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# LAND TENURE, GOVERNANCE AND PROSPECTS FOR SUSTAINABLE DEVELOPMENT IN AFRICA

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## THE NEED FOR SECURE LAND TENURE

Environmentalists and agriculturists know that secure land tenure is a critical requirement for sustainable development in the poor regions of Africa. But policy-makers have ignored this issue for too long. As a result, most rural Africans face growing conflicts over land ownership, as more land is cleared daily for agriculture and pressure mounts for the limited supplies of soil, water, trees, and wildlife. Because land tenure is at the heart of how rural communities are governed or govern themselves, African governments and scholars alike should place a higher priority on land tenure policy reform.

Reforms are badly needed. Most African governments, as a matter of policy, designate traditional land as State land, held in trust for communities. Such bureaucratic decision-making, however, undermines the democratic institutions and economic rights of people at the grassroots level. The absence of secure land tenure, particularly on common property

land, yields lower agricultural productivity and mismanaged natural resources. Instead of destroying traditional systems, African governments should recognize their value and

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strengthen traditional tenure systems and institutions by decentralizing the legal, administrative, and budgetary processes to empower local communities. Moreover, they should reform contemporary institutions so that they recognize and internalize the values, principles, and belief systems of traditional society.

## THE DANGERS TO TRADITIONAL LAND SYSTEMS

Natural resources managed as common property now face severe degradation in most African countries. When local institutions are unable to resolve conflicts over the use of common resources, governments often make the mistake of assuming direct control and administration of these resources. In some instances, the government is simply interested in exploiting the resources to the exclusion of local communities, as is sometimes the case with wildlife and national parks. The deprived communities often lose interest in protecting the natural resources and may actually contribute to unauthorized exploitation and poaching. For resources under common usage, governments should shift toward a policy that employs a transparent decision-making process to control access to natural resources. Meaningful community governance is possible mainly where political power and fiscal responsibility are decentralized to institutions that represent local stake-



holders. In practice, however, two widespread policies inadvertently undermine indigenous tenure systems.

- **Unregistered land is State land.**

Most prevalent is the practice that all land with no registered title is State land. The reality, however, is that the majority of Africans continue to believe in and hold their land under indigenous customary tenure systems, irrespective of the formal legal position under national law (Bruce, Migot-Adholla and Atherton, 1993). Organs of central government are generally inappropriate for local administration and management of land tenure, and invariably undermine the local and traditional institutions. Moreover, this leads to corrupt practices by influential politicians and bureaucrats. Although governments acknowledge this *de facto* prevalence of customary tenure, they continue to maintain the *de jure* state ownership. In this situation, land conflicts escalate, and traditional conflict resolution mechanisms are rendered ineffective.

- **Common land is private land.**

The second practice is the attempt to replace customary land tenure with State-imposed individual property rights to land and resources. This change is assumed to be more compatible with the protection and sustainable exploitation of natural resources, as well as the intensification and commercialization of agriculture. There is mounting evidence, however, that land titling and registration programs have not yielded positive benefits. Moreover, formal title has not necessarily increased tenure security (Roth et al., 1989). The weaknesses of government insti-

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tutions in Africa leave these State-imposed individualized tenurial systems in a vulnerable position. State imposed tenure systems are often based on European or North American legal and administrative codes. A battery of institutions is required for this tenurial system—and soon. These types of institutions, including surveyors, courts of law, legal practitioners, police and banks, are generally absent in rural Africa. African customary laws and values that guide tenure policies also differ or even conflict with the alien ones. Where the State imposes alien tenure systems, conflicts often arise in the interpretation of these at customary law. Examples include: differences in values surrounding group versus individual rights; and inheritance and succession.

So debilitating are these practices that in Zimbabwe for example, highly centralized systems of government were judged as the most serious threat to tenure security for land users under all types of tenure (Rukuni, 1994). This problem is most acute for communally held land and State-land occupied by communities under customary rights. Communities occupy-

ing such land have limited exclusive rights because bureaucrats and politicians also claim institutional authority over the land. In the worst case, these state functionaries may be the *de facto* landlords.

## DISPUTING THE TRAGEDY OF THE COMMONS

Communal tenure in Africa has erroneously been described as “the tragedy of the commons.” Observers believed that these systems of tenure assign land rights to the community as a whole and therefore hold no one accountable. As a result, the theory goes, land users won’t risk long-term investment to improve the land and land-based resources. More careful analysis of traditional tenure systems, however, shows that this tenure is composite, with clear freehold rights usually allocated for arable and residential land, and group rights for pastures, forests, mountain areas, waterways, and sacred areas. The robustness of the tenure system depends on the strength of the traditional institutions in place and the degree to which state and local government institutions supersede traditional rights.

