

**LAND POLICY DEVELOPMENT IN EAST AFRICA
A SURVEY OF RECENT TRENDS**

**By H. W. O. Okoth-Ogendo
Professor of Public Law
University of Nairobi
KENYA**

(A Regional Overview Paper for the DFID Workshop on
'Land Rights and Sustainable Development in Sub-Saharan Africa'
held at Sunningdale Park Conference Centre, Berkshire, England,
16 - 19 February, 1999)

A. LAND POLICY IN EAST AFRICAN HISTORY

Introduction

Land policy in East Africa has had an extremely colourful history. Although firmly rooted in a common foundation cast by the Berlin Conferences of 1884-85 that sanctioned the partition of Africa among the European powers, actual development of land policy on the ground in the three countries of Tanzania (formerly Tanganyika) Uganda, and Kenya (briefly East Africa), parted ways soon thereafter and for nearly a century remained radically different in each jurisdiction. The primary reason for this was that although the assumption of imperial jurisdiction over these territories came almost simultaneously at the close of the 19th century, the 'constitutional' effect thereof varied both with the actual political formations in existence in each context, and the immediate needs and concerns of the imperial authority.

2. The Colonial Phase

Thus in the case of Tanzania, the German imperial authorities had no difficulty in promulgating a series of decrees intended to convert all land in the territory into 'crown land' which was then vested in the empire (Chidzero, 1961). In typical Napoleonic fashion, Germany simply assumed that all land to which private ownership could not be established by documentary evidence, was ownerless (Okoth-Ogendo, 1993). They then proceeded to make a series of freehold grants to settlers along the coast, the coastal townships and in the northern hinterland (Okoth-Ogendo, 1969). The defeat of Germany by the allied powers in the First World War led to the assumption of British imperial jurisdiction over Tanzania but this came with limited authority over land. The League of Nations Mandate under which the jurisdiction was assumed now required the mandatory to protect the land rights of the indigenous inhabitants of the territory. For example, no land occupied by an indigene could be transferred to a non-indigene without the prior consent of the public authorities. It was this requirement which led the British government in 1923 to declare 'the whole of the lands in Tanganyika whether occupied or unoccupied to be public lands' (Chidzero op.cit). Thus although the essential nature of imperial authority over land did not change, the juridical infrastructure accompanying it was considerably overhauled.

In Uganda, the British authorities took a more 'diplomatic' approach. After all, their interest in that country was not settlement but control over the headwaters of the Nile - the lifeblood of Egypt (Okoth-Ogendo, 1991) Consequently they identified a number of traditional rulers and negotiated with them a series of agreements whose effect was to carve out Uganda into private estates to be shared among them and the British government. The 1900 Uganda and Toro Agreements and 1901 Ankole Agreement gave to local rulers and their functionaries, estates (called 'mailo' in Buganda and 'native freeholds' in Toro and Ankole) equivalent to the English fee simple, subject, however, to certain obligations in respect of customary law 'tenants'. The rest of the country not so carved out was then declared 'crownland'.

The 1900 and 1901 Agreements were followed by a series of legislations designed to define more clearly the relationship between the new land owners and their 'tenants'. Thus in Buganda a Busuulu and Envunjo Law was passed in 1928 to regulate the payment of rent and tribute by 'mailo' tenants. This was preceded in 1908 by a Possession of Land Law whose purpose was to confer physical occupation to 'mailo' estates so granted. Thus Uganda was set firmly on the road towards a semi feudal system of land tenure not unlike that known to feudal England. This was sealed by Uganda (Order in Council) 1902.

And finally, in Kenya a broad and somewhat ambiguous proclamation, not unlike that issued by German authorities in Tanzania, was made in 1897 declaring all 'waste and unoccupied land' crown land hence vested in the imperial power. That ambiguity was however removed in 1899 on the advice of the Law Officers of the Crown who argued that in Kenya all land had in fact accrued to the imperial power simply by reason of assumption of jurisdiction. (Okoth-Ogendo, 1991 op. cit.) Thereafter, Kenya slipped very quickly into a territory of individual private estate owners the legitimacy of whose titles were derived from the imperial power.

