

CHAPTER 6

GRASSROOTS DEMOCRACY: PROPERTY RIGHTS AND THEIR ROLE IN ECONOMIC DEVELOPMENT AND SOCIAL JUSTICE

Introduction

In most African countries widespread land shortage is a relatively recent phenomenon. For centuries it has made sense to use shifting cultivation and other extensive land use systems. The land allocation systems were developed more to ensure smooth social relations than to deal with the trade-offs involved in the use of scarce resources. Colonisation and urbanisation increased pressure on land in areas relevant for industrialisation and commercial agriculture. Land allocation in these areas resulted in different forms of individualisation of tenure, with initial titles often given under a system of political patronage (first colonial and subsequently by and for ruling elites). All other land remained relatively unspecified but was generally considered tribal or communal land owned by the State.

In most countries, the traditional norms are adhered to in the tribal areas, unless or until the government or other politically or economically powerful agencies want access to the land or resources. The legislative systems very seldom give *de jure* rights to the people using the land and they have little recourse for demanding accountability. Rural populations became increasingly reliant on the benevolence of central governments for access to their own resources. This made it difficult for them to mobilise savings. Raising local taxes for development is impossible leaving these communities reliant on central authorities for access to infrastructure and social services. This reliance makes transparent political processes difficult to achieve.

Solutions to African land tenure problems should be grounded in its historical heritage of rural institutions. Rukuni maintains that African culture and traditions are the glue that hold people together and allow communities to function¹. However the emerging systems based on tradition must be able to adapt to new challenges. Land tenure is the burning issue of the future in Africa and probably holds the key to social, economic and political progress. Land tenure is a complex issue that should be allowed to develop or evolve with the changing socio-economic, technological and cultural conditions of a given community.

Tenure security is a more fundamental issue than the type of tenure. Tenure security is defined by a basket of rights that include use, transfer, exclusion and enforcement rights. Traditional or customary tenure systems can offer users security, provided that communities have legal ownership and authority over their land and natural resources and provided further that the traditional systems have not been undermined by central governments. Supporting and empowering local communities can strengthen traditional tenure systems.

¹ see Appendices

Land as an Economic Resource

Land is the most important economic resource to the majority of people in most African countries. There are only a few countries where oil, minerals, fishing, industry and tourism are more important than agriculture for household economies, and often the national economy relies on land. Land also influences social, political and economic relationships. In Namibia, South Africa and Zimbabwe access to land is dominated by concerns with racial equity. For most of Africa land is not a racial issue and in many of the countries torn by conflict, it is their mineral wealth which is responsible for the power struggles. Land area per capita and the quality of that land is declining in many African countries. Investment in land throughout Africa has been minimal and in areas where land is becoming scarce it is imperative to find incentives to encourage investment in natural resources to make land more productive.

When a resource is abundant it has no value in economics – the air we breathe is an example. As the resource becomes scarce so it is increasingly important that our choices result in best use – we need to ensure that we maximise our social welfare. The signals of this scarcity are transmitted in market economies, through prices. The price reflects the level of demand and the availability of the resource. As the price increases, so it pays people to invest more to expand supply, to intensify use and to reduce demand. Encouraging investment increases the efficiency of a scarce resource.

Although land size is limited, it is possible to considerably increase the productivity of land. As indicated above, when land becomes scarce, land values increase and so landowners are encouraged to invest more in productivity. If landowners are certain that they and their families will still be able to reap the benefits of the increase in value, it will pay them to utilise their land sustainably and to invest in increased productivity. This is why tenure must be secure.

In order for these incentives to work, it is important that the market can adjust to new realities. As land becomes scarce it is likely that society will have to use it more intensively. This means that the size of farms should be able to adjust and become smaller. Land which is unused (or where returns from farming all the land owned is uneconomic to the current landholder²) could be in demand to farmers with lower profit expectations. At the other end of the spectrum as societies become more industrialised and urbanised and returns to labour and capital become higher in other sectors, it is important that land holdings are able to respond to prices and become larger as currently indicated in India. If the land market cannot respond to the signals, then the farm sector will become inefficient. Without a flexible, effective and secure land market, agriculture will struggle to absorb increasing populations or create more wealth for the country.

