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Land Rights and Land Conflicts in Africa: A review of issues and experiences

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A 'State of the Art Report' – composing part of the policy study on: 'Land Rights and Land Conflicts in Africa' carried out for the Danish Ministry of Foreign Affairs and coordinated by Danish Institute for International Studies

Preface

This paper is the first result of a policy study on Land Rights and Land Conflicts in Africa carried out for the Danish Ministry of Foreign Affairs and coordinated by the Danish Institute for International Studies, Copenhagen. The paper is based on experiences gained by the three authors through previous research activities and assignments in different parts of Africa and reading of existing literature. It identifies and discusses what is seen as being the most important issues in the ongoing debate about African land rights and land conflicts. It also presents and discusses various policy approaches being adopted on the continent to solve land tenure problems and related conflicts. The opinions expressed are those of the authors and do not necessarily correspond with those of the Ministry of Foreign Affairs.

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1. Introduction

In the past many African countries were blessed with relative land abundance. This situation has, however, changed radically in most of the countries. People in Africa are now increasingly competing to get access to arable land and pastures, and open land conflicts are becoming more and more common across the continent. Market development and population growth provide an important part of the explanation for this development (Quan et al 2004). But other interrelated factors like increased competition between different land utilization patterns (e.g. cultivation, pastoralism, hunting and gathering, conservation for example); population mobility; wars; and conflicts also contribute. The situation in most African countries today is that while customary systems of land regulation are being undermined and weakened in many places, more formal regulative mechanisms are still underdeveloped. This implies that land rights for many rural as well as urban dwellers are increasingly becoming insecure and unclear, and it is generally recognized that especially vulnerable groups like the poor, women, youth and indigenous peoples are hardest hit by this development.

The utmost importance of land for the livelihoods of the majority of African populations, and therefore for the social and economic development in Africa, combined with the growing pressure on land resources (exacerbated by declining soil fertility in many places), concern about land-related conflicts, and rising levels of rural impoverishment have once again secured land a place on the policy and donor agenda in Africa.

Many African countries have recently embarked on changing their land policies as well as land legislation, and land reforms of various natures are currently sweeping the African continent, greatly encouraged, and also often heavily subsidised, by the international donor community and international financial institutions. The declared overall objective of such reforms is poverty reduction and they can therefore be seen as part of the poverty reduction strategies (PRSP's), which have been developed in a number of African countries. Land issues have, as far as we know, so far not received much direct attention in these strategies. But as the PRSPs are aimed at, among other things, enhancing rural livelihood safety, minimizing conflicts, and promoting sustainable use and development of land and its resources, land issues inevitably form an implicit part of the strategies.

The World Bank has been, and still is, a key player in relation to land policy reforms in Africa. Until recently the Bank has focussed mainly on the promotion of increased land tenure security through formal registration and land titling. However in the report “Land Policies for Growth and Poverty Reduction - A World Bank Policy Research Report” (Deininger 2003) it is emphasised that much more attention should be paid to the legality and legitimacy of existing institutional arrangements, and that dealing with issues of economic efficiency will not automatically resolve equity issues, including the rights of historically disadvantaged groups such as women, herders and indigenous populations (Deininger 2003, xIv, http://econ.worldbank.org/files/27814_toc.pdf)

The World Bank land policy formulation process has been intensely followed by and prepared in consultation with African government representatives, donor organisations, researchers in the North as well as in Africa, NGO’s in and outside Africa etc. A useful overview of many of the contributions to the debate is available on the following link to the web page of OXFAM: www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/africa_gen.htm

While the declared changes in emphasis in World Bank land policy has been welcomed by many observers, a number of weaknesses, with special reference to Africa, have been pointed out. For example that the report is still paying too much attention to formalisation of land rights on the assumption that this will increase productivity (Stamm 2004); is focussing too much on market-based land distribution; failing to address the structural reasons for distortions of land holdings in Africa; and it is pointed out that existing inequalities in land distribution are likely to be reaffirmed and reproduced by the Bank’s proposals (Fortin 2005). The report has in general been heavily attacked for its approach to the gender dimension of reforming land rights (see for example ActionAid International 2006, Fortin 2005, Manji 2003 and other recent contributions to this debate, all available at the OXFAM link referred to above).

The EU has also recently prepared Land Policy Guidelines (November 2004) for the use of EU donors when supporting interventions in rural land policy and administration. The Policy Guidelines, which can be downloaded from the OXFAM link referred to above, emphasise the long-term perspective of land policy reform; the need for designing diverse types of interventions to suit a range of different settings, and for continuous follow-up research to identify what works/does not

work, where – why or why not. What is seen as important is to find ways of combining formal and informal/customary tenure rules and institutions to ensure legitimacy, equity and economic efficiency, and it is stressed that while formalisation of land rights through land titling may be a solution in some contexts such an approach may be very problematic in other places. The EU Guidelines do not seem to have given rise to any critical debate so far.

Other actors like for example DFID, ILC, IFAD and FAO have also taken part in the land policy debate and prepared a number reports, briefs, publications etc., of which some can be downloaded from the following links: www.dfid.gov.uk/pubs/files/landpolicy_consult.pdf ; www.landcoalition.org/program/policy ; www.fao.org/wssd/landtenu.doc

The policy debate as well as research about land rights and land conflicts has demonstrated that when dealing with the land issue in Africa it is advisable to keep a few basics in mind. First, there is no single land issue. A whole series of issues are among other things expressed in terms of access and control over natural resources, i.e. in terms of land tenure. Slow growth, limited technological innovation, equity, social security and conflict are all concerns, which somehow relate to land. Not all are equally pressing in all circumstances and their respective priorities are essentially political. Land policies express, implicitly or explicitly, the political choices made concerning the distribution of power between the state, its citizens, and local systems of authority. From this follows the second basic observation: There is no single remedy or instrument to deal with land issues. Had there been a magic bullet, it almost certainly would have been fired by now. Frustration with the complexity of land related problems may render decision makers susceptible to ‘clear-cut’, ‘once-and-for-all’, seemingly ‘obvious solutions’. But simplistic policies have a truly poor record in Africa. However, inaction and refusal to deal with land issues politically is not a real option. ‘Autonomous’ land dynamics have significant socio-economic and political effects, not all of which benign. There is no ‘natural evolution’ of land tenure systems; they are integral parts of social and political processes (Bruce 1986; Platteau 1996). This takes us to the third basic observation. Land issues are in fact not new in Africa. The land tenure situation has always been undergoing change in response to demographic and technological changes, wars, conquests and changes in governance. Moreover, land has been an object of policy intervention from colonial times to the present, and every spot of land in Africa has a history of changing land policies and different forms of land politics. Any new

policy must therefore take previous policies and their effects into account in addition to the socio-economic conditions of land tenure they aim to alter.

