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ROBIN PALMER

## Struggling to secure and defend the land rights of the Poor in Africa

### 1. Introduction – a rather bleak context

As state capacities and resources have been rolled back in Africa and elsewhere in the wake of new economic orthodoxies following the end of the Cold War, weakened governments searching desperately for foreign investment are offering up resources such as land, water, forests and minerals that were once considered the domain of the state. Liberalisation has often come to mean 'selling off the family silver', in Harold Macmillan's memorable phrase about Margaret Thatcher's drive for privatisation. Over the past decade, a raft of new land laws and policies has been formulated in many countries in Africa, seeking in various ways structurally to adjust to the new world order. In response, some civil society groups are struggling to defend or secure the interests of the poor in what amounts to a new Scramble for Africa. It is very difficult terrain. My own role, as Oxfam GB's Land Policy Adviser, has been to try to support some of those struggles, many of which are documented on my website *Land Rights in Africa*, <http://www.oxfam.org.uk/landrights>. It is on the theme of *Making Land Rights More Secure*, to cite the title of a recent workshop in Ouagadougou, that this article will focus. Following a very brief introduction, it will look at specific examples in Uganda, Mozambique, and South Africa.

In a recent thought provoking article on 'taking a longer view' of land reform, Henry Bernstein suggests that a long phase of redistributive land reforms directed against predatory landed property in the transition to capitalism, starting with the French Revolution, finally came to an end in the 1970s, and coincided with the beginnings of the new world order we now call globalisation. Bernstein argues that the 'classic' agrarian question of capital has now 'been resolved on a world scale *without its resolution* – as a foundation of national development/accumulation, generating comprehensive industrialisation and wage employment – in most of the poorer countries in the South.' What we now have, in Bernstein's view, is the concentration of agribusiness capital on the one hand, and on the other the fragmentation of labour, most acutely and ferociously felt in Africa but also in the maquila export processing zones of Central America, as key components of globalisation.

There is no longer any need to change production in the South through land reform because the global production of food has been resolved, to the satisfaction of some. Nothing in current official development discourse, Bernstein argues, is capable of addressing this rather grim situation. (Bernstein 2002: 448, 452).

In a context of weakened states and relatively new and weak civil society in Africa, donors have come to play a highly significant role, one, which is not always apparent to an outsider. The donors bring both desperately needed resources and an anti-poverty, anti-corruption rhetoric, the latter being frequently ignored in contexts where serious economic interests are at stake. Donors have conspicuously failed, however, to seriously address, let alone redress, the major issue of redistribution of land in Southern Africa, and have thereby helped to create a crisis in Zimbabwe, which is continuing to reverberate strongly across that region.

### 2. Uganda

Recent Ugandan experiences of contestations over land, in a relatively favourable post-conflict environment, with a government committed to economic reform and a very sympathetic donor community, emphasise the need for constant vigilance and to take long-term perspectives.

Pressures for land tenure reform began in 1988 with the establishment of a committee in the Ministry of Agriculture to look into ways of making land more freely available for investment. Research along these lines was conducted with the very willing support of USAID and the Wisconsin Land Tenure Center. Draft Bills were being written from 1993. Alarmed by and in response to this trend, a group of local and international NGOs and academics decided to form the Uganda Land Alliance. This Alliance, formed in 1995, has been something of a model for similar groupings formed elsewhere. Oxfam GB played a significant role in encouraging this development and its recent campaigning experiences on basic rights proved useful and relevant for the Alliance.

An early draft of the land bill implied the promotion of a completely free market in land through the transformation of the whole country into individually owned leasehold and freehold estates. Liz Wily, an independent adviser called in by the Alliance, described it as one of the harshest transformations into western tenure yet attempted in Africa, and one, which would open the door to rapid accumulation and land speculation. In response, the Alliance sought to:

- Lobby for a moratorium on land acquisition and registration, pending enactment of a fairer law;
- Publicise the new draft land bill for debate from the grassroots upwards and carry out education of the general public in order to promote further this debate;
- Lobby to ensure that the new land tenure arrangements protect the rights of vulnerable and disadvantaged groups and individuals.