² This is the case for most large farms in Southern Africa where it would be possible for the farm to be subdivided without affecting output levels of current farmers. Thus the sub-division would increase output, employment and equity. However if the opportunity cost of retaining unused land is zero then farmers are unlikely to subdivide, particularly when this will probably increase transaction costs of having more neighbours. It will only happen with land taxes and other government policies that encourage sub-division. However the appropriate land sizes cannot be centrally determined since it is impossible for government to be able to establish a system that would respond to economic, social and technological changes effectively.

Systems that rely on centralised decision-making are inevitably inflexible and economically inefficient. It is the flexibility of the market economies that has allowed them to rapidly increase material well-being and take advantage of globalisation. Centralised systems lead to stagnation and corruption. On the other hand market systems are also imperfect. Prices seldom reflect all the social costs and benefits and markets often reward entrenched interests, since they tend to favour those granted early title. A good land policy will be one that allows flexibility, reduces corruption, reduces market imperfections and increases access to land by disadvantaged groups.

The allocation of land (who uses the land) is not a major ethnic or racial problem in most African countries, although there are increasing pressures to see a more equitable distribution between genders and in some countries there is an increasing problem of landless and displaced people. In Southern Africa land allocation and access is a racial problem with historical roots and requires specific attention. Redressing the imbalance requires innovative approaches that will reduce the inequalities without severely disrupting the national economies. Zimbabwe would have achieved a much more equitable and efficient land use structure if it had actively encouraged the subdivision of large farms instead of actively discouraging it.³ The radical redistribution since 2000 has transferred land from a white elite to a black elite, significantly reduced short-term output and probably long-term output given the increased insecurity of tenure and erosion of the skills and capital base.⁴ The lack of changes to the land tax and subdivision regulations in Zimbabwe since reform, undermine the future potential for land to be a flexible economic asset.

While equitable racial distribution of the land is only a problem in Southern Africa, security of tenure (who has legal control of the land used) is a problem throughout Africa. Secure tenure is critical to resource decisions that are sustainable and which reflect the increasing scarcity of land. Rukuni shows that traditional tenure systems are able to achieve these objectives, provided the local community has both *de facto* and *de jure* control over the resources. Most traditional tenure systems are relevant to situations of land abundance and need to adapt to changing population pressures. However, this adaptation was interrupted first by colonial and settler governments and then by the newly independent African governments which reinforced or extended centralised control and state ownership of land and natural resources.

The Importance of Secure Property Rights (Tenure)

The term "property right" refers to the bundle of entitlements that define the limits and entitlements the owner of that right has. Property has no meaning without the right of exclusion. Property rights can be held individually, by a group (community, corporation, etc), or by the State. Or there may be no defined property rights in which

³ 86% of applications for sub-division were turned down between 1982 and 1992 and those which were granted were primarily for small businesses established on farms and not an exercise to reduce the size of land holdings.

⁴ Over 3500 white farmers have been displaced, the majority without any compensation. Most of the farms went to the political elite and defence force hierarchy. Only a few of the farms were subdivided into small units and given to war veterans and to the landless. However in 2004 some of these small settlers were displaced by the politically well-connected and landholdings increased often back to the original size..

case the tenure system is known as "open access". In market economies well-defined property rights provide the incentive to use resources efficiently and sustainably, since a decline in value represents a personal loss.

If these rights are not broadly accepted by the society (universality) then they will be constantly challenged. If these rights do not provide the holder with the ability to exclude outsiders (exclusivity) and if these rights cannot be upheld (enforceability), they will be meaningless. If the rights cannot be transferred by sale or bequest, this will reduce their effectiveness as an economic asset (transferability).