However, African governments are faced with an additional major challenge when dealing with land issues, e.g. fighting the widespread land grabbing which is increasingly taking place almost everywhere on the continent, often undertaken by the economically most powerful groups, including government officials and politicians (Peters 2002, Toulmin 2005). While this phenomenon increases the need for reforms, its very existence composes a major constraint in the process of implementing such reforms. The inter-linkage between land and power, which is illustrated by such land grabbing, as well as the use of land in political power struggles (Zimbabwe is a case in point here), add to the difficulties in dealing with land issues in Africa.

2. The main issues

Land in Africa is never just a commodity or a means of subsistence. It has so many other meanings, and combines being a factor of production with its role as family or community property, a capital asset and a source of cultural identity and/or citizenship. All the interrelated social, institutional and political factors involved in land make it an asset different from all others. The vital importance of land issues to social and economic development in Africa is unquestionable. Growth and poverty reduction; governance, political organisation and conflict; and migration and demographic developments are in many ways integral parts of the land issues of the continent.

The majority of Africa's populations, depend on access to arable land and/or pastures for their livelihoods, and still live in rural areas despite growing urbanisation. Even for many of the urban dwellers linkages to relatives in the countryside are often necessary to keep hunger from the doorstep. Increased and more secured access to land and natural resources for poor people in the developing world is a key means for achieving food security and broadening the economic opportunities available to them. This may imply *land redistribution* or *institutional measures* such as formalisation, registration and regulation in land markets, depending on contexts. This is a fundamental distinction worth making in relation to land rights and land policies. Is the land distribution of such a nature that actual re-distribution becomes the object of reform, or are we

dealing with issues related to the terms and conditions on which land is already held? In short; are we facing an inequity problem where actual re-distribution may be an instrument, or are we facing an institutional problem where formalisation, individualisation, privatisation or communalisation of rights might be a solution? Are we trying to redress past inequity, or are we trying to curb future inequity? Obviously, in concrete situations particular problems may not be entirely clear-cut; re-distribution will often entail new types of formalisation, and formalisation of existing rights may effectively mean exclusion of secondary right holders and redistribution of assets. Nonetheless, it is a useful distinction in defining the problem.

Land is also a conflict-ridden resource, and, due to its many meanings a sensitive issue in Africa. Disputes and conflicts about land occur at all levels: Conflicts between neighbours about field boundaries; between men, women, and generations about their respective land rights; between pastoralists and farmers; between states and indigenous peoples; between companies and local populations about rights to exploit mineral and other resources. The question about rights to land and territories has also been the source of civil wars as well as wars between nations.

3. Increasing resource scarcity

In mainstream literature on both institutional evolution and violent conflict increasing land and resource scarcity plays a direct and prominent role. In basic, evolutionary theory on conflict and population dynamics, violent conflict is simply a means to redress imbalances between people and resources caused by population growth. This literature draws heavily on Malthusian and Neo-Malthusian perspectives, where a tendency towards exponential population growth traps humanity in a perpetual struggle over a finite and ultimately insufficient resource base.

The same logic, though in a less naïve guise, informs evolutionary perspectives on land use and land rights. Here, however, increasing land scarcity spawns both technological and institutional adaptations. Greater scarcity triggers social mechanisms that lead to more labour-intensive land use (Boserup 1965) as well as improved institutions characterised by more specific rights with greater formal protection (Ruttan and Hayami 1984). Thus, in the standard neo-institutional narrative, greater scarcity results in economic growth and human development rather than bloodshed. To be

sure, conflicts play an integral part of the evolutionary theory of land rights, but they appear as small and inevitable events; as a symptom that society is getting on with the greater and more important business of altering its technologies and rules to fit new circumstances. In recent and influential work on armed conflict, resource scarcity again plays a central role. In what has become known as the “environmental security” literature, natural resource scarcity is seen as the single most important trigger of violent conflict; scarcity is said to be an underlying cause, not just an intervening factor (Homer-Dixon 1991, 1994).

Africa has proven a fertile testing ground for these theories and perspectives. While Africa in the past was said to be a relatively land-abundant continent (albeit with great variations in population density), high population growth rates have led to an increasing focus on accelerating scarcity. Africa is also the continent that has suffered from the greatest incidence of meso- and macro-scale conflicts over the last half century. Unfortunately, empirical evidence seems incapable of doing anything more than at most partially supporting these theories. While there is scattered evidence of successful technological adaptations to increasing scarcity, there are also numerous examples of communities in which the rapid growth of the population overwhelms attempts to adapt. And although there have been important and far-reaching changes in land tenure institutions across Africa over the last century, benefits associated with more precise and protected rules have largely failed to materialise. Finally, conclusions with respect to the central role of scarcity in causing violent conflict are at best highly speculative.

If the evidence from Africa is so mixed, can anything sensible be said about the role of scarcity and its implications for policy? First, increasing scarcity is certainly an essential factor in the great dynamics with which African land tenures evolve. In the overall picture, the colonial past and post-independence policies certainly play their part. Yet, rural African cultures have shown both resilience and ingenuity in their encounters with various rulers and their policies. Current institutional processes at the local level can be seen as an ongoing exercise in adjusting to the multiple pressures imposed by a volatile climate, unpredictable macro-policies, changing economic circumstances, and increasing land scarcity. And if there is one issue on which most observers of African tenure agree, it is that such tenure is adaptive and flexible.

Second, the mixed evidence underlines the need to consider context and to look beyond scarcity itself to its causes. There is an unfortunate tendency to employ scarcity as a catch-all, exogenous factor to which all subsequent events can be traced back. Yet scarcity can itself have several causes. There is a general emphasis on population growth, commercialisation, and technological change as causes of scarcity, while some also emphasise the role of distribution (or “discrimination”) and resource and land degradation, including decline in soil fertility. More importantly, however, some social scientists have started to emphasise what they call the social construction of scarcity; its roots within social relations of power and influence (see e.g. Mehta 2005). On the one hand, the concept of scarcity is often invoked in the service of particular and narrow interests, for example in building political support for large scale dam projects; on the other, scarcity can be group-specific and related to growing inequality in the access to and control of resources. From a policy standpoint, the causes of scarcity may be at least as important as its particular manifestation and its effects.

4. Conservation:

While conservation is a policy measure to protect natural resources, it may also result in increased competition for and pressure on land and other resources in non-reserved areas. Therefore, conservation and issues of land rights, tenure and conflicts are closely interlinked.

