retain a very high level of interest and series of associations with the land, whether as their original homeland, or as a place to walk and seek spiritual nourishment.

## **PATTERNS OF LAND HOLDING**

In most parts of Scotland, the titling of land in the 1700s transformed customary rights into private claims, and further concentrated ownership into a few hands, leading to the highly skewed distribution of land you find today. Scattered communities are all that remain of a once huge population of small-scale tenantry. The current distribution of land in Scotland is markedly different from other European countries in terms of holding size. Thus, for example, 313 landowners own half the privately held land in Scotland. Areas owned are often well in excess of 5,000 hectares, with the largest holdings more than 20-40,000 hectares in size. Such an unequal pattern of holdings can also be found in those African countries - South Africa, Namibia, Zimbabwe and Kenya - in which colonial governments allocated enormous tracts of land to white settler farmers. In these countries, as in Scotland, much of the land reform agenda today is driven by a strong sense of inequity and the urgent need to right a historic wrong. The debate is coloured, in Scotland, by the echoes of the Clearances, while in South Africa the memory of forced settlement of people in the Bantustans is a harsh reminder of the need for restitution in some form. Similarly, in Zimbabwe, the arguments used to justify seizure of white commercial farmland by President Mugabe's government return again and again to the wrongs committed many decades earlier.

Elsewhere in Africa, the distribution of land ownership is much more equal and much less of a political issue. Many West African systems are still based on customary rights associated with cutting a field and settling land around the village, particularly where land is still relatively abundant. There the main issues concern the need to sort out the contradictions between customary and statutory tenure systems, provide communities with greater formal decision-making powers over how the resources on which they depend may be used, and strengthen local

capacities to carry out these tasks effectively. However, as land becomes scarcer and more valuable, some groups face increasing problems – such as women, migrant farmers, and herders – who find their customary rights of access being revoked. This happens particularly close to expanding urban centres where farmland is being turned over to building plots.

## **WHERE IS ULTIMATE POWER VESTED?**

In Scotland, there has been much breast-beating about the need to abolish feudal tenure, with its associations of archaic social relations and undue powers held by land-owners. Much debate has focused on the term ‘feudalism’ and the need to do away in a modern Scotland with anything that reeks of old forms of servility. Yet with the disappearance of feudalism also goes obscure but profoundly beneficial customs of obligation to the public good. This set of concepts and principles, linked to stewardship of the land, are of continued broad relevance today, since they enshrine the rights of society to impose conditions on how land is used. Governments are not always able to provide an effective alternative mechanism for achieving this, despite their rules and regulations.

The question of where ultimate rights reside is also an important issue in much of Africa. After Independence, many governments vested ultimate land ownership in the President who, it was assumed, would act on behalf of the citizenry. The state would thereby hold land in trust for the broader social good. But, this was to ignore the temptations of patronage. With land constituting a major asset for many of these countries, those in government have rarely been able to play this role of wise and impartial steward. In Tanzania, the 1992 Land Commission argued strongly in favour of land being vested formally in the people, to avoid local politicians and government officials grabbing land, but this recommendation was ignored in favour of government retaining ultimate rights over the country’s natural resources<sup>2</sup>. The grant of land holdings to political allies has been a key means of building a power base for presidents and ministers in many countries across the world, just as it has been in Scotland.

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<sup>2</sup> ‘Not yet democracy: Reforming land tenure in Tanzania’. Issa G. Shivji, IIED, London, 1998.

## **THE ROLE OF CUSTOMARY CHIEFS & LANDOWNERS**

Customary chiefs and large landlords are deeply out of fashion in political circles whether in Africa or Scotland. Many African governments have been keen to establish new forms of local government, through a series of decentralisation measures, setting up elected local rural authorities often for the first time. With the rallying cry of promoting local democracy, these new systems have in practice been a means both to increase the political power and reach of central government into distant rural areas, and to disenfranchise customary chiefs. However, this has not always been welcomed by the locals. Although in South Africa, many traditional chiefs have been completely discredited as a result of their having been co-opted by the apartheid regime, elsewhere, they may provide an effective, low cost means of managing land and resolving conflicts. Customary chiefs often have greater legitimacy in local eyes than the incomprehensible procedures and decisions stemming from formal government structures. Of course, neither local chiefs nor elected bodies provide the perfect solution - both mechanisms can exclude important constituencies, and both are at risk from corrupt practices. There is no ideal institutional form - whether customary or democratic. A balance of forces is needed to get the best of both worlds. Local land boards with representation from a broad range of interests can be one means of trying to achieve this.