Individually owned property rights are more easily defined and enforced than common property rights. However for most African countries granting individual title may not yet be relevant for all land and natural resources. In some countries this is because there is no scarcity of land and the transaction costs of registration would be too high (Angola and to a lesser extent Zambia and Mocambique). In others because there are few social services, low opportunity costs of unskilled labour and high unemployment, the resources need to be shared across both time and space. Throughout Africa land is the only source of social security and this needs to be considered before alienating the extended family from the land through individual title. Pensions are inadequate or non-existent and there are no retirement homes. Medical and unemployment benefits are rare and people turn to their family homes in the rural areas for support and sustenance in times of need. In these circumstances resources owned by the community may be more appropriate than individual tenure, despite calls by the more progressive smallholders for individual title. When more effective social security systems are in place, and with greater industrialisation, it may be more appropriate to convert communal land to individual title. In the meantime communal tenure can offer security provided that the users as a group have legal title to those resources. However to be effective it is important that common property regimes have:

- clarity of membership (including entry and exit rules)
- agreed rules relative to access, benefits, duties and management systems
- disputation process for internal conflict resolution
- widely recognised jurisdiction
- monitoring and enforcement mechanisms (localised but backed by national)
- limited external interference or regulation

In the - Voices from Lesotho in Chapter One it is possible to see what secure property rights and individual initiative can achieve. The reclamation of severely eroded gulleys and the intense production systems they created in very marginal areas are remarkable.

Issue of secure tenure

In most of Africa where communities use the land smallholders normally have fairly secure usufruct rights to the land for their homesteads and for cultivation. Access to land for grazing, natural forests, water and wildlife is less certain but is normally controlled by traditional institutions. Since the ownership pattern is not clear these institutions often break down under pressure. The pressure may be from outside or internal. The problem is that only the State has *de jure* rights to that land and the

resources. This makes it very difficult for communities to stop bureaucrats, politicians or other influential individuals or bodies from appropriating their resources. It is also difficult for traditional norms to be enforced with no legal rights. This is evident in Zimbabwe where various companies owned by influential individuals were awarded hard-wood logging contracts at the expense of the local community in the late 1980s. More recently it was evident in the case where a community had given permission to a company to mine granite and was receiving (albeit very low) compensation. In due course granite was declared a mineral so that the rents were now paid to the State. The community, however, were still incurring all the environmental costs associated with the mining and with even less compensation. The CAMPFIRE programme (see Wildlife Box) was one attempt to link the costs and benefits of living with wildlife and provide better tenure security for communal areas.

The main issue is who has the right to benefit from “exploitation” and who pays the “cost” of the continued existence of the resource. As indicated above, whilst individual property rights provide the most direct link they are not always appropriate. The nature of the resources, the high degree of unemployment⁵ and the lack of formal social security systems, makes individuation of tenure for communal farmers in most of Africa pre-emptive at this stage of development. However, there is an urgent need to localise tenure and to develop and reinforce common property systems that grant residents a much closer link in the management, control and benefits of “their” resources. Even with cultivable and homestead land, where land rights are relatively secure, communal area farmers find themselves having their land taken over for public works with inadequate and delayed compensation, and little recourse to law. The State owns the land. There are numerous instances where the State builds a dam, road or irrigation scheme and moves existing smallholders to inferior land with inadequate compensation for their investment in housing and the farm. Delays in the payment of compensation render even fair assessments meaningless in the face of high inflation.

Experience with Wildlife in Zimbabwe

Zimbabwe witnessed a significant increase in wildlife numbers, the growth of an economic wildlife industry and a broadening of participation in the legal benefits from wildlife in the 1980s and 1990s. The underlying factor for this success was the National Parks and Wildlife Act, 1975. The Act effectively transferred wildlife usufruct rights to owners and occupiers of private land. In the past wildlife was alienated from landholders who were not allowed to use their wildlife and were arrested for poaching. The result of the old legislation was a significant decline in wild animals as there was both overt and covert elimination of wildlife by both small and large-scale farmers⁶. The change in legislation giving farmers control over their wildlife resulted in a significant increase in animal numbers. It also increased species diversity and changed land use in dry areas to more lucrative and employment intensive tourism. Cattle ranchers converted to wildlife. Hunting dominated the industry in most of the country but the cropping areas on underutilised land and rocky outcrops unsuitable for crops were converted

⁵ Just over 10% of the population is formally employed which means that the informal sector and rural areas must provide sustenance to most of the population.