In a number of African countries substantial parts of their territories are under some kind of conservation regime. For example, there are nine African countries in which more than 9% of total land is under strict protection in national parks or game reserves (Neumann 2000, p.220). In one of them, e.g. Tanzania, there are 32 National Parks and Game Reserves occupying 151,496 square kilometres or 16 % of the surface area (Barrow et al 2001, p. 59) all under strict protection. In addition to this come buffer zones and other areas where certain restrictions prevail. For previous inhabitants/users of such areas conservation efforts have necessarily implied restrictions on their access and control to land and other resources in these areas.

Protecting certain areas from various types of uses has been part and parcel of local traditional land management systems in Africa, but the origin of present day’s conservation policies with state intervention and the enactment of laws restricting or banning human interference in certain areas

dates back to the colonial past. International concerns for environmental degradation, discussed at international conferences like for example the Rio Conference in 1992, and resulting in international biodiversity protection agreements have implied that conservation policies are still integral parts of the policy agendas of African governments, with the support of the international donor community.

The term conservation has meant different things at different times in recent history. Until the early 1970's conservation based on the protected area concept (e.g. complete protection of the areas in question implying exclusion of people as residents and prevention of all forms of human impact) or 'the protected area approach' (Adams and Humle 2001)) was predominant. However, the international discourse has for quite some time increasingly been influenced by social concerns for the people affected by conservation policies, as expressed by World Commission on the Environment and Development in 1987: "It is both futile and an insult to the poor to tell them that they must remain in poverty to protect the environment." (Hulme and Murphree 2001, p. 1). Since the late 1990s the conservation policies in many African countries have, in principle at least, gradually become more inspired by the 'sustainable use approach', that is '...the use of nature in accordance with an explicit aim of protection in order to ensure continuing use into the future.' (Bonnet et al. 2005, p. 54). In today's conservation efforts focus is on community-oriented approaches, with integrated development goals and with the aim of delegating some power and benefits to local communities.

While many observers support the idea of linking conservation with development goals, and the use of community based approaches, there is little agreement about how to involve the communities on the one hand, and what the effects of this involvement may be on natural resources and livelihood conditions on the other.

Critics argue that the declared goal of devolving rights over natural resources to the communities, to build capacity of community level institutions to develop well functioning and legally recognised systems for managing and distributing benefits from the resources, rest on the assumption that such rights and institutions do not already exist. With reference to the existence of indigenous rights and institutions in many African communities, it is emphasised that it is important to build on what is already there (Anstey and De Sousa 2001). Others point out that local indigenous institutions are

becoming more and more undermined and that they are not appropriate for the complexity of the modern world. The problem, it is argued is, however, that in cases where there is agreement that institutional reforms are badly needed, states have been too quick in taking rights and responsibilities away from people, and too slow in reversing the process (Barrow et al 2001).

Examples of removing indigenous land rights and ignoring local land management systems in connection with conservation plans are in fact quite numerous. Eviction of pastoralists and groups of hunters and gatherers from areas being perceived by them as their home areas, but included in government conservation plans, has not been uncommon during recent history. There is much documentation of this, some of it also showing that it still takes place, even in connection with community based conservation activities (Schmidt-Soltau 2003, Chapin 2004, IWGIA 2003, 2004, 2005 and 2006).

Local farmers also feel insulted being banned from getting access to daily necessities in forests and woodlands, to which they used to have rights until such areas were included in local community based conservation plans, on which they feel they have had no influence. They may at the same time have to watch silently while wild animals feed on their crops. (Kiwasiila and Odgaard 1992, Humle and Murphree 2001)

Resulting conflicts of recent conservation activities are becoming more and more serious and violent, which makes it difficult to arrive at lasting and peaceful solutions. Recent problems in Kenya between government authorities and Maasai pastoralists (see for example IWGIA Year Book 2005 and 2006), and a number of cases in Tanzania are examples of that (Maganga and Odgaard 2002).

Critics are now also questioning whether the international conservation agenda has in fact changed from the 'hands off' policy to more socially concerned community based approaches. It is important to keep in mind that community based conservation takes place within a regional and national framework and under the supervision of authorities at all these levels. Some argue that there is a danger therefore that community conservation may in fact lead to increased state control with land and other natural resources in local communities instead of increased local control. Some of the experiences from community based forest activities in Tanzania illustrate this problem (Maganga

and Odgaard 2002). Village public land in Tanzania is increasingly being turned into community forest reserves to be managed by the communities, but under the overall supervision of National Forest Authority, and in accordance with national guidelines for community forestry (Ministry of Natural Resources and Tourism 2001). This implies that National Forest Authorities may withdraw the management authority from the local community if it is found that the community does not manage the forest in accordance with the rules. The end result of a community based forest management development activity may be that the state takes over the authority over land, which was previously exclusively under the jurisdiction of the village authorities (Maganga and Odgaard 2002). The question as to who stands to benefit from this type of development effort will therefore in the end depend on the nature of state governance ('good' or 'bad' governance). This aspect is also being emphasised by Neumann (2000) who refers to studies showing that attempts to integrate conservation with development has served to extend state power into remote and formerly neglected rural areas.

A number of problems are also identified in other types of community based conservation efforts. In Uganda for example Muhereza (2005) shows how selective decentralisation of forest management powers to some traditional authorities and private operators has served the purpose of strengthening the power base of the state among pivotal rural constituencies, while at the same time paving the way for corrupt exploitation of valuable timber inside the forests.

Experiences in Mali with projects aimed at involving local communities in forest management and carried out as part of the decentralisation reforms in Mali have not been very successful either. According to Kassibo (2005) the Malian government has not in practice been sufficiently willing to transfer powers and resources to the local communities. This, according to him, can to a large extent be explained by the way the government looks at community involvement in conservation, namely as a question of transferring rights to manage state owned land, and not as a question of transferring the rights to the land itself to decentralised bodies (ibid p. 311).

Although some positive experiences of community based conservation activities have previously been documented for Tanzania for example (see Wily and Haule 1995, Sjögren and Wily 1998), for Mozambique (Anstey and de Sousa 2001), and mixed experiences with CAMPFIRE activities in Zimbabwe (Jones and Murphree 2001, Bond 2001 and Murombedzi 2001), it is hard to avoid the

conclusion that community based conservation activities in general have a fairly poor record in most African countries.

The type of reforms needed to ensure more secure land rights for rural people, and especially poor and marginalized groups, who may be most seriously affected by conservation efforts, is subject to much debate. But as stressed above key words seem to be equity and legitimacy through proper democratic institutions (whether formal or indigenous democratic institutions), transparency, and in general diverse interventions depending on specific contexts.

