

**A Comparative Study of Land Tenure Reform in Four
Countries: Uganda, Tanzania, Malawi and Kenya**

by

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ABOUT LADDER

LADDER is a research project funded by the Policy Research Programme of the UK Department for International Development (DFID) that seeks to identify alternative routes by which the rural poor can climb out of poverty. LADDER is working with nearly 40 villages and 1,200 households in Uganda, Tanzania, Malawi and Kenya to discover the blocking and enabling agencies in the institutional environment facing rural people that hinder or help their quest for better standards of living for themselves and their families.

This working paper represents work-in-progress and the reader is advised that it has not been subjected to academic quality control, nor edited for errors of fact or interpretation. The paper forms part of a mosaic of research findings that will contribute towards an overall picture of rural livelihoods and micro-macro links to poverty policies in the case-study countries. The findings and views expressed here are solely the responsibility of the authors and are not attributable to DFID.

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A Comparative Study of the Institutional Contexts of Rural Livelihoods in Uganda, Tanzania, Malawi and Kenya:

Issues Arising from Land Tenure Reform

by

Sholto Cross*

Summary

Despite their divergent colonial and post-colonial histories, these four countries have experienced a remarkable convergence in the current state of affairs regarding customary land tenure. The last decade has seen an intensification of popular demands for land reform which have given rise to new legislative initiatives. These are as yet untried in the sense that little by way of implementation has taken place. The obstacles facing implementation may be viewed both as a function of the political context within which the reforms are set, and of the culturally embedded nature of tenurial systems. The micro-level insights provided by the LADDER village studies reveal a world clinging to culturally embedded modes of access to land which are however giving increasingly diminishing returns to both equity and efficiency. The resource base is critically affected, resulting in land fragmentation and outmigration, where new opportunities are mainly seized by young men. The welfare function of the common property regime has largely given way in the face of shrinking per capita land availability, and has given a new dimension to patriarchy following the commoditisation of land and agricultural production. A considerable capacity for adaptation is however revealed in terms of moving to new forms of economic activity, both non-farm and off-farm, but this has been seriously undermined by a wholly inadequate supply of inputs and marketing support, and ubiquitous rent-seeking behaviour by local authorities.

A comparative review of land reform across the region notes the advances that have been made in enhancing the status of customary tenure, and reviews the complex linkages between security of access, production efficiency and the land market. Privatisation has been scarred by the capture of land by elites; where this has gone furthest in Kenya, the level of disputation has led to the continuing postponement of reform. New dynamics forcing the early breakup of households have actively disadvantaged women, and further micro-stratifications in land access have developed. Reforming the gender balance will require broader initiatives than legislative measures, which are criticized for their levels of complexity and over-reliance on undeveloped local administrative regimes. The battle for control over customary lands engulfed by expanding urbanisation has already been engaged. In this highly politicised environment, careful, bottom-up approaches supported effectively at the local level are likely to bring better results than legislation driven from the centre, however this is framed. This raises the issue of building democratic processes and local government as a necessary accompaniment to land reform, and underlines again its problematic nature.

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In conclusion, the paper argues that while land reform initiatives in the region do formally address a number of critical issues, they lack a grounding in both the micro- and meso-level of policy and political action which alone can ensure their effectiveness.

Introduction

The 37 LADDER village reports reveal a diverse picture of the pursuit of livelihoods by small rural producers in east and south-central Africa in the years 2000-2 (LADDER Village Reports, 2001-2). At the micro level it is apparent that many new avenues, especially for off-farm income, are being explored. Different ecological systems pose new challenges and opportunities: there are declining coffee and cotton markets, and a hazardous environment for large livestock, but new opportunities in horticulture, improved smallstock breeds, processing and trading. Despite these diversities, there are significant commonalities, a number of which are discussed from a comparative point of view in other LADDER publications (Ellis & Freeman, 2002). What stands out plainly overall is that rural immiseration is deepening, and that the causes of this are intimately bound to the manner in which households gain and maintain access to the land, the basis for most of their prospects for survival. It is the purpose of this paper to review the themes and issues which arise from what may be termed a 'narrow aspect' of land reform - that is, the changing nature of customary tenure, and its interaction with policy initiatives which have impacted on it. These are then placed within the context of an overview of the developments in land reform at a more general level in these countries. The aim is to situate the immediate and the concrete life experiences revealed by the village reports not only against this broader background of a political and historical narrative, but also in the context of the contemporary debate on land reform. If in doing so some light is thrown on what priorities there may be for policy interventions, and what lessons may be learned from the comparative contexts, then this paper will have succeeded in its basic aims. But it is a large canvas, with a complex and confusing landscape, where dense thickets of legislation and bureaucratic procedures more often obscure than expose the interactions between land-users, administrators and policy-makers.

The structure of the paper is as follows. Following a brief outline of the background to land reform (broadly, up to 1990) some of the key issues arising from the village reports are summarised and presented. There is here a necessary process of selection, but this takes the form of limiting the detail on specific variations rather than neglecting any major issue: it is remarkable how over the four countries the same motifs emerge. There are broadly three groupings of these. The first is that of the (in)security of tenure, which goes to the heart of the experience of land loss which has formed the consciousness of small producers over the past century. Allied to this are a range of issues and co-factors concerning the optimisation of the efficiency of land usage via the design of the tenurial relationship. Second is the question of inequality of access to land and associated economic opportunities, of which gender is the largest but by no means the only dimension. The third issue to be addressed arises directly from these: the nature of the obstacles to the implementation of the current land reform proposals which have so painfully passed through the birth channel of the political and legislative process.

Before proceeding with a further analysis, the paper then stands back for a more general *tour d'horizon* of the background to and current developments within the four countries in the last decade. Those familiar with these may wish to skip ahead. Yet this narrative needs no apology; the roots of the problem run deep, and are embedded in the nature of the

contemporary African polity. Experiences in one country have also significantly influenced the land reform debate among its neighbours. The three main foci are then revisited, and the linkages established between the micro- and macro-levels examined. Finally in the concluding section some attempt at a synthesis is made, and suggestions put forward for a further deepening of the linkage between policy at the macro level, and micro-practice.

Background to Land Tenure Reform

This paper starts from the premise that land, as the key resource in Africa, is at the centre of its political struggles just as much as it is the fount of its economic wealth. The determinants of socio-economic status flow from the outcomes of these struggles. There are many dimensions. At the broadest level is the issue of dominance, by individuals and groups, their retainers and client base, over the system whereby land is made available to actual and potential supporters. Contemporary elites have found in the institution of freehold tenure and the notion that the state has vested title to land, as with those who introduced these during the colonial period, powerful weapons for consolidation. But contestation has extended downwards to the inter- and intra-household levels, where customary modes of access to land predominate. While the latest wave of land reform has been characterised by attempts to remove the radical title to land from the state (and the official class which it subtends) and vest this in the people, and to 'rehabilitate' the customary sector in various ways (in particular through aligning it with freehold systems), many questions arise over whether the outcomes have in practice favoured small land-based households, or reduced inequitable stratification within them. An understanding of these struggles around land utilisation is of particular relevance for the analysis of sustainable livelihoods by the poor, as their life chances are predominantly determined by the terms on which they have access to land.

There are many common threads for this perspective in the four countries under consideration. In Uganda, Kenya and Malawi, English land law (as it existed prior to its reform in 1925) was imposed in such a manner as to facilitate the alienation of land to the state, for purposes of encouraging settlement and commercialisation. The existing, or customary mode of land-holding was accorded the fragile and subordinate status of occupancy (Okoth-Ogendo, 2000). The German period in Tanganyika was no different, and although this process of alienation was frozen in terms of the C mandate granted to Britain, the customary sector was similarly made subordinate to the received law (McAuslan, 2000). This phase of reception of land law was followed during the 1920s to 1950s by what many proponents of a balanced approach to settler and indigenous rights refer to as the period of reconstruction (the maintenance of a dual system, whereby new systems such as trust lands were deployed, aimed at maximising political stability). Piecemeal attempts were thereafter made to evolve customary tenure in the direction of freehold, but at independence customary land-holders generally had the lowest degree of enforceable rights to land (Toulmin & Quan, 2000).

While the political developments during the first three decades of independence in these countries took apparently different routes, there were fundamental similarities and continuities. In Malawi, the 1967 Land Act re-asserted the control of the state over land, and subsequently Banda proceeded both to subordinate the customary sector to the interests of a new *rentier* class of supporters and officials, and to transfer large areas of prime land out of the customary into the private leasehold sector (Cross, 2002). In Uganda much the same processes took place under Obote I, Amin, and Obote II, with Amin's 1975 Land Reform

Decree (purporting to declare all land as public land, thus ostensibly destroying freehold tenure in Buganda and the other kingdoms – the ‘lost counties’) doing little more than open the door for large amounts of land to be transferred as leasehold to the benefit of senior politicians and officials, operating through district land boards and the Uganda Land Commission (Bosworth, 2002). The development conditions attached to the land were rarely enforced, and much remains under-utilised.

Kenya led the way in land policy in East Africa, but is now arguably the laggard. The background is complex, but central to current problems. The Swynnerton Plan (Swynnerton, 1954) envisaged the intensification of agriculture as the road ahead for the customary sector, and also scouted the idea of converting customary tenure to individual freehold. This path was taken further by the recommendations of the East African Royal Commission (1955). Presented in terms of economic rationalism, political considerations of a hoped for stabilisation of land matters were also a driving impulse for reform, which culminated in the Registered Land Act (Cap 300, 1966) (RLA). This took into the independence era the system whereby land might be registered, consolidated and adjudicated as privately owned land, while the Trust Land Act (TLA) vested control over customary lands not so transferred to absolute proprietorship in county councils. Both were ill-suited instruments. They perpetuated the notion of state trusteeship for the customary sector, and the move towards titling and registration of agricultural land, but failed to install any effective means of policing the fiduciary duties of the state (Okoth-Ogendo, 2000). The RLA did not deal with issues of succession, where customary law continued to operate, while the registration approach often required adjudication on title, tilting access in favour of the powerful and wealthy, particularly where urban expansion brought rising land values (KLA, 2002). The TLA was wide open to abuse by county councils whose fiduciary duties were neither supervised nor challenged, despite the wholesale transfer of land under customary use for registration by big men. The courts did attempt to establish some protection where customary systems continued to operate in purportedly privatised land, but upon sale or lease this involved the destruction of lesser rights and ‘condemned customary land tenure to the ghetto of neglect’ (Migai Akech, 2001). In particular there was a large reduction in the welfarist role of the land, through the loss or further degradation of the weak rights of outsiders and women.