So began a long struggle. After initially being treated with some disdain by the Technical Committee on Land, the Alliance gradually gained strength and mo-

mentum and forced recognition of its concerns on behalf of the poor, aided by strategic support from both Oxfam and DFID (the British Department for International Development). It began its lengthy and frequently uneasy engagement with the Ministry of Lands.

Following sensitive lobbying, a key breakthrough occurred at a workshop in Kampala in September 1997. This was open to the public and attended by 300 people. The Prime Minister was present, as was the Minister of Lands and several MPs, representatives from the World Bank and DFID, and the British High Commissioner. It was an important opportunity for the Alliance to make public its critical views of the bill. There was heated debate and many conflicting views, but some very positive outcomes:

- The Prime Minister agreed to hold a public debate on land, something which had been previously resisted, and which the World Bank said it was also now committed to;
- The new land bill was declared a public document and so was open to comment;
- There was clearly a great deal of support for looking at poverty issues;
- The government announced that it would not be taking land from the people for foreign investment, as it already has enough land for this.

Following this breakthrough, the Alliance made use of its connections with Oxfam to conduct a series of grassroots workshops. Finding the Ministry's concept of 'consultation' highly circumscribed, the Alliance switched to targeting MPs and ran a workshop specifically for them. Meanwhile other lobby groups, which wanted the Bill passed as it stood in order 'to free up' land, began mobilising. The Alliance took up a number of specific gender issues, including co-ownership of land by spouses. There was enormous pressure to pass a Land Act before a constitutional deadline in June 1998. There was a very heated debate in the press and in parliament, where a divisive issue was the role of landlords in Buganda. Despite the controversies, there was general satisfaction with the 1998 Uganda Land Act and a real sense of achievement by the Alliance that it had largely managed to deflect the law from its original course. Its main concern was over the 'lost' co-ownership clause, which it was naively hoped would be quickly reinstated. But initial satisfaction was rapidly followed by disillusion because the Act could not be implemented.

So much attention (Einzug fehlt!) had been focussed on the process, the lobbying and the constitutional deadline that no one, not the politicians, nor the NGOs, nor DFID (which had become involved as a key donor) had done any serious costings. In the event these proved to be extremely large; to finance land titling and ownership transfer alone was estimated to cost over £280 million. (Palmer 2000: 277). There were significant additional difficulties; the Act tried to co-

ver the whole country in one fell swoop and it swept away existing institutions without replacing them; significant regional differences, especially between north and south, were to a large degree ignored; the absence of an agreed national land policy was acutely felt; and there was a serious lack of attention to the need for capacity building within the Ministry. Since then, there has been an exceptionally difficult process of trying to find ways of moving forward with a law that cannot be implemented as it stands. (Adams 2000: 85-94).

The Alliance has meanwhile battled away, unsuccessfully, on the co-ownership issue. This was apparently agreed to, but lost between the Bill and Act because the MP Miria Matembe, when she read out the clauses in parliament, had not been handed the microphone, and so they were never officially recorded in Hansard. She recalled later:

‘You can see the tactics used by these male conspirators. The men had achieved what they wanted for themselves in the [1998] Land Act. The Baganda got their share. The Banyoro got their share. And after the women lost out...none of these men was ready to come our way with support.... As with so many things, the women were left out again. Justice for women? Not this time? But when?’ (Matembe 2002: 252).

In a series of recent publications, the Alliance and some of its key allies and supporters have looked back somewhat ruefully over this whole process. (Rugadya and Busingye 2002, Matembe 2002, Asimiwe 2001). They have come to recognise, sadly, that politics remains a male domain in Uganda, that they lack political leverage, and have limited ability to reach rural women; that in situations of intense competing interests the government tendency is to compromise rather than stick to its policy commitments; and that the Government had calculated that the cost of stalling the debate on co-ownership was negligible. They had hit the rock of patriarchal power and were frustrated by the inaction of female legislators. Yet the feeling was that, despite all the obstacles, there was still an opportunity for partnership with government in implementing the Land Act. They had, after all, ensured that the debate on women's land rights (see Palmer 2002) moved out of the closet into the public domain, and they had achieved concrete gains both in the Act and in representation on dispute resolution committees. (Rugadya and Busingye 2002: 17, 31).