⁶ Muir, K. “The Potential Role of Indigenous Resources in the Economic Development of Arid Environments in Sub-Saharan Africa” *Society and Natural Resources* Vol 2:4, 1989 pp 307-319.

to tourism and safari camps and lodges proliferated. Imire Game Park, Pamuzinda and Bally Vaughn are among the better known of the photo safari destinations on farms within a day of Harare.

The wildlife resources in communal areas, however, continued to be controlled by the State with communities receiving benefits on an *ad hoc* basis. In 1982 the Act was amended to allow the Minister to devolve authority over wildlife in the communal areas to a district council, provided it met specified conditions. This resulted in the development of the CAMPFIRE principles and appropriate authority was granted to two districts in 1989. CAMPFIRE (Communal Areas Management Programme for Indigenous Resources) is an institution to allow limited devolution of wildlife use-right to people living in remote areas.⁷

The rationale for devolving use rights was to provide incentives for farmers to encourage wildlife, thus promoting habitat and animal conservation while at the same time increasing rural livelihoods and rationalising land-use. In the communal areas, inadequate legislation and powers for local institutions and their ineffective tenure over land, restrict the effective devolution of property rights over all natural resources (including wildlife, tree, water and mineral resources) to the people living with, and using, these resources. There has been some success with CAMPFIRE increasing awareness of the value of wild animals and the environment. It was especially successful in building awareness of the rights of smallholders to have more control over their resources. However the farmers actually living with the wild animals still have little control over wildlife use decisions. Legal control is vested in the District authorities who are often far removed from the villages living with wildlife. The increases in animal numbers, habitat protection and changed land-use systems have been less prevalent and less successful than in the large-scale farming areas where wildlife has become a major land-use system in the more arid farming areas.

CAMPFIRE precipitated the movement towards granting property rights over natural resources and has awoken the realisation by rural communities that greater control over their lives is a legitimate objective. There is now the need to work with the political process to promote the call for decentralisation and tenorial empowerment for local communities over all their resources including land. Until this is achieved it is unlikely that CAMPFIRE can continue to be an effective vehicle for sustainable development. As Bond showed where property rights are strong, financial rewards can be weak, and still provide incentives for conservation of common resources. However, where property rights are weak and financial returns are low, it would be irrational for smallholders to invest in resource conservation.

The concept of CAMPFIRE has spread into neighbouring countries where it has been adapted to local conditions. In many of these countries their community based natural resource management institutions provide much greater tenure security to community resource users, particularly in Namibia.

⁷ Readers are referred to Bond, I. (1999), "CAMPFIRE as a Vehicle for Sustainable Rural Development in the Semi-Arid Communal Lands of Zimbabwe: Incentives for Institutional Change", Unpublished D.Phil thesis, Department of Agricultural Economics and Extension, University of Zimbabwe, Harare.

Current Land Tenure Systems

Most of the land in Africa is farmed in a communal setting where land for cultivation is owned by the State but allocated by traditional authorities, or by local government, or by local political party structures, or by national administrative or political institutions. These use rights can be terminated by the State without legally required compensation. Grazing and forestland is available for community use but the State retains ownership of all the resources and while the community may have *de facto* access, in most countries they are unable to claim these rights in court.