This was aggravated by the fate of much public land. At independence a considerable amount of land consisting of gazetted forests, national parks and reserves, bodies of water, wetlands (and unalienated range or agricultural lands in such areas as Lamu and Tana River Districts) passed to the state. In practice, this has been treated as if it were private property to be disposed of at will, without conditionalities or public scrutiny. All categories of government land (including land reserved for public purposes or in urban areas where leases expired) became vulnerable. The ‘principle of first registration’ in the law of Kenya originating from the colonial era has also meant that irregular allocations cannot easily be reversed.

In the pastoral areas covering two-thirds of Kenya (where Swynnerton did not envisage privatisation) group ranches were established in the early decades of independence, over a third of which were subsequently sub-divided, individualised and mainly sold to outsiders, leading to a resurgence of customary patterns of ownership (Scoones, 1995). The redistribution of private land owned by white settlers after independence has also led to an extremely complex and inequitable situation. Farm areas are now of mixed size ranging from 10,000 ha to less than one hectare. Smallholders rarely have registered titles and operate in accordance with customary law and land use systems. Apart from changes in the technical

description of land title, land relations in registered areas of trust land have barely changed. Attempts to assert private title are often fiercely resisted by kinsmen and are a frequent cause of violent confrontations.

The replacement model, which characterised early post-colonial Kenya, has thus failed. The extent to which private tenure regimes were installed has reflected a political market rather than an economic one, and the vast majority of farmers continue to access land via indigenous systems. This has led to arguments in favour of an adaptive model for customary tenure, driven by Boserupian forces and induced innovation (Bruce & Migot-Adollah, 1994). But the overlapping and incoherent administrative measures surrounding access to land make a radical overhaul now imperative.

Tanzania has a somewhat different history, but with curiously similar outcomes (Sundet, 1997). The German period of occupancy recognised formal title where it existed, and as with most other colonial powers, acquired land to the state by right of conquest, and subsequently made this available for commercial settlement. The mandatory terms established by the Treaty of Versailles prevented such transfers, however, and the Land Ordinance of 1923 vested radical title to land in the people, represented in the person of the Governor, subsequently the President. This did not prevent significant alienation of land in the southern and northern highlands to settlers, but the mandate ensured that Tanganyika fell under the doctrine of the paramountcy of native interests. The adoption of a socialist *ujamaa* ideology following independence permitted land policies to flow smoothly on from the colonial dispensation, allowing the political leadership to propose and dispose of land without challenge, a primary enablement for the villagisation programme. In 1963 the role of traditional chiefs was abolished, clearing the way for the rural revolution *vijiji*, which saw two-thirds of the rural population resettled via administrative fiat into nucleated villages (Hyden, 1980; Coulson, 1979). The collapse of the rural economy led to the formulation of the New Agricultural Policy in the 1980s, and the Economic Recovery Programme, heralding a process of liberalization. This opened the way for widespread disputation over land rights. Apart from the direct dispossessions of customary land for resettlement, the state had also granted vast swathes of land to parastatals and individuals. The confusion in land affairs also saw a continuing process of land-grabbing.

The first post-colonial phase 1960-1990 thus saw, as Okoth-Ogendo (2000) has concisely summarised it, some deep commonalities in land policies across the four countries. These are the pre-eminent role of the state, which retained radical title to the land (or behaved as if it had), without any means of control or supervision of its trusteeship duties; a general attitude that customary tenure was an inferior system and should be allowed to wither away, if not actively suppressed; and arching overall a system whereby land matters were dealt with essentially through political and administrative means, rather than by any attempt to establish a coherent body of law. Despite the very different apparent circumstances therefore of avowed socialist and capitalist systems, countries suffering civil war and anarchy or enjoying extended decades of peace, the political processes vis-à-vis land policy have shown some profound structural similarities. These are the continuance of the early colonial agenda by the new nationalist elites of providing a land-owning basis for the powerful and wealthy and those who would join their ranks; rent-seeking behaviour towards the customary sector, whose own production interests were largely neglected or utilised as a base for the extraction of profits; and their general downgrading to the status of tenants at will, with inferior rights of dubious enforceability, constantly subject to the threat of eviction.

A wave of land reform in the region took place broadly in the last decade of the twentieth century, provoked by rising popular dissatisfaction - given greater scope by the dawning of the multi-party era - together with the urgings of the donor community, and the broad shift in public policy perspectives towards poverty alleviation via liberalisation. These developments are reviewed for each country, following a review of the detail provided by the LADDER surveys.

Land Tenure and the LADDER Village Reports

Overview

The LADDER surveys are not intended as representative samples, but rather as illustrative of particular ways in which livelihoods are pursued in different and typical ecosystems. The Tanzania fieldwork was undertaken in two of the five districts within Morogoro region: Kilosa (intensive irrigated rice, semi-arid maize, livestock) and Morogoro Rural (south-west face of the Uluguru mountains, high value fruit and vegetable production; and remote and relatively inaccessible maize and sesame villages on the northern border of the Selous Game Reserve) (James, Mdoe & Mshili, 2001). The Malawi surveys (Dedza, Zomba districts) covered villages with access to fish and paddy, and those confined to dryland arable, significantly off-road. The Kenyan studies concentrated on the west (Suba district, lakeshore and hinterland districts) where rural land competition is as intense as anywhere in Africa. In Uganda (Mbale, Kamuli, Mubende districts) both highland coffee-banana *shambas* and lakeshore fishing villages were covered.

Land Access: Inheritance

Customary tenure predominates as the means for gaining access to land in these areas, affected as they are but not yet overly disturbed by peri-urbanisation. There have however been many modifications and adaptations from the archetypal mode of matrilineal or patrilineal inheritance, reflected both in mobility (incoming outsiders, clan movement to new land) and endogenous change. Generally it appears that the greater the pressure for land, the more adverse are the chances of woman achieving access or security other than via marriage; women in better-off households have greater access to land and room to manoeuvre than do those in poorer households; and the risk to a household of early adult death impinge hardest on women and the young. There is thus an apparent gradient of negative consequences of traditional inheritance systems running parallel to socio-economic status. There are exceptions to this, notably where *mailo* tenure is in operation, and also where women's associations have been established. There is also a growing stratification between elders, those already established on the land, and 'outsiders' and 'insiders' with political access on the one hand, and the younger generation who may have no other choice than migration, landless labour, or inadequate survival on a fragment of inherited land on the other. Generally customary inheritance has retained its validity, even where registration and titling of land has purportedly occurred, or land has been removed from clan control by allocation. Yet its capacities do not appear to be able to contain fragmentation and deepening inequities.

Some examples illustrate this. Pinde village, (irrigated vegetables, Uluguru) typifies a settlement with a major land constraint where the matrilineal system is still intact. Almost all available land is cultivated, some under perennial crops. The better off own up to 4 acres in 3 to 4 scattered plots, and rent in land. The poor own less land, much of which is fragmented and rented out. The old who cannot work are food insecure most of the year, and a large proportion of the youth migrates. Drastic declines in soil fertility have accompanied a shift

away from coffee (falling prices) to intensive horticulture (cabbage, tomato, improved varieties of Irish potato). The position of women is noted as being quite balanced under a still strong matrilineal system, with considerable involvement in decision-making, and significant areas of independence, such as the freedom to raise credit (although constrained by a lack of collateral sources to raise capital).

Buwopuwa village (Mbale) is populated almost exclusively by Bagishu clans, and patrilineal inheritance by sons predominates. The few outsiders in the village have purchased their land. More recently, however, some women have been free to inherit land and transact in this resource independent of men and clan influence. But only women whose parents recognise that both boys and girls have equal rights have been so favoured. Most fathers bequeath land to their male children only. Parents who allocate land to girls are those parents who are well off or only have daughters. Nonetheless inheritance by women is frowned on by the community, as this status is associated with women who have separated from their husbands or are spinsters living on their own. This may be contrasted with nearby Bunabuso, where access to land occurs equally through outright purchase or inheritance (hiring and borrowing are not uncommon). Once one buys land it becomes private property. The most common source of this kind of land is from neighbours. Clan elders may stop the sale if they do not think there is a genuine reason for its sale or the interests of other members of the household are being neglected. Typical reasons for selling land accepted by the clan as valid include school fees, court fees, money for dowry, health problems, burial arrangements, and purchase of land in other areas. The key distinguishing characteristic of the latter village is the prevalence of development institutions, some external, some homegrown, which suggests that these may help account for its more 'modern' attitudes towards the land market.

In Dedza and Zomba villages the predominant matrilineal system is starting to break down under the pressure of land scarcity, as is the case in Tanzania (cf. Gudugudu below). At Lumwira, more sons than daughters are being given land by their mothers, and the traditional *chikwamwini* (matrilocal) system declining in places (Mpango village) to *chitengwa* (patrilocal). This has led to a structural change in village relationships, with household members preferring to devote time and resources to non-farm income generation rather than supporting family ties (Cross, 2002: 19). Malawi perhaps is nearing the endpoint where customary systems of land access via inheritance and marriage fulfil some social welfare function, and as the most extreme example of poverty and scarcity amongst the LADDER countries, may be the most obvious case for providing assistance to the adaptive capacity of indigenous systems through careful legislative reform.

Land Access: Purchase and Rental

Land sales are generally most uncommon in the LADDER villages, except the *mailo* areas, and even here it is infrequent. The rental market however is a rapidly growing one. In Kisanga sub-village (Morogoro Rural) land sales were noted as very uncommon but did occur, with renting or inheritance as the main means of access. The better off rent in land, and a higher proportion of land is rented out as the poverty indicators increase. The very poor, with on average 0.5 acre, have little option but to rent out both their land and labour. There is an interesting positive relationship noted here between village authorities who are helpful (solve disputes, not corrupt) and rising income levels and micro-mobility.

In Kinamwanga (Kamuli), most villagers have only small pieces of land, some none, and gain access through renting at about U30,000/- per acre (on average up to 1km distant). This trend has sharpened over the last five years. In the past, people used to lend out land free of charge

for cultivation purposes; this is now rare. Land fragmentation is on the increase through inheritance, distress sales of small portions of land arising from sickness, marriage payments, burial arrangements, debt repayment, and to finance outmigration. It is the latter category that is usually available for outsider cultivators to buy. (Fisherfolk who come to the landing in search of employment on the lake may be given free space where to put a simple shelter, but nothing else).