They further recognised that at a tactical level they needed to ask 'where they were coming from', to address key conceptual issues regarding patriarchy, to adopt a long-term (10-20 year) perspective on current land reform processes, to strengthen coalitions with like-minded partners and to be selective about who they were. They also needed to ensure

‘that our advocacy efforts (as essentially elite-led organisations) are rooted in the reality of those who have an even higher stake in land because their livelihoods are dependent on land, and that our goal should not be to do things for them but to enable them to undertake their own analysis and action.’ (Rugadya and Busingye 2002: 4).

They also needed to pay attention to differences among women and to rethink and amend customary tenure to match changing times. It was essential to continue supporting skills training, to promote debate, be more proactive in sensitisation and advocacy campaigns, provide communities with information, and help women to translate rights into meaningful opportunities to participate in national development programmes. (Rugadya and Busingye 2002: 41). Though they were still waiting for justice for women, as activists they had not given up but were reviewing strategies, devising new ways of lobbying MPs, actively recruiting male allies (though few men had hitherto been brave enough to publicly support the women’s cause), extending public dialogues to rural areas, and conducting research to demystify myths surrounding women’s land rights. (Asimiwe 2001: 185-7).

In conclusion, as the distinguished law professor H.W.O. Okoth-Ogendo told the Alliance,

‘Legislating land rights for the poor is certainly very risky business. It involves the likelihood of antagonising powerful land elites without necessarily following a reformist momentum among the same poor whose position the proposed law seeks to uplift. Furthermore, it is by no means certain that the end of the exercise the poor will find the results sufficiently attractive to take advantage of. Moreover, the cost of undertaking the exercise may be too heavy for the national economy to absorb.’ (Rugadya and Busingye 2002: 53).

### 3. Mozambique

Mozambique, like Uganda, is in a post-conflict situation, but with few of its advantages. It has suffered from appalling Portuguese colonialism, insensitive Marxist-Leninism, brutal South African aggression and a civil war, all of which have helped generate desperate poverty. Mozambique’s ruling party Frelimo used regularly to incant *a luta continua* (the struggle continues). Because Mozambique’s land struggles are so little known in the rest of Africa, I have sought to gather together a list of articles and reports on my *Land Rights in Africa* website which document and explore that experience in detail. (Hanlon 2002, Kanji 2002, Knight 2002, Negrão 1999a, 1999b, Norfolk and Liversage 2002, Tanner 2000, 2002).

In summary, as soon as the civil war ended in 1992, the Wisconsin Land Tenure Center and USAID were again busy pushing privatisation of land, just as they had done in Uganda. Mozambique clearly faced huge problems of reconstruction, having suffered massive destruction during a war, which had displaced millions of people. There were concerns around competing claims to land as people returned to a countryside much of which had previously been unsafe, as a large number of concession claims were made by South African and other speculators, and as plans were mooted to settle in parts of Mozambique some Afrikaner farmers who had difficulty coming to terms with the new South Africa,. Frelimo was also busy transforming itself from Marxist-Leninism to neo-liberalism in the wake of the collapse of its former Soviet ally.

In this somewhat unpromising situation, to which should be added a long history of highly directive top-down governance, there emerged a quite remarkably open and consultative process of law making, culminating in the 1997 Land Law (*Lei de Terras*) which was followed by an equally remarkable campaign of public awareness to help people understand their new rights under that law. The key elements of this law were:

- ‘Land remains the property of the state; communities, individuals and companies only gain use rights (leases).
- Use rights can be transferred but cannot be sold or mortgaged.
- Use rights are gained by occupancy or by the grant by the state of a lease of up to 100 years.
- Formal title documents showing the right to use land can be issued not just to individuals and companies, but also to communities and groups.
- Communities or individuals occupying land for more than 10 years acquire permanent rights to use that land and do not require title documents.
- Courts must accept verbal evidence from community members about occupancy. (Verbal testimony was restricted under the old law, which gave absolute preference to paper titles. This clearly worked against peasants.)
- Titles for use cannot be issued on land already occupied by others.
- Titles for use rights are only issued if there is a development plan; titles are issued provisionally for two years and made permanent (for up to 100 years) only if the projected development is being carried out.’ (Hanlon 1997).