But whatever approach being used to conservation, it always entails some restrictions on local land users' access to the resources, at least in the short run, and conflicts of interests are becoming more and more common and seem to be unavoidable. However, as conflicts are becoming increasingly tense and more complex, the existing mechanisms to deal with them in a peaceful, participatory and equitable manner are not always there, a problem which is being given increased attention in some recent literature (Castro and Nielsen 2003, Pendzich et al 1999).

5. Migration – population mobility

Migration may be seen as one type of response to local pressure on resources, but it may also be an integral part of some people's livelihood, e.g. nomads and pastoralists practicing transhumance. Migration is also often a response to other factors such as wars and conflicts (refugees), a desire to exploit new opportunities in other areas, conservation policies etc., or resettlement schemes as part of government policies for rural development compose other examples. *Push* as well as *pull* factors cause people's movements, and migration is practiced under many different forms (e.g. rural/rural migration, rural/urban, trans-national migration etc.).

Whatever the background and form, migration always affects, and is being affected by issues related to access and control over land and other resources in places where it occurs, and brings with it potential conflicts in rural as well as in urban areas.

There are two fundamental and general issues in relation to migration and land rights. One is the aspect of being first comers or latecomers in certain areas, or indigenous versus non-indigenous/newcomers. While this may not cause a big problem as long as land is plentiful, there is much evidence that it certainly does cause problems as competition for land is increasing. (Juul and Lund 2002, Toulmin 2006, Odgaard 2003 and 2005).

The other basic issue is the type of land use. In terms of claiming land it makes a big difference whether land is cultivated, and thus appears with visible signs of use, or whether it is being used as pastures, or for hunting and gathering activities for example by more or less mobile groups of people. For the last mentioned types of livelihood patterns it has been shown how difficult it is for these groups to claim any land rights at all, even in their original home areas (IIED 1999, Lane and Pretty 1990, Tenga 1992, Toulmin 2005, Odgaard 2005). While this has been the major reason for them to migrate to other parts of their countries or abroad in the first place, it certainly makes it even more difficult for them to claim land in the areas to which they migrate.

The land tenure systems evolving in areas with heavy immigration are extremely complex, with a complicated mix of local indigenous rules and norms, informal renting and borrowing arrangements, semi-formal agreements (in writing) and formally registered rights co-existing, and often overlapping. In the many fast growing cities in Africa with the increasing numbers of squatters and growing slum areas the situation in relation to tenure and tenancy rights and access to other resources is chaotic. Not surprisingly such areas are often very conflict ridden. Solutions to tenure problems and conflicts in those situations are not straight forward, but many observers generally warn against simple and blueprint solutions, and call for context specific interventions based on in-depth studies.

6. Land commodification and markets

Much of the debate about potential weaknesses in African rural institutions over the last couple of decades has reverberated around the issue of land transactions. Those with a sceptical view towards customary African land tenure have pointed to the propensity to militate against both temporary (leases, pledges, mortgages) and permanent (sales) transactions in land. In most African cultures, land is more than a mere commodity, with important connotations in terms of ancestral spirits,

community cohesion, and livelihood security. Customary prohibitions on land alienation also spilled over into post-independence legislation in several countries in Southern and East Africa.

The attraction of markets in land is conventionally seen as their ability to facilitate the transfer of land from less to more efficient users. At the same time, markets will permit the conversion of landed capital into other forms of capital, mobilisation of financial credit through the use of land as collateral, and consolidation of fragmented holdings.

With the replacement in the late 1970s and early 1980s of a “state-led” approach to development with a “market-led” approach (Havnevik 2005), triggered by the Bretton-Woods institutions and subsequently followed by many bi-lateral donors, pressure was increasingly brought to bear on governments to design and implement more market-friendly land policies. This occurred despite the mostly discouraging experiences with earlier programmes aimed at converting African customary tenure into freehold rights (Shipton 1988).

Defenders of the new focus on markets pointed to the recognition of a changed reality: while land in many regions of Africa previously had been comparatively abundant, population pressure and land degradation were leading to increasing scarcity and competition for productive land. In response to this pressure, informal land markets were evolving in rural African settings despite – rather than because of – national policy. At the same time, commercialisation of complementary goods, increasing reliance on money in rural communities, increasing influence of urban or modern values, and even religious dynamics were supporting the commodification of land (Benjaminsen and Sjaastad 2002, Woodhouse 2005). Prohibiting sales under these circumstances would, according to this view, only serve to keep transactions in the extralegal sector and slow down development.

One result of these general trends was a general shift in many African countries, especially in the 1990s, towards more market-friendly land policies. At the same time, the World Bank and other donors recognised that freehold rights, involving full ownership, were not necessarily the solution to the problem. Much recent literature has documented the tendency of land markets to increase land concentration, rural inequality, and speculation (resulting in idle productive land); many of the sales observed are also so-called distress sales where the poor are forced to sell off land when faced with drought or other disasters. Attention has therefore increasingly turned to discovering

compromise solutions where markets can emerge without disadvantaging the poor (Deininger 2003). Of particular note here are the advantages of long-term rentals over sales markets, incorporation of customary rights of succession, and local control of market restrictions. Local control may also reduce risks associated with multiple legal systems, or legal pluralism, where the comparatively wealthy and powerful are able to take advantage of competing institutional systems for their own ends and at the expense of the poor and the vulnerable.

This apparent march from two directions towards an intermediary solution – between freehold tenure and totally deregulated markets on the one hand and retention of customary institutions and local control on the other – is, however, not able to disguise a fundamental dilemma of commodification of land. Many natural resources across Africa, particularly forests, woodlands, and pastures, are still governed by communal forms of access and control; and research has established that it is the disadvantaged groups – female-headed households, the very poor – who depend most heavily on these resources (see e.g. Vedeld et al. 2004). And while it is theoretically possible to isolate and alienate the specific individual rights and duties that comprise a communal system, this has proved futile in practice. In reality, therefore, commodification of land first requires a degree of isolation and exclusion that is incompatible with communal access, and a push towards markets for all types of land will generally have serious and detrimental effect on the livelihood opportunities of the most vulnerable segments of rural populations.

In terms of conflict generation and management, effects of rising rural inequality cannot be overemphasised. While there is disagreement as to the specific role of inequality in generating civil wars and other macro-level armed conflicts, most scholars agree that rising inequality in wealth and access to resources is a primary cause of group-specific scarcity, micro-and intermediate-level conflicts, and associated rural strife, particularly when inequalities in wealth and access follow fault lines related to religion, ethnicity, gender or other spaces of identity (Homer-Dixon 1994, Cramer 2003). Uncritical promotion of markets in land may, when this accentuates inequality, therefore constitute an unintended trigger of rural conflict, and particularly when markets cause land and resources to be concentrated in the hands of one socio-cultural group and the expense of another. For example, disguised sales of land to rural in-migrants are at the root of intra-family conflicts in many West-African communities (Toulmin 2006).

