SECURE TENURE MUST BE THE FOUNDATION OF ADAPTATION IN EAST AND SOUTHERN AFRICA

Sensitivity to land tenure conflict and associated land tenure rights are essential for successful climate change adaptation initiatives. Climate change will have devastating effects on local livelihoods in East and Southern Africa. In response, governments in the region are developing land-use based adaptation initiatives; for these to work, governments must resolve land tenure rights issues at the local level.

All climate change adaptation is local. Adaptation plans and decisions could be made at international and national levels, but the implementation must be at the local level for these plans to make a difference. Therefore all land-use based climate change adaptation programmes have to pay attention and be sensitive to land tenure rights and social relationships at the local level for such programmes to stand any chance of sustainable success.

Land tenure rights do not stand alone but are closely associated with other human rights to food, housing, water and work.

Several international organizations including the International Labour Organization (ILO), the UN Human Rights Council, the Food and Agricultural Organization (FAO) of the United Nations, and UN-Habitat have recognized the centrality of tenure to their mandates and also the common occurrence of conflicts over land between governments and local people, and between the strong and the weak in many communities.

The ILO Convention No. 169 of 1989 (ILO 169) on Indigenous and Tribal People’s Rights, a globally binding treaty on governments, states in Article 14(1) that:

The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

Policy designers in government and project implementers have to keep in mind that, unless land tenure rights issues can be freely articulated by local people through legitimate channels, there will always be the risk of conflict, which in turn could increase local vulnerability. The importance of legitimacy in the articulation of land tenure rights draws our attention to the need for substantive local representation, participation and democracy with regard to decision-making about land use.

RECOMMENDATIONS

- Governments must be responsive to land tenure rights claims of local people in order to ensure successful implementation of land-use based climate change adaptation initiatives.
- Governments must publicly acknowledge land tenure rights as inviolable human rights of all their citizens.
- Governments should provide legal and other support for local people to realize land tenure rights awarded in legislation.
- Governments must explicitly acknowledge and recognize that women and men have equal rights to land.
- NGOs and international development partners must pressure governments to be responsive to the human rights of their citizens including land rights.

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Contemporary policy nullifies customary tenure rights that ordinary people in East and Southern Africa had enjoyed during the pre-colonial era. Local people also lack the power to be effective competitors for land against the private sector and large conservation organizations.

In Uganda prior to colonialism, powerful rulers like the Kabaka had the final word on land use in their territory. During British colonial rule from 1894, traditional leaders of self-governing groups including the Buganda, Busoga, and Bunyoro became answerable to the colonial authorities, who strengthened the power of these traditional leaders over land. They could make decisions without consulting their subjects as long as the colonial authorities approved. This pattern repeated itself all over East Africa; in countries like Tanzania, with weak or non-existent customary institutions, the British created such traditional leaders and empowered them to make decisions over land use. At independence, governments in East Africa took away the privileges of land-use decision-making from traditional leaders, placing all land under government ownership. The villagers however remained voiceless. Even when governments tweak the law, as happened in Tanzania with the 1999 Village Land Act that allows for management rights over land by village authorities, ownership rights still remain with the government as stated in Section 3(1)(b) of the Village Land Act.

In the Southern African countries of Mozambique and Angola which were under Portuguese colonial rule, customary authorities' influence over land remained undisturbed as the colonial authorities were more interested in conscripting labour from the rural areas. This changed after independence and the end of the civil wars; interest from these governments in foreign investment attracted forest exploitation and agricultural development companies, who appropriated land in rural areas with government support, leading to conflict with rural people displaced from the land. In Zimbabwe, white settlers took the best agricultural lands in the colonial era, and at independence the white minority owned about 50% of the most productive lands. This bred much resentment in the majority black population, and has played a part in political instability and conflict in Zimbabwe, with corresponding losses of rights to food, housing, water and work.6

Legitimacy of land-use based climate change adaptation initiatives is essential for reducing the likelihood of land tenure conflicts.

In this respect it is helpful if local people’s participation in land tenure decision-making policy processes is led by local representatives democratically chosen by local people.

Freely elected local representatives have to be responsive to local interests and accountable to local people; thus local democracy increases legitimacy and reduces social vulnerability.

Force is a feature of land management

Governments easily use the law backed by physical force to evict local people from land set aside for government use or leased to private enterprises. This has led to conflict between local people and government in many communities. In Kenya, the Maasai have had a long-running conflict with the government over the location of protected areas in their traditional lands.

In Tanzania, communities around Mt Kilimanjaro have been resisting loss of forest-use rights due to a government decision to expand the boundaries of the Mt Kilimanjaro National Park. In the Rufiji delta area, a number of multinational companies have acquired land for agricultural development with the support of the Tanzanian government, and against the wishes of some of the village authorities in the area. This has pitted local people and their village authorities against multinational companies and their supporters in government. In the Mt Elgon area in Uganda, government authorities have faced severe challenges from local people in their attempt to establish the boundaries of the Mt Elgon National Park gazetted in 1993.

Local people do not have ownership rights over the lands on which they depend for livelihoods, and government authorities disregard the human rights of local people to food, housing, water and work when making decisions about these government-owned lands.7
Resolving land tenure conflict and creating an effective base for adaptation

Governments in East and Southern Africa appear to be listening to the voices asking for land tenure reform that is responsive to the needs of the marginalized. However, the results are mixed, and in some instances local land conflicts have been exacerbated, undermining any possibility of successful adaptation.