Gudugudu and Mlali (Morogoro Rural) are unusual villages, in that land (village and clan) is relatively freely available. Village land is accessible both to residents (and outsiders) through application to the village administration and the payment of T10,000/- (T18,000/-) to cover stationary costs and allowances for the Village Land Committee. Clan land is acquired through matrilineal inheritance. But for the four major Luguru clans with land in Mlali (Kimri, Nkombe, Ndoto and Kikomi) this system has been in steady decline since the villagisation programme. Men now commonly inherit directly, and sales of clan land (T50-70,000/- per acre) are reported. Other ways of gaining access to land for agricultural activities is through renting. Similarly the renting of both clan and village land is on the increase, specifically for cash cropping tomatoes (T5,000/- per acre for two seasons). This land rental market is not however free of constraints, as may be seen from the cases of other Tanzanian villages reviewed below (p.13).

Land Access: Mailo Land

In the coffee-banana system of eastern Uganda, Bukhasusa is an interesting case where patrilineal inheritance predominates, but customary and freehold (*mailo*)¹ tenure mingle easily, and the not infrequent land sales suggest an evolutionary path from the former to the latter. This is accompanied by the privatisation of hill lands, which were previously under common property or open access regimes. Rich households may set aside land for a daughter, after provision had been made for sons. The delineation of a small piece of land for widows is frequent, but the purpose is primarily to meet funeral costs and continuing access is subject to clan approval. It was observed that women who are members of the savings and credit associations live a better life. They are able to pay for school fees, corrugated iron roofs, can purchase their own land and at least can pay hired labour for their separate fields. Some have acquired livestock, which gives them milk for domestic consumption and sale.

Similarly in Kabbo village, a father may allocate some land to his married sons. However, if the father dies before all the sons are married, then the wife inherits the land and she has the right over the land and the decision to allocate it to the remaining sons as they acquire their own homes. Land in the village is owned by private individuals with some having acquired leaseholds while others are at varying stages of formalising the title deeds. Many are sitting tenants (*Bibanja* holders) who pay no rent to the title holder, and are free to develop or sell the *Kibanja* without permission. Normally, wives have their own plots that they cultivate for home consumption. Produce from men's plots is usually sold. Women work both in their own and their husband's plots, but husbands rarely help in the women's plots. Single women may access land via rent and purchase, if they can.

In Kansambya village, men own most of the lands in the village while women gain access to the land through their husbands. Land in the village is private *mailo* (absentee landlords) and is acquired either by inheritance or purchase (hiring and borrowing from a neighbour are also known). Land is rented out for three production seasons (about 1.5 years) at a cost ranging from U15000/- to 30000/- per acre. In the case of borrowed land the individual who is given land may decide what to give the owner as a token of appreciation after harvest. Both women

and men are free to purchase land. Parents may allocate land to both their sons and to those daughters who have returned home following failed marriages. However, if the father dies before all the sons are married, then the wife inherits the land and she has the right over the land. The sons and daughters who get land from their parents can use that land but do not have the right to sell without consent of the parent. It is only after death of the father that those who inherited land can freely dispose of it. Many people do not have land titles. These are sitting tenants (*bona fide* occupants) who do not pay any thing to the landlord holding the title and they are free to develop or sell the *Kibanja* to any other person without seeking permission from the titleholder. Although many people still work together, it is now common to find separate fields for husband and wife in a household. This has come about because men do not provide enough for their wives. The women cultivate and harvest produce mostly for home consumption but also operate separate plots whose proceeds are sold. Produce from the men's plots is usually sold to meet major family obligations such as school fees for children and house construction. The women work both in their own plots as well as in their husband's plots, but the husbands rarely help in the women's plots.

Land Scarcity

Not a single village study encountered a community where land availability was not a major constraint, regardless of scale factors. At one end of the spectrum are typical Kenyan villages such as Gingo where within living memories land holdings by the better off exceeded 20 acres, but have now more than halved, to the Malawian case where average holdings (across the three income categories) are in the 4-6: 1:<0.3 acre range. "Those who did not get rich in the past, will never get rich now" was the telling phrase.

Table 1: Western Kenya Land Holding (acres) for Selected Villages (LADDER surveys)

Village	10 Yrs Ago	5 Yrs Ago	Today		
			I	II	III
Gingo	20	15	10	8	5
Roo	communal	n/a	12	6	2.5
Nyapuodi	120	n/a	10	12	1.5
Makende	20	15	10	7	2
Average	53	15	10	8	3

Nyapuodi, for example, was originally a settlement scheme where land access has changed, from being simply a matter of registering and clearing land in the 1950s (holdings up to 150 acres), to a system in the 1970s whereby land was temporarily acquired for a minimum period of five years by contract with household heads, subject to elders' approval and witnessing. This has now modified to the hiring of land for a fixed period lasting one harvesting season (basically one year). Apart from those accessing public land through reportedly corrupt means, inheritance now remains the only sure way of acquiring land.

Land distribution in Roo, where communal land was originally freely available, is now essentially bimodal between the older generation of Basuba settlers with 8-12 acres and the youth with 1 to 5. Similarly in Kilimani sub-village (Chakwale, Kilosa: maize, pigeon peas, sweet potato, beans) elders own most of the land, which can be up to 20-40 acres, while the poor average 1 acre. Youth have no option but to migrate or sell their labour. With declining soil fertility, little infrastructure, no or fake inputs, returns of <4 bags maize/acre indicate the non-viability of fragmented holdings. A similar picture emerges from Bunabuso (Mbale).

With increasing population, land fragmentation has increased and most young people have had to migrate out of the village in search of off-farm employment in North Mbale, Kenya, and Buganda. Indeed some of them have eventually settled where they migrated after securing land. Nonetheless they rarely relinquish the land they own in the village.

Land Titling, Registration, Land Use Planning Allocation

In Tanzania (Kilosa) the growing demands for land as a result of increased population pressure has led to violent clashes between pastoralists and crop farmers resulting in 42 deaths between 1998 and 2000. Whilst such outcomes are the exception, in all communities land demands are fuelling intensified grievances. Some communities complained that village councillors had corrupted this process by consistently awarding the best land to themselves and immediate family. Indeed, only 48 of 314 respondents expressed satisfaction with the current system of land planning and allocation in their villages. In particular the growing interest of 'outsiders' in acquiring land was felt to be perpetuating poverty.

Chanzuru Kati sub-village (Kilosa) has a diverse ethnic mix of one-time sisal workers, brought together through villagisation. Following the demise of sisal production, the estate was handed to the local village for redistribution at T1000/- per acre. The village leaders who formed the administration took all the plots. Significant changes in land use through the introduction of high value paddy rice, local population increase and incoming entrepreneurs have intensified the demand for land. The closure of co-operatives has led to a concentration on two basic cash crops, maize and rice. Access to paddy land by other than notables and the younger generation is now only via rent, but with declines in the profitability of rice, this is now barely viable. Maize farming is possible only through renting from the 3 businessmen who own all the suitable land, at T5000/- per acre, on an insecure annual basis (land may not be available in time to cultivate and plant for the rains; land cleared one year may not be made available the next). This has created a poverty trap, where those with little land are forced into labour for others, neglecting their own fields, with particular impact on women in Group 3 households. Attempts to extend maize cultivation have led to clashes with Maasai pastoralists. A very similar picture is presented by neighbouring Darajani and Chekereni sub-villages, where the local MP has facilitated the sale of maize land to private businessmen.

The inequities created by land demarcation and registration are also noted for Gingo village (Suba). Registration is not operative, despite demarcation. Clan lands have been allocated outside the group through administrative fiat. This has included in a number of areas access to forest reserves.

The clear conclusion is that registration has not worked as an empowerment tool, rather the reverse. The bureaucratic procedures necessary to register and entitle land, and accord with land use planning by-laws, have reduced rather than enhanced the security of the customary sector, and it is to the informal rental market that producers mainly look for exchange value.

Gender Balance

Both matrilineal and patrilineal systems reflect the culturally embedded norms, which give men land entitlements not generally open to women. This may be seen not only in inheritance, but in the division of labour, decision-making, control of income, livestock, and access to credit. The examples are ubiquitous throughout the reports. Women within marriage secure their land via their husband, with access to specific fields from which they are expected to provide for the reproductive needs of the household, providing most of the physical labour as well. Upon the husband's death, land is usually allocated to male relatives

within the clan. Where land is made available for widows and daughters (rich families, coffee-banana area), it is land 'on the other side', land close to the homestead being reserved for sons. The increasing fragmentation and declining fertility of land means that women of remnant households often end up with non-economic holdings. Separation, divorce and early widowhood (AIDS) are now common.

But there is some evidence to suggest that the declining opportunities within cultivation are episodically improving women's livelihood chances. Basic field labour is giving way to trading, processing, and catering, which are proving to be both more financially rewarding and capable of opening up some independent social space, whether individually or through women's groups. In many fishing villages, for example, where women are forbidden to go on the lake (although instances of women owning boats and nets occur) the drying and marketing of fish provides significant income. Brewing beer and *waragi* are similarly increasingly profitable undertakings open to women. Iyingo is a typical case of the position of women in a fishing village. Here poor women buy and sell *mukene* while the better off trade in *tilapia*. The trade in *mukene* is exclusive to women. A wife will receive sufficient money to buy one basin of fresh fish to process and trade, but thereafter has to buy the fish from the husband, and seek approval for how the income is spent, the decision usually being joint. Women do not act on their own without the consent of their husbands for fear of being told to leave the home. Some women own boats, nets and lamps, and employ men to fish for them. While the fishermen may share the fish with fellow men and other women, women boat owners sell their fish to a women's cooperative. Women and the men spend their money differently. Women's income is mostly used to meet household necessities, to hire land, and for clothes. Men's income is usually spent on alcohol, food, prostitutes and livestock. But the first priority is to the maintenance of fish nets. Women who invest in livestock do not make independent decisions. In most cases, they have to consult their husbands before they can purchase livestock. It is only women whose husbands have migrated who make their own decisions throughout the year.

But the situation is not static. In Kinamwango (Mubende), for example, as for many other villages, the new economic activity is brick-making. Women are involved in excavating the soil, fetching water, processing the mud, making bricks, and fetching fire wood to bake the bricks. However, women refuted the view that few have been attracted to this activity because it is considered a masculine activity. By and large women in this part of Uganda feel they are leading a better life in the last 10 years. This is attributed to the changes in government. Women have been empowered and they attend meetings outside the village e.g. LCs, political mobilisation, and health training. Sensitisation has led to greater awareness with respect to work practices and the need for equal participation of both men and women in income generating activities. And as in Kiribayiria, this has resulted in an increase in business activities and petty trade leading to increased incomes to households. This has also enabled more villagers to acquire legal fishing gear, boats, bicycles and livestock, and even to construct permanent houses.

