

Impact of land rights on productivity of agriculture and natural resource enterprises in Africa¹

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Abstract

The paper provides evidences that securing land rights for agriculturalists and environmentalists alike in Africa is now an issue directly related to broader issues of governance. Africans face growing conflicts over land ownership as more land is cleared daily for agriculture. Moreover pressure mounts for the limited supplies of soil, water, trees and wildlife. The paper explores the impact of land policy on productivity of agricultural enterprises as well as sustainable management and utilisation of community based natural resources that are essential for rural livelihoods. On the growing debate on contract farming and FDI in Africa, the paper focuses on the pros and cons of promoting productivity through large-scale plantations agriculture as opposed to modernizing traditional smallholder agriculture. The majority of land users in Africa enjoy customary rights, and the paper discusses experiences so far on how these rights are impacted by the State and its foreign direct investors and the overall implications for productivity enhancement. Juxtaposing current experiences from several countries against the Africa Union's framework and guidelines on land policy in Africa, the paper offers options for broad-based adoption at country as well as regional levels of policy reforms aimed at strengthening land rights for the poor and enhancing agricultural productivity and securing rural livelihoods. The paper demonstrates that in order to enhance productivity, land development is essential through investments into appropriate legally binding agriculture business development models, land reform programs, land tenure security for land users, as well as access to long term land related development programs and finance.

Keywords: productivity, agribusiness models, land tenure security, rural livelihoods, FDI.

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1. INTRODUCTION

Land is a primary and critical factor of agricultural production and expansion of livelihoods opportunities in Africa. Secure access to land affects production and productivity in all sectors of agricultural production. Without equitable and secure access to land by the majority of farmers in Africa it will be difficult to achieve food security. African governments have to appreciate that transforming agrarian systems into urban industrial economies invariably requires fundamental changes in many institutions, including those of land tenure. There is growing evidence that agricultural growth and efficient management of natural resources are dependent on the political, legal, and administrative capabilities of rural communities to determine their own future and to protect their land and land-based natural resources and other economic interests. The lack of this power (or lack of democracy) is translated into insecure tenure rights, abuse of common property and resources, dis-enfranchisement of rural people, particularly women, and the breakdown or weakening of rural economic institutions. The management of the environment and the effectiveness of community based natural resources management are all dependant on clearly defined land rights and support systems for rural communities. In this paper, through a review of literature, evidences that show that securing land rights for agriculturalists and environmentalists alike in Africa is now an issue directly related to broader issues of governance are presented. A brief background on Africa's land resources and an exploration of the emerging trends and issues is first provided, focusing issues of land distribution, use, tenure, administration and adjudication across Africa. The issues of conflicts, 'land grabs', and investments in biofuels and their implications on agriculture are also examined. The paper concludes by offering options for broad-based adoption at country as well as regional levels of policy reforms aimed at strengthening land rights for the poor and enhancing agricultural productivity and secure rural livelihoods.

2. CONTEXTUAL SETTING: AFRICA'S LAND RESOURCES, EMRGING TRENDS AND ISSUES

2.1 Endowment of land resources in Africa⁴

Africa is the second largest continent in the world after Asia, and with a total land area of more than 3,025.8 million hectares (ha), its landmass is more than three times that of the United States of America. Of Africa's 54 countries, Algeria is the largest, covering 2 381 741 square kilometres and Seychelles the smallest, covering only 153 square kilometres. In terms of

⁴ Most land resources statistics adopted from United Nations Environmental program(UNEP) "Land resources in Africa". In: Encyclopedia of Earth. Eds. Cutler J. Cleveland (Washington, D.C.: Environmental Information Coalition, National Council for Science and the Environment). [First published in the Encyclopedia of Earth June 19, 2008; Last revised Date June 19, 2008; Retrieved September 7, 2011

<http://www.eoearth.org/article/Land_resources_in_Africa>

population density, Mauritius was in 2001 the most densely populated with 583 people/100 ha, compared to Namibia, the least densely populated at 2 people/100 ha. The African landscape is a rich and dynamic mosaic of resources, which includes forests and woodlands, arable land, mountains, deserts, coastal lands and freshwater, that holds vast opportunities for development and improving human well-being if managed sustainably. Africa's landscape includes Forests and woodlands which cover about 650 million ha or 21.8 percent of the land area, Wetlands which cover about 1 percent of the region's total surface area, and are found in virtually all countries. Some of the physically smallest countries in Africa also have the highest percentage of mountainous areas. These include Lesotho, Rwanda and Swaziland. A total of 1,274 million ha in Africa are extreme deserts, exemplified by the Sahara Desert in Northern Africa – the largest desert in the world – and the Kgalagadi Desert and the Namib Desert in Southern Africa.

About 630 million ha of land in Africa is suitable for cultivation, supporting the majority of the people through subsistence and commercial agriculture. Africa's soils are classified into six different categories, with the first four being of good quality which unfortunately cover only 10.6 percent of the land area or 3,100 million ha and support about 400 million people. Classes I-IV do not have major constraints and usually adequate for at least one major crop per season. However, Classes V-VI of the soils in Africa are of poor quality and have limitations and this poses a major challenge for agricultural development as many farmers are only able to practice low input agriculture on these soils. Classes V-VI soils include highly acidic, impermeable, frequently waterlogged, easily accumulate salts, and require major investments to manage. They cover 11,200 million ha and support about 200 million people, i.e about 23 percent of the population.

2.2 Africa Union (AU) policy direction on land resources management in Africa

The Africa Union declaration on land issues and challenges in Africa (2009)⁵ sets the tone of how African countries should approach land issues. The African Union undertakes to prioritise, initiate and lead land policy development and implementation, processes in African countries, notwithstanding the extent of multi-stakeholder contribution to such processes involving civil society, private sector and other stakeholders. The assembly also undertook to support the emergence of the institutional framework required for the effective development and implementation of land policy and implementation as well as allocate adequate budgetary resources for land policy development and implementation processes, including the monitoring of progress.

In this declaration, African states also resolved to ensure that land laws provide for equitable access to land and related resources among all land users including the youth and other landless

⁵ AU Declaration On Land Issues And Challenges In Africa: Thirteenth Ordinary Session In Sirte, Libya(2009)

and vulnerable groups such as displaced person at the same time strengthening security of land tenure for women which merits special attention. A special request was made for the African Economic Commission in collaboration with the Regional Economic Communities⁶ (RECs), UNECA, AfDB and other partners to:

- Endeavour to work towards establishment of an appropriate institutional framework to provide coordination of follow up activities and facilitate mutual learning by member states as they develop/review their land policies in accordance with the Framework and Guidelines;
- Take measures for the establishment of a fund to support follow up activities to promote land policy development and implementation;
- Undertake measures for the establishment of mechanisms for progress tracking and periodic member states reporting on progress achieved.