In Scotland, many argue that large land-owners should be done away with, due to the bad behaviour of a small number of well-publicised cases that have hit the press. There are others who argue that benevolent, community-minded landlords can be a great asset, especially if they have plenty of money to invest in the area, providing jobs and a source of external income of benefit to the local economy. Many people attempt to make the land tenure debate turn around who is a 'good' and who is a 'bad' landlord, and the need to set codes of good practice to convert the latter into the former. But those with experience from elsewhere argue that land reform must be about land re-distribution, with a limit placed on the size of holdings which people can own. This is an essential first step to develop a vibrant, self-sufficient rural economy, such as found in parts of Scandinavia and mainland Europe, where disparities in ownership are much less stark. A broader range of land owners brings a more diverse rural economy which is less vulnerable to the whims and fortunes of a few large landlords.

## **GETTING PEOPLE TO PARTICIPATE**

Following the 1992 Rio Earth Summit, most governments have provided at least rhetorical commitment to 'community participation' in achieving more sustainable development. But it is unclear in many places how far this constitutes a paper exercise in which 'I tell you what to do, and you participate' or provides for a real transfer of powers. In Scotland, government rhetoric is heavy with promises of participation, but light on commitments to make this meaningful or even possible for most of the rural population. It is often only well-educated people, with the skills and knowledge of the 'system' who can play a part in regaining control for local people.

A similar contradiction between rhetoric and practice permeates much experience with 'community participation' in Africa. Governments preach their adherence to people's participation and the value of traditional knowledge, yet are unwilling to match such pronouncements by releasing control. Thus, communities are often made responsible for certain activities but without the power, resources and decision-making needed to carry through such duties effectively. In some countries, farmers must still get a written permit to cut down trees that they have planted on their own land, the authorities considering this necessary to instil a proper sense of respect for the 'environment'. Real commitment to land reform is jeopardised by this institutional resistance to 'letting go'. Such commitment also needs investment in the re-building of local communities, their access to funds, and their capacity to have a vision of what might be possible, a capacity lost through centuries of disenfranchisement and centralisation of power.

Inequitable access to the legal system has also been a problem. In many African countries, customary rights have been highly vulnerable to reinterpretation and seizure by more powerful groups. As land values rise, chiefs become tempted to transform their customary responsibilities over land into private property rights. Rather than being recognised and protected in themselves, customary rights usually operate by default only in those areas where no other interests are sufficiently important to contest these claims. As a result, those with power and political backing have been able to seize the commons, especially where it is argued that local people were not making good use of it. Grazing of animals is not considered under law to generate a claim to land. Pastoral herding groups have thus been particularly vulnerable to such losses, with encroachment by tractor and plough on

much valuable grazing land which they have been unable to protect through recourse to the courts.

A few examples are now starting to emerge where governments agree to recognise the authority of local organisations to make by-laws, and control access to common resources, such as woodlands and grazing. But progress is slow. It takes time to reach agreement amongst the different interests within the community, while those in local government are often reluctant to grant the community the right to exclude and fine other users. Much more needs to be done to strengthen the rights of local groups to manage and control access to common resources. Without such management rights, there can be little hope of sustainable resource use, whether it be fisheries, woodlands, wild fruit or grazing resources.

## **BUT WHO IS THE COMMUNITY? WHO BELONGS AND WHO IS AN OUTSIDER?**

This question afflicts the debate both in Scotland and many African rural settings. In many African countries, certain groups are systematically excluded from debate and decision-making under customary structures - typically women, visiting herders, ethnic minorities, and new settlers. Where valuable resources are at stake, definition of identity has become of increasing economic importance, with the definition of who can be regarded as a 'community member' tightening as land becomes scarcer. In Scotland, the decision regarding who is a member of the 'community' is still under debate. Perhaps the Scottish Parliament could take lessons from the South African example. In 1996, the Communal Property Associations Act set out in a simple ten page brochure the principles and procedures whereby a community can form an association based on non-discriminatory, inclusive membership, equality and transparency of decision-making. It would make good reading for those struggling with this issue elsewhere.

## **CONSULTATION**

In Scotland, getting input from a broad range of people is recognised as being both of practical value in policy design, as well as of great political importance. The Land Reform consultation process in Scotland provides a good model of how to get many views into the debate on land reform, through distribution of documents, a travelling roadshow, regional meetings, and call for submissions. This process of consultation continues with the current legislative process underway.