By 1920, when Kenya was formally declared a colony, all land in the country, irrespective of whether it was occupied or unoccupied was regarded by the British authorities as 'Crown Land' hence available for alienation to white settlers for use as private estates. Even when attempts were made in 1922 and after to address the issue of land rights security for African cultivators, the device then used, i.e. to create 'reservations' for each ethnic group offered no protection in the face of settler advance. And as the Maasai were to discover to their detriment, not even 'treaties' similar to those concluded elsewhere in Central and Southern Africa, were capable of offering protection. Land reserved Africans for use remained 'Crown Land' hence available for alienation at any time (Okoth-Ogendo, 1991 op. cit). It was only after several inquiries and commissions that a clear separation in colonial law (rather than fact) was made in 1938 between 'Crown Land' out of which private titles could be granted, and 'native lands' which were to be held in trust for those in actual occupation.

3. The Post-Colonial Phase

These divergencies continue to dominate land policy and law to this day. Rather than restructure land relations in accordance with new development imperatives, these countries, instead, simply re-entrenched and sometimes expanded, the scope of colonial land policy and law.

Thus Nyerere's Tanzania expanded the domain of 'public land' by abolishing all freeholds extant in 1962 and converting all existing government leases into 'rights of occupancy' under the 1923 Land Ordinance. This was done despite the fact that the location of radical title in public land had never been identified and the juridical character of the right of occupancy as the basic tenure system was far from clear. Nevertheless, the Land Ordinance 1923 remains, to this date, the basic land tenure and land use law in Tanzania.

Similarly Uganda, despite its traumatic political history, has stuck to the same tenure regime categories defined by British colonialism, namely feudal tenures interlaced with public and customary land holdings. The Land Reform Decree 1975 which had sought to abolish all feudal and private tenures and to convert all land in Uganda into 'public land' access to which was to be by leasehold tenure only, was never really implemented. Indeed after some twenty years of dormancy, that Decree was rendered defunct by Uganda's 1995 Constitution and subsequently repealed by the Land Act 1998. Thus land tenure systems in Uganda have progressed no further than they were immediately after the 1900 and 1901 Agreements.

And so it is in Kenya. Despite its long experience with comprehensive land tenure reforms, little effort has been made to design innovative land rights systems and complimentary infrastructure for the country. Private ownership rights derived from the sovereign (now the President) remain as legitimate as they ever were in colonial times, 'native lands' (now called 'trustlands') are still held by statutory trustees rather than directly by indigenous occupants and unalienated land remains the private property of the government, hence subject to no public trust.

Attempts to convert trust land into individually held 'absolute proprietorship' have simply thrown the country's tenure system into confusion. For little clarity has as yet emerged on whether this new 'estate' is an allodium, an estate *sui generis*, or merely a disguised fee simple! In general terms therefore, not much has changed since 1938 even though a great deal of policy development has in fact occurred.

B. TRENDS IN LAND POLICY DEVELOPMENT

1 . Commonalities beneath divergence

Although the juridical landscape drawn by colonial and post-colonial land policies and laws appear, at first, divergent and irreconcilable, buried underneath them are a number of common issues which have influenced contemporary land policy development in East Africa. Three of these are of special significance.

The first is the role of the state in the regime of property law introduced by colonialism and perpetuated by the post-colonial state. In all three countries, the state became, in law, the ultimate authority in matters of control and management of land. Whatever differences there may have been, there were essentially of degree rather than of substance. Thus while the role of the state was much more directly and clearly entrenched in Kenya's land law, the position was really no different in Uganda and Tanzania.

In Uganda, the fact that 'mailo' and similar estates carved out to traditional rulers were regarded in law as 'freehold' interests means that some sort of residual or radical title was always retained by the protectorate power. In that sense therefore, radical title to all land in Uganda and not simply to those declared 'crown lands' rested in the colonial power up to independence in 1962. This situation did not change until the Land Act 1998 came into effect.

In Tanzania, while the Land Ordinance 1923 seemed to have vested radical title to all land in the public at large, control and management of that land was expressly vested in the Governor (later the President) and this in terms that rendered the public powerless in all land matters. In the event, the Governor and later the President proceeded to deal with land in Tanzania as if they were both trustees and beneficiaries and therefore free to dispose of it virtually at will.

As if those powers were not in themselves complete, in all three countries the power of eminent domain was expressly reserved either in constitutional instruments as in the case of Kenya and Uganda, or in ordinary legislation in respect of Tanzania. This remains a powerful instrument of public policy. The important of the availability and exercise of this power is that in all three countries, the state has always had an overriding interest over matters of access, control and management of land irrespective of the tenure category under which it is held or owned.