Gendered division of labour

While there are some new freedoms, these must be seen alongside traditional constraints, the most noticeable of which is the gendered division of labour whereby the bulk of repetitive chores are reserved for women. The study of Kabbo village provides a widely common picture of the rural lives of men and women. Here the main activities for women are crop production, livestock management and trade in that order. The priority crops for women are bananas, cassava, beans, cabbages, Irish potato, tomatoes and groundnuts. For men priority

crops are coffee, banana, maize, Irish potato, beans and cassava. While men prefer crops primarily for income generation, the primary objective for women is food production. Income is secondary. The view that 'food production is symbolic with women because they are the mothers who have to feed their children. Men would think about children but in most cases they have more than one wife hence many children. Thus the children are left in the care of their mothers' is typical.

Men mostly manage cattle; goats belong to both men and women, but are managed by women. Pigs are kept by women, while chicken are the domain of both women and children. Men's interest in cattle is largely because it is viewed as capital investment. Men have authority over all livestock types because they are the heads of household. Women are free to own any type of livestock but they do not participate actively in livestock marketing. For households, which tether animals, the responsibility is ideally supposed to be shared by both man and women but the reality is that women take much of that responsibility. Husbands only help if the wife is sick and when children are at school. Men with large herds of cattle are responsible for grazing those animals or they hire in labour.

Both women and men participate in trade. Men often acquire the initial capital from sale of livestock while women obtain the initial capital from sale of crop produce. Both women and men may trade in coffee although women only normally trade in parchment beans while men sell processed coffee. Women lack money to process coffee beans and transport the dry coffee to processing plants. Therefore in most cases women sell their coffee at home or in the gardens. Women are interested in brick-making, but - unlike Kinamwango - cultural norms and public opinion about feminine and masculine jobs deter them. This is also the case with men who can cook; it is taboo if a married man dares to get involved when the wife has no physical and health problem. The growing cash market for charcoal is also widely restricted to men.

As regards the agricultural division of labour, both men and women are involved in cultivation. Wives assist their husbands with their gardens, but the reverse does not apply. Selling one's labour is regarded as a lowering of social prestige. Rich men hire labour to carry activities in their separate gardens for coffee banana, maize, beans and Irish potato. Similarly women in category 1 sometimes hire labour. Usually it is Category 3 men who are the most readily available for hire; women are often busy with domestic work. In Kasambya local men avoid hiring themselves; it is mostly immigrants from Ankole, and Kigezi who sell labour. A married woman dares not sell her labour, as this would shame her husband. However the husband may go with his wife to accomplish a task which he was hired to do.

Overall, the position of women in the upper stratum shows some movement towards greater social and economic independence, but generally the imbalances are deeply embedded in social norms. These value women for their reproductive fertility within marriage, and physical capacity to maintain the household. Once outside marriage negative discrimination is an inevitable consequence. The decline in life expectancy following the growing incidence of endemic disease exacerbates this. The question arises whether this is properly a matter for reform via a review of laws governing inheritance and tenure, or should be subject to a more widely based initiative to transform domestic relationships. The tenacity of customary systems in the face of a century of adverse legislation suggests that tenurial reform on its own is unlikely to have much effect.

Village Settlement and Mobility

A striking feature of the studies is the high level of physical mobility revealed, whether relatively large cross-border movements of both clans and individuals, or oscillating migration between a home village and local employment or trading node. Even Malawi is no exception, although movements here tend to be individual rather than clan-based, mainly consisting of *obwera* (outsiders) moving into new cash opportunities (fish, rice), men in a matrilineal system who retain land in their clan village, and a certain amount of rural-urban oscillation. The search for land is the predominant motive. Lundi sub-village (Morogoro Rural, Uluguru mountains) where land availability is the major constraint on livelihoods is typical. Almost all is clan land, with steep slopes prone to soil erosion, subject to fragmentation and declining plot size and soil fertility, except for areas reserved to tree planting. Something of a land market has developed, with a few sales but more commonly rentals (T60-120,000/- per acre). This village shows a picture of increasing diversification within the agriculture sector, away from coffee and food staples towards new cash crops and improved livestock (Swiss goats). The problems are the limits to agricultural involution of these production systems, with consequent outmigration, largely by young men, who in any event constitute the better off. Women are relatively adversely affected by these changes as they have fewer opportunities for engaging in the new activities, are constrained into the less profitable forms of petty hawking and entrepreneurship, and have markedly less capacity to raise credit and accumulate capital.

Sogea Mbele (Bakwira, Morogoro Rural) is a settlement recently formed by such Luguru outmigration. It is isolated, with little infrastructure or services, but offers scope for young men. Non-clan access via rent (T2-5,000/- per acre of paddy) and sale (T50-80,000/- per acre) is common, (sales less so) mainly to men. Matrilineal inheritance is now breaking down into the patrilineal form. The upper stratum is composed mainly of hardworking young men with some education who cultivate up to 10 acres (usually in non-adjacent plots), often hiring in (male) labour. Informal networking, revolving credit and support organisations (*kiwili, lugota*) contribute to their success. The local MP and village committee are resented for not having prevented land suitable for paddy being removed to a wildlife area, and generally failing to respond to requests.

Iyingo village (Lake Kyoga, Kamuli) reveals another dimension to population mobility. During the bush war fought by the NRM in the 1980s there was a large-scale outmigration (of all tribes) from Iyingo, followed by an influx of Iteso fleeing the insurgency in Teso (a district on the other side of the lake). These then returned home, retaining some stake, while the families who fled the area in the early 1980s have been filtering back. However, the returnees, faced with the decline in fishing prospects, have built homes in Iyingo, but practice oscillating migration (to Buganda and Kenya) to pursue livelihood activities. Wives are usually left in Iyingo, which is visited only at Christmas and Easter.

The elders of the fertile Roo fishing village (western Kenya) date the first settlements to around 1920. These were Basuba people from the northern parts of Tanzania, (later driven out by another clan of the same tribe). They then settled in other parts of Gembe division, and were joined by other Basuba clans from Uganda, now currently settled in Gwassi, Mfangano and Rusinga. The majority of the original Roo community is descendants of the Kakrinda and Kakyone clans founded by two brothers. Villagers therefore cannot intermarry. Marriages are strictly with the immigrants from other areas, or uxorial with neighbouring clans. Apart from the predominant Luo and Basuba there are also Kisii who migrated from Migori in the early 1970s in search of farmland, relatively new Luhya settlers, Baganda, and Tanzanians

from the border towns of Mara, Tarime and Msoma, most of whom engage in fishing. The Tanzanians, some of whom have second identities as Kenyans, have not fully settled, instead opting to keep moving from Kenya to Tanzania and back. Wives may not accompany their husbands. In the early days land was communally owned and only one person, the clan elder, advised by counsellors whose appointments were entirely based on age and knowledge of the community, had the prerogative to allocate land. Quarrels over land were minimal or non-existent. Most of these powers and positions have now been pre-empted by the Provincial Administration and government appointees. Disputes occur every day. Population growth, exploitation of forest resources and water catchment areas for commercial farming by outsiders, some with political support, and the enactment and enforcement of forest legislation restricting further access to the forest have meant that they are faced with a shrinking, overexploited resource base. This has resulted in increased land pressure, and hence a reduction in the fallow periods, resulting in declining soil fertility and lower yields.

Overall Assessment

The picture at grassroots is then of a world clinging to culturally embedded modes of access to land, which are however giving increasingly diminishing returns to both equity and efficiency. The resource base - soil fertility, tree cover, fishing stocks, livestock - is critically affected, resulting in land fragmentation and outmigration, where new opportunities are mainly seized by young men. The welfare function of the common property regime has largely given way in the face of shrinking per capita land availability, and has given a new dimension to patriarchy following the commoditisation of land and agricultural production. A considerable capacity for adaptation is however revealed in terms of moving to new forms of economic activity, both non-farm and off-farm, but this has been seriously undermined by a wholly inadequate supply of inputs and marketing support, and ubiquitous rent-seeking behaviour by local authorities.

If there is one feature common to all the studies, it is the revelation of the absence of any effective or fair local land administration. We now turn to review developments at the macro-level to assess the prospects that national land reform programmes may have something to offer.

Current Developments: Uganda

The National Resistance Movement (NRM) came to power in 1986, after 5 years of bitter fighting. Their orientation towards popular struggle, and the decentralised Resistance Councils created for this, led naturally to a process of further formal decentralisation (Kisakye, 1996). In this Uganda had a headstart over its neighbours, for whom decentralisation was more part of the donors' agenda than their own. Interestingly, while the transformation of local government was to become central to the thinking around land reform, the initial 10-point Programme of the NRM did not refer directly to land grievances, although it did touch on this indirectly in references to economic decay, corruption, and the rule of law. Of greater significance for a radically new approach to land relationships was the NRM's concept of sovereignty being vested in the people, which underlies one of the most important features of Ugandan land reform, namely the transfer of radical title away from the state (while retaining pre-eminent domain, and control over public environments). The immediate driving force towards formal land reform was however the political imperative of achieving accord with the single most dominant group in the country, the Baganda political elite, for whom grievances over land were central.

It should be emphasized that even at this stage little in practice had changed from the early colonial settlement in terms of land tenure. Until the coming into force of the 1995 Constitution and the enactment of the Land Act (1998), only three tenurial systems were recognized under the law: private freehold, leasehold, and *mailo* freehold (see below). Customary tenants were regarded as occupiers of crown land, mere tenants at will or at sufferance of the state who could be evicted with only three months notice, and compensation for the developments on land. All land was vested in the state under the management of the Uganda Land Commission. Such occupants had no enforceable rights, and indeed many were shunted aside. Mwebaza (1999) states that it was “a common phenomenon in Uganda for politicians and big government officials to award themselves leases on huge chunks of land to the detriment of the local occupiers who were often not given notice or compensation for their developments on the land”. In a country where 84 per cent of the population lived by the land, insecurity of access was a core popular grievance.

