

LAND RIGHTS GOVERNANCE IN PRESENT DAY AFRICA AND IT'S EVOLUTION

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Most of the Land in Africa is owned under the customary land tenure system with the various traditional leaders as custodians of these huge chunks of land on which subjects have and hold land rights.

As traditional leaders, it is our duty to see to it that the land rights of our subjects are fully attained in an equitable manner that would then spur on economic growth and development in the different parts of Africa whilst also ensuring environmental protection and sustainable and eco-friendly development. In this regard, we the traditional leaders in Africa stand together with our various heads of state in reaffirming the commitments made by the heads of state of the African Union in July 2009 to eradication of poverty and raise the living standards for all African people and in particular specific commitments under the declaration on land issues and challenges in Africa which calls for the use of Frameworks and guidelines on land policy in Africa.

To this end specifically in Adjumani District of Uganda, we have embarked on a huge drive towards land rights registration for customary land rights owners to ensure that they receive a certificate of customary ownership thus offering protection and enabling business with these certificates of customary ownership as security in any future financial transactions with monetary institutions. This will also minimize the potential negative impacts of large scale land acquisitions, land dispossession and environmental degradation whilst enabling us to archive equitable and sustainable agricultural development and economic transformation that will ensure water security, food security and protection of our forests and ecosystems.

However, during the course of making these much needed changes, we have encountered many legislative huddles in the design of current legislation which is mostly colonial by design and does not favor the African dream and also a policy issues that would bring the traditional institutions at loggerheads with the local government structures.

There is need to ensure that the activities of the traditional institutions are lawfully embedded in the national constitutions and that traditional leaders receive the ideological recalibration to lead for the African dream

In the main, the reforms have involved to verify extents (dependent on country contexts) five specific processes. First is privatization of ownership which often involves eventually enabling individual title although initially allowing for other shades of formalization and securitization of customary tenure, typical reform countries like Ghana, South Africa, Kenya, South Sudan, Tanzania, Burkina Faso, Uganda and Zambia have built this into their reforms. Clearly this move toward privatization of what was effectively traditional customary land has been aided by reforms moves that on the face of it are designed to secure tenure. Specific actions like documentation and registration of customary land users, adjudicating and assigning land rights to individuals or collectives, physically surveying boundaries make customary tenure more legible. While in some contexts formalization of tenure means a little more than endorsing existing practices, this process formally recognizes an individual or a collective's right not only to use and profit from but in some case also dispose of land much in the same way as envisaged. However, the question remains, does customary land remain the people's protector and insurer against disenfranchisement or is it being capitalized through blind folding and renaming that loses its protective meaning? Or perhaps has it become more necessary to do so due to the population explosion and the fact that traditional leaders have become out of touch with the customary land question and people needs? Either way, the issue of customary land tenure needs to be further looked into in order to remove the multiple negative stumbling blocks and red tape through further consultations and sensitizations of all the traditional leaders and the people that live and have rights on these lands.

A typical example in many of the reform countries are civil society organizations either offering a platform for consultations on contentious issues or helping citizens register their claims to land. Mozambique's *terras Comunitarias* working with communities to ensure they register their land grabs by foreign sovereign and corporate investors by the 2000s. On the one hand by helping to secure tenure they protected people in precarious and insecure tenure from the impact of this rise in global demand for land by both local and international investors. On the other they make customary tenure more legible especially to investors and therefore create

conditions that are more likely to result in the loss of the land. The potential contradiction here lies in the fact that by making land a formally tradable commodity in this way, many of the rural poor can find themselves landless after all (see the example Collins and Mitchel, 2017). It is clear from the foregoing that there are elements of the reforms that conform to the classic neo-liberalization of customary land.

Security of tenure here refers to the formalization or statutory recognition of rights. Although experiences are varied, on paper at least the 'new' Africa customary tenure offers graduated shades of tenure security that ranges from simple registration of rights to dispensations offering recognition of customary tenure as property in some countries. In an analysis of 46 African countries shows that 30 of these the reforms have brought better protection of rights through formalization compared to the situation before. There is little work done to document whether formalization actually works to protect the implementation gap. There are still cases where collusion between the state and the external investors can undermine this security to tenure.

