

Land Tenure and Land Grabs in Africa

Land grabs in Africa occur in a number of ways.

Wealthy individuals or enterprises stake out prime land and obtain Government allocation of the land for large agricultural use or industrial activity- often to the detriment of small land owners that are displaced often without compensation

This happened in Uganda where a sugar cane producer Metha staked out a forest he was determined to chop down to plant sugar cane. The local Government offered him alternative land but he rejected it. The forest is a critical environmental treasure as it protects rare plants and animal species in addition to being a watershed for nearby rivers.

Foreign Governments or their instrumentalities negotiate land concessions from African Governments for extensive plots of land for food production which is exported with little or nothing left behind.

This is the case of China and some of the Middle East countries such as Kuwait and Qatar which secured massive tracts of land in Ethiopia and Sudan for food production.

Foreign entrepreneurs who seek to grow food for sale back home: the case of Indian merchants in Ethiopia.

The massive acquisition of land by mostly foreigners is motivated by the quest for foreign investment and facilitated by the fragile land tenure systems.

In Ethiopia for example the Constitution provides that all urban and rural land is the property of the State and the Ethiopian People. Accordingly, sale, exchange and mortgage of land are prohibited. It is stated that the purpose for this is to ensure equitable access of land for all citizens. However this has led to abuse because the State then is free to alienate land to whomever it wants at the expense of ordinary people.

The Federal Rural Land proclamation 456/2006, Article 5(4)a) provides:

Private investors that engage in agricultural development activities shall have the right to use rural land in accordance with the investment policies and laws at federal and regional levels.

According to the law, land can only be allocated to foreigners under “lease” and not absolute ownership.

State control of land is also the law and policy in a number of other countries such Tanzania where under the Land Act of 1999 all land is vested in the President for the benefit of the people Land is administered by a Land Commission under the Land Act and by Village Land Committees under the Village Land Act.

African countries that have adopted State Control of land purport to follow the traditional land tenure systems in existence prior to colonial times. It is said that land ownership belonged to the ruler and that the subjects held land only as “users” or usufruct. The colonialist found this myth extremely convenient. In their reading the imposition of colonial rule meant that all powers of the traditional ruler had been transferred to the colonial power and thus the representative of the colonial government, normally the Governor, was placed in the colonial statutes in the position of “owner” of the land ostensibly in trust of the local inhabitants, as in Tanzania. All land that had not been alienated to foreign investors, for exploitation of minerals or agricultural produce to be exported to the home land, was declared public land. It is on this public land that all the indigenous people were sequestered as tenants at will, allegedly holding their plots of land under “customary tenure”.

The holder of land under customary tenure was accorded in law what was described as a “usufructuary” title: meaning that he did not possess what in Western legal terms is defined as land “ownership” but just a right to occupy and use the land. Since the holder was on “public land” and was not the “owner” of the land he occupied, the Governor could at will grant a registered title, of any land on public land, to any foreign investor, often with little or no compensation to the native occupants. On independence the newly installed elites found this state of affairs too convenient to change as it gave them a great pride and power, as they then controlled all public land, meaning all the land that the colonial administration had not, under the colonial statutes, transferred to foreign “investors” under the registration of land system, and could dispense of it at will by lease or freehold.

In Tanzania a Land Commission appointed to propose reforms to the land tenure recommended changes to this system and vest ownership of land in the hands of Tanzanians. The government refused and retained the original position that all land is vested in the President (successor to the Governor) in trust of the people of Tanzania. In Uganda, the Constitution provides that land belongs to the people of Uganda and may be held as: freehold, leasehold or customary tenure. While this was an improvement the retention of land holding by ordinary Ugandans under the previously debased tenure called “customary tenure” does not give comfort to the holders of land under that tenure as the Government still regarded that land as “public land” or if the land had previously been alienated in freehold to an “owner” the occupiers were automatically classified as “tenants” in their own country. Tenancies were subject to eviction despite the safeguards built into the Land Reform Act 1999. Thus land grabs continue to plague Uganda like any other country on the continent.

The true nature of traditional tenure in pre-colonial times was of course very different from the colonial conception writ large in text books and anointed by colonial judges and courts. Africans lived under three main types of societies. There were the feudal systems where there was a recognized King with chiefs and subjects. Buganda in Uganda is one of them, but there were others such as the Zulus of South Africa, Matabele of Zimbabwe and Ashanti of Ghana. Two Kingdoms still exist on the continent as viable states: Lesotho and Swaziland. There were “Clan” societies such as Somalia where the entire nation was divided among clans and each clan lived under its own laws but all share a common ethnic

identity. There were also the nomads and peasants who had no central authority but lived on the land and roamed freely from place to place in search of water, food or fertile lands to cultivate. In this category are the Masai. Many tribes in Kenya were neither feudal or nomadic but retained control of their lands and individual ownership of developed land was recognized.