Evidence is also growing that indigenous tenure systems are dynamic, not static. They evolve with changing social, economic, and political circumstances. In fact, traditional systems are often more flexible and evolve faster than state-imposed systems. Boserup (1981) provides evidence, corroborated by Bruce, Migot-Adholla, and Atherton (1993), that customary tenure rights evolve toward more inalienable individual rights as population pressure increases and as agriculture becomes more commercialized.

## EXAMPLES OF NEW RIGIDITIES AND SOLUTIONS

Some of the worst damage that has been experienced in Kenya, Tanzania, Zimbabwe, and other African countries has come from new land tenure rules that introduced rigidities in the use of common access resources. In these situations, local communities often found themselves with no real accountable representation.

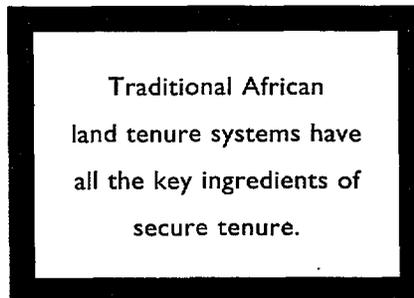
### Failures in Kenya

The Maasai Group Ranches and the forests and wildlife reserves in Kenya are typical examples of state-introduced rigidities invariably leading to some breakdown in accountable management of the resources. A related example is the experiment in Kenya to allocate to the local community a fixed proportion of gate fees from the Amboseli Reserve. The scheme collapsed after a few years because the Treasury failed to transfer the funds to the district council.

### A Better Model in Zimbabwe

A relatively more successful case is the CAMPFIRE (Communal Areas Management Programme for Indigenous Resources) program in Zimbabwe. Under CAMPFIRE, local communities manage and utilize their natural resources to their own economic benefit. This approach has been most effective in the management of wildlife held on communal land. Because of the financial incentives CAMPFIRE provides to the communities, they now take the initiative to protect and conserve the wildlife that in the past they would poach. The success of CAMPFIRE is limited, however, by the weakness of the Rural District Councils, which

are the local authorities that receive and distribute benefits and costs to various villages under their jurisdiction. Thus, the Councils' weakness hinders communities' ability to reap the fruits of their property rights. This is inefficient and imprecise. CAMPFIRE will become more effective when the state confers greater tenure rights and authority to lower levels of local governance, such as the traditional village, family, and individual



levels. That development would allow the concept of CAMPFIRE to be applied to other natural resources such as trees, minerals, and water.

Even in its limited current application, however, CAMPFIRE has confirmed the need for greater empowerment of communities over the conservation of their environment. The program demonstrates the benefits possible when the State delegates responsibility and authority over community-based natural resource utilization to local rural communities. Programs based on the CAMPFIRE principle are now being adopted in a few other Southern African countries.

### Poor State-Imposed Institutions in Tanzania and Zimbabwe

In Tanzania and Zimbabwe, state-imposed village institutions have lost legitimacy with the rural people as

these become politicized and corrupted. The Village Development Committee, established by the Zimbabwe Government in 1982, is now generally moribund, as rural people gravitate back toward traditional leadership and traditional village boundaries. In Tanzania, village common property is vested in the Village Council, but this council is also losing credibility because of its susceptibility to external manipulation and abuse. The main lesson here is that state-imposed institutions are often poor managers of rural common property land and natural resources.

### Important Exceptions

There are, of course, situations in Africa where registered title is genuinely in demand and may offer the greatest security. The strongest instances occur where the State redistributes land previously held under large estates or where the customary system has broken down completely and a commercial land market has emerged, such as periurban areas.

### Tenure Security

Traditional African land tenure systems have all the key ingredients of secure tenure. Land tenure security can generally be defined as the certainty of continuous use, and is associated with four sets of rights:

- **Use rights:** rights to grow crops, trees, make permanent improvement, harvest trees and fruits, and so on
- **Transfer rights:** rights to sell, give, mortgage, lease, rent or bequeath
- **Exclusion rights:** rights to exclude others from using or transferring

- **Enforcement rights:** refer to the legal, institutional and administrative provisions to guarantee use, transfer, and exclusion rights.