All of these components were remarkable, not least the retention of land belonging to the state in the face of very considerable Western pressures to liberalise, and the use of verbal testimony to assert historical claims to land. The processes, which produced the law involved a wide range of actors, including the NGOs ORAM (Associação Rural de Ajuda Mútua) and UNAC (União Nacional de Camponeses), church based groups, a Land Studies Unit at the University of Maputo, various politicians and international organisations such as FAO. (Tanner 2002, 2000).

In a recent study of the role of NGOs in promoting land rights in Kenya and Mozambique, Nazneen Kanji has suggested that the critical factors involved in the case of Mozambique were:

- ‘Political liberalisation, increasing freedom of speech and of the press allowed NGOs to influence land policy. It was possible to criticise draft versions of the land law in public without fear of reprisals. Freedom of the press allowed opposing voices to be heard and citizens to be informed of different arguments.
- In the process of formulation, discussion and approval of the new land law and its regulations, the broad alliance between sections of government, parliament, religious institutions, NGOs, academics and donors was a critical factor in its success.
- The churches were important and active in this process, promoting dialogue between Frelimo and Renamo, establishing the Diocesan Lands Committees, and supporting the creation of the NGO ORAM to defend the rights and interests of communities.
- The Latin American experience of agrarian reform positively influenced the Mozambican land reform process. Some individuals – religious persons, academics, and representatives of development agencies and consultants of the United Nations system – were from Latin America and had particular knowledge of and sensitivity to land issues.
- The fact that individual academics and leaders of non-governmental organisations were respected and recognised for being honest was vital to the success of their advocacy. These leaders were able to engage with different interest groups while maintaining their commitment to promoting land rights for the majority. They were not members of either of the main political parties.’ (Kanji et al 2002: 11)

Clearly this combination of favourable factors was unique to Mozambique at that time and is not replicable. After the passing of the law, a Land Campaign (Campanha Terra) co-ordinated by the respected academic José Negrão, and supported by a range of international NGOs including Oxfam GB, then sought to disseminate information about the new law.

‘The Campaign produced: 120.000 copies of a total of six 8-page comic books; three thousand audio cassettes with the dramatisation of the comic book scripts one side in Portuguese and the other in one of the local languages; a manual to accompany the reading of the new Land Bill with a printing of 20.000 copies; 15.000 copies of an aerogram like form for registering land conflicts, six guide-books for theatre in Portuguese and 20 national languages; 500 posters with the symbol of the Land Campaign; one supporting text

about traditional, customary rights and access of women to land. All of this material was distributed to the provincial capitals using road and air transport.’ (Negrão 1999a).

‘At the end of two years of operations, 114 of the 128 districts and 280 of the 385 administrative posts existing in the country had already been covered. Around 15,000 volunteers had been trained as activists in the Land Campaign – these included young people, priests, pastors, evangelists, teachers, extensionists and NGO workers, in an authentic movement of national unity.’ (Negrão 1999b).

In its second year, the Campaign stressed the fact that consultation with local communities was obligatory when outsiders applied to acquire land in rural areas, and it sought to inform people about the ways in which such consultation should be carried out. Its concern arose from a series of cases in which officials had limited themselves to collecting only a few signatures in a token attempt to fulfil the consultation requirements.

Mozambique’s progressive land law and land campaign not surprisingly produced a backlash. During 2001 an alliance of local and outside forces began seeking to undermine the law. USAID was irritated because Mozambique had not taken privatisation as a fundamental guiding principle in drafting the law. It began to argue that the law blocked the creation of land markets and was impossible to implement because it implied serious (and hence lengthy) consultations with communities before any agreements could be made to lease land to outsiders. In addition, some senior Mozambican elite figures did not like the law. They felt that they had been caught off guard when it was passed and complained that it challenged the power and interests of the state and complicated their accumulation of land. Quite a few Western donors sympathised with this view, and those in Mozambique who were seeking to defend peasant rights grew increasingly concerned about these developments.

On hearing about this and being approached about some possible response, Oxfam’s concerns were that the whole process of getting a pro-poor land law in place, then following this with a fairly effective campaign of publicising the law and making people aware of their new rights, was in danger of being undermined, and thus all the time, effort and resources which Oxfam and many others had put into the process could well be undone. The question revolved around whether Oxfam GB would support some fact finding research by the Mozambican specialist, Joe Hanlon, who would try to discover what exactly was going on and by doing so would give support to those trying to defend some hard-won gains. There were numerous political complexities, including those caused by

events in Zimbabwe. In the meantime, Hans Binswanger, the World Bank's land guru, visited Mozambique and, to the surprise of some, proclaimed that Mozambique's Land Law was one of the best in Africa. At the same time, the issue of privatisation of land was raised by a number of Mozambicans attending a major World Bank workshop on land issues in Africa in Kampala.