The AU also invited the RECs to convene periodic regional platforms to facilitate experiences sharing, lessons learning and dissemination of best practices in land policy formulation, implementation and monitoring based on members states experiences. The need to appropriately capture and address issues of land policies within their respective common agricultural policy framework was also emphasised. With regards to member states, the AU encourages African states to review their land sectors with a view to developing comprehensive policies which take into account their peculiar needs, build adequate human, financial, technical capacities to support land policy development and implementation; and take note of the iterative steps outlined in the Framework and Guidelines on Land Policy in Africa (F & G) for their land policy development and implementation strategies.

Against this background, the African Union's perspective is that agriculture and land are central in the social and economic development of the continent and that rights to land are fundamental for the participation of all people including women and disadvantaged sections of society in the development process. Africa's development remains dependent on agriculture and exploitation of natural resources, yet agriculture and livestock production is largely carried out by smallholder farmers under increasing pressure of scarce land resources managed under unsecured customary land ownership. African governments are seeking to address tenure insecurities to promote sustainable rural and urban development, and to address inequalities in land ownership between different social groups. The various programs within NEPAD (including CAADP, the Comprehensive African Agricultural Development Programme) as well as national development

⁶ The 8 RECs are: Arab Maghreb Union (UMA), Common Market for Eastern and Southern Africa (COMESA), Community of Sahel- Saharan States (CEN-SAD), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD), Southern Africa Development Community (SADC)

plans, strategies and programs of many African countries, all point to the importance of achieving a structural transformation as a means of attaining meaningful economic development that provides employment and hence reduces poverty. The AUC, ECA and ADB have pledged to work together in their support of Africa's economic and social development, which includes assisting African governments in their quest to achieve a structural economic transformation that not only provides employment and reduces poverty, but also ensures good governance of natural resources to ensure peace and security, and overall sustainability over time. Sound land policies which guarantee secure land access and clear property rights are a critical ingredient in achieving sustainable structural transformation which in most cases must begin with progress in developing the agricultural sector.

2.3 Why are land resources so critical in Africa?

Land in Africa is used for many activities: agriculture and forestry, urban expansion including transportation, mining and oil extraction, tourism and recreation; and also as a sink for domestic and industrial waste. It provides material resources for livelihoods, food and health, provides security against environmental shocks and future uncertainties, and underlies many social and cultural systems. Therefore, access to land and the resources it offers is at the core of enhancing opportunities and choices, particularly for those who depend more directly on it.

Africa's significant land resources can contribute to sustainable development, and to achieving the targets under all the eight Millennium Development Goals (MDGs). Whether in pristine condition or degraded, land resources provide vast opportunities for investment for internal and external investors. The degraded lands can be restored in some cases or converted to other land uses, and thus still contribute to development.

Land is a key factor in sustainably managing the environment for development in Africa, but there are many challenges to be overcome. The region has sufficient land resources to produce enough food to feed its people and yet one in three people in the region is presently undernourished. Increasing agricultural production which is the dominant economic activity in most parts of the region is the key to addressing extreme poverty and hunger.

Managing Africa's land resources is complex, requiring the input and participation of different stakeholders and interests as well as transparent and effective governance structures. Governance systems should be able to balance the needs of small and large investors, community and national interests as well as sectoral demands and conflicts. It is evident from different economic data that land is the foundation upon which the eight Millennium Development Goals – from eradicating extreme poverty and improving gender equality to ensuring environmental sustainability and developing a global partnership for development – can be realized in Africa. Land in Africa is a social, economic and environmental good, and as long as all the ingredients

critical to achieving the MDGs through the available land resources are rationed, the goals will remain a fantasy.

The importance of stronger tenure rights, with related improved governance system as the basis for improving sustainable management and enhancing opportunities can thus not be overemphasized. Tenure regimes, access and equity issues, poverty alleviation and gender dimensions all shape governance and the opportunities available at different levels. Governance today will have important implications for the opportunities of future generations, either enhancing or foreclosing choices. In many countries where land is very unequally distributed land reform is a basic requirement, whilst in some cases issues of use, administration become critical. Against this background, land-use decisions from the household to the national level, in rural and urban areas, have a major role to play in Africa's influencing environmental governance and thus resource sustainability. Environmental governance in terms of land is well entrenched with so many laws and policies, institutions and stakeholders but yet effectiveness remains a mirage due to various factors, including policy failures. The following sections examine some of the trends and emerging issues on land resources in Africa.

2.4 The land issues in Africa

2.4.1 Weak land governance systems

In most African countries many constitutive and regulative institutions suffer from massive functional deficits: land rights are most often characterised by fragmented or overlapping legislation and legal pluralism, resulting in unclear property rights and land-ownership conflicts. Land-administration authorities dealing with land registration, land-information systems, land-use planning and land development lack trained staff, technical infrastructure and financial resources. Administrative services are over-centralised and responsibilities are often not clearly assigned or are overlapping, impeding co-operation and co-ordination. As a result, the little available and mostly incomplete or isolated data on land ownership and land use is being gathered by diverse non-co-operating institutions, making its proper use difficult or even impossible. The result is endless procedures and low levels of implementation. For instance, the SADC in its Synthesis report of key agricultural policy issues and Regional Agricultural Policy (RAP) policy direction⁷, land distribution, land use, and tenure, land administration and adjudication were identified as major policy issues that needed regional effort. The same report also highlighted the need for improved access to land; enhanced security of land tenure with proper land tenure guidelines based on best practices; and strengthened institutional capacity in land use, management, administration, redistribution and adjudication as major policy areas.

⁷ SADC(2010): Synthesis report of key agricultural policy issues and RAP policy direction: Final report: Volume II

Neither institutions constituting nor those regulating the land-market make any substantial contribution to the avoidance of land conflict. Given the low salaries and openness to motivation payments, they rather contribute to them. Legal security is limited by insufficient implementation of rule-of-law principles, while mechanisms for sustainable land development suffer from the fact that ethical principles are not broadly acknowledged. The crucial point for all institutions is lack of implementation. Unclear implementation guidelines and contradicting legislation worsen the situation. Political will is insufficient. Insufficient constitutional provisions compound the imperfect land-markets and this promotes land-ownership conflict, while poor regulative institutions are responsible for both land-ownership and land-use conflicts.

Land tenure issues in Africa

Land tenure security is still a major problem in most African countries. For instance, a study by Economic Commission for Africa⁸ on land tenure systems and sustainable development in Southern Africa revealed that land tenure insecurity is still widespread in Southern Africa. This study highlights that land tenure insecurity manifests itself in a number of ways. It appears in minority groups in Botswana and Malawi; in unclear or overlapping land rights and insecurity of farm workers and farm labour tenants in South Africa; in overcrowding in the form of high population to land ratio in Lesotho, Malawi and South Africa; in land alienation into leasehold in Malawi, Mozambique and Zambia; and in inappropriate and exploitative administrative practices and limited women's land rights in each of the study countries. All the countries studied are at various stages of undergoing land policy and tenure reforms. Also identified in this study are exploitative administrative practices have been a long-standing source of tenure insecurity in some countries. The focus of the land reform strategy is to have procedural safeguards and regulations that ensure the land administration system reflects the will of the community and that land administration officials are accountable. One interesting argument brought about by the study is that land degradation by smallholder farmers under customary tenure occurs because of ignorance about conservation, unsustainable traditional agricultural production and lack of inputs such as labour, rather than because they do not have tenure security.