Should commodification of land and increased land market activity then be encouraged or fought? The current mainstream position, touted for example by the World Bank, is that measures designed to obstruct the free operation of markets generally entail other, sometimes hidden, costs that far outweigh their benefits. But as mentioned, the World Bank does recognise that unconstrained markets in land generally will lead to greater inequality. If this inequality is not associated with increasing opportunities in non-land-based livelihoods, adverse effects in terms of conflict may also ensue.

Commodification is, however, not necessarily occurring because of promotional efforts by multilateral organisations or African governments. Commodification of land and other things are also often associated with broad and long-term global trends, increasing communication across cultures, modernisation, and shifts in values and religious beliefs; in short, changes beyond the control of governments or donors. Perhaps the main issue, as far as interventions are concerned, is therefore to ensure that commodification does not occur in a manner that triggers conflict and that leaves the poor and other disadvantaged groups as victims.

Instruments that will encourage land markets involve the repeal of bans on land sales and rentals and the promotion of money economies in rural areas dominated by subsistence and barter. Yet the distinctions between different types of land and their uses may indicate a dual approach to interventions. While increasing commodification of agricultural and residential land may be inevitable and in many cases beneficial, care should be taken to discourage the conversion of communal lands into individual, alienable holdings, particularly those land that provide livelihood security to vulnerable groups.

As noted in previous sections, we know some things about land markets in Africa, for example that rental markets in agricultural land possess many of the benefits and few of the problems observed in sales markets. There are still many things we do not know, however. The realm of land commodification and transactions in land may therefore call for policy experiments, where institutional solutions of various designs are tested in limited scale and specific locations before the most promising are absorbed into national policy.

7. Redistribution of land

Redistribution programmes are responses to historically skewed distribution of land. In Africa, skewed distribution is mainly a legacy of the colonial period and it is in some of the most recently liberated countries – Namibia, South Africa, and Zimbabwe – that the focus on redistribution of land has been strongest of late. Motivations for redistribution of land extend beyond the obvious need to address issues of equality and social justice to include objectives related to production and efficiency.

While smallholders generally are owner-operators or tenants, larger farm owners are generally more capital-intensive and also rely on hired labour. The questions of efficient size of holdings and preferred management system have a direct bearing on redistribution programmes. How far should redistribution of commercial farmland be pursued? And should redistribution primarily target the poorest rural dwellers and landless labourers, or should funds be directed towards “emergent” farmers who already possess the required know-how and productive assets?

Of importance here is the possibility of an inverse relationship between farm size and efficiency; if smaller farms are more efficient then redistribution makes sense also from a standpoint of economic growth and productivity. Evidence of a fairly direct nature is provided by studies from Zimbabwe, where redistribution of farmland to settlers in the 1980s led to improvements in both overall income and equality (Kinsey 1999). Of great importance are also implications of redistribution for the rural economy in general; it has been shown that rural multipliers for smallholder production increments are greater than those for commercial farming, largely because smallholder proceeds are recirculated within the rural economy (Kirsten and Van Zyl 1996). The question of productivity must also be seen in the context of wider economic policies and constraints. Large-scale commercial farms in Africa have often been the beneficiaries of subsidies, tax breaks, and support services not enjoyed by the peasantry. Theory and recent evidence suggest that African smallholders, when given adequate farm conditions in terms of support services and market access, are efficient producers (Binswanger and Rozensweig 1986, Deininger and Squire 1998).

Land redistribution prior to the 1980s was mostly effected through the state-controlled “land authority” model, which involved expropriation and free provision. Disenchantment with the results

of this model and the growing emphasis on market liberalisation led, however, to the gradual emergence of a market-assisted model.

Market-assisted reform basically means that the State, instead of expropriating and reallocating land itself, provides grants to eligible beneficiaries so that these can obtain land through existing markets. Besides less bureaucracy, market-assisted redistribution is believed to have many other benefits. While expropriation often leads to legal disputes and court action, at once costly and time-consuming, market assisted redistribution relies on the willing seller-willing buyer principle. Thus, disputes are unlikely and beneficiaries can immediately put redistributed land to use. Market-assisted redistribution is also much more likely to receive support from all stakeholders and therefore avoid damaging political confrontations (Binswanger 1996, Deininger 1999). In addition, market-assisted redistribution will tend to ensure that inefficient, rather than efficient, farms are redistributed.

To be effective, however, market-assisted redistribution requires a relatively dynamic land market, with the capacity to bring forth a stable flow of willing sellers capable of matching redistribution targets over time. Sceptics of market-assisted redistribution also point out that full compensation to farmers who have obtained their land through political oppression or bias is unjust, that negotiations between willing sellers and groups of willing buyers may be protracted and costly (see e.g. Murray 1997), and that such a mechanism may lead to rapid increases in the price of land.

A further problem that may attend market-assisted redistribution concerns control. The manner in which land is made available in the market is piece-meal and scattered. Unless the location of intended beneficiaries happens closely to match the spatial pattern of willing sellers, market-assisted redistribution may require translocation on a scale that is neither politically nor economically feasible (Zimmerman 2000). And it becomes very difficult to integrate redistribution with more general objectives of rural development, when the latter require location-specific investments in infrastructure and other support functions (Jacobs et al. 2003). To be truly effective, market-assisted redistribution may need to be complemented both by prudently utilised expropriation tools and improvements in support services such as extension, infrastructure, marketing, input provision, insurance, and credit.

8. Institutional issues and institutional reform

Security and certainty

While actual land redistribution is hugely complex and politically challenging in many respects, institutional issues and their reform are no picnic either. Much of the concern about land in Africa stems from a combination of assumptions and observations which relate to the conditions under which people hold land and what this enables them to do with it. It is often argued that insufficient security of tenure hampers significant productive and economic transactions and is the root cause of social, political and economic malaise. The argument runs somewhat like this: when people do not have individual, private, formalised property rights protected by government institutions and law, they will not invest, they cannot mortgage their assets, and the land market is not functioning in a way which allows the more productive hands to till the land in a sustainable and profitable way. Moreover unclear property rights cause conflict, which is very costly to society.