The second is the general contempt of customary land tenure evident in all three jurisdictions. The most extreme of this has been in Uganda where as late as 1975 customary land users were regarded, in law, as 'tenants at will' of the Government or of individuals holding leasehold title from the state. Indeed even though the 1998 Land Act purported to reinstate customary tenure as a basis of property holding, that was done in terms which make it clear that the state would be happier if that system was phased out of the juridical landscape altogether. Thus provision is

made in this Act for the conversion of customary tenure into freehold through simple registration without any possibility of irreversibility.

In Kenya, contempt for customary land tenure has been widely documented. Even before the Swynnerton Plan of 1954 defined systematic procedures for the conversion of customary tenure into individual freeholds, official policy always contemplated the ultimate disappearance of that system. As was the case then, so it is now, the official policy of the Kenya Government is the extinguishment of customary tenure through systematic adjudication of rights and registration of title, and its replacement with a system akin to the English freehold.

In Tanzania, that contempt is evident in the deliberate refusal by the legislature and the courts to develop customary land law as a body of jurisprudence supporting an important system of land relations. For example, the classification of customary modes of landholding and use as 'deemed rights of occupancy' was never followed by a clear definition of content or indication of the substantive legal regime applicable to land held under different customary regimes.

It is important to explain that contempt of customary land tenure hence of customary land law has its origins in two assumptions, one ideological and the other supposedly historical. Except for Tanzania where explicit attempts were made from 1957 to resist the introduction of a private property regime as a basis for social development, in Kenya and Uganda this has always been and remains the dominant ideology. This is explicit in many policy documents and laws including the recently enacted Uganda Land Act 1998. Many assessments of the dynamics of land relations in Tanzania also show that despite state ideology to the contrary, land has always been treated as a commodity in that country. Indeed the 1995 National Land Policy instrument now expressly acknowledges that land in Tanzania is a commodity subject to individual expropriation and control.

The second basis of that contempt lies in the assumption that customary land tenure is merely a stage in the historical evolution of societies from 'status to contract' (Maine, 1861). Fuelled by conclusions of legal anthropologists, colonial administrators did indeed believe that customary land relations would wither away as Western civilization became progressively dominant in African social relations. There was, therefore, no need to acknowledge, leave alone develop customary land law as a viable legal system. Indeed it was even thought that by simply enacting a new system of land law - usually based on Western property notions - customary land law would simply atrophy and die!

Consequently in all three countries customary land tenure and land law was systematically misinterpreted even undermined by the judiciary, ignored by legislatures and constantly manipulated by administrators to support ideological experiment as and when this became necessary.

The third common issue is the essentially administrative character of land law in these jurisdictions. Not only was customary land law neglected and undeveloped, the substantive content of imported English property law was not developed either. The reason of course was that the corpus of English common law was presumed to be so well developed that proprietors would have no problem understanding the nature and content of rights conferred by that regime. Instead of enacting substantive property law statutes therefore, the colonial government concentrated rather on the development of an administrative infrastructure around land relations.

The result is that much of what counted as land law was in effect the law of land administration, hence land tenure became part and parcel of administrative law.

In Kenya, for example, no consolidated body of land law was enacted until 1963 when a Registered Land Act (now Cap. 300) came into effect. Up to that point and for a vast number of ex-settler properties the applicable regime remains the common law of England as modified by the doctrines of equity and statutes of general application. The Transfer of Property Act of India 1882 was thus necessary only as part of the administrative infrastructure of land relations within the settle community. Similarly in Uganda and Tanzania land administration institutions (including land, survey and registry offices) grew at the expense of clarity in the substantive content of land law. Consequently the content of 'mailo' freeholds or of the 'right of occupancy' remained undefined well after independence.

These commonalities have, in the course of time, created serious problems for the evolution of land rights, and land relations in all three countries. As regards the role of the state, and its administrative bureaucracy, serious doubts have emerged as to the competence of that organ in matters of land management and stewardship. In all three countries the state simply appropriated to itself a vast array of land rights including those in respect of which the law designated it a trustee. In Kenya, for example, trust land was often administered as a specie of government land even through relevant legislation required that the interests of customary land occupiers should override all decisions to alienate or otherwise deal with such land. In Tanzania the state system granted 'rights of occupancy' over vast tracts of land to private investors without due regard to the 'deemed rights of occupancy' of customary land holders. And in Uganda while the declaration of all land as 'public land' under the Land Reform Decree 1975 should have conferred a duty of trusteeship on the state, leases were often issued to private individuals in utter disregard of the occupancy rights of customary land users.