In the event, Joe Hanlon went to Mozambique in mid-2002 and produced a careful, thoughtful and comprehensive research paper on the land debate in Mozambique. He stated that:

'Land is again the subject of debate in Mozambique, five years after the passage of a land law following wide-spread consultation in one of the most democratic processes in Mozambique in the 1990s. The law has won praise for protecting peasant rights while creating space for outside investment. The new debate is about two issues: – Should land, or at least land 'titles' (effectively, leases), be able to be sold and mortgaged? – Should more emphasis be put on improving conditions for would-be investors (particularly large foreign investors) or should the stress being on delimiting and protecting peasant land, and capacitating communities to deal with investors?' (Hanlon 2002: i).

Hanlon argues that the debate on land was actually a proxy for a debate about rural development and who should drive it – foreign investors, the urban elite, advanced peasants, or family farmers. Different groups were prioritised by different Mozambican and foreign actors, and he found sharp divisions within government, the World Bank, donor agencies, and Mozambican civil society. Hanlon went on to note that:

'The law gives communities the right to delimit and register their land, including not just immediate farms but fallow and reserve land. Once registered, potential investors need to negotiate with communities rather than merely consult them. About 100 communities have had land delimitations approved, but so far there have been no negotiations with investors. Delimitation gives communities power, but the process can cause problems, raising expectations and sometimes disinterring old disputes. Although the process is expensive and time-consuming, it may be the only way to protect peasant rights. So far, communities do not understand the value and potential of their land.' (Hanlon 2002: i).

Rather than make recommendations, which might have been considered politically insensitive, Hanlon's paper cited proposals already made by Mozambicans and foreigners on themes such as: continuing the work of the land commission, improving consultation, continuing delimitation, creating a kind of community organiser, facilitator or barefoot planner, enforcement of regulations and agree-

ments, pilot partnerships, credit guarantee funds, and increased transparency. Finally, the paper stressed the central role of Mozambican NGOs, but raised a number of questions about their increased role as service agencies and their ability to do what might be asked of them. Hanlon's key points concluded:

There is a need to shift the balance toward peasants and the poorest, to guarantee in practice land rights contained in the law, and to increase the ability of communities to invest and to become genuine partners with outside investors. The key question is how to encourage both small and large investment without also aiding land grabs. (Hanlon 2002: i)

It would be premature to judge the impact of this research paper (which was also of course translated into Portuguese) but it was extremely helpful in clarifying and publicising the issues in what had hitherto been a somewhat covert debate. The shadows of Zimbabwe and of race do complicate matters, as does the fact that a number of white Zimbabwean farmers have sought (and been given) land in Mozambique. The role of donors in such a highly donor dependent country as Mozambique is inevitably highly sensitive and I strongly agree with Hanlon's conclusion that:

'In the end, the land debate is really a proxy debate, to replace a debate about development policy that remains tabu. It would make more sense if Mozambicans could be encouraged to have that debate in public.' (Hanlon 2002: 36).

As an interesting footnote, a very strong defence of the land law, written post-Hanlon by Rachel Knight and based on her fieldwork in four rural communities in Manica Province during 2002, concluded that:

'The 1997 land law is slowly facilitating monumental changes in the consciousness of rural small scale farmers... empowering them to use the law to protect their interests and defend their claims to land; and assuring them of the tenure security they need to begin to invest more permanently on their land. In short, the law is acting as a catalyst for both the conceptual and physical development of rural communities. Furthermore, community dialogue is beginning after years of silence and decisions handed down from above, a process which is contributing to the growth of village unity. Mozambique's 1997 land law is slowly accomplishing everything it set out to do and more – actively granting rural peasants rights and a means through which they can secure these rights is not only propelling the economic development of the countryside, but also the conceptual development of the people.' (Knight 2002).

It is to be hoped that this struggle will continue, but victory (to paraphrase the old Frelimo slogan) is by no means certain.