Though there are several elements of fact in this, the simplified line of reasoning confuses and collapses several different issues, which, although related, are distinct. An important distinction to make is between the command that a person holds over the resource – i.e. to what extent the right holder may use and transfer the resource and for how long these rights are valid – and the certainty or assurance with which rights are held (Lund 2001). This often creates a paradox in Africa because command and certainty do not necessarily correlate. The law may provide for private property (great command), but formal government institutions may be unable to guarantee it in practice (low certainty), and indigenous forms of tenure and indigenous institutions may not provide private property as such but rather more limited rights (lower command) but be able to effectively guarantee the recognition of these rights (high certainty).

However, while command (degree of exclusivity) and certainty (assurance) are different aspects of tenure, changes in one tend to affect the other.

Autonomous Dynamics. Privatisation and Formalisation.

The considerable flexibility of indigenous land tenure arrangements in Africa is widely documented (Berry 2002, Juul and Lund 2002, Toulmin, Lavigne Delville and Traore 2002, Benjaminsen and Lund 2003, Evers et al 2005). Recent experience shows that growing population pressure and development of markets in connection with commercialisation of agriculture has given rise to

significant changes in land tenure practices; namely in terms of dynamics of privatisation and formalisation. These processes of change are not un-problematic or conflict free. On the contrary, evidence of these developments being conflictual abound. Increasing pressure on land through the combined effect of population growth and increasing commercialisation of land-based activities makes land values rise. This process leads to individualisation of land tenure. Increased individualisation of tenure and higher incidence of different forms of land sales testify to processes of *privatisation*. Common property resources are generally under pressure, and small holder farming is under pressure from urban expansion and foreign investors in areas of high agricultural yield or tourism. Many forms of property encountered in Africa are significantly less exclusive than what are normally associated with ownership. This is not to argue that African land tenure is essentially communal, but often several layers of interest in property are recognised as legitimate. When indigenous forms of property undergo individualisation, the element of exclusivity tends to be strengthened to the benefit of the primary right holder and at the expense of others. Different structural processes have promoted an 'autonomous' privatisation process in Africa. Customary constraints on sales of so-called 'inalienable' land are gradually relaxed as land scarcity increases. What is particularly interesting in this context is as Shipton (1989) observes that these features of privatisation often occur regardless of legislation. However, this is also where legislation can direct the development by legalising and sanctioning certain forms of transaction and certain institutional fora for mediation.

In a comprehensive article, Peters takes issue with recent increasing attention to the flexibility and negotiability of rules and socio-economic position in Africa. Peters argues that '[t]he proliferating tensions and struggles between generations and genders, or between groups labelled by region, ethnicity or religion, are intimately tied up with the dynamics of division and exclusion, alliance and inclusion that constitute class formation. ... as land becomes a property or a commodity, so we see developing a very different sense of 'belonging' – from someone belonging to a place to a property belonging to someone; in short, a shift from inclusion to exclusion' (Peters, 2004: 305).

This is taking place at different scales simultaneously. Within households, competition between men and women and between generations often lead to the edging out of women and young men from control over productive resources, and family property is effectively privatised by middle-aged and senior men (Jacobs, 1999, Odgaard, 2005). This process is often seen as a social phenomenon, but it is in fact a change in property relations. While it can seem marginal, it appears to take place on a grand

scale in particular in areas of marketable cropping (Odgaard et al 2005). On a larger scale, the encroachment of commons by farmers, and the marginalisation of small holders by e.g. larger scale foreign investors are widespread phenomena. Such processes are often backed by the state whose perception of pastoral and small holder land use is that it is unproductive and even destructive. The state and elite networks also operate to effectively promote privatisation even if this is not official policy. Much has been written about the ‘weak’ African state. However this does not mean that either the state or those acting in the name of the state are without effect. On the contrary. Even with serious loss of ‘managerial’ capacity, the state is rarely irrelevant in the way that access is granted to large scale entrepreneurs, and how different connections are formed and institutionalized. Frederick Cooper sees African states as ‘providing little accountability, few services, and meagre security [to citizens] ... while ruling elites use sovereignty [the claim of the state] to gain a degree of leverage among international and national networks, licit or otherwise ...’ (2001, 43). Cooper attributes this pattern to the fact that ‘the post-colonial gatekeeper state, lacking the external coercive capacity of its predecessor [the colonial state], was ... vulnerable’ to capture: ‘ruling elites ... use patronage, coercion, scapegoating of opponents, and other resources to reinforce their position ...’ (2002, 5-6 (here from Peters 2004)). Privatisation of peri-urban land thus often takes place as a result of abuse of power from elites and officials. For examples from Kenya see Kanyinga (2000); from Mali see Benjaminsen and Sjaastad (2003); from Ghana see Berry (2001) and generally see Shipton (1989). These ‘autonomous’ or undirected privatisation processes cause persistent and often violent conflicts. They are often caused when certain groups’ form of tenure is not well protected by either custom or law and more powerful actors or groups take advantage of their position.

A key political issue is therefore where and with whom the institutions for the management of land are found (national government, district, local, etc.) and the degree of control which different groups are able to exert on them. Essentially, it is a question of whether the institutions of justice are accessible by ordinary people or reserved for an influential minority. Questions of language (English, French, Portuguese, etc. versus national languages) as well as geographical and economic accessibility to such institutions are decisive.

The process of autonomous privatisation is increasingly accompanied by various local forms of registration and *formalisation* of property, often outside formal government institutions (Lavigne

Delville 2003; Matheu, Zongo and Paré 2003). Recent research shows that the autonomous processes of privatisation, of exclusion, and of out right land grabbing are often accompanied by different efforts at formalisation. However, to obtain a formal title is a cumbersome and costly process in most African countries, well beyond the reach of most rural poor. As a consequence of the unsatisfied demand for formalisation of land rights, a process of what one might call informal formalisation is emerging in many places with land scarcity. Thus informal recording of property transactions on paper, or other formalised ways of registration and transaction, seem to develop in parallel to the states' generally less than successful efforts at formally recording the land tenure situation (2001, 2003, Lavigne-Delville 2003). Such informal practices are produced and invented through local institutional innovation using whatever means available. They are composite practices combining, with more or less ambiguity, operations issuing from the repertoire of contract, documents and market exchange with operations stemming from customs and interpersonal relationships as they are dynamically lived in local society. Lavigne-Delville draws on cases studied in various countries in francophone Africa (Ivory Coast, Burkina Faso, Benin, Rwanda and the Comoros) and demonstrates how farmers use various forms of signed documents to record land transactions. These written documents are mainly found in cases of definitive transactions involving the transfer of money. Only when sales are rare and illegitimate they seem not to be accompanied by written contracts. These documents, which are attempts to formalise informal transactions, are diverse and vary from one region to another. Hand-written documents testifying the transaction are used in many cases. These documents are deliberately left incomplete and they usually avoid mentioning terms like 'sell', 'buy' or 'allocate'. In other cases, typewritten documents are used. The format of these documents imitates an administrative style and the local police or administration will be asked to sign and stamp it. The most ambitious document aiming at formalising an informal transaction is what the authors call a record of palaver (*Procès-verbal de palabre*). The seller, buyer, the customary authority and the local administration must all sign this document, which is required in order to continue on the process towards obtaining a legal title. Lavigne-Delville identifies three common features. First, contracts are incomplete and vague when it comes to the content of the transaction itself. A higher degree of precision might be perceived as unnecessary in some local contexts when people know each other, while in other cases a certain ambiguity might be in the interest of one of the parties. Second, witnesses generally sign the contracts to strengthen the transaction. In addition, an official validation of the transaction is sought by approaching an authority, which can be customary or religious, but usually it would be the administrative local