Further, the administrative infrastructure that accompanied state presence in land matters in time became a serious impediment to land development throughout the region. For while it tended to strengthen the already enormous powers of the state, it passed on all the costs of the inefficiencies of that organ to ordinary land users. First, ordinary land users found themselves subjected to administrative decisions emanating from a whole host of offices and political functionaries all of which had some sort of jurisdiction over land matters. As a result conflicts and contradictions were often endemic in land use decision-making. Second, inefficient management by that bureaucracy tended to further frustrate proprietary decision-making. And as that bureaucracy grew abuses became routine and entrenched. Indeed throughout Eastern and Southern Africa land bureaucracy became corrupt, inefficient and largely insensitive to the ordinary land using public which they were designed to serve. The cost of these abuses, which were often considerable, were again invariably passed on to the land using public. Second, because most conflicts and disputes over land use including those involving substantive rights tended to be processed through that bureaucracy rather than the courts, no organised body of land law ever really emerged. The dearth of a body of case law in this area is a clear pointer to this.

Instead legislative policy appears to support the institutionalisation of administrative and quasi-administrative mechanisms of conflict resolution in the form of tribunals, mediators and elders in matters both of substantive law and land administration.

As regards the status of customary land tenure, all available assessments indicate that despite its resilience in the face of constant attempts to legislate it out of existence, its juridical content

remains obscure, control mechanisms ineffective and transactional procedures generally inconclusive. What exists in effect is simply a body of social practices regarding land which are not likely to die quickly but which are ill adapted to the challenges of contemporary land development.

The fact that statutory attempts to eradicate customary land tenure practices have always focused on issues of title rather than on the dynamics of tenure relations as a whole has created further confusion in the property systems of these countries. For that focus misses the fact that the uninterrupted transmissibility of land rights between one generation and the next is a fundamental tenet of customary land tenure. To assume that the vesting of the full plenitude of land rights in individuals or groups accompanied with authority to extinguish the rights of future generations will eradicate customary tenure in the absence of any changes, express or implied, in the rules of customary land inheritance, is clearly an exercise in futility. The survival of customary land tenure practices in Kenya despite half a century of attempts at statutory conversion and the collapse of the family freehold or 'Ndunda' system in Malawi are clear proof of that futility. Uganda is bound to experience similar effects should the conversion of customary tenure to freeholds occur to any significant degree under the Land Act 1998. That effect is likely to spread beyond areas of land originally held under customary tenure so as to encompass those governed by other systems of property law. Experience from Kenya suggests that as long as succession to land is governed by customary law, it matters not what other law governs the determination of land rights in general.

2. Issues in Land Policy Development

Because these problems have evolved over a considerable period of time and in the light of rapidly changing economic, social and political conditions in the region, reform of land rights and complimentary infrastructure have become inevitable and urgent. The focus of reform has been at two inter-connected levels; namely policy and substantive law. In either case the basic issues appear to be the same in each country. Five of these have, in recent years, become the central focus of discourse in East Africa and beyond.

The first is a governance issue and relates essentially to the role of the state and its agents in land matters. Given the fact that under existing legal regimes the state is both an inefficient administrator and predator on land that really belongs to ordinary land users, what changes in policy and law should be effected to institutionalise an effective framework for proprietary freedom? This issue has become especially important in the light of pressures for economic liberalisation which are currently sweeping through Africa. The way in which Uganda and Tanzania have approached this issue is to revisit the doctrines of radical title and eminent domain so as to protect the public from any possible abuses of public trust. Although no express attempts have been made in Kenya to do so, political activism in defence of 'public' land rights is likely to crystallise along these lines as the constitutional review process gets underway.

The second is an old issue and concerns the search for a secure system of land tenure. The simple assumption that customary land tenure is inherently insecure and that salvation lies in its replacement with a regime of individual property modelled after English tenure systems is clearly no longer tenable. What policy and legal changes are required to ensure that tenure regimes confer social security and equity, permit economic efficiency, and facilitate the sustainable management of land? The resolution of this issue has by no means been easy especially since

each of those values: security, equity, efficiency and sustainability are not always naturally reinforcing.