In another scenario, a report of the African Commission's working group of experts on Indigenous populations/communities (2005)⁹ concluded that indigenous pastoralist and hunter-gatherer communities in Africa have been losing their land incrementally over the years. In many parts of Africa, this situation has been promoted by the assumption that the land occupied by the pastoralists and hunter-gatherers is *terra nullius* (land belonging to no-one). The assumption that the land of pastoralists and hunter-gatherers is "open access" or not used productively has

⁸ Economic Commission For Africa(2003) Southern Africa Office, Lusaka, Zambia Land Tenure Systems And Sustainable Development In Southern Africa

⁹ Africa Commission(2005): African Commission's Working group of experts on Indigenous populations/communities

stimulated land alienation at all levels. The targeted pastoralist and hunter-gatherer communities have only, to a very limited extent, legal titles to their land as their customary laws and regulations are not recognized or respected and as national legislation in many cases does not provide for collective titling of land. Collective tenure is fundamental to most indigenous pastoralist and hunter gatherer communities, and one of the major requests of indigenous communities is therefore the recognition and protection of collective forms of land tenure.

Land reform issues in Africa

Land reform is a much more complicated process than realised by the general public, and also the majority of politicians, bureaucrats and journalists Grunewald (2003)¹⁰. It is an involved process requiring much in terms of finance, intellectual manpower, organisation, planning and execution. It requires serious research into the whole process, something in which African bureaucracies unfortunately do not appear to be interested in. According to same author, the process also needs some understanding and sympathy in the international arena. Eventually the main requirements are perhaps comprehension and the political will on the part of policy makers, coupled with commitment and perseverance on the part of those who have to do the job.

The process of land reform is an involved process, and everything cannot be done simultaneously. Successful management and execution of the programme will be dependent on the identification of priorities. Probabilities of success will be maximised logically if the bulk of early efforts is expended on those activities and locations offering the highest probability of success, coupled with activities expected to increase the probabilities of success in other activities, areas and fields. One can visualise such a prioritising action as something similar to a dynamic, multi-period operations research problem with successful settlement of new farmers as objective. Constraints include time schedules, financial constraints, manpower, institutional limitations, etc. Sequences of events and actions at different locations and of different magnitudes may be viewed as the activities involved in the process.

A few problems on Africa's land reform experiences can be derived from the East Africa case as presented in a paper on land reforms in East Africa¹¹. The observations made in this paper present some seemingly representative scenario of what obtains across most of Africa in countries where reforms have occurred. The paper made several conclusions on the impact of land reforms as follows:

¹⁰ Groenewald (2003): Conditions for Successful Land Reform in Africa: Paper presented at Pre-IAAE Conference on African Agricultural Economics, Bloemfontein, South Africa, August 13-14, 2003

¹¹ Oscar Okech Kanyamgareng (2005), .Land Reforms in East Africa. Landnet East Africa, October 20, 2005. E-mail: ula@africaonline.co.ug

- The reforms have failed to balance concerns for the tenurial security of small landholders and users against commercial interests;
- Compulsory land acquisition by governments has increased;
- The reforms have enhanced women's rights with women now able to demand their land rights to some extent, but this is still hampered by cultural and social factors. The reforms have failed to take off effectively due to bureaucracy, lack of awareness, inadequate funding and weak institutional capacity;
- The reforms have put too much emphasis on individual property rights to the detriment of communal access to land and land based natural resources such as forests, water sources and pastures. Yet, more than 80 per cent of land in Tanzania, 60 per cent in Uganda and 90 per cent in Rwanda is held under customary tenure regime by rural communities which live in village settings;
- Commercial banks have recently shown a keen interest in extending credit to small landowners and users, and the latter have been only too happy to apply for loans. Unfortunately, this apparent boon to credit-hungry farmers has turned out to be a bane as thousands of them lost their lands to the banks when they failed to repay their debts;
- Authorizing the sale of bare, undeveloped land has hastened the commoditization of land and created a class of land speculators and hoarders. Land hoarding reduces the supply of available land and leads to conflict among land users;
- Landlessness is on the rise as a result of failure to implement land laws/policies, population pressure, and conflicts over rights. In Uganda, owners of *mailo* land, who find it hard to get rid of tenants, sell the land to a third party who then does the evicting. The land fund in Uganda, which was supposed to help tenants buy the land from their landlords, is too small and the process, too slow. To date, seven years after the enabling law was passed, no title has been allocated to any tenant. In the meantime, forced evictions of tenants by their landlords continue.

Given a background of such experiences, Grunewald (2003) points out to a range of matters to be considered in land reform processes and these include the institutional framework, programme design and implementation, budget and funding issues, selection of beneficiaries and related human capital issues. In a nutshell, it is generally agreed that land reform should not just about redistributing land, but rather needs to be viewed as a whole basket of services that included supply of inputs, marketing services, financial services and research as follows:

- ***Financial services*** are critical because small-scale farmers in Africa have limited and differential access to credit. Moreover, rural financial markets serving small emerging farmers are often inefficient; borrowers as well as non-borrowers are credit constrained;
- ***Access to markets*** is critical because, for their development, new farmers depend on revenues obtained by selling products at prices which render it profitable to produce; marketing, or rather access to profitable markets, is vitally important. According to Van

Renen (1997)¹² new small farmers face various bottlenecks that need to be overcome as follows:

- i. Poor availability of market information and transport services and infrastructure;
 - ii. Limited value-adding is done by the small-scale farmers.
 - iii. Cool storage facilities are generally not available and in grain producing areas, and silos are often not favourably located for the small-scale farmers.
- **Supply of inputs** is critical and requires appropriate public and private sector investments. Transport infrastructure is also important as most of rural Africa is poorly serviced by roads. Other infrastructural deficiencies that have to be overcome include communications, health and water supply infrastructure.
 - **Research** is also vital since improvements in technology will not only lead to gains in productivity, but to the addressing of new and emerging challenges such as those brought about by climate change across all sectors.

2.4.2 Land grabs and biofuels investment in Africa

The perception that Africa contains large amounts of apparently vacant farmland has led to many investments targeted at the continent. The African continent is perceived to neglect its agricultural potential and many investors therefore consider Africa to be well suited for new rural investments¹³. It is estimated that 80% of the global reserves of farmland are in Africa and South America; in Africa, mainly in countries like Sudan, DR Congo and Angola (Cotula et al. 2009). The problem is that most of these areas are either covered by tropical rainforest, are located in protected natural areas or are already under rotational land cultivation or grazing of animals¹⁴. Furthermore, the commercial value of the land is still relatively low, which raises an expectation of possible large returns in the future. Such land acquisitions are being driven by both government concerns about national food and energy security as well as private sector expectations of increasing profits from agriculture in a world of higher food and commodity prices. Table 1 shows the 13 main recipients of land deals listed by number of deals.

¹² Van Renen, E. (1997). The BATAT marketing drive: Improving market access for small-scale farmers. *Agrekon* 36: 648-655.