authorities, which are requested to sign and stamp the documents. Finally, registers are often kept locally by lineage chiefs or other leaders to keep track of land tenure changes in the area. These records can then be used in the event of dispute. On the other hand, such registers are usually absent within local government offices.

Policy interventions specifically directed at privatisation through formalisation of property rights have been rather limited. Recently, the writings by Hernando de Soto (de Soto 2001) have re-kindled the ideas about privatisation, and inspired a number of programmes, one of which is 'Program to formalize the Assets of the Poor of Tanzania and strengthen the Rule of Law'. De Soto's ideas have been challenged in many circles (see for example Mathieu 2002, Gravois 2005, Cousins et al. 2006, Bromley 2005). However, reform efforts along the lines suggested by de Soto are too recent to have yielded significant experience. With the recent establishment of the intergovernmental 'High-Level Commission on the Legal Empowerment of the Poor', with an independent secretariat hosted by the UNDP, with Hernando de Soto as one of its members, one may expect more initiatives of this nature in the future.

9. Instruments and governance issues

It will now be clear that there is no single land issue, but indeed many different issues which may be linked in various ways. Policy instruments that affect resource use and potential conflict are numerous and highly varied. They include legislation, executive rules and regulations, financial instruments, public projects and programmes, environmental policy, and policy related to health and demographics. It therefore makes sense to adapt the use of instruments to the different *causes* of tenure problems. We have sketched out an analytical table for approaching land issues at the end of this section. It is meant as a tool to link different land issues to concrete problems, link concrete problems to policy objectives, link policy objectives to an analysis of the source of the problem, and link the source of the problem to the inventory of instruments. Obviously, as problems are connected and overlap, one must expect to employ several instruments at the same time, but the sketch serves to disentangle the various elements in a complex field.

The range of instrument that a donor can possibly influence is, of course, not necessarily identical to the range that it should attempt to influence. The attraction of specific instruments is also often closely tied to the manner in which they are implemented.

Inequity

We will first look at the situation where *past inequity* has led to the political desire for land redistribution. The blunt tool of *land-authority-based redistribution* may be called for when immediate and massive measures are required to avoid anarchy or large-scale social conflict. *Market-based redistribution* is often slightly less controversial, but also somewhat slower, than redistribution based on state expropriation and awards. A third instrument is that of *restitution*, meaning measures designed to restore land or property to those who have been illegitimately dispossessed. Finally, in some cases the state may itself be in possession of land and resources in quantities that permit it to rectify gross inequality in resource access, either through *grants or through sales*.

The first instrument has recently been employed in Zimbabwe with mixed results. This form of redistribution is quite radical and lends itself to politicisation, which may easily jeopardize the declared purpose of the reform. The three other instruments have been used in combination in South Africa since the 1990s. While it is still early days, it seems safe to say that the technical, administrative and operational challenges have been daunting even for a country with a comparatively well functioning public sector such as South Africa.

Unless the situation is acute, however, more long-term and subtle instruments can be used to address past as well as *future inequality*. Such instruments could be *progressive property taxes* (or regressive subsidies) and land ceilings. More generally, measures that lead to a more balanced wealth and income distribution in general (i.e. not just in terms of land) will usually also have positive effects on equality of access to land and natural resources.

A further instrument that affects distribution include *laws related to succession*, which have profound effects on property fragmentation, women's access to land, and possibly investment (depending on whether succession is within the nuclear family or not). Finally, other laws and regulations (and their practical application) related to land acquisition are of importance. Of

particular significance are the institutions governing adverse possession in urban and peri-urban areas, where customary institutions often are weak or absent. The need for land for housing and livelihood security in African towns and cities often far exceeds what is available; liberal institutions with respect to adverse possession and squatting may relieve some of this pressure, but may also – if attended by loose enforcement and ambiguity – lead to a breakdown in the respect for formal authority and ultimately to chaos.

Institutional Insecurity

If the problem is not so much past inequity, but rather possible future *institutional insecurity*, other instruments appear more appropriate. We shall therefore in the following describe some broad types of causes of institutional insecurity of tenure within customary systems with a couple of examples going from smaller to bigger problems and less to more state involvement in regulation and management. As Fitzpatrick (2005) points out, there has in recent years been a change in the official attitude towards customary tenure. Agencies such as the World Bank now recognise that customary systems of land tenure are often more flexible and adapted to local circumstances than centralised and uniform systems (Deininger 2003, see also EU Task Force, 2004). Thus, the challenge is no longer to argue that customary systems are flexible, dynamic and adaptive: it is to look for ways in which customary land rights that enfranchise poor and marginal groups may be strengthened and legally recognised. However, it is important to keep in mind, that there is nothing intrinsically equitable about customary tenure or the non-state engineered tenure dynamics unfolding ‘autonomously’.

Obviously, there are great variations in customary land tenure systems and in the circumstances in which they operate. In some places, customary systems may provide adequate security of tenure, recognition of transactions and conflict resolution. ‘In other circumstances, customary systems may well be deficient, and yet regulatory intervention will simply serve to dispossess vulnerable groups and enhance uncertainty by creating parallel systems’ (Fitzpatrick, 2005: 453). It has been shown for example that in matrilineal matrilineal communities in Malawi and in some patrilineal communities in South West Tanzania regulatory intervention, even though there are deficiencies in the customary systems, may in such contexts have a very negative impact on women’s land rights (Peters 2006, Odgaard and Bentzon, forthcoming). Regulatory intervention may also put rights of other vulnerable groups at risk like for example poor landless people renting or borrowing land (Berry 1997, Odgaard

2005). In yet other circumstances, customary rules and authorities may be unable to provide adequate and sufficiently legitimate institutions to secure land holdings and transactions in future.

Where land access for all members is secure, where investments are protected, where conflicts are managed peacefully, and where resources are bountiful, there seems no need for state protection of customary land tenure. It is difficult to provide a valid empirical example.