#### 4. South Africa

In South Africa a post-apartheid government came to power committed, among many other things, to a radical and imaginative programme of land reform and redistribution, aided, so it seemed, by a very experienced NGO land sector, honed in the struggle, and some extremely skilled lawyers intent on drafting new pro-poor laws and a new Constitution. (Palmer 2001).

The land reform programme, set out in 1994, sought:

‘to redress the injustices of forced removals and the historical denial of access to land. It was to ensure security of tenure for rural dwellers, eliminate overcrowding and to supply residential and productive land to the poorest section of the rural population. Land reform was to raise incomes and productivity and, through the provision of support services, to build the economy by generating large-scale employment and increase rural incomes.’ (Adams 2000: 46-7).

This was to be achieved through a three-pronged approach of restitution, involving cases of post-1913 forced removals of individuals and groups, redistribution of 30 per cent of the country’s agricultural land from white to black owners within 5 years, and tenure reform, which sought to increase tenure security, for example of farm workers, and to accommodate a diversity of forms, including communal tenure. A raft of new laws and institutions (including a new Department of Land Affairs) were created to try to make all this happen.

But it did not happen at anything like the speed envisaged. The obstacles were many, not least from the continued strength of so-called ‘organised agriculture’ (white commercial farmers). Here, as in Zimbabwe and Namibia, the intransigence of white farmers blocked land reform in the short term, but could well prove disastrous to them in the long term.

But there were also deeper structural problems. As part of the ‘historical compromises’ made at the change of government, South Africa ‘bought’ the prevailing World Bank model of market-assisted land reform and a clause in the Constitution guaranteeing existing (hence overwhelmingly white) property rights. It is now abundantly clear that in the South African context there are fundamental problems with a demand-led, market-based approach to land reform and with the ‘willing seller, willing buyer’ approach. The scope that these provide for securing sustainable rural livelihoods for poor people has proved very limited. It clearly needs to be complemented by a supply side component involving acquisition of land by government when it becomes available at favourable prices for later re-

distribution to the rural poor. This is necessary because poor people in South Africa are simply not in a position to organise themselves to utilise funds for land acquisition, settlement and production on any significant scale. Contrary to expectations, South African NGOs did not take up that role, so a considerable government support system had to be put in place before poor people could move even to the point of land acquisition, let alone to settlement and production. It has also been found that extensive training was necessary in a number of critical areas around land acquisition and it took several years for the Department of Land Affairs to get up to reasonable speed on that.

But the performance of South Africa’s land reform programme also needs to be seen within the contexts of:

- the huge constraints imposed by the inherited apartheid structures and unreconstructed power relations on the land;
- the relative weakness of the new state structures and the absence of effective local government structures;
- the relative collapse of the land advocacy NGOs through leakage of staff to government and the drying up of international funding;
- the fickle and inconsistent political support for land reform which seems characteristic of new majority rule situations; in particular the lack of adequate government resources allocated.

There are a number of key lessons which can be learned from South Africa’s land reform experiences to date. Among them are:

- That there is a need to establish good monitoring and evaluation systems at the outset in order to be able to gauge subsequent impact effectively.
- That there is a danger of passing so many new land laws that you lack the capacity to implement them.
- That measures designed to protect labour tenants and farm workers can very easily backfire as long as existing power relations remain unchallenged.
- That it is very difficult for poor, rural people to make their voices heard.
- That NGOs can find it difficult to define a role when they are broadly supportive of government, but they do not easily become implementers of land reform, often lacking hands on experience of this.
- That 5 years is certainly far too short a timeframe in which to measure success or failure of a land reform programme.

Land reform always seems to be in a state of flux in South Africa. This was forcefully brought home to me in 1999 when, with Lionel Cliffe of the University of Leeds, I joined a South African team reviewing donor support to the land reform programme. We did our work immediately after an election and the change of minister from Derek Hanekom to Thoko Didiza, at a moment when all past policies seemed to be on hold and there was considerable disarray and tension



within the Department of Land Affairs. It seemed the worst possible moment to be conducting such a review. Similarly, when I began writing a review of some of the work of the Legal Resources Centre in July 2001, I did so in the immediate aftermath of the Bredell land invasion near Johannesburg, and received two very contrasting emails on the same day – one saying that the Governor of the Reserve Bank had intervened personally over Bredell, fearing that if it went ahead unchecked the South African economy would collapse, while a very experienced NGO land activist wrote ‘I must confess this was one of the most horrifying moments of my time in the land sector.’ In the immediate aftermath of Bredell, there was official talk of a ‘wake-up call’, of ‘going back to the drawing board’ to address the slow pace of delivery, and of a ‘pivotal shift’ in redistribution policy. The government was thought to be preparing to table a bill which would outlaw land invasions, saying it was determined to resist such unlawful acts. For some this ‘evoked memories of similar attempts by successive apartheid governments.’ (Business Day, 15 September 2001).