In the African context, some consultation has been highly impressive. In South Africa, and Uganda, new legislation was preceded by extensive consultation exercises. Elsewhere, consultation is more of a patchy affair. Some governments have set up commissions to investigate land issues, such as Professor Shivji's report of 1992 for Tanzania, Professor Rukuni's commission of 1995 in Zimbabwe, or the consultations prior to passing the Rural Code in Niger in 1993. But, as with all consultation exercises wherever you are, it is unclear who actually participates and how much account gets taken of the results of such processes, particularly where the findings are politically inconvenient. In many cases, the consultation process is limited to debate amongst civil servants, MPs, and Western donors, but with few opportunities for broader public debate. Even in South African, it looks as though the new government elected in mid-1999 will now backtrack on the more radical objectives of the Land Reform process. It may be that land as an asset to cement political alliances, has become too important to re-distribute to the poor.

In all cases, it is vital to encourage the inputs made by civil society and other interested groups into local and national debates on land reform options. An alliance of non-governmental and other groups, such as the Ugandan Land Alliance, or the Scottish Land Reform Convention, can provide valuable space within which to air alternative perspectives and ensure the voices of poorer and less articulate groups can be heard.

## **WHO IS DRIVING THE AGENDA?**

In Scotland, as elsewhere, the issue of land reform is highly political and, despite the relatively few who actually work and live off the land, there is a justifiable perception that wealth in land is closely associated with power. Large land-owners may no longer hold much formal political power, but continue to exercise huge informal influence. So much so that few of the current 'reforms' are likely to actually touch their power. While the overall aim is to create a broader set of arrangements through which people can own and gain access to land, there will be no compulsory take-over of estates, and no requisitioning of land by government. A land fund is being set up to which community groups can apply for finance, when land comes on to the market, but the constraints of the European Court of Human Rights provide tight safeguards on the sanctity of property and, hence, large land owners have little to fear from new legislation. The language of Scotland's land reform is couched in non-controversial terms, such as addressing ways to promote more sustainable rural communities, regenerating the rural economy through increased control over decision-making and improving access to livelihood opportunities linked to land.

In Africa, the land reform agenda is driven to a large extent by international donors, such as the World Bank, the UK, France, Germany and the US. Such engagement stems in part from the perception that land reform is vital to ensure sufficient security of tenure to encourage agricultural investment, reduce conflicts, and allocate land from less to more productive users. Such a stance is also intended to open up many African countries to outside investment in agriculture. It is argued that Western firms need secure title to land if they are to invest their capital in Africa's high risk economies. There are also important domestic interests, who see a chance to acquire land as it shifts from customary to market-based systems of management.

Governments often start off in favour of radical land reform measures but rapidly find their plans bogged down in the sands of political inertia. In addition, they begin to realise that too radical a set of reforms could lead to their losing hold of an asset of great political importance.

## **LEGISLATIVE CHANGE ALONE IS NOT ENOUGH**

Whatever the differences in history between Scotland and Africa as they wrestle with land reform, both must acknowledge that legal process alone will not be enough to revive local economies and guarantee secure incomes for local people. There are limits to what legislation can achieve. The law needs to agree broadly with what people feel is right and fair, if it is to work. It cannot propose a set of values which depart too far from commonly held views and norms. Equally, changes in laws and institutions have implications for the resources needed to implement new measures. People need not only access to land but also the means to tap into credit, technology, input supplies and markets if they are to make use of the opportunities which land can provide. One without the other is not enough. Whether a tenant farmer in Morayshire, or a peasant growing millet in Mali, the options for getting a reasonable income are further limited by many other factors. These combine to throw up major hurdles, whether due to the marginal climate and soils or to high transport costs and distance to market.

If land reform is to work whether in Africa or in Scotland, it needs a clearer vision, practical goals and targets to meet. In order for this to come about, we need more informed debate about the different options that might be considered, and a better understanding of the links between land and other political, economic and social dimensions. Exchange of experience between different contexts can help us here. Local people and national decision-makers need to decide the kind of rural economy they want to see develop. Highly unequal land ownership tends to provide a particular kind of local politics and rural economy. A more egalitarian pattern generates a different mosaic of economic opportunities, with a broader set of interests and stake-holders. An approach is needed which draws on experience from across the world, with innovative thought given to new sorts of institutional arrangement that can achieve broader goals. In Scotland, there has been a lot of debate about what should be done away with, but we need a better idea of what we want to create, what sort of model we have in mind, and how to combine land reform with other measures to achieve these goals. Learning from experience across the world provides a better basis from which to test out the options and review the political challenges.