The reconstruction of the mechanisms of rule was however the first priority for the Museveni government. Moves to overhaul the civil service and breathe life into local government culminated in the 1993 legislation which launched the decentralisation process (overcoming bitter opposition that this entrenched unitary - as opposed to federalist government - reflecting the underlying irredentist concerns of old Buganda, with future implications for land matters). This encountered all the expected early problems, central to which was the question of insufficient competent manpower, fearfulness and obstruction from civil servants, turf wars between line ministries, and a major row over payroll management (Lubanga, 1996). However, where donors adopted a ‘participant-support’ rather than a blue-print approach, as in Rakai district (Nielsen, 1996), the results were remarkable and the turnaround in levels of service delivery and the morale of district staff indicated that the prospects for a sustained implementation of decentralisation were high (Semakula, 1996).

The five-tier system of elected local councils running from district to parish levels on which this decentralisation was based had as a major strength the involvement of most local leadership elements. What is less explicit are the means whereby accountability and democratic interaction are to be pursued - the Achilles’ heel of African decentralisation, as has been pointed out by many (Cross & Kutengule, 2001). This is critical for the politically charged questions around land reform: these devolved structures are expected deliver the key elements of land reform, yet were not effectively involved in the considerations which led to its formulation (Toulmin, 2000; Mutyaba, 1999). A review of the actual operations of decentralised government in Uganda suggests that neo-patrimonial attitudes continue to predominate, and that the highest priority of villagers - agricultural development - is receiving the lowest level of budgetary support, in the 2 – 3 per cent range (Francis & James, 2002).

It is perhaps unsurprising that the NRM government should have undertaken such limited consultation on such an important issue as land reform, and orientated these to the simmering grievances of the *mailo* freeholders, rather than to the dubious position of customary tenants whether relatively securely established (*bona fide*) as payers of *kibanja* rents, or at the mercy of a landlord. This underlines both the complexity of the land issue itself, and the difficulty of treating it on its own without bringing in a raft of necessarily related issues. The land reform discussions indeed pre-empted the development of national land policy, which was a significant shortcoming.

Land holding arrangements are by no means uniform in Uganda. The Uganda Agreement of 1900 had established a precocious system of indigenous freehold in the south-west through the allocation of 19,600 square miles (hence *mailo*), 9,000 of which were reserved to the Crown, with 8,000 allocated to the king, chiefs and notables of Buganda, and lesser amounts to mission societies townships, forest reserves and the like (Nsibambi, 1996; Gombya-Ssembajjwe, 2001). This system later also extended in part to the kingdoms of Ankole, Toro and Bunyoro, but with transfers of Ankole land to Buganda (Doornbos, 1975). This led to a vigorous land market, and complex relations between landlords and existing (and subsequent) occupants, who were variously encouraged to stay through rental agreements (*kibanja*), or pressurised out when regulation of rental levels to a nominal level were brought into force in 1928. The conflict between the *de jure* owners and *de facto* occupants has been a continual source of political conflict, exacerbated rather than reduced by Amin's 1975 Land Reform Decree. In northern and eastern Uganda, most of the land is under a common property regime, whether pastoral or arable, and controlled by clans. In both cases, custom restricts access by women to usufructuary rights only.

The makings of land reform policy commenced in 1988 with a drive to make tenure more secure - a key political grievance - and free up land for investment. Proposals developed with the assistance of the Wisconsin Land Tenure Centre recommended

- the abolition of the Land Reform Decree 1975, which vested all land in the state
- the conversion of all *mailo* land to freehold
- customary tenants on former public land should apply for freehold, on the basis that the requirements of a modern cash economy are unlikely to be met by the indigenous land tenure systems
- Leases on public land to be converted to freehold
- The update and decentralization of the land registry.

This report was subjected to a number of criticisms for being unduly focussed on *mailo* tenure and the Buganda region, and failing to deal with the crucial issues of landlessness and insecurity, exploitation of tenants (Ddungu, 1991), and was followed by several other reviews. These did not however constitute a land policy framework, as several critics have pointed out (Mwebaza, September 1999).

The bulk of the proposals arising from these limited studies were accepted, but with a non-compulsory view of the status of customary tenure. The Constitution Act of 1995 provided that all citizens owning land under customary tenure might acquire a certificate of customary ownership, and convert this to freehold by registration. It mandated Parliament to enact a law, by the end of June 1998, regulating the relationship between *mailo* tenants and landlords, and making provision for tenants on registered holdings to acquire a registerable interest in land. Bearing in mind the undesirability of further postponement of this highly sensitive issue, and with the urging of donors, the Ministry of Lands (following only selective consultations) caused a new Land Bill to be drawn up and gazetted in March 1998. The Land Reform Act (Republic of Uganda, 1998) made an historic break with the colonial past by removing the radical title to land from the state, and vesting this in the people. It unequivocally acknowledged the validity of customary tenure, but opened a one-way door for transition to freehold. Any person, family or community holding land under customary tenure on former public land might acquire a certificate of customary ownership in respect of that land, and convert this to freehold. Immediate title might also be obtained without conversion. Certification further opened the way to the lease, mortgaging and pledge of customary land, subject to community

norms and safeguards. Additionally the Land Act enabled holders of customary tenure who wish to or who use land communally to establish common land associations, and management schemes. Similar provisions for the securing the formal recognition of *bona fide* occupants of *mailo* land (12 years occupancy, paying of *kibanja* rents), and transitions to freehold, were made.

The Act further prescribes a range of institutions to implement these provisions, being Land Boards and Tribunals, and a Land Fund with a number of compensatory and lending responsibilities. All districts are required to establish the administrative and judicial structures specified by the Act.² (Given the contentiousness around land, the suspension of the existing judicial mechanism before its successor was in place has led to some confusion). The Land Fund was a critical part of the political machinery of the Act: it was designed to address the long-festering Kibaale question, by purchasing the reversionary interests of the landlords of the 'lost counties', and provide a basis for buying out certain other landlords. Much which had been promised to the *mailo* freeholders was in the event seriously curtailed by the provisions for the protection of the interests of tenants, as with freehold land rights in other kingdom areas (Bosworth, 2001). The offer of generous compensation held out by the Fund provided a way through these difficulties.

The gazetting of these provisions spurred a wide-ranging debate, led by the Uganda Land Alliance (ULA) and opened up all the political issues which, one suspects, the leadership might have preferred to be glossed over. The national consultation, which ensued, saw vigorous debate and inputs by numerous stakeholders, which undoubtedly strengthened the Land Reform Act, but also underlined the problems created by incorrect sequencing and strategic planning. Amongst the most controversial issues were the legal recognition of *bona fide* tenants (undermining landlord and *mailo* freeholder control, these being amongst the most wealthy and powerful in the land), and the wholesale thrust against customary tenure itself.

A central issue which emerged in the debate was the position of women, with the ULA pushing hard for a clause on co-ownership of land by women, as part of an overall modernising agenda (Wougnet, 2001, provides a full bibliography on the debate). A well-argued investigation commissioned by the Ministry of Water, Lands & Environment (MWLE) arising from this put forward the case for a fundamental assault on patriarchy in land affairs (Ovonji-Odidi *et al*, 2000). Based on fieldwork in 6 districts, the study demonstrated the fundamental gender-based inequalities. Ownership and authority over land was almost entirely invested in men, with the rights of women to access land significantly less secure than those of men. While there was some variation over different land utilisation systems across the country, with the authority and conservatism of the clans in the north-east greater than that of the smaller family households of the south-west, a general picture emerged of the subordination of women. This was major cause of intra-familial disputes, with over 90 per cent of such cases involving questions of land. The economic implications are major, and it is worth quoting the findings in full (box 1). These confirm the detail revealed in the LADDER village studies, and demonstrate their broad representativeness. The study argues for the major social and economic benefits that would flow from empowering women in terms of security of access to land, and reviews the potential beneficial impact on marriage and family stability, downward pressure on reproduction rates, social status and self-esteem, and the optimisation of farm-level productive activities. It demonstrates a close link between gender discrimination and a large category of the poor.

The amendments were apparently accepted by parliament, but when the co-ownership clause came back to the house for the second reading, the proposer was not present and the motion failed³. This gave a breathing space to its many opponents, and the matter was subsequently shunted into the *sudd*-like waters of the Domestic Relations Bill (no government since independence has brought such an initiative to fruition). This issue goes to the heart of the problem of the reform of customary tenure. Relationships to the land as a productive resource are embedded within social norms and the micro-political cultures, and top-down enactments are unlikely by themselves to make much impact and would certainly sharpen internal political cleavages between the already embattled north and south.

Box 1: Women and Land in Uganda (Ovonji-Odidi *et al.*, 2000, 2-3)

1. *The primary distinction made in land use in both monogamous and polygamous (with slight regional variations in relation to co-farming by polygamous wives) households is between "family" or "wives" fields, as allocated by the husband at marriage, and "husbands" fields, which have no restrictions as to use or transfer. There are restrictions and powerful disincentives circumscribing use of family fields by women. Women are commonly forbidden to plant tree crops or to hold large livestock, and there are powerful disincentives to women planting cash crops since they link this to potential loss of their land rights (usually through re-allocation to their husband or to co-wives).*
2. *Women provide the bulk of agricultural labour, particularly in food crop cultivation though they also work on cash crops. Women were found to withhold their labour from cash crop cultivation in response to conflict situations in the home or restrict the effort, which is applied to family holdings.*
3. *Male sole ownership of land directly translates into male control of land use and decision making over issues such as which part of the land to use, which crops to grow and when to grow. Independent women land owners/farmers were highly regarded as farmers.*
4. *Women in most cases exercise little control over crop income. This is partially attributed to their lack of control over land, since "The reason always used by men as to why they can't share the money with women is that the land belongs to them and the trees and the house belong to them. The only thing a woman can own is the food she grows from the farm."*
5. *The insecurity of women's land rights has consequences for the likely poverty status of certain categories of women, in particular widows who lose their land rights, separated and divorced women, and in some cases for their children, who lose economic security, alienation from the community and increased vulnerability to ill-health. The economic cost of women's tenure insecurity extends beyond the women themselves to their households, communities, and the national economy, through lost production and the implications for household expenditure.*

This point is amplified by the initial hostility, which the legislation received from northern clan-based land users, who criticised the draft bill for paying insufficient attention to the interests of pastoralists, and the holders of common property resources. The inclusion of a category of group ownership in the Act has gone some way to acknowledging common property rights regimes. There are a number of other detailed areas of concern which are not adequately addressed (Muhurera & Bledsoe, 2002). Forestry and woodland account for 24 per cent of the land area, and wetlands a further 13 per cent, with a mixture of private and CPR usage. Both are under threat from alienation to private use. Tenure insecurity

particularly affects the interests of communal users and women, as the planting of tree crops confers long term rights to the land, and is accordingly opposed by *mailo* and leasehold owners.