¹³ Cotula, L., S. Vermeulen, R. Leonard & J. Keeley (2009): Land grab or development opportunity. Agricultural investment and international land deals in Africa. IIED, FAO & IFAD, London/Rom.

¹⁴ Ramankutty, N., J.A. Foley & N.J. Olejniczak (2002a): People on the land: Changes in global population and croplands during the 20th century. *Ambio* 31(3): 251-257.

Table 1: Main recipients of land deals listed by number of deals

Country	Number of deals	Magnitude(1,000ha)	
		Minimum	Maximum
Ethiopia	26	2.892	3.524
Madagascar	24	2.745	
Sudan	20	3.171	4.899
Tanzania	15	1.717	11
Mali	13	2.417	2.419
Mozambique	10	10.305	
Uganda	7	1.874	1.904
DR Congo	6	11.048	
Nigeria	6	821	
Zambia	6	2.245	
Ghana	5	89	
Malawi	5	307	
Senegal	5	510	
Total (all 27 countries involved in land deals)	177	51.415	63.111

Source: Adapted from Friis, Cecilie and Reenberg, Anette (2010)¹⁵.

African governments have even gone to extents of formulating policies that attract foreign investment into their countries but the debates on whether these FDIs are benefitting Africa's poor majority or there are other vested interests in an elite few in governments or in the private sector. Figure 1 is a map and gives an overview of investor and target countries around the world. It is interesting to note that Africa is mainly a target continent but is not investing abroad and this may have underlying implications that still need to be explored.

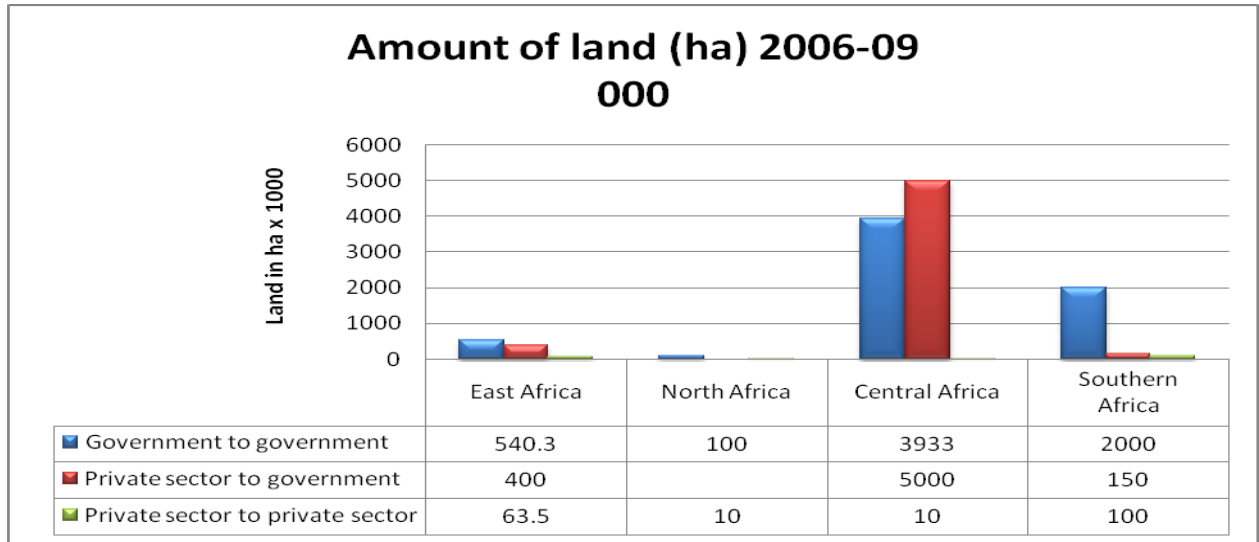
¹⁵ Friis, Cecilie and Reenberg, Anette (2010). Land grab in Africa: Emerging land system drivers in a teleconnected world. GLP Report No. 1. GLP-IPO, Copenhagen.

Figure 1: Investor and target regions and countries in overseas land investment for land production, 2006- May 2009



Source: UNCTAD, World Investment Report 2009: Transnational Corporations, Agricultural Production and Development

Figure 2: Land 'grabbing' by investors in Africa, 2006-09



Source: IFPRI, 2009¹⁶

¹⁶ Figure was drawn from a combination of data from IFPRI, 2009 based on media reports on overseas investments

According to Cotula (2011¹⁷), not every acquisition is a ‘land grab’ and much depends on local context, the terms of the lease, how it was obtained, and local reactions to it. There are chances that properly structured, genuine agricultural investments by operators with a strong track record can create opportunities for recipient countries and local people, bringing capital, know-how, jobs, market access and infrastructure development.

The same author however pinpoints that, large land deals also carry big risks. Local people can end up losing the land, water and other resources that have supported their livelihoods for generations, while the jobs created in return may be few, short-lived and low-paid. Family farmers risk being marginalised by a shift toward large-scale agriculture. This is because most cultivable land is already used or claimed by local farmers, herders and gatherers. The problem is that these people have little access to the law and are excluded from formal land rights — only a tiny proportion of local farmers in Africa, for example, have written documents for their land. In this regard, very large land deals are bound to involve some squeeze on existing rights, even if the intensity of current resource use is low. Dealing with these situations fairly requires careful weighing of individual and societal interests. But the gap between legality where the government may formally own much if not all the land and legitimacy, where local people feel the land they have used for generations is theirs, exposes local groups to the risk of dispossession and investors to that of local contestation. Therefore the role of government with regard the land grabs in Africa, particularly with emphasis on protecting poor farmers resource rights must be strengthened.

According to a study carried out by Cotula et al (2009)¹⁸, although the terms and conditions of investment display a huge diversity among countries and even individual projects, the emerging trends based on synthesis of few international land deals, include the following:

- Land deals must be assessed in the light of the often complex overall package they are part of, including commitments on investment, infrastructure development and employment – the “land grab” emphasised by some media is only part of the equation;
- Land leases, rather than purchases, are predominant in Africa, and host country governments tend to play a key role in allocating them;

“Land Grabbing” by Foreign Investors in Developing Countries: Risks and Opportunities. Joachim von Braun and Ruth Meinzen-Dick. IFPRI Policy Brief 13, April 2009

¹⁷ Cotula L. S(2011): ‘Land Grabs’ in Africa: Is there an alternative: International institute for environment and development

¹⁸ Cotula, L. *et al* (2009); Vermeulen, S., Leonard, R. and Keeley, J., 2009, Land Grab or Development Opportunity? Agricultural Investment and International Land Deals In Africa, IED/FAO/IFAD, London/Rome

- Land fees and other monetary transfers are not the main host country benefit, not least due to the difficulty of setting land prices in absence of well-established formal land markets;
- Host country benefits are mainly seen in the form of investor commitments on investment levels, employment creation and infrastructure development – though these commitments tend to lack teeth in the overall structure of documented land deals.