At the end of apartheid in 1994, the South African government attempted to empower rural people to own land through the 2004 Communal Land Rights Act. This did not produce the expected results due to the power that the government also bestowed on traditional authorities to decide on land matters, which they have used to further their private interests rather than the interests of their local subjects. Presently, South Africa lacks a policy that provides a definitive path to land ownership for rural people; land conflict between local people, traditional authority, elected local government, and private business are commonplace. In areas like Driefontein in Mpumalanga Province, this land policy lacuna is felt even more acutely. Local people successfully fought against the apartheid state for the right to own land, only for them to get drawn into struggles today to maintain ownership of lands they occupy against the interests of private investors and traditional authority.8

In Tanzania, the 1999 Village Land Act allows for customary management rights over rural land by village authorities. However, this legislation is insufficient as it does not transfer freehold ownership rights to rural land users—government still owns all land.

The Mozambican government has gone one step further with its 1995 National Land Policy and the 1997 Land Law. The policy has made three core advances: (i) recognition of customary land claims and the rights allocated through them; (ii) recognition that women and men have equal rights to land; and (iii) recognition that access to and use of land must follow principles of equity. Communities and individuals with customary claims to land, or who have productively occupied a tract of land for at least ten years, are granted transferable land tenure rights. To enjoy legal protection of these rights, the land must be registered with the Justice Department, so it can be recorded onto the national land-use map. Where the land is not legally registered, the local owner stands the risk of the land being apportioned to an investor because it does not appear on the land-use map as an occupied space. The Justice Department is weak and socially distant from rural and poor people, so local land registration is now a major hurdle to enjoying secure land rights. This situation draws attention to the issue of empowerment of the marginalized to stand up for land rights, both recognized and unrecognized.

Partnerships with powerful organizations can be an important strategy for such vulnerable population groups. The success of the land-titling programme for poor landless people in the Indian state of Andhra Pradesh would not have been possible without the support of NGOs and other partners like the World Bank working to provide awareness, literacy and legal empowerment programmes targeted at poor landless people.9

The Voluntary Guidelines for Good Governance in Land and Natural Resource Tenure is a best practice land tenure rights document published by the Food and Agricultural Organization (FAO) of the United Nations. Using a human rights approach, this FAO document identifies six key principles to which governments should adhere when resolving land tenure conflicts:

- non-discrimination and equality
- participation
- priority for vulnerable groups
- accountability
- transparency
- indivisibility and interdependence of all human rights.

The FAO Voluntary Guidelines show that the right to land is a human, civil and political right that governments should respect—not a favour from government to its citizens.
Policy Pointers

All adaptation is local, so to ensure successful implementation of land-use based climate change adaptation programmes, governments must pay attention to land tenure rights at the local level—listening to and responding to the interests of local people. Farming and pastoral communities in East and Southern Africa are among groups most vulnerable to climate change. Women and youth in these population groups are more vulnerable compared with men, as they traditionally have even more limited land rights. Land-use based adaptation initiatives not sensitive to local land rights inequities will be built on shaky foundations, a recipe for failure.

Land conflicts have negative effects on the human rights to food, housing, water and work; governments have to acknowledge land rights as human rights of their citizens and not bounty for political officeholders and their clients. Too often governments have viewed land as a perk of political power, a tool for political patronage, and a source of revenue; what is absent is the perspective that access to and use of land is an essential human right.

Human and other rights are only as real as the ability local people have to claim them. Therefore governments should provide legal support for local people to realize land rights awarded in legislation, as for example the government of Mozambique in leading the way with a progressive land policy that recognizes communal and individual land rights based on customary claims and long-term history of land use. However, government must go a step further to provide legal support for local people so they can register their lands and obtain the legally secure title deeds that accompany registration.

Governments must explicitly acknowledge and recognize that women and men have equal rights to land. Studies have shown that landless men on receiving land titles easily trade this for other personal and short-term financial or material benefits. Landless women on the other hand, on receiving land titles, think long-term and about the welfare of the family rather than personal needs; thus land titling for women have greater impact on poverty alleviation.

NGOs and international development partners must continue to pressure governments in East and Southern Africa to be responsive to the human rights of their citizens including land rights, while at the same time empowering poor people—through awareness raising, and literacy and legal assistance programmes—to take advantage of favourable land policies, where they exist, and contend against unfavourable land policies.

End Notes

1 Agrawal et al 2008
2 Quan and Dyer 2008
3 Wickeri and Kelhan 2010
4 ILO 1989
5 Cousins 2009; Meinzen-Dick et al 2008
6 Golooba-Mutebi 2011; Government of Tanzania 2009
7 Dollar 2012; Mariki 2013; HAKARDHI 2011; Lang and Byakola 2006
8 Cousins ibid; Van Der Westhuizen 2013
9 Nielsen and Hanstad

Author: Emmanuel O. Nuesiri is a postdoctoral researcher with the Responsive Forest Governance Initiative (RFGI) at the University of Illinois Urbana Champaign, USA. His research focuses on the links between governance, political representation and climate change, with special interest in democracy, customary authority and land tenure in Africa. He is a member of the IUCN CEESP Theme on Environment, Conflict and Security.


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