The fundamental weakness of the Act however was that of its implementability. The grand vision of a decentralised web of institutions, which might measure and register land, handle disputes, and preside democratically over the transition to a self-regulating private land market, was hardly realistic. One indicator alone, that of manpower requirements (Table 2), suggests the magnitude of what was contemplated, and the unlikelihood of its achievement.

A first consequence of this was one of the common dangers of land reform, a situation of asymmetric information leading to opportunistic behaviour. Those with interests at stake, including large *mailo* freeholders, urban elites seeking rural land-holdings, politicians and the official class in general understood the opportunities and threats and moved accordingly. As in South Africa, the proposal to improve the security of tenants on freehold land has led to an increase in the rate of evictions, even though these may be of dubious legality. The opening up of a land market is likely to benefit the urban rich more rapidly than it will the emergent rural entrepreneurial farmer. The programme of 'sensitisation', or an information campaign directed at villagers to advise them of their new rights which has been established (Nsamba-Gayiiya, 1999) runs up against the many difficulties of information mobilisation in rural areas, and the question of the disinterestedness of those charged with its execution.

Table 2: Manpower Requirements, Land Reform Act 1998 (Mwebaza, 1999)

Institution	No. Offices	Officials per District	Total
District Land Board	45	5	225
Land Committees	7,000	4	28,000
Recorders	917	1	917
Land Officers	45	5	225
District Land Tribunals	45	3	135
Sub-County Tribunals	917	3	2,751
TOTAL			32,253

A second consequence was a severe loss of momentum in pursuing the many agendas raised. This in part was counteracted by a detailed analysis of the many issues and problems of practical implementation (Land Act Implementation Study, 1999) (LAIS). This noted a number of weaknesses in the Act, and proposed a way ahead. The overall costs and manpower requirements were impossibly high. The case for a direct link between tenure security and farm investment had not been made, and therefore land reform in itself was unlikely to have much effect on poor rural livelihoods. The Land Fund had little economic rationale, and given its political nature and the windfall benefits which would ensue, would not be funded by donors (costs of titling and the Land Fund were an estimated \$0.5bn). The law on social consent was likely to deter people from acquiring title, or improving the security of women. Generally the Act of itself was unlikely to make a beneficial impact on environmental sustainability and rural development: what was required was the pursuit of these reforms within the context of an overall land policy and a detailed, practical and affordable plan for implementation. This was to operate within the context of decentralisation, but concentrating resources economically at the district level.

With a multi-institutional steering mechanism, in accordance with the radical vision of the Land Reform Act in shifting the action away from the centre, a Land Sector Strategic Plan

(LSSP) was accordingly developed to take the matter forward, review financing needs (Adams & Aliber, 2001), and conduct further detailed sectoral studies on land markets (Mwebaza & Gaynor, 2002), and gender and family issues (Eilor & Giovarelli, 2002). However the initiative met with difficulties and delays, seemingly occasioned by the concern of the Ministry of Lands to retain both line control and the Land Fund, with opposition from the Ministry of Finance on the budgetary requirements. This impasse has led the major drive in the land sector to be overtaken by other major programmes. It also raises major questions over the readiness of key line ministries to support the logic of decentralisation.

Government meanwhile had responded to the criticisms of the inadequacy of tenurial reform on its own in meeting the needs of the poor. The Poverty Eradication Action Plan (PEAP) first launched in 1997, and revised in 2001 (accepted as Uganda's PRSP) is consonant with the direction of land reform in terms of the promotion of land markets, liberalisation and commercialisation of the agricultural sector. The emphasis is placed on a transformation of productivity of both land and labour within the context of increasing land pressure. PEAP I accepted the premise that tenurial insecurity and communal tillage and grazing provided a barrier to increased productivity by smallholders, who had the potential to be more efficient than largescale producers. There is however little direct linkage linking land with the national development strategy.

The Plan for the Modernisation of Agriculture (PMA) also makes surprisingly little reference to land reform processes, while nodding in the direction of the received wisdom on poverty relief measures. This is a key programme for a comprehensive attack on rural poverty, yet appears to have been conceived quite separately from the issues of governance and delivery which constrain the pro-poor elements of land reform (Republic of Uganda, April 2000). Appendix 2 of this document (Poor Peoples' Perception of Constraints on Their Livelihood: 105), has little to say on issues of tenure, access, security and gender discrimination, although is otherwise informative on the major constraints faced by poor farmers, pastoralists and fisherfolk. The National Agricultural Advisory Services Programme (NAADS) which flows from this marks a shift towards a demand-responsive approach to extension, and may provide a welcome innovation from the moribund processes of the past (Republic of Uganda, October 2000). As with land reform itself, however, the proof is in the pudding.

In conclusion, some of the key issues, which emerge from the recent Uganda experience, are:

- The need for strategic planning and sequencing of land reform in relation to consultation with stakeholders, and the building of capacity to implement its key measures
- Equipping decentralised structures with the necessary administrative and political machinery to allow for a democratic and accountable involvement with land reform at the local level
- Equity of information on land rights and opportunities
- Land reform as part (and not necessarily the most important part) of a bundle of support programmes for smallscale agriculturalists
- Poverty focussing via addressing gender discrimination in land access and use.

Current Developments: Tanzania

Two processes dominated the land reform agenda as Tanzania entered the 1990s. The first was the formulation of a national land policy (NLP) - a natural follow-on to the 1983 National Agricultural Policy (NAP) - within which land reform might be situated, conducted at ministerial level; and the second the establishment of a presidential commission of enquiry to look in detail at people's land grievances and propose some solutions. Each departed from a significantly different philosophy. The NLP was key to the new investment promotion drive at the heart of *mageuzi* (reform) which succeeded *ujamaa*. From the official point of view, there was plentiful land for investment, which needed to be prised away from villages which either were over-claiming or under-utilising land. The NAP had also introduced two major policy initiatives into land tenure, namely a drive towards granting land tracts to large and medium commercial farmers, and the introduction of village land titles, as part of 'modernization'. The titling of land also envisaged freeing up village land, and directives had gone out that every village should be surveyed, and a land use plan drawn up whereby land surplus to village needs over the next few decades could be released for investment purposes (a programme effectively not affordable and barely implemented according to Lerise [2000]). Land allocation committees were established at district and regional levels, with a ministerial committee controlling urban, foreign investment and industrial land (Shivji, 1994: 25-6). The consequences of this were on the one hand a battle between rival allocation bodies (with double allocations in many instances), and a large increase in the grants of rights of occupancy to wealthy and well-connected individuals (Havnevik, 1988). For the Dar es Salaam and Moshi regions, 86 per cent of the land so allocated in 1987-92 were for holdings in excess of 500 acres, with an average of 3,000 acres (Sundet, 1997: 66).

The presidential commission (1991) adopted a populist approach, taking evidence in all but two districts, and consciously sought to make its recommendations express the voice of the *wananchi*, and spark a national debate (Shivji, 1994). The background was the world of disputation over land rights spawned by the collapse of villagisation, and an escalating struggle over the control of land allocation. Particularly in the more fertile areas, farmers were litigating for the return of valuable crop lands. Land grabbing had become particularly prevalent in the pastoral areas (Chachage, 1996; Brockington, 1999; Igoe & Brockington, 1999) via the subornment of village councils, and the expansion of peri-urban areas which saw largescale dispossession of village land by fast-footed speculators (Sundet, 1997: 90-2). The commission, under the chairmanship of professor Issa Shivji, provided a most comprehensive review of land matters, and on the basis of massive directly gathered evidence, offered a powerful critique of the failure to separate legal rights and issues from administrative rule; the confused and wholly inadequate status of customary tenure; and the lack of transparency, checks and balances in the allocation of land. The recommendations of the commission were equally uncompromising. The radical title to land should be divested from the state (in the form of the president), and vested in two different bodies. These should be village assemblies (the administrative body comprising all adult villagers), having title to all land falling within the boundaries of the country's villages, largely corresponding to land accessed under customary tenure (clan and family land); and a Board of Land Commissioners controlling whatever was not village land, and administering it through a national lands commission. Each village would have its land demarcated and certified, and decisions on land use and access within this area subject to standard democratic procedures within the village, with an elders' land council acting as the primary judiciary organ for dispute resolution. This body would also act as a registry, providing certificates in proof of ownership, which would be negotiable within the village (sale and credit) subject to consent

from spouse(s), but not transferable outside the village. Outsiders could only gain access to village land via a customary lease, proposed not to exceed 10 years (renewable) and 3 acres. Existing granted land rights could be transferred to national lands by a two-thirds majority vote, but thereafter no such disposals might be made. As regards national lands, two types of tenure were envisaged, a right of occupancy and a customary right, the major emphasis being on transparent and participatory procedures for accessing these rights. A dedicated hierarchy of courts, in which elders would participate, was proposed to handle disputes (Shivji, 1994).

There are many interesting proposed solutions to the difficulties of evolving customary tenure contained in these recommendations, which have a wide relevance. Most strikingly they opened the door to a new and democratic fundamental principle for the operation of the vesting of land rights. The commission offered a way ahead for resolving the aftermath of villagisation, by containing this within the new dispensation for village tenure. It provided a firewall against the depredations of village land through shady means by powerful outsiders. It offered a legal basis for customary tenure such that most Tanzanians could no longer be regarded as 'squatters in their own country', as had effectively been proposed by the attorney-general as late as 1994 (Twaib, 1996), following the passing of the Land Tenure Act 22 of 1992 shortly before the commission was due to report, and subsequently thrown out by the Chief Justice⁴. The hostile reaction by government to the suggested displacement of the head of state as the titular investee of national land and explicit recommendations to outlaw rent-seeking activities by politicians and bureaucrats was not unexpected, although these are clearly welcome measures. Two basic queries do arise however: is the populist land regime proposed by the commission over-protective in the sense that it does not allow sufficiently for innovation and development and broader external linkages within smallscale agriculture? Does it sufficiently address the question of the balance of gender interests in land matters? Shivji provides a spirited defence, particularly to the latter criticism, matters which are further pursued below (Shivji, 1998).