The same authors also notes that although on paper some countries have progressive laws and procedures that seek to increase local voice and benefit, big gaps between theory and practice, between statute books and reality on the ground result in major costs being internalised by local people – but also in difficulties for investor companies. It is noted that countries do not have in place legal or procedural mechanisms to protect local rights and take account of local interests, livelihoods and welfare. Even in the minority of countries where legal requirements for community consultation are in place, processes to negotiate land access with communities remain unsatisfactory. Lack of transparency and of checks and balances in contract a negotiation creates a breeding ground for corruption and deals that do not maximise the public interest. Insecure use rights on state-owned land, inaccessible registration procedures, vaguely defined productive use requirements, legislative gaps, and compensation limited to loss of improvements like crops and trees (thus excluding loss of land) all undermine the position of local people.

Virtually all the contracts analysed by this study tend to be strikingly short and simple compared to the economic reality of the transaction. Key issues such as strengthening the mechanisms to monitor or enforce compliance with investor commitments, through monitoring and sanctioning, maximising government revenues and clarifying their distribution, promoting business models that maximise local benefit, as well as balancing food security concerns in both home and host countries are dealt with by vague provisions if at all.

In view of the need to protect the land space and livelihoods of smallholder farmers in Africa, and given that land deals are still going to occur, win-win outcomes with greater collaboration and awareness of the issues and risks are the way to go. This requires innovation and collaboration between villagers, local government, investors and civil society organisations, as well as flexibility from central government and financial institutions. The following are a summarised version of Cotula *et al* (2009) recommendations to stakeholders which generally are in agreement with other authors (for instance, Friis, Cecilie and Reenberg, Anette (2010), Joachim von Braun and Ruth Meinzen-Dick (2009) among others). Perhaps the greatest advantage of the recommendations by Cotula *et al* (2009)'s study is that they are made in line with the stakeholders, namely investing companies, recipient governments, and non government players as outlined below:

Investors – options and checkpoints for maximising security for investment and sustainable development gains:

- Investors need to make realistic assessments of their capacity to manage farming projects at this scale;
- There is need for careful and detached analysis of the factors involved in land investments in developing countries;
- Issues of image and reputational risk should not be underestimated;
- International land deals can be perceived as bringing back the “bad old days” of colonialism, particularly in Africa. This is particularly so when rental fees are zero or close to zero;
- At the local level, land rights may be hotly disputed;
- Local expectations of benefits may be unrealistically high. Clarity is needed about the costs and benefits of the business transaction from the start. This includes realistic estimates and honest communication of what the project will bring;
- Clear principles for engagement at the local level are required (as shown in the Box 1);
- Recognising that internationally recognised human rights are at stake, namely those most directly linked to land access such as the right to property and the right to food is critical.

Box 1: Basic principles for engagement at the local level

Basic principles that should be followed in engaging communities and local level stakeholders include:

- Consulting when all options are still open;
- Ensuring information is available to the community in understandable forms, including the full prior project proposal, explanation of options, impacts and alternatives, record of any agreement and pledges from either side;
- Making sure that diverse local interests are properly represented, by going beyond local elites and by making specific efforts to include groups who may be left out, such as women, minority ethnic groups and non-resident people like transhumant pastoralists;
- Crystallising any investor-community agreement emerging from the consultation in readily monitorable and legally enforceable terms;
- Providing effective arrangements for local people to voice concerns and seek redress, particularly where access to formal courts is constrained (e.g. grievance mechanisms);
- Committing to clear plans for revisiting the dialogue and reviewing progress in consultation with community

Cotula *et al* (2009)

Recipient governments – placing sustainable development at the centre of investment decision-making

- Governments need to clarify what kinds of investment they want to attract;

- Given the long-term nature and large scale of much recent land acquisition, strategic thinking rather than ad hoc decision-making is needed in order to make incoming agricultural investment one of the pillars for long-term rural development;
- Attention to increased agricultural productivity needs to be balanced with assessment of how gains are achieved (for example, through mechanised or labour-intensive production) and how benefits are shared;
- State-of-the-art assessments of the social and environmental impacts of proposed investments are needed;
- Governments should ask hard questions about the capacity of investors to manage large-scale agricultural investments effectively;
- Land contracts must be structured so as to maximise the investment's contribution to sustainable development;
- Mechanisms should be developed to discourage purely speculative land acquisitions;
- Investment decision-making must be transparent. Investors need to be given clear information on procedures, criteria for decision-making, and conditionalities;
- Efforts must be stepped up in many countries to secure local land rights;
- Advocacy and awareness-raising are also needed at each stage of the land investment process;
- Legal support to people affected by investment projects can help them get a better deal from incoming investment;
- Collective registration of community lands can be an effective tool for protecting local land rights vis-à-vis incoming investors.

International development agencies – catalysing positive change

- Engage with investor and recipient governments, private sector and civil society to ensure that land deals maximise the investment's contribution to sustainable development. The ongoing, FAO led process to develop Voluntary Guidelines for Responsible Governance of Land and Other Natural Resources, and the Framework and Guidelines for Land Policies in Africa being developed under the leadership of the African Union, the UN Economic Commission for Africa and the African Development Bank are useful steps in that direction;
- Help address the lack of clear and easily accessible information on land acquisitions and agricultural investments;
- Provide expert advice, capacity building and other support for governments, private sector and civil society¹⁹

¹⁹ These recommendations were summarised from Cotula *et al* (2009)

2.4.3 Land conflicts

Land issues readily lend themselves to conflict, particularly in Africa. This is because land is an important economic asset and source of livelihoods; it is also closely linked to community identity, history and culture. Communities, therefore, can readily mobilize around land issues, making land a central object of conflict. Addressing land grievances and conflicts is fundamental to creating sustainable peace. Land conflicts tend to be dynamic: the relationship between land and conflict often changes over time²⁰. Although land may once have seemed an almost inexhaustible asset in Africa, 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 areas²¹.

The legacy of the oppressive and racially based policies of colonial governments is still reflected in the inequitable land distribution patterns in some parts of Africa. For example, the extremely skewed land tenure is excessive in South Africa where white South Africans, who make up only 5% of the population, own almost 87% of the land. In Namibia, some 4000 white settler freeholders own 6400 farms with an average size of 5700 hectares each. Such land distribution dynamics continue to be drivers for potential land conflicts. The scope for land reform is still considerable given that some countries still have highly skewed land distribution patterns amidst high levels of landlessness. Such land distribution dynamics shape the land and food security issues in the respective countries and indicate the need for regional guidelines and support in addressing otherwise politically sensitive issues of land reform. This is more so given the emergence of bio-energy where the issues of land grabbing in some African countries increasingly come into play.

According to Wehrmann (2006)²² the best way to classify conflicts is the one based on the social dimension of a conflict. In line with this, the same author highlights three dimensions which are based on the social level at which a conflict takes place namely inner-personal, interpersonal, inner-societal and inter-societal/international level. While in the case of land conflicts the inner-personal level can be ignored, the other three are very useful for classification. Land conflicts within one country will then occur at either the interpersonal or inner-societal level.