The State in effect owns most of the land. Some of this land is farmed or managed by the State (State plantations, national parks, indigenous forests etc) and some is leased to large corporations and wealthy or well-connected individuals. Smallholders under varying degrees of local control, as indicated above, farm most of that State land. In addition there are some countries where a significant proportion of the land is privately owned. These include South Africa, Zimbabwe, Namibia and to a lesser extent Botswana, Cote d'Ivoire, Kenya, Lesotho, Malawi, Morocco, Tunisia, Swaziland and increasingly Zambia and Mocambique. In some of these countries, private tenure is insecure because the general population does not accept its universality. In other instances the government in power does not recognise the rights because they wish to disenfranchise one elite to replace it. This leads to disinvestment and insecurity even in countries where property rights are protected by the law.

Throughout Africa, highly centralized systems of governance have undermined localised control over resources. The traditional tenure system has survived a century of neglect, abuse and exploitation by both the settler and contemporary government. These tenure systems require support to strengthen local institutions and empower local communities in administering property rights, including the ability of the tenure system to evolve over time. Tenure security in terms of exclusive rights of groups and individuals are the very basis of political and social power, and status. As Rukuni points out, when such rights are overly subordinated to the state, it follows that the political rights of rural people are diminished, and that democratic processes and institutions are undermined. Secure tenure is important for good governance, for economic growth and for equity - provided it is fairly allocated.

Tenure insecurity leads to degradation of resources. This is seen most clearly where rapidly increasing population growth, high unemployment and high inflation combine to put pressure on resources. In order to implement economic incentives that relate to the social and private costs and benefits, it is imperative that local communities are given clear and enforceable rights to their resources. Insecure tenure has negative impacts on agricultural productivity and the management of natural resources, particularly of communally held resources.

Insert - Tradable Grazing Rights box approximately here

The granting of secure tenure rights to wildlife in the large-scale sector in Zimbabwe has shown how effective this can be to achieve sustainable growth. The expansion of the wildlife industry resulted in investment in wildlife and wildlife habitat. This increased wilderness and animal numbers and thus species diversity. The higher returns to land and capital contributed to growth and the increased jobs available to

skilled and semi-skilled was important to the increasing numbers of high school and college graduates.

The granting of tenure over wildlife to people bearing the costs of living with wildlife in the communal sector has been more difficult. There has been some success in devolving responsibility from Central to local government but there is a reluctance on the part of local government to devolve further to the actual “producer communities”. Part of the difficulty arises from the lack of legal bodies at producer level, but this could be overcome by the formation of companies, co-operatives or conservancies. It is the lack of security of these communities over land and other natural resources which makes effective devolution over wildlife usufruct rights, difficult. A similar situation exists with indigenous woodlands, where Districts retain control over commercial use, and local communities have insecure rights to their trees.

In Zimbabwe, the Land Tenure Commission investigated the options for community based tenure systems in some detail and recommended individual tenure in resettlement areas and the transfer of legal ownership to villages in the communal area. In response government undertook to implement these recommendations but it has been ten years and little has been achieved. In the current political climate it is more likely that real devolution will only arise from strong demands for ownership and empowerment by the communities themselves. This is a process that is beginning to emerge and to which CAMPFIRE has contributed. In most cases what is required is a formalisation of *de facto* boundaries with title passing to local communities. The increasing population pressure has seen the emergence of resource disputes and there are situations where arbitration will be required. These conflicts will grow in the face of increasing population pressures if ownership, access and boundaries remain unclear. Legal structures are being put in place in Tanzania, Namibia, Zambia and other countries to grant title to local communities but the implementation is stalled by central and local bureaucrats who are threatened by the changes.

If indigenous woodlands and wildlife are to fulfil their potential as an alternative or supplementary land-use in semi-arid areas, it is essential for them to gain greater political credibility. Wildlife, in particular, suffers from a perception that it is not a serious economic activity and that land would be better used for food production. In addition, although there is a growing lobby for wildlife use rights from certain sectors of the rural community, indigenous resources are still viewed by many as a gift from nature, to be shared by all, including outsiders. This undermines efforts to establish institutions for development, sustainable use and markets; increases transaction costs and encourages an open access environment.

The way forward for Southern Africa

Throughout Africa there is an urgent need to address tenure security and to provide the land users with the security which will allow them to obtain the asset value of their resources so that they are able to increase investment and demand accountability from their politicians and civil servants.