The ministerial committee pursuing land tenure reform under the NLP had however a very different set of priorities to the presidential commission. It had a technocratic view of land, and sought to optimise economic efficiency through creating a land market (sufficiently controlled to prevent rich ethnic minorities from dominating it) which would allow for investment and modernization. The formal response was delayed however until mid 1995, by which time other considerations were brought to bear. These included the move to multi-partyism and the fear that land grievances were ripe for exploitation by a political opposition; a change of leadership in the Ministry of Lands; and further technical inputs supported by the World Bank. These and the commission's report were considered at a national workshop in January 1995. The outcome of this was a national land policy which, Sundet concludes, 'rather than being the sum of Government priorities and considered policy analyses...disproportionately reflected the objectives of a limited circle of senior civil servants in the Ministry of Lands (Sundet, 1997: 126-7). These perceived the recommendations of the Shivji commission as tantamount to making the government a 'beggar for land when required for development' (Sundet, 1997: 108), and dismissed the fundamental divestment principle. Rather it proposed a further centralisation of all land matters in the hands of the administration, through the powers granted to a national land commissioner, giving wide discretionary powers to the Minister over various land allocation bodies. A significant number of the commission's proposals were accepted, but with some crucial amendments. Village land demarcation is to go ahead, but titling will continue as before, and authorised by the council rather than the full assembly. The role of the elders is significantly reduced to dispute settlement only, with no hand in local land administration.

In January 1999 these policies on land were formalised through the passing of the National and Village Lands Acts (Republic of Tanzania, 1999). These accepted the land categorisation of village land and national land (all land not village land), part of the latter being conservation areas. Land markets are however still bureaucratically and discretionarily controlled, leaving them open to manipulation, even though foreign ownership is curtailed. Both Acts are immensely complex and are predicated on elaborate procedures for certification whose bureaucratic requirements may well tilt the actual practices of land access in favour of a literate elite. Designed to curtail further abuse, but constrained by the national land policy, the legislation has yet to face the test of implementation. Some concerns which have been raised include the centralisation of land administration; the question of the ability of villagers to interrogate the boundary demarcation process; the president's right of transferral of village to national land where he is so minded for reasons of public interest; the appropriateness for village level capacities of the administration procedures; and the lack of inclusion of village judicial institutions.

The degree to which customary rights may further evolve to provide sufficient security for small producers, and encourage them to upgrade their farming systems, is accordingly as yet obscure. The Land Acts do represent an achievement in their recognition of customary rights, but are constrained by the centralised administrative setting and complex procedures through which implementation is to be managed.

Current Developments: Kenya

Of all the LADDER countries, Kenya has the most conflict-ridden land sector. At a national level, the elections of December 2002 have taken place against a background dominated by the struggle between popular interests and the institutions, persons and practices held to be abusive of land rights. Locally, the courts are clogged with land disputes, and violence between rival claimants to land is an everyday occurrence. The exceptionally high population growth rate has provided a Malthusian basis for this, but the larger part is the failure of the replacement model of freehold tenure, against a background of land alienation and fragmentation, and the continual postponement of land reform as the opposition to KANU was out-manoeuvred in the 1992 and 1997 elections.

During the last decade in Kenya a wave of pressure for reform has built up, largely driven by specific grievances over land, but also encompassing fundamental criticisms of the partisan nature of the state and the means whereby the system of spoils allocation has been maintained. Government at first resisted these demands, leading to the launching of a land review by opposition parties in June 2000, which forced government's hand. Pressure created by the PRSP and donor demands for reform have also led to some land-related initiatives such as the development of a rural development strategy and national environmental management plan, culminating in the Environmental Management and Coordination Act (1999), and a draft Forest Bill. (Emergency presidential decrees were issued in 1998 and early 2002 purportedly suspending the allocation of public forest land amounting to some 10 per cent of total forest cover to private individuals, following an international outcry). Neither these nor the international conventions on environmental matters have however been effectively coordinated or implemented, and there are major queries over capacity and commitment to them (KLA, 2001).

The Kenya Land Alliance (KLA), formed in 1999, has provided a major channel for the demand for land reform. Modelled on the Uganda Land Alliance (which however had the advantage of a Land Bill on the table to lobby over) it produced a relatively well focussed critique on government failures to address the land question (box 2).

Box 2: Key Land Reform Issues (KLA, 2001)

- the colonial and post-colonial legacy of downgrading of customary law in relation to received law;
- the use of powers over land allocation to further political and ethnic interests;
- widespread manipulation and deeply rooted corruption in the alienation of government land;
- deprivation of the poor of their land and the displacement of people;
- the concentration of land ownership in a few hands;
- the increasing privatisation and commoditisation of land and the erosion of people's rights to use and occupy land, to bury the dead and to have access for gathering natural products;
- the breakdown of rights to exclude others and rights to the enforcement of the law;
- the growing poverty and human misery created by landlessness and tenure insecurity in both rural and urban areas;
- environmental degradation due to the breakdown of natural resource management, particularly common property resources;
- the degazetting and alienation of forest reserves, in some cases long used and occupied by indigenous people;
- lack of state organs to address complaints and to resolve land disputes in a timely and even-handed manner;
- gender and age discrimination in both customary and statutory law and land administration; and
- the lack of a coherent national land policy.

Of particular interest is the pressure for reform of gender-based inequities (box 3), which bring into focus new mechanisms which are reducing security for women and youth arising from the HIV/AIDS epidemic.

The government response to the debate remains enigmatic. Two parallel processes have emerged whereby reform is being pursued: one open, and one more closed. The open process is that of the Constitution of Kenya Review Commission (CKRC) which, largely absorbing the parallel people's review, has received wide-ranging submissions aiming at a radical reorganisation of the functioning of the state. The second is the Njonjo Commission of Inquiry into Land Law, established in November 1999. Given the high political sensitivities in an election year, this has been held behind closed doors, with even the CKRC not privy to its deliberations, although the Kenyan press published many of the more sensational revelations, detailing massive land-grabbing by the highest in the land (e.g. *Daily Nation*, 22/2/2002; *East African*

Box 3: Women's Land Rights and HIV/AIDS (KLA, 2001)

Despite the fact that women constitute 50.5 per cent of the Kenyan population and play a central role in agriculture, they own less than 10 per cent of the available land. Yet 69 per cent of the active female population works as subsistence farmers compared to 43 per cent of men. Women form the majority of the poor. Lack of ownership of property by women reduces production incentives, retards development and contributes to poverty and low-self esteem.

Many local cultures do not guarantee a wife's rights to inherit her husband's property. Widows are often dispossessed by their in-laws and rendered homeless. Even when they have taken care of their parents, brothers often evict sisters when parents die. Since many wives have little control over income during marital discord, many women are sent away with little if any means of survival. Ten percent of women slum dwellers left their rural homes because their marriages broke down, eight percent because they were widowed and eight percent due to pressure of single motherhood. In Kenya, HIV/AIDS is seriously affecting the rights of surviving widows and orphans on customary land. In some cases, women are dispossessed of their land and property after their husbands' death. Widows are often unjustly condemned as the ones who have infected their husbands and are subsequently under pressure to leave their marital homes.

In some localities such as Nyeri, on titled land, women face heightened tenure insecurity when an infected husband or father dies, as land is normally registered in the names of men. Widows are mere trustees of the property, on behalf of the children. They cannot mortgage the land and lose the right to retain it on re-marriage. Where such women are married without children, the norm is for them to be sent back to their families as soon as the spouse is buried. Children, irrespective of their ages, are the most affected. Their adult male relatives often disinherit orphans. The rights of children of single mothers who die of AIDS are at greatest risk due to the uncertain position of the mother in her community and the stigma associated with the disease.

Standard 5/10/2001). Civil society organisations accordingly tend to view this as an attempt to sideline debate on the matter – fuelled by the last minute postponement of a national conference on the draft constitutional proposals until after the election. But it is this Commission's report, and the action which flows from it, which will provide the measure for the seriousness with which land reform is addressed.

The CKRC reported in September 2002, and limited its recommendations on land reform to the level of principles. These comprised nine major points:

- Land belongs to the people (non-citizens may only enjoy leasehold)
- Three tenure regimes of public, private and common lands
- Public land clearly delineated and properly held in trust
- Private ownership recognised in law
- Commons recognised and tenurial relations formally defined in law
- Lawful property rights may be freely alienated without discrimination 'subject only to such restriction as are inherent in the tenure systems creating them'
- All land subject to acquisition or regulation by the state in the public interest
- A Land Commission to hold title to public land, review law and policy, develop principles for sustainable use, and exercise residual land administration functions
- Parliament to legislate within the first 2 years to give effect to these principles, resolve certain historic claims, develop mechanisms for dispute resolution, the taxation of under-utilised land, and coordination and simplification of land laws (CKRC, 2002).

It appears therefore that the current moves to reform both relationships between state and society in general, and land use and land tenure in particular, have been kicked into political touch for the next elected parliament to deal with. Whatever the outcome of the December 2002 elections, these matters will remain at the top of the agenda. The only benefit of delay is the possibility that comparable policy and legislative developments in neighbouring countries may by that stage have provided some useful ways ahead.

Current Developments: Malawi

These have been reviewed in detail in relation to the issues thrown up by the LADDER village surveys elsewhere (Cross, 2002). The main points arising may be briefly summarised here. The Land Act (2002) is similar to that of Uganda and Tanzania in the provision for the registration and certification of customary rights and the subjection of the freedom of sale to spouse consent. Less clear are the means whereby leasehold land may be reacquired by the traditional owners, who are recognised as the new leaseholders, rather than the state. Their rights vis-à-vis this land depend greatly on the effectiveness of local assemblies in passing and implementing regulations on land use and taxation which may free the large, under-utilised leasehold sector for redistribution. It is unlikely that this will meet needs in the short to medium term, or that a significant land market other than via small rentals will develop. Land hunger in Malawi is the most intense in the region, with average holdings at 0.5Ha/Hh indicating the sub-economic status. The LADDER studies, confirmed by the MPRSP (2002), reveal that casual labour is now a more important source of subsistence than agriculture. The option for migration is constrained by the absolute scarcity of land, and that of resettlement by the politics of access to the under-utilised leasehold sector, as well as financial resources. Further implementation studies of the Land Act are ongoing, but with Malawi moving into a pre-electoral phase (next elections due June 2004) no radical initiatives are likely.