In the long term, land conflicts can only be resolved and avoided if addressed by an integral and system-oriented approach. Core elements of conflict resolution and prevention are therefore the establishment of a state under the rule of law and implementation of good governance to

²⁰ The United Nations Interagency Framework Team for Preventive Action: Land and conflict: Guidance for Practitioners(2010)

²¹ AU/ADB/ECA: Consultative Workshop 27 to 29 march 2006 on Land policy in Africa: A framework of action to secure land rights, enhance productivity and secure livelihoods.

²² Wehrmann Babette (2006): Solving Land Conflict in Africa: Cadastre Alone Not Enough

minimise abuse of power and corruption. Beyond this, integration is required of psychotherapeutic methods for active trauma counselling and reappraisal of historical injustice so as to restore missing trust in the state and its institutions. Further elements are functioning, regulative and constitutional institution of locally adopted land-markets, a transparent capital market and a co-ordinated system of arbitration boards and jurisdiction (Wehrmann 2006).

As a preventive measure, good governance is of particular importance in this context. Criteria such as sustainability, subsidisation, equality, efficiency, transparency, account-ability, public participation and security, if applied to land tenure and urban land management, form a good basis for development in African countries to be relatively free from land conflicts. Tools and approaches to avoiding and resettlement of land conflict can be distinguished as preventive and curative measures. The former focus mainly on institutional framework conditions such as establishment and strengthening of constitutive and regulative institutions and establishment and control of an accessible and transparent capital market.

Wehrmann (2006) also notes that there are curative measures to land conflict resolution. These include a much broader range of activities, broadly divided into three types: (1) conflict resolution, (2) land management and (3) psychotherapeutic approaches. Conflict resolution, including moderation, mediation and arbitration can take place at different levels; it can be applied within the formal and within the informal sector, or even in mixed forms (hybrid structures). Conflict resettlement institutions can also be administration-based, be it state or traditional. Land management includes various ways of clarifying land rights and security of tenure. It embraces surveying and land registration, land consolidation, land readjustment, land sharing, land pooling, land-use planning, investments in the housing market (including housing for the middle-class, social housing, concessions, site and service programmes and site without service programmes), recovery of state assets and an increase in transparency and documentation of land conflicts for example through state land inventories and GIS specially designed to document land conflicts.

However, each land conflict needs its individual solutions, adapted to its local, regional, national and supranational political, socio-economic, cultural and power-related framework conditions. Not even a perfect land market can prevent conflicts unless regulated by governing institutions. Wehrmann (2006) notes that there are two types of institutions: constitutive and regulative institutions. Constitutive institutions are needed to enable an economically efficient land market through land rights, land registration and rule of law, while regulative institutions are necessary to make the land market socially sustainable and environmentally sound through land management and ethical principles. However, even with all these institutions in place, land conflicts can still occur, mainly as a result of extreme emotional and material needs.

3. LARGE-SCALE PLANTATIONS VERSUS MODERNIZING TRADITIONAL SMALLHOLDER AGRICULTURE

Agriculture and the natural resource sectors play a special role in various stages of economic development. High and sustained rates of agricultural growth, largely driven by productivity growth, will be necessary if African countries are to accelerate broad based economic development and poverty reduction. This is because agricultural growth has powerful leverage effects on the rest of the economy, especially in the early stages of development and economic transformation, when agriculture accounts for large shares of national income, employment, and foreign trade. It has been widely accepted that general economic growth has to be preceded, or at least accompanied by solid agricultural growth²³. Agriculture has historically played this central role since the English Agricultural Revolution which paved the way for the Industrial Revolution. This transformation process still applies today. The Africa will not be an exception, neither is it likely that Africa will be able to jump this vital stage of development. The traditional roles of agriculture are essential in overall economic growth and these include:

- Providing adequate and affordable food for increasing populations. The process of industrialization and urbanization is more efficient when food is cheaper for the growing industrial labour force;
- Supplying raw materials to growing and diversifying domestic industrial sectors;
- Releasing labour for the growing industrial sector;
- Enlarging the size of the effective market for the products of the domestic industrial sector;
- Providing employment and livelihood as well as alleviating poverty for a large percentage of the rural population;
- Earning and saving foreign exchange through exports; and
- Accumulating domestic savings for investment and capital formation.

Timmer (1988) provides a conceptual framework for agricultural and economic transformation which shows four stages of development. In the *first stage*, agriculture has been adequately nurtured and starts growing and creating new wealth at a rate that allows direct and indirect taxation and this feeds into other major public assets and infrastructure. In the *second stage*, agricultural growth becomes a direct contributor to overall economic growth through greater links with the industry, improving efficiency of product and factor markets, and continued mobilization of rural resources. In the *third stage*, agriculture is fully integrated in the market economy. Prices of food and the share of food in urban budgets continue to decline. In the *fourth stage* agriculture is part of an industrial economy. Productivity and efficiency of agriculture is a major issue, and environmental and other concerns assume greater significance.

²³ Timmer 1998

In Africa, all the countries are in various degrees of transforming from Phase 2 to Phase 3. Even the most advanced economy, South Africa, still has a significant portion of its agricultural and rural population not yet integrated into the market economy. As agriculture goes through these stages, its share in the national accounts figures diminishes, and increasingly the population becomes more urbanized. African politicians and governments may have unfortunately misinterpreted this as a decline in the importance of agriculture. In reality, agriculture is politically alive in industrial economies, even where farmers and rural people represent only 2-3 percent of the population they still command the attention of governments. Against this background, it is critical for African countries and RECs to clearly articulate, define and affirm the position with regards to agricultural transformation, and therefore the decisive role land policy plays in this transformation.

Should Africa promote a colonial type dualistic agriculture? Where ever large scale agriculture exists in Africa, it is better integrated into the market economy than traditional smallholder agriculture. Up to an estimated 70% of population live in rural areas and are predominantly involved in small scale agriculture which is dominated by women. It follows therefore, that economic and social progress for this majority population is depended on their effective integration into the market economy. Although large scale agriculture has a role to play in economic development, it is smallholder farmers that have the most crucial role to play in the transformation of the region's economy from agrarian to urban industrial where majority of people experience an urban-industrial middle class life. The emergence of high value agricultural food chains and the associated spread of quality standards triggered a vigorous debate in the development community on the effects on poor producers in developing countries including. A key concern is that the process of vertical coordination will exclude a large share of farms, and in particular small farmers.

The debate in large scale FDI in African agriculture needs to be informed, therefore, by the experience so far for dualistic agrarian economies. The extreme examples such as South Africa, Namibia and Zimbabwe have shown that large scale agriculture at best will integrate a small proportion of the population directly into the market economy, with limited growth in overall employment and poverty reduction.