In Southern Africa the establishment of rational land policies is made more complex by the extreme dualism and racial nature of the problem. The solution is however, similar for both tenure security and more equitable racial balance. It is used here to

highlight what could be done to address the problems. There is an urgent need for apolitical, transparent and sustainable institutions to be established which will ensure productive and equitable access to land and resources and secure tenure.⁸

It is proposed that all land should be made freely divisible. Where there are environmental concerns, these should be addressed directly and not by indirectly reducing population pressure through artificially maintained large land size. This only diverts the environmental problems to other areas and ensures the continued social and political pressures arising from under-utilised land remaining inaccessible to the landless. It reduces agricultural output and employment. Environmental factors are important and should be directly addressed but land must be freely divisible for allocation to be efficient.

A land tax imposed on all land, including communal land, could be used to raise revenue to be used for local development, the establishment and enforcement of locally controlled sustainability norms and possibly to address equity issues. Such a tax will discourage land speculation and encourage sub-division. It will also assist to ensure greater tenure security as the paying of taxes reinforces the holders' rights.

Resettled farmers and large-scale farmers need to be given secure title to their properties. Where governments prefer to retain State control they could make these 99 year leases and so postpone the negative effects of insecurity for some sixty years. Where governments do not want land alienated to foreign nationals they have to make specific regulations that are clear and transparent. They will then be sacrificing increased agricultural output and employment in order to ensure national control of land. There are many Africans who would consider this a reasonable choice. It may appeal less to the unemployed.

In communal areas where the social security value needs to be maintained, villages should be allowed to form companies, co-operatives or other legal entities. These villages should be granted title to their land. Where appropriate this could be managed through traditional structures but not necessarily. The smaller the ownership boundaries the more cohesive, stable and rational the resulting land use system will be. There will, however, be the need for extensive negotiation between villages to establish these boundaries. Within villages, requiring that all members be given shares of equal value, can reduce alienation of resources to the elite. To achieve this there needs to be an open and transparent allocatory mechanism with an appeal process that transcends local elites. An example relevant to communal grazing areas is tradable grazing permits (see Box). These would ensure that all members of the community benefit from maintaining and improving grazing resources, provided all members are granted equal grazing rights, regardless of cattle holding. Those without cattle can then sell their rights to those with too many cows. The better the grazing is, the more valuable it will be to both buyer and seller.

Where a country is not yet in a position to allow the legal decentralisation of secure land tenure, it needs to take steps to ensure that the communities have full control of the other resources associated with the land. Furthermore they should be given

⁸ These need to complement steps taken to mitigate the inherited duality through land reform programmes in Zimbabwe, South Africa and Namibia. Clear, consistent and widely communicated rules and norms of redress will help to reduce negative impacts of reform on investment.

recourse to the law to ensure that they are not prejudiced when their land use rights are affected by political and bureaucratic decisions.

Conclusion

All countries need a flexible system that allows farmland to move from large to small and then in time to large again. They need a system that gives individuals and communities the opportunity to shine as in the Voices from Lesotho. The systems need to encourage people to build strong local institutions that can help to encourage sustainable growth.

Land tenure is a complex issue that should be allowed to develop or evolve with changing socio-economic and cultural conditions of a given community. Traditional or customary tenure systems can offer security provided that communities have legal ownership and authority over their land and natural resources. If they have legal authority they can then be more effective in controlling access and in taking management decisions which will benefit land users. It is important that the systems established make it difficult to empower the elite within the groups. There needs to be transparency and accountability to the entire community. Governments can strengthen this tenure system by supporting and empowering local communities. Highly centralized systems of governance, combined with bureaucratic top-down decision making systems have imposed decisions on people at the grassroots level. This system of government is weak in terms of effectiveness and impact, accountability and transparency, and it denies people the chance to be self-innovative. Tenure security in terms of exclusive rights of groups and individuals are the basis of political and social power and status.