### Who Enforces Rights?

These four property rights define the legitimate uses and users of land in a given period (Feder and Feeny, 1991). Rights may be subdivided almost infinitely. In parts of Africa and South Asia (as was the case in medieval England), rights to the crop are private whereas rights to the stubble after harvesting are communal. Similarly, in some parts of Africa, land and tree tenure are not held by individuals. Rather, they are defined at community level. Rights may be enforced by formal institutions or informal customs, beliefs, and attitudes (Taylor, 1988). Enforcement often requires a buttress of instruments such as courts, police, banks, lawyers, surveys, and valuation and recordkeeping systems.

### Who Enjoys Rights?

All tenure systems fall into four broad categories of ownership: open access, communal, private, and state (Table 1). In most countries, few areas are truly open access; some land may appear open, but usually it is State or communal land over which the State or community lacks adequate enforcement capacity, or such capacity comes under pressure. The result is insecurity of tenure, manifested in land use patterns that mimic open access systems.

Exclusivity defines the degree of tenure security. Under communal tenure, exclusive use rights are assigned to a group. Individual

or family use rights are also assigned under most traditional tenure systems.

Private property rights are the most prevalent form of tenure in industrialized Western countries. Many Africans view these rights as a creation of the State, not as God-given or sacred rights. The experience in Africa has therefore been that where private property rights are not viewed as legitimate, or not generally viewed as working in the public interest, or where they are simply not enforced adequately, they become quite insecure. In extreme cases, *de jure* private property can deteriorate into *de facto* open access. Migot-Adholla et al. (1991) have argued that communal tenure in indigenous African land rights systems do not necessarily conflict with Western property rights systems. Holding exclusive use rights in traditional tenure systems can be as secure as private property rights in Western industrialized countries.

There is no tenure system that is good or bad, right or wrong. Most important is a tenure system that is secure, appropriate, and able to facilitate the needs of a community

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or society. At issue is who confers the rights. Where freehold rights are assigned to family or individual by the community under the traditional tenure system, these rights can be very secure.

### Land Tenure and Economic Efficiency

Contrary to popular belief by Western scholars and observers, traditional systems of tenure are quite secure, and do not necessarily constrain productivity and conservation. A growing body of research on tenure demonstrates that the most important characteristic of tenure security under

TABLE I. CATEGORIES OF LAND TENURE SYSTEMS

CATEGORY	OWNERSHIP OF EXCLUSIVE RIGHTS
Open access .....	None
Communal .....	Defined group
Private .....	Individual legal entity
State .....	Public sector

indigenous systems is the ability to bequeath land. Place, Roth, and Hazell (1993) examined existing studies by the World Bank and the Land Tenure Center, and also studied a number of African countries to produce a comparative analysis of Burkina Faso, Ghana, Kenya, Rwanda, Senegal, Somalia, and Uganda. This analysis confirmed that indigenous systems do not hinder productivity or investment. In addition, land registration has not necessarily led to tenure security. Recent research also demonstrates that the high productivity increases enjoyed by smallholders in Kenya and Zimbabwe had, and still have, less to do with individual tenure, than with the removal of prohibitions and other bottlenecks for smallholders that were more important than land tenure changes. Government intervention makes sense, therefore, only after the causes of tenure insecurity and the bottlenecks to rural development have been identified.

Research has also exposed two other economic fallacies associated with State-imposed individual tenure reforms. First is the fallacy of economies of scale in agricultural

production. Worldwide evidence shows no real scale economies, and, if anything, small farms can be even more efficient than large farms. The second fallacy is the view by governments that the practice by African farmers of holding multiple parcels of land in separate locations is not efficient. Once again, evidence is showing great wisdom in the holding of multiple parcels of varying suitability for the wide spectrum of crops grown. These two fallacies lead governments into pursuing policies of consolidating holdings rather than subdividing land.

### The African Legacy

Rural economic development ultimately depends on building strong and effective rural institutions and empowered communities. Issues of agriculture and natural resource management, therefore, cannot be separated from issues of politics, democracy, and good governance. Agricultural growth and the efficient management of natural resources depend on the political, legal, and administrative capabilities of rural communities to determine their own future. The lack of this power (or lack of democracy) is translated into inse-

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cure tenure rights, abuse of common property and resources, disenfranchisement of rural people, particularly women, and weakening of rural economic institutions.

Alien land tenure systems should not be imposed on rural Africans. Land tenure should be allowed to evolve with the changing socioeconomic and cultural conditions of a given community. Indigenous tenure systems have survived a century of neglect, abuse, and exploitation by colonial and contemporary governments. Now, these tenure systems require support to strengthen local institutions and empower local communities.

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