Each of these groups carved out a recognized part of the land as their “own” and had rules governing the allocation of use of this land. Most particularly the feudal system was very advanced at the time of colonialism. Buganda was unique in that it combined both feudal and clan systems of land ownership. While the King and through his chiefs retained the right to allocate land and to resolve land disputes, the clans retained full control of clan lands which consisted essentially of burial grounds and land used in common for clan activities. The power to allocate land was exercised once and the beneficiaries of such allocation obtained absolute ownership to the land they with their sweat and energy had transformed to production for their livelihood. Vacant land, except his own, was held by the ruler, not as his own, but in trust for his people, with no right for alienation to strangers. If a member of the community needed more land, more could be added by grant from the local chief from the vacant land. Strangers could be allowed to use but not own land absolutely except when co-opted as members of the community or tribe which required only acceptance of the ways of that community and an intention to stay on a permanent basis usually demonstrated by marrying in the community.

The idea that an “owner” of land could be displaced from his land was heresy and Kings that did so often faced rebellion and most times death or

exile. This happened in Buganda when the King agreed to a proposal from the Colonial Government to grant land titles to the King, Chiefs and other “notables”, thus reducing the occupants of this land into mere tenants at will by a stroke of the pen. The populace rose in arms and rebelled against the King until he succumbed and passed a law protecting the so-called tenants from eviction by “owner” except upon obtaining a court order and only for failure to tithe. This law still remains the basic protection of the peasants against freehold owners in Buganda, known as “Mailo” land. The Land Reform law contains other attempts at lifting the status of customary Law land owners such as obtaining certificates of customary tenure and formation of companies or cooperatives to obtain titles to communal land but all these amount to skim milk “ownership”, whereas the registered title remains full milk “ownership”. Registered titles remain the preserve of the rich and elites who can afford the cost of surveys and registrations fees and gifts. It still behooves me why such Land titles cannot in this age of cartographic mapping be issued to all that can prove “ownership” of the land occupied and tilled on the evidence of neighbors and village chiefs either as individuals or as groups.

If as in Buganda there happens to be a title holder for land in excess of that needed for personal sustenance and commercial exploitation such land should be titled to the occupiers. This would in essence constitute true “land to the tiller” initiated in Ethiopia but not perfected and in Niger.

As explained earlier, land grabs are carried out under the pretext of investment and Governments exercise their illegitimate right to alienate any land not titled to any “investor” that seeks it.

For example:

In Ethiopia, it has been reported: Gambella, the size of Belgium, has a population of 607,000. Its richly fertile soil has attracted foreign and domestic investors who have leased large tracts at "favorable prices."

Between 2008 and last January, Human Rights Watch said, Ethiopia had leased out at least 9.5 million acres of land.

The report says the government has repeatedly denied the clearances are linked to large-scale land-leasing for commercial agriculture. But Human Rights Watch said many villagers it interviewed claim they were told this was the reason.

These land grabs have been widely criticized as a new form of neocolonialism that leaves large parts of Africa in the hands of foreign states and investors while displaced local populations are left to suffer and go hungry.

In 2010 up to 123.5 million acres of African land -- double the size of Britain -- have been snapped up or is being negotiated by governments or wealthy investors, various assessments conclude.

Ethiopia alone has approved 815 foreign-financed agricultural projects since 2007.

Last fall, Oxfam International reported that Asian and Middle East companies had bought up 560 million acres of farmland in developing countries, often at bargain prices, with some reportedly less than \$1 a hectare.

Oxfam estimated Ethiopia now supports the export of fruit and vegetables worth \$60 million annually, as well as flowers worth \$160 million per year.

It noted that Ethiopia's per capita income is around \$1,000 per year. That's less than Haiti, often listed as the world's poorest country at \$1,200 per year.

Rich Arab states like Saudi Arabia have bought up huge tracts of land across Africa in recent years in a bid to combat global food shortages, water scarcity and desertification and to feed their swelling populations.

But now the scramble for Africa is intensifying, with investment banks, hedge funds, commodity traders, sovereign wealth funds, corporations and business tycoons out to grab some of the world's cheapest land -- for profit. China has leased 6.91 million acres in the Democratic Republic of Congo for the world's largest oil palm plantation.

South Korea's Daewoo conglomerate planned to buy 2.9 million acres of Madagascar until the deal collapsed in 2009 when rioters toppled the Indian Ocean island's government.

"Foreign direct investment in agriculture is the boardroom euphemism for the new land grab and those promoting the grab spin it as a win-win situation," Le Monde Diplomatique reported recently.

http://www.upi.com/Business_News/Energy-Resources/2012/01/18/Ethiopia-Thousands-driven-out-in-land-grab/UPI-60071326912191/print#ixzz2OxEIWofl