Since then, a Landless Peoples Movement has been formed, supported somewhat uneasily by the much older National Land Committee. It has called for the scrapping of the property clause in the Constitution, a speeding up of restitution and redistribution to the landless, the allocation of more support and funding to land reform, and a land summit. It is a new, volatile and unpredictable player on the scene, with its rhetoric of ‘Landlessness = racism. Give us our land now’ (Laurence 2002), and has caused the government some serious embarrassment, especially by its highly visible march during the World Summit in Johannesburg in August 2002. This has been further complicated by Zimbabwe’s attempts to export its land acquisition programme to its neighbours. Robert Mugabe’s ruling ZANU-PF party has established links with both the South African opposition Pan Africanist Congress, which had supported the Bredell land invasion, and with the Landless Peoples Movement. South Africa’s recent handling of Zimbabwe has been a contentious issue internationally, and the positive reception accorded Mugabe’s speech at the World Summit calling for further redistribution has added a new dimension.

While Mugabe has certainly become a brutal, self-serving tyrant, this does not negate the fact that the issues that he is raising require much more imaginative responses than they have received to date. For example, I believe that he is right:

- in categorising the colonial expropriation of land as unjust and oppressive – and needing radical resolution;
- in castigating the colonial powers for encouraging and legalising it;
- in castigating them again – with America – for their Cold War fears which put such huge constraints on all redistribution programmes in Southern Africa;

- in complaining that the promises of buying out white farmers (Kenya-style) that were made by Owen and Young were reneged on in the Thatcher-Reagan era, and replaced by the ‘willing seller, willing buyer’ formula;
- in arguing that in practice this meant legalising more than a century of oppression and land grabbing, in which millions of people were uprooted from their ancestral lands without being paid compensation and often with deliberate cruelty;
- in complaining that bringing about pro-poor land reform therefore necessitated the ‘willing consent’ of the colonial beneficiaries of past expropriation;
- in feeling aggrieved when donors in Zimbabwe did not come forward with funding after the September 1998 agreement on a new programme of land reform according to the existing ‘rules of the game’;
- in abandoning the narrow technical arguments, which have always been used by opponents of redistribution in Southern Africa;
- finally, in appealing in the language of historical injustice which – because the fundamental issues have not been adequately addressed – has enormous popular appeal among the poor right across Southern Africa and so – to the chagrin of European governments – make it very difficult for neighbouring Presidents, especially Thabo Mbeki, to criticise him in public.

In a context in which the one thing which unites people in Southern Africa (and unites them against Western donors) is the need for redistribution, and in which the World Bank’s Land Reform and Policy Co-ordinator for Africa argues that redistribution is good for growth, efficiency and poverty reduction, it seems to me that those Western interests which have at enormous social cost successfully contained ‘communism’ in Africa, need to fundamentally rethink their approach. By letting the genie of redistribution out of the bottle, admittedly for his own brutal and corrupt ends, Mugabe has concentrated people’s minds in a way that nothing else could have done and has taken the land struggle into a different dimension.

### Abstracts

This article focuses on struggles to secure and defend the land rights of the poor in Africa.

A very brief introduction sketches the impact of liberalisation on land in Africa, then looks at the deeper context of land reform, and at the current role of donors. The article goes on to look at detailed case studies of Uganda, Mozambique and South Africa and examines reasons for successes and failures of pro-poor land struggles in those countries. It concludes by focusing on the issue of redistribution in Southern Africa.

Dieser Artikel beschäftigt sich mit dem Ringen von NGOs aus dem Norden und Süden die Landrechte der armen Bevölkerungsteile in Afrika zu sichern und zu verteidigen.