Land tenure and economic efficiency

A growing body of research based knowledge on tenure demonstrates that the most important characteristic of tenure security under indigenous systems is the ability to bequeath land. Pace, Roth and Hazell (1993) examined existing studies by the World Bank and the Land Tenure Center, and they also studied a number of African countries to end up with comparative analysis of Burkina Faso, Ghana, Rwanda, Kenya, Senegal, Somalia and Uganda. This analysis confirmed that indigenous systems do not hinder productivity or investment. In addition, land registration has not necessarily led to tenure security. Government intervention, therefore, makes

sense only after establishing causes of tenure insecurity, and also bottle necks to rural development. As productivity of land and natural resources increases, agriculture becomes more commercialized and as population densities increase than appropriate registration effort they bear positive results. The same may apply where land grabbing by powerful elites is unchecked. Recent research work also demonstrates that the high productivity increases enjoyed by smallholders in Kenya, Malawi, as well as Zimbabwe and other countries in the past had and still have less to do with individual tenure, but rather that the removal of prohibitions and other bottlenecks for smallholders were more important than land tenure changes.

Research has also exposed two other economic fallacies associated with state imposed individual tenure reforms. First is the fallacy of economies of scale in agricultural production. Worldwide evidence shows no real scale economies, and if anything, small farms can be just highly economically efficient as any size farm. The second fallacy is the traditional state view that multiple parcels of land in separate location is inefficient for production. Once again evidence is showing great wisdom in holding multiple parcels of varying potential and/or suitability for wide spectrum of crops grown. These two fallacies lead governments into pursuing policies for consolidating holdings and policies against sub-division of land.

4. LAND TENURE AND COMMUNITY BASED NATURAL RESOURCES MANAGEMENT AND RURAL LIVELIHOODS IN AFRICA

In this section, we will summarise findings of the Scandinavian Seminar College (SSC) workshop which was held in August 1998 in Harare, Zimbabwe. The workshop entitled “*An African Perspective of Policies which Support Sustainable Development*” reviewed research results from several African countries. The major lessons from the SSC workshops were that:

- a. CBNRM (Community Based Natural Resources Management) is constrained by a legacy of top-down government who treat traditional land as state land;
- b. There are examples, however, showing a reversal of this trend in Africa, and a giving of natural resources back to people;
- c. The guiding principles around this trend show a need for:
 - land rights and tenure security;
 - a clear legal, regulatory and administrative framework that guides relationships, rules, roles, rights and responsibilities between the state, local government, communities and individuals;
 - community level agreements with the state that are officially negotiated;
 - community rights to define themselves and their membership and boundaries, as well their rights to exclude; and,
 - legitimacy of authority, whether elected or customary.

Both communal and individual tenure systems succeeded with CBNRM if based on above principles. Although most cases are based on a single resource such as wildlife or forests, there is evidence that the same principles can be extended to other natural resources, and that land tenure

reforms may hold the key to greater success in community participation in sustainable CBNRM. Several case examples were presented at the SSC workshop as follows:

4.1 Ghana

- The development of off-reserve forest management in Ghana presents yet another clear example of the deterioration and unsustainability of the colonial and post-colonial top-down command and control management;
- Timber logging is a major industry with more than 50% coming from the off reserve: agricultural fields, fallow lands, secondary forest patches, and settlements;
- Under the colonial and post-colonial policy, however, even trees on farmland belonged to the government, and were basically seen as a source of public revenue;
- Regulation, granting of concessions and collection of royalties were shared by the Forestry Department and the Lands Commission and this duality led to much mistrust, institutional jealousy and ineffectiveness;
- Little or no management took place outside the reserves. This, coupled with the absence of any meaningful rights for farmers and local communities, and the centralization of concession allocation, revenue collection and distribution, meant that the stakeholders nearest the resource had no interest in its management and protection;
- Rather they had every incentive to destroy it. The result was a fast depleting resource;
- By the mid-1990s the situation had reached crisis dimensions, in terms of totally uncontrolled timber harvesting in the off-reserve areas and a serious reduction in revenue from the timber trade;
- It was on that basis a new forest policy was introduced in 1994, that signified a major shift in off-reserve policy from 'liquidation' to 'sustainable management';
- In 1995 'Interim Measures' were promulgated strengthening the control of the Forest Department over illegal off-reserve timber felling by recognizing certain rights of farmers and local communities, and soliciting their support for the improved control;
- This has resulted in a significantly reduction in illegal logging;
- Local community representatives, including traditional authorities (stools) and district assemblies, are now required to take part in a pre-felling inspection with the applicant and Forestry Department prior to the issuing of a felling permit, and before the logger can obtain a certificate of conveyance, allowing the removal of the log, and any dispute over compensation for crop damage has to be settled;
- During the study it was reported by farmers, how this recognition of their rights had led to improved cooperation between farmers and concession holders - to reduce crop damage and improve compensation - and Forestry Department - to reduce illegal operations and improve management of the resource;
- It is reported that revenue collection has improved, raising the shares due to stools and district assemblies;

- The success of the ‘Interim Measures’ has resulted in a new Timber Resources Management Act (1998), which introduces a more open and competitive bidding for Timber Utilization Contracts between loggers and the government and introduces the right for either the landowner (stool) or farmer to veto the harvesting of trees from their land; and,
- Ghana has begun the long road of returning forests to the people.

4.2 Namibia

- Namibia is probably the most advanced in developing policies and legislation that vests authority over wildlife utilization and conservation in local communities;
- The emerging CBNRM approach is based on experience with a break down the state ‘command and control’ system and the subsequent deterioration in the wildlife populations;
- Namibia is succeeding with individually owned conservancies and also with CBNRM projects with a component of retention of revenues at community level;
- This has led to policies and legislation that gives ownership rights to most game, as well as rights to control to communities that form conservancies;
- Four such community conservancies have been developed; and ,
- These conservancies are also becoming models for other common property resource management for forest, water and maybe eventually land.

4.3 Zambia

- In the Luangwa Valley, incorporating the national park and the Lupande Game Management Area (LGMA), the colonial command and control game management system failed to address the 20 year decline in valley elephants from 5000 down to 100;
- The community based project started off by sharing revenue from wildlife equally with traditional chiefs without any broad community involvement;
- The project improved the model and now involves both traditional and elected leaders, and 80% of revenues are distributed to Village Action Groups;
- Jobs have been created for the communities for scouting and construction of water points;
- The major benefits have been a reversal of negative attitudes towards wildlife, leading to improved elephant herds;
- The relative success of Luangwa led to the establishment of the Kakumbi Natural Resources Management Business in 1997; and
- The Kakumbi Chiefdom Area Development Committee now manages all common natural resources in the area namely wildlife, trees and land.