Overall it is reasonable to assume that when individuals are given formal reorganization of their right to occupy and use a piece of land, their welfare condition can improve. Evidence of the welfare effects of this is still scant but some work demonstrates that in places where customary institutions still work well, formalization itself may not change the way individuals decide on their investments in land. Although there is mixed evidence on this, evidence suggest countries or areas customary institutions are under pressure and where the rules and norms governing land have broken down, security of tenure that comes from formalization does make a difference. In such contexts formalization allows individuals to make investment decisions that recognize the guarantee of rights of use. There is some evidence also pointing to the positive correlation between titling and investments although work in Ethiopia suggests that it may only make a difference with respect to long term investments for example tree crops. Consensus points to the suggestion that recognizing customary rights as property makes difference in the nature and form of investment decisions people under the new customary tenure make perhaps more significantly so in areas where rules and norms of customary tenure have broken down.

Formalization of rights has begun a process of gentrification of customary tenure practices and land governance institutions. Many of the land governance institutions formed to underpin the new customary tenure are a hybrid bringing together elements of traditional authority and fusing this with some of the values of statutory institutions they interface with as in the case with Ghana (see Biitir et al. 2017) and in Rwanda (see Schrieber, 2017). The import of the changes is not only to make them land administration more predictable and legible to outsiders but to ensure that they facilitate the property transactions more efficiently (Lemmen et al., 2017). They have therefore become more professional in the way that they administer and manage land in some cases more egalitarian in the way decisions about land governance are made (Boone, 2017), see also on Uganda, Tanzania, Ethiopia and Ghana). For example rather than relying on oral institutional memory, many of the reform countries have professionalized land titling and registration introducing appropriate level of technology to capture this at local level. Rwanda demonstrates what can be achieved through more professional land administration. Not only has the country managed to set up a computerized system to manage 10.4 million properties, it has also reduced the transaction cost drastically and it now takes just three days to register title and by 2017 some 7.16 million land owners had collected their titles. Customary tenure as we know it now looks very different in Rwanda compared to what it was at the turn of the century. Similar land administration reform programmes have been or are being undertaken in Cameroon, Ghana, Malawi, Mozambique, Namibia, Tanzania, Burkina Faso, Uganda and Zambia with emerging evidence suggesting similar effects.

Conclusion

The inability of post-colonial government in Africa (with the exception of Ghana) to put in place a mechanism that would seek to transform traditional institutions of Africa in their transformation process thus integrating the development processes of both traditional and liberalization of land rights and facilitating them to concurrently evolve thus meaning that traditional mechanism also evolve, leaves a huge gap in the agrarian development questions.

African traditional institutions should be developed into what they are supposed to be and have them take their rightful place in society and not demonized into what they are not. The colonial agrarian way was and is never intended to benefit the African masses but rather the colonial

expatriates to have and hold un-natural powers over land that cannot provide for a natural and sustainable agrarians development path way for the African population. In the end, the lack of traditional ethics in the agrarian question will eventually lead to the economic disenfranchisement of the poorer African masses to the benefit of the few financially and politically connected individuals.

The question of land and agrarianism should be directed towards responsible, equitable and economically viable needs meeting and strengthening the evolutionary process of customary land tenure in regard to management and administration and not to further empowering of economically abled individuals to hold land in perpetuity. It is a question of land and agrarian needs development to suit the African population needs. We only have one planet to live on and the needs of many have to be provided for and this regard, the African customary tenure system is best placed to meet this need provided it is facilitated with the environment to grow and evolve as it continues to meet the challenges that it faces.

Under customary tenure, it is the chief and his council that plan and regulate land usage. The land out lay was in such a way that land for arable farming was known, land that was rich in specific mineral deposits was known, land that was more suitable for purposes of grazing cattle was known, land for forestry and hunting was known, land for housing needs was known and land specifically gusseted as wetland was also known etc. It was then the chief that allocated these various lands to the individuals or the community for the necessary purpose. Today due to migration and varying needs in order to carry out these tasks, you would also have to evolve as a traditional land holding institution to accept the fact that peoples may hold multiple inter clan loyalties and that it might be necessary to accept people for the particular loyalty and homage that they paid to you rather than have and hold the land simply for your clansmen only.

Today however, individuals in a society grant themselves individual rights to ownership that includes the right to transact or sale a piece of land without the communities or the chiefs' permission. This is a direct result of colonial agrarian distribution that came about as the implementation of Lord Macavleys address to the British parliament on the 2nd Feb 1835 in which he said "I have travelled across the length and breadth of Africa and I have not seen one person who is a beggar, who is a thief. Such wealth I

have seen in this country, such high moral values, people of such caliber, that I do not think we would ever conquer this country, unless we break the very back bone of this nation which is her spiritual and cultural heritage and therefore, I propose that we replace her old and ancient education system, her culture, for if the Africans think that all that is foreign and English is good and greater than their own, they will lose their self-esteem, their native culture and they will become what we want them to become, a truly dominated nation”.