THEMES AND ISSUES

Land Tenure: Entitlement, Security and Investment

The LADDER reports show generally that customary tenure systems are dynamic rather than static, capable of evolution, yet also inadequate in a number of respects. Given the context of poor agricultural service delivery and an adverse politico-administrative regime, the direction of adaptation has been towards survival, and advantage for the upper stratum of small rural producers with some shift from matrilineal towards effectively patrilineal inheritance, rather than towards promoting efficiency, innovation and equitable access. They have not prevented fragmentation and environmental degradation, and have lost much of their welfare function. Common property rights have been widely abused through privatisation and over-exploitation, and in particular the weaker rights of outsiders and migrants have been further eroded; the evidence of the village reports confirms the conclusion that formalization of tenure is unlikely to secure that which has not been attained through the operation of social networks (Meinzen-Dick *et al*, 2002: 7). Thus neither the arguments for creating a fully fledged open property market, nor the conception that customary land rights evolve on their own in an optimal manner appear to be supported. The Kenyan case (Haugerud, 1983; Migot-

Adollah *et al*, 1991) classically illustrates the former, and Malawi (Cross, 2002) the latter. There is some evidence from the surveys that more secure tenure is positively correlated with better practices such as fallowing and tree-planting (as also noted by Place & Otsuka, 2002) but this is possibly as specific to farming systems as it is to tenure as such.

Do the proposals on the board in the land reform legislation proposed in Malawi, Uganda and Tanzania offer a way ahead? Certainly there are some significant advances. Optional avenues for formal transition towards registration, while retaining safeguards against abuse, and the opening up of a potential land market are desirable, and there is little evidence that this per se leads towards overly large agricultural land accumulation - this occurs primarily in the peri-urban fringe driven by speculation, and does not address the issue of tenurial design as such. The key problem has been land grabbing by elites at the point of first registration rather than through the market (Bruce, 1988; Sundet, 1997: 118). The main reason why rural land markets are likely to be thin, as Platteau points out (2000: 62), are attitudes towards the land, which is seen as a bank, a refuge of last resort, and a stake in the organic community rather than primarily as a commodity. The thrust of activity observed in the villages was towards the emergence of a rental rather than sales market, and the constraints on and imperfections in these are hardly addressed in current legislation. Land rental by individuals and collectives to more efficient producers (including outsiders and migrants) holds greater promise for optimisation and the maintenance of political stability than does the promotion of a land sale market. This ties in with the widely observed failure of the collateralisation effect (Platteau, 2000: 71). Failure to access credit is also less a function of land entitlement than it is of the market for rural credit supply. Of more importance perhaps for the drive towards efficient utilisation are means to promote production on those lands largely acquired (from non-agricultural incomes or straight preferment) for reasons of prestige or speculation. Absentee landlordism in Uganda, leaseholding of erstwhile customary land in Malawi, elite transfers via registration and disposal in Kenya and Tanzania are cases in point. This has effectively created a dual agrarian structure (Otsuka & Place, 2001: 28) in these countries, and is a large contributory factor to land scarcity. This is not an issue effectively addressed in the legislation.

The proposals put forward by the presidential commission in Tanzania and the Land Acts in Uganda and Malawi for the establishment of a village land register and the issuance of certificates of registered customary rights are however moves in the right direction. The difficulty lies in the detail of implementation, and the effective settlement of disputes. Here one may contrast the commission's proposals for a simple village-based model involving a council of elders, integrated into the judicial system with the elaborate and probably unworkable proposals envisaged in the decentralised land registry, board and tribunal system proposed in Uganda. Such is the level of contention in land matters in all countries, and the potential explosiveness of outcomes not acceptable to land hungry villagers or ethnic groups, that those means which promise local legitimacy and relative simplicity should be preferred over the complex and exhaustive procedures offered say by the Tanzania Land Acts. This approach is consonant with the cooperative approach recommended for example by Platteau (2000: 72, also citing Atwood, 1990, 667)

What is...needed is an approach based on cooperation rather than confrontation. This implies where feasible a strengthening of local capacities for management, information, and dispute settlement rather than imposing from above the formal mechanisms of a formal state legal system.

and the local adaptation model of Mwebaza (2002):

This is not to say that Uganda should completely shun titling. What should be borne in mind is that it should be implemented carefully and selectively as the conditions for its implementation slowly take root in Uganda. For example, whereas titling may be possible in areas in and around Kampala, because of increased land pressure, increased land sales, and land litigation and so people actually want titling, insisting on titling Karamoja which is largely a pastoral community with vast pieces of land lying unoccupied would not be wise and necessary.

Keeping it simple, adapted to local level circumstances, with administrative action subject to local judicial scrutiny are hardly radical prescriptions, but these emerge as the most appropriate way ahead.

Gender Aspects of Poverty

The embedded imbalance between land entitlements and access between men and women has been shown to be deeply resistant to legislative and administrative measures. Nor can it be assumed that evolution and adaptation are leading to individualisation, market integration, and greater independent rights for women (Yngstrom, 2002). The LADDER studies reveal certain micro-stratificatory processes whereby Category I women have greater freedoms than poorer women, and off-farm activity and greater associational opportunity gives some room to manoeuvre. In principle a case may be made - Uganda is the obvious example - that co-ownership by spouses would enhance economic optimisation, on the grounds of improved security and incentives. However both the rights-based and market-based arguments fail to address the limits of public sector intervention in changing customary land tenure. A rights-based approach should deal not only with inheritance but also with wider issues of succession, marital status and the rights of children: addressing gender imbalance indirectly through land reform legislation per se is unlikely to work, and avoids many of the main issues. A pressing area where legislative reform is needed, and may be a point of access, is the rights of widows and their children, particularly in the light of the AIDS impact. Legislation is pending in Lesotho, which proposes that land, or land access and inheritance should be based on merit, regardless of gender, but having regard to capacity to utilize the land effectively. The course of this will be of interest.

The struggle for women's land rights in Uganda and Kenya particularly also suggest that this is part of a wider process of governance, where the voice of women (in particular rural woman) is closely associated with the need for local democracy in general and gender sensitivity in service delivery in particular. This may be more effective outside the standard extension areas where women have lesser involvement in decision-making, and relate to new on-farm and off-farm economic opportunities available to women. Some of the lessons from innovations in the design of service delivery for poor rural women in Latin America may be apposite here (MacDonald, 1999: 5), approaches to enhance women's productivity (Deininger & Okidi, 2001), as well as the introduction of social auditing which can more explicitly determine the micro-blockages which prevent equitable outcomes for women (Leodegar, 2002). The surveys point to processes whereby both patriarchy and patrimonialism are being intensified as land hunger sharpens. The impact on these processes via legislative reform and centralized administrations is likely to be slight. Once again the signpost for progress is towards meaningful forms of decentralization where women can have an effective voice to promote public sector action which builds accountability towards their interests.

Obstacles to Implementation

The land reform measures adopted in Malawi, Uganda and Tanzania – and proposed for the next government in Kenya – do offer a vision for a degree of rehabilitation of customary rights of access. Uganda has gone furthest in recognising that land belongs to the people, not the state, with an elaborate decentralised mechanism on the drawing board. Malawi too has set up a process whereby customary ownership can be certified, and even extended to cover leased out land, which may theoretically be recovered by the original clan owners. The Tanzanian legislation has exhaustive procedures which seek to control abuses in land administration, and a number of sensible provisions for village land security, but is gravely weakened by the centralisation of control and the continuity with the past tradition of control by the state without judicial oversight.

However a central question hangs over all these initiatives. How and when may these measures be implemented? The course of development in Uganda, which has led the way both in decentralisation and land reform measures, is instructive. The enormous requirements for manpower, the costs, the unfindable Land Fund which is the fulcrum of its political mechanism, the shifting of priorities towards agricultural development rather than land reform as such all suggest that the operationalisation of the 1998 Act lies far in the future. In Tanzania the overlapping powers of various authorities to deal with land matters (allocation in particular) has been clarified, unlike Kenya where this still remains a difficult matter for solution, and a complex system of controls established. The problem here is the sheer density of technical and bureaucratic requirements, demanding a formidable ability from villagers who wish to negotiate towards security of land ownership. Similarly in Malawi much of the intention of reform depends on the establishment of effective and democratic district government, for which the national administrative effort is not yet properly in place, and which faces major structural and political constraints (Cross & Kutengule, 2001). There is also the consideration that customary systems of land access and usage have persisted for many decades despite legislative and administrative measures designed to adapt or replace them.

There is also the question of regional variances in the type and nature of land reform problems. The reforms, which might improve the status of common property regimes, in particular pastoralism, are of a different order from those required by intensive highland agriculture. They are linked, however, through the concept of the appropriate level of utilisation. The pastoral areas tend to be more conservative and traditionalist regarding rules governing land access, and have resisted – largely unsuccessfully – privatisation and transfers of clan land, exercised in the name both of protecting conservation areas and freeing up land for investment purposes. The fragmentation of agricultural land suggests that here too consolidation, and even the introduction of regulations enforcing a minimum size of holding, may be desirable. But both these approaches to the control of utilisation are bound to encounter further fierce resistance. The battle for control over customary lands engulfed by expanding urbanisation has already been engaged. In this highly politicised environment, careful, bottom-up approaches supported effectively at the local level are likely to bring better results than legislation driven from the centre, however this is framed. This raises the issue of building democratic processes and local government as a necessary accompaniment to land reform, and underlines again its problematic nature.

Given the hindrances facing the rollout of the Land Acts, it is likely that the future course of implementation will be driven more by struggle and dispute as the battle for survival by those

dependent on the land intensifies than by rational administrative action. Those measures and institutions in the legislation, therefore, which provide for readily understandable, easily accessible and transparent means of pursuing these within a local judicial context are likely to prove the most robust. The recommendations of the Tanzanian presidential commission have much to offer in this respect, and the reversion to centrality and complexity in the legislation is a missed opportunity. It is equally important that the climate, which fosters and permits land grabbing by elites, is changed. This requires the institutions and culture of accountability to be strengthened, which is a function of political leadership at both central and local levels.

In conclusion, it may be argued that while land reform initiatives in the region do formally address a number of critical issues, they lack a grounding in both the micro- and meso-level of policy and political action which alone can ensure their effectiveness.

Footnotes

- ¹ On *mailo* tenure and *bibanja* tenancy, see p 15.
- ² The Land (Amendment) Act, 2001, extended the time limit in which Magistrates' Courts and Local Council Courts could deal with land disputes pending before them.
- ³ It has also been suggested that women MPs were deliberately led from the House.
- ⁴ This Act retroactively validated land transactions carried out during villagisation, and further undermined customary rights, particularly clan rights in pastoral areas.

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