In einer kurzen Einleitung wird auf die Auswirkungen der Liberalisierung von Land in Afrika ebenso eingegangen wie auf den weiteren Kontext von Landreform und die Rolle der Geber. In weiterer Folge werden anhand der Fallstudien Uganda, Mosambik und Südafrika die Gründe für die Erfolge und Misserfolge des Kampfs um Landrechte für die Armen in diesen Ländern diskutiert. Im Schlussteil fokussiert der Artikel auf das Thema der Umverteilung von Land im Südlichen Afrika.

## References

- Adams, Martin. 2000. *Breaking Ground: Development Aid: Development Aid for Land Reform*. London: ODI.
- Asimiwe, Jacqueline. 2001. 'Making Women's Land Rights a Reality in Uganda: Advocacy for Co-Ownership by Spouses'. *Yale Human Rights and Development Law Journal*, 4, 171-87.
- Bernstein, Henry. 2002. 'Land Reform: Taking a Long(er) View'. *Journal of Agrarian Change*, 2, 4, 433-63.
- Hanlon, Joseph. 2002. *The Land Debate in Mozambique: will Foreign Investors, the Urban Elite, Advanced Peasants or Family Farmers Drive Rural Development?* (Pretoria: Oxfam GB in Southern Africa)  
<http://www.oxfam.org.uk/landrights/debatMoz.doc>
- Hanlon, Joseph. 1997. *Mozambique Peace Process Bulletin*, 19, September 1997.
- Kanji, Nazneen, Carla Braga and Mitullah, Winnie. 2002. *Promoting Land Rights in Africa: How do NGOs Make a Difference?* London: IIED.  
<http://www.oxfam.org.uk/landrights/PLR.pdf>
- Knight, Rachael. 2002. *Camponeses' Realities: Their Experiences and Perceptions of the 1997 Land Law*. <http://www.oxfam.org.uk/landrights/MozLawCR.doc>
- Laurence, Patrick. 2002. 'Struggle for land, a crucial new chapter', *Focus*, 28, December.
- Matembe, Miria. 2002. 'Moment of Reality – The Land Act 1998'. In: Matembe, Miria (ed.), *Gender, Politics and Constitution Making in Uganda*. Kampala: Fountain Publishers, 234-53.
- Negrão, José. 1999a. *The Land Campaign in Mozambique*.  
<http://www.oxfam.org.uk/landrights/Mozcamp.rtf>
- Negrão, José. 1999b. *The Mozambican Land Campaign, 1997-99*. Paper at the Workshop on the Associative Movement, Maputo, Mozambique, 14 December.  
<http://www.oxfam.org.uk/landrights/Mozcamp2.rtf>
- Norfolk, Simon and Liversage, Harold. 2002. *Land Reform and Poverty Alleviation in Mozambique*. Pretoria: SARP. <http://www.oxfam.org.uk/landrights/LRPAMoz.doc>
- Palmer, Robin. 2002. *Gendered Land Rights – Process, Struggle, or Lost Cause?*  
<http://www.oxfam.org.uk/landrights/gendered.doc>

- Palmer, Robin. 2000. 'Land Policy in Africa: Lessons from Recent Policy and Implementation Processes'. In: Toulmin, Camilla and Julian Quan (eds.). 2000. *Evolving Land Rights, Policy and Tenure in Africa*. London: DFID, IIED, NRI, 267-88.
- Palmer, Robin. 2001. *Lawyers and Land Reform in South Africa: A Review of the Land, Housing and Development Work of the Legal Resources Centre (LRC)*.  
<http://www.lrc.org.za/4Pub/Papers/palmer.doc>
- Rugadya, Margaret and Harriet Busingye (eds.). 2002. *Gender Perspectives in the Land Reform Process in Uganda* (Kampala: Uganda Land Alliance).
- Tanner, Christopher. 2002. *Law-Making in an African Context: The 1997 Mozambican Land Law*. Rome: FAO Legal Papers Online No. 26.  
<http://www.oxfam.org.uk/landrights/FAOMzLaw.doc>
- Tanner, Christopher. 2000. *Report on an FAO Workshop on Common Property Tenure Regimes: Methodological Approaches and Experiences from African Lusophone Countries*.  
<http://www.oxfam.org.uk/landrights/faoluso.rtf>

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