4.4 Uganda

- After years of civil war Uganda emerged in the 1980s centered around a new constitution and a decentralization;

- The Local Government Act includes important legal and policy instruments for sustainable management of natural resources such as Environment, Water and Wildlife Statutes and the Land Act;
- Legislation also formalizes peoples' and communities' participation, allowing for devolution of resources management to local government and community levels;
- the statutes legalize systems of water permits and wildlife use rights;
- The basic features of these are that they create a formal legal basis for recognizing and upholding mutual rights and obligations between the government and the permit/right holder, which cannot be unilaterally revoked, without compensation, as long as specified obligations are met;
- While not conferring absolute ownership they thus combine legally secured use rights with upholding of governments supervising and protective role;
- The rights are, with certain conditions, tradeable, bringing them in line with other efforts to replace command and control with economic regulation mechanisms;
- The new Land Act from 1998 provides for the tenure, ownership and management of land in accordance with the constitution which stated that all land in Uganda is vested in the citizens of Uganda and is owned in accordance with customary, freehold, mailo and leasehold land tenure systems;
- Thus it does not, like most African colonial and postcolonial landlaws do, uphold the principle of radical ownership by the state (head of state), which implicitly endorses the state's (administrations) primacy and right to interfere in land matters;
- Complementary to this the customary mode of land ownership is now legally recognized as a form of landtenure and the occupants enjoy security of tenure on former public lands. For the first time a certificate of title known as "certificate of customary ownership" is granted to the owner of such land;
- Uganda has a special kind of feudal land ownership in certain parts of the country, where the British granted chiefs and other supporters freehold rights over land they previously held as fiefs, which was very different from freehold, thus creating squatters of the former small scale farmer occupants;
- Under the 1995 constitution and the new Land Act these occupants are now given secure tenure, provided they have unchallenged used the land for twelve years or more before 1995. Such land holders are issued with a certificate of occupancy;
- Although the value of the certificate is primarily symbolic, this has created created more trust between government, people and communities in recognizing mutually respected rights and obligations, where no such situation existed before;
- It is of course early days to say how the new laws will be implemented, and what impact they will then have, but at least the principle of legalizing peoples informal rights and linking them with obligations and a regulatory role by the state seems to give promises for the future; and,
- Certificates are allocated for different land holding types.

4.4 South Africa

- In South Africa, the Richterveld is an example of local communities asserting rights over common property by voluntarily contracting it to the national parks administration;
- The agreement, however, was a protracted process of developing a new and equal relationship between the community and the state;
- Richterveld is an example of village communities winning their rights back from both the state and local government attempting to designate their grazing as national park area;
- The agreement includes the parks department leasing the land for a fee to the community, and a joint parks/community management committee; and,
- It is expected that the communities will benefit through social projects financed by the lease funds; some semi-skilled jobs have also been created by the tourism trade.

4.5 Zimbabwe

- Zimbabwe is an example of the gradual transition from state 'command and control' approach to CBNRM by devolution of such rights to individuals and communities;
- In the 19970s Zimbabwe started reviewing policy and legislation and today 'landowners' and 'appropriate authorities' have custodian rights over wildlife on their land;
- This has led to 'conservancies' mostly by large land owners pooling their farms together into a protected area and thereby attracting tourists and hunters;
- This has also led to the CAMPFIRE program which gives District Councils the appropriate authority status over wildlife in the district, and therefore acting on behalf of communities in the district. CAMPFIRE is the Communal Areas Management Program for Indigenous Resources;
- CAMPFIRE does exercise some authority over wildlife administration and tourism operations, with revenue shared between the district council and communities;
- CAMPFIRE as a pioneering model scored some successes and demonstrated the value of CBNRM, and a greater definition of tenure and property rights at a local or community level will further empower communities and enhance conservation;
- With forest resources, the rights are held directly by the district councils, who in turn do not devolve any benefits or responsibilities to the communities as with CAMPFIRE. It is expected that progress in legislation in future will lead to community rights over forests; and,
- Because the District Councils have the rights over commercial timber, communities are unable to exclude 'outsiders' and this contributes to unsustainable logging.

5. FRAMEWORK FOR STRENGTHENING LAND RIGHTS FOR THE POOR, AND ENHANCING AGRICULTURAL PRODUCTIVITY

Land rights of people is an issue that is assuming greater and greater significance in every African country, and this issue will almost certainly be a most burning one in the 21st Century.

The following rights determine how secure a tenure system is for the land and natural resource users:

- **Use rights:** to grow crops, trees, make permanent improvement, harvest trees and fruits, wildlife and so on;
- **Transfer rights:** are rights to transfer land or use rights, i.e., rights to sell, give, mortgage, lease, rent or bequeath; rights to bequeath are most important in traditional systems
- **Exclusion and inclusion rights:** are rights by an individual, group or community to exclude and/or include others from the rights discussed above; and
- **Enforcement rights:** refer to the legal, institutional and administrative provisions to guarantee these rights.

Enforcement of land rights often requires a buttress of instruments such as courts, police, financial institutions, the legal profession, land surveys, cadastral and record keeping systems, and land titling agencies. In rural Africa, these institutions either do not exist or are ineffective.

The majority of Africans hold their land under indigenous customary land tenure systems irrespective of the formal legal position under national statutory law. Rural Africans, therefore, rely largely on traditional customary institutions. Solutions to African land tenure problems, therefore, are largely found in supporting its historical heritage of rural institutions *i.e.* the glue that holds people together and allow communities to function. The state, on the other hand, needs to pass laws that support communities and recognize traditional tenure systems and in addition decentralize government so as to localize the responsibility and management (including ability for conflict resolution) of land and natural resources. Highly centralized systems of government were judged as the most serious threat to tenure security for land users under all types of tenure

6. CONCLUSION

African culture and traditions are the glue that holds people together and allow communities to Function. This should not to be trivialized by reducing this to some marketing ploy for eco-tourism since it has 'bread and butter' significance to most Africans. Land tenure is therefore a complex issue that should be allowed to develop or evolve with changing socio-economic and cultural conditions of a given community. Traditional or customary tenure systems offer as much security as any other system provided that communities have legal ownership and authority over their land and natural resources. Governments can strengthen this tenure system by supporting and empowering local communities.

Highly centralized systems of governance, combined with bureaucratic top-down decision making systems tend to impose decisions on people at the grassroots level. This system of government is weak in terms of effectiveness and impact, accountability and transparency, and it denies people the chance to be self-innovative. Governments have to fully understand traditional and indigenous tenure systems before radical attempts to alter them for whatever reason, be it

ideological or purely political. These tenure systems have survived a century of neglect, abuse and exploitation by colonial and contemporary governments. Above all, these tenure systems require support to strengthen local institutions and empower local communities in administering tenure, including the ability of the tenure system to evolve over time. Tenure security in terms of exclusive rights of groups and individuals, it has been argued, are the very basis of political and social power and status. When such rights are overly subordinated to the state, it follows that the political rights of rural people are diminished, and that democratic processes and institutions are undermined. This then is a major cause of tenure insecurity, with resultant negative impact on agricultural productivity and the management of natural resources, particularly on communally held land. Donors and government alike need to invest in strengthen civil society organizations, and in particular community based organizations and NGOs that support these. In many cases, positive change and local empowerment on NRM was a direct result of local activities, NGO pressure, and so on, and this has also led to policy changes, and policy changes in turn facilitated new advances at the local level. Donors need to provide more support local efforts, indigenous systems, and were appropriate provide or fund technical support across the key areas such as resource management and legal reform.

Moreover, there is need to support and develop community and local level institutions that are responsible for tenure administration. The state should relinquish legal ownership of traditional land, and the state should concentrate its support towards support of traditional tenure systems, initially passing legal tenure rights to village assemblies. The key tenure rights under traditional tenure should include user rights, transfer rights, inclusion and exclusion rights, and enforcement rights. Common property and natural resources are owned, governed and managed by village assemblies with provisions for local by-laws.

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