Outside encroachment

A good example is from the cotton area of Southern Mali. Here, land in the peri-urban areas is converted at a brisk pace from inalienable customary tenure to various forms of exclusive and alienable holdings. The rapid increase in the value of land has led speculators and bureaucrats to acquire land at the urban fringe from the customary land holders. Customary land tenure is not effectively recognised by the state, and customary land holders face a difficult choice: either to sell the land to speculators in order to at least make some benefit from their land holding, or to risk being de facto expropriated by the state who is the legal owner of the land without receiving any adequate compensation (Benjaminsen and Sjaastad, 2003).

A possible instrument could be the demarcation of customary areas in which land matters are left in the hands of local customary authorities (Toulmin & Quan, 2000). One major difficulty is that internal equity issues are not dealt with in this model, and weaker groups' interests within the community are not represented.

Undermining of common property

Some groups may control common property and may sometimes want to transact with outsiders for access to such resources. This may range from grazing and watering of animals, over small-scale mining to larger longer-term investments. Often the resource is held in common by a community, but if that community is not recognised as a legitimate and legal landholder, free-rider problems may undermine customary rights and lead to depletion of the resource.

One possible instrument could be to recognise the customary group as a corporate entity with 'legal personality'. This way, the group could not only engage in transparent contracts with outsiders, it could also formalise internal rules for revenue sharing etc. One major difficulty lies, of course, in defining

membership of the group, whether it is hereditary, requires residence, is marketable etc. In Namaqualand in South Africa, communal areas faced a combination of problems. There was, in particular, a need to protect the communities' common grazing against outsiders, and it was therefore decided to undertake a survey to identify legitimate landholders and their respective property. On the one hand, the survey clarified rules of access reducing opportunities for 'gradual privatisation' of communal assets such as water points. On the other hand, however, the survey also ushered in a stronger demarcation of individual holdings with fencing, potentially limiting herd mobility and thus effectively changing the communal tenure of the area.

Internal conflicts

In some situations, the existing customary rules and customary authorities are unable to provide adequate security to its members. Hence, a simple formalisation and recognition of existing rights may be insufficient to provide security and certainty of tenure. Two examples may illustrate some of the challenge to policy.

In Niger, the Rural Code invited customary landholders to have customary rights recognised. The formalisation was at least partly a response to popular demand. However, the state was unable to back up its policy and legislation with adequate implementation mechanisms and procedures, and the local population addressed themselves to the chieftaincy in order to have claims formalised as rights. The reform policy introduced a situation of legal and institutional pluralism, and the formalisation process was usurped by local leaders and power holders. Formalisation became an instrument for opportunism and, ultimately, inequality (Lund, 1998).

The experience in Côte d'Ivoire with the Plan Foncier Rural is more promising. The ambition was similar to the one in Niger, namely a documentation of existing land tenure structures and actual possessions and rights in villages in the country in order to make existing rights more certain. The methodology was far more elaborate than in Niger. First of all surveys were made in villages of all rights allowing for overlapping rights to land. Thus, claims to particular plots were not necessarily exclusionary like in Niger. Secondly, an important element of participation by villagers, chiefs and dignitaries was a central part of the operation. Thirdly, topographic maps were made. The assessment of the operation is mixed. On the one hand, the approach was promising and feasible, and the Ivorian government put political and economic support behind the operation. The

limitations seem to be that the operation tended to turn into a rather technical procedure of delivery of 'papers of proof'. It appears important that the sociological, political and pragmatic aspects of the reform are in view for the authorities trying to implement the reform. Communication and engagement of the population concerned would appear crucial for the effective utility of the reform (Chauveau; Bosc and Pescay 1998). These experiences lead to the aspect of governance and administration.

One possible instrument in this case could be to establish a local agency for recognition and recording of land transactions. In many places in Africa, this role was assigned to a chief by colonial and post-colonial authorities. More recently, with democratisation, such agencies take the form of village committees with the possibility of a more genuine representation of community interests. However, they may still not adequately represent the views and interests of all groups in the area.

Alternatively, Land Boards under the responsibility of local government can operate to validate and guarantee transactions and land holdings. This system is known from various parts of Anglophone Africa such as Botswana and Ghana. As Quan observes, 'Land Boards offer a way of decentralising the implementation of a land policy by creating local institutions in which both government and local stakeholders can be represented. They also provide a way of removing customary land allocation from the absolute control of traditional chiefs, without rejecting the principles of customary land law, and allowing traditional leaders to retain some representation in the Board' (Quan, 2000: 204). The flip side of this is that Land Boards tend to be dominated by local elites and central government interests. The issue of representation is therefore crucial when this instrument is to be considered.

Rights are certain if they are not contested without reason and if, in case of contestation, they can be confirmed by public authorities, whether these be customary, governmental or both. Assuring land rights is thus largely a question of having effective institutions and enforcement of rules for the management of land rights, and not merely a question of the formal legal nature of the rights themselves. Obviously, there are several options and combinations of different institutional models will develop in different contexts. All the same, there are a few key factors that must be weighed against each other. Toulmin puts it this way, '[s]econd best solutions are inevitable in seeking a balance between building on existing structures while rendering them more representative, and avoiding the concentration of powers in a single structure, while preventing too wide a dispersion of

powers and responsibilities amongst bodies which then contest each other's mandates' (Toulmin, 2000: 244). Whatever the forum, there are bound to be conflicts of interests, disgruntlement with some decisions, questioning of the jurisdiction of the authorities etc., however it is important not to have too narrow criteria for success. The challenge can hardly be to avoid conflict of interests, or to end debates over the legitimacy of different forms of property; the challenge is rather to provide legitimate and accessible fora where such conflicts can be settled in an equitable, legitimate and fair manner.

1. Sketch for analytical table for approaching land issues.

Theme	Issues	Problems	Policy Objectives	Sources of the Problem	Instruments
Land	Economic growth	X Y Z	Land redistribution (e.g. South Africa, Namibia and Zimbabwe)	Various forms of colonial acquisition, confiscation, nationalisation, etc. requiring immediate or reasonably imminent action	Land-Authority based redistribution
	Innovation	X Y Z			Market based redistribution
	Equity/social security	Past (or current) inequity	Prevention of (further) land concentration	Structural inequality and undesired land concentration	Restitution
		Possible future inequity			Government grants or sales
Other ...	X Y Z	Institutional securitisation of land tenure	Undermining of common property	Progressive property taxes, and/or laws of succession	
				Internal conflicts	No instrument necessary
					Recognition of group rights to manage customs
					Recognition of corporate groups
					Land boards (state managed)
					Land agencies (chiefs/village committees)

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