The third is basically normative and political and is about how best to maintain social stability and integrity in the light of revolutionary and sometimes unfamiliar changes in land relations. The issue here is how and when changes in land rights, whatever their propriety, should be introduced. Should they be incremental or comprehensive, radical or revolutionary? How are established social systems to be protected against adverse consequences of change, or compensated for loss of accrued rights and interests? As a policy matter, this issue has been handled in terms of the search for a comprehensive corpus of law that would establish a complete land rights system. This is what Kenya thought it was doing in 1963, Uganda appears to have done in 1998, and Tanzania hopes to accomplish in an attempt to enact a basic land law.

The fourth relates to the nature, objective and limitation of the police power of the state i.e. the residual power of the state to ensure that proprietary land use does not injure the public good. In recent times this issue has become central to the discourse on the sustainable management of land resources at the national and international spheres. The concern therefore is to design policies and laws that would ensure proper oversight in the exploitation of resources without erecting an impediment thereby to proprietary freedom. In all these countries, this issue has been dealt with in terms of the design of policies and laws for the comprehensive and integrated management of all environmental resources (Okoth-Ogendo and Tumushabe, 1999). Uganda has gone farthest in this direction followed by Tanzania, with Kenya still at the legislative design stage.

The fifth is about the support services infrastructure necessary for a land rights system to operate effectively. This is not an issue which designers of land policies and laws often advert to. The general perspective has always been that changes in the technical description of title *per se* is all that is required for a new land rights system to function. Experience from Kenya and those countries where experimentation with new tenure regimes have been conducted, indicate clearly that reform of complementary institutions relating to physical infrastructure, supply of agrarian inputs and services are important levers in the operation of land rights systems. Although such infrastructure exist in various degrees in each country, they have not always been effectively co-ordinated or fully activated.

3. Land Policy Development Processes

Each of these countries has dealt with these issues in ways reflecting the preeminence of social, economic or political pressures in their land reform agenda. In general, however, two main processes have been adopted in the formulation of appropriate policies and design of laws around these and other issues. The first of these is essentially bureaucratic in nature and assumes that policy and legal development can be undertaken in the usual course of administration. This means in practice that state organs are quickly mobilised to produce policy and legal instruments which may or may not be radical in content and consequence. The second has been to rely on expert panels, task forces or investigating teams, or on comprehensive commissions of inquiry whose mandate is to generate and derive policy principles and programmes through extensive discourse and negotiation (Okoth-Ogendo, 1998a). All three countries have, at one stage or another adopted one or a combination of these processes.

Bureaucratic processes of land policy and legal development has a respectable history in Kenya. There is a long list of policy papers going back to the Swynnerton Plan of 1954 that attests to the use of this modality. At the same time commissions, task forces and investigations have been used in land policy development on many occasions. Examples of these include the Kenya Land Commission of 1934, the East Africa Royal Commission of 1953-5 and the Lawrence Commission of 1965-6. Most recently a task force on the review of land policy and law was instituted by the Minister of Lands and Settlement and is yet to report its findings.

In Uganda, the approach followed was to include land policy development in the agenda of constitutional reform which was conducted between 1990 and 1994. The land component of the discourse was then passed on to the National Assembly in the form of a constitutional obligation to enact laws designed to incorporate certain principles, within a specified period of time. Among those principles were that:-

- radical title be vested in the citizens of Uganda and not in the State,
- the state should exercise trusteeship over fragile ecosystems,
- proprietary land use should conform to existing or future legislation on sustainable management,
- mailo, freehold, leasehold and customary bad tenure systems should be restored, and
- the security of actual land users under any tenure regime should be guaranteed.

This is what the Land Act 1998 was designed to effect (Okoth-Ogendo 1998b). The development of policies on sectorial aspects of land use has tended to follow bureaucratic processes.

Tanzania is perhaps the only country in the region that has adopted a fully systematic process of inquiry. In that country a Presidential Commission of Inquiry on Land Matters submitted its report in 1991 after two years of extensive investigation and public discourse (Government of Tanzania, 1991). That report made radical proposals on the first four of the issues identified above, most of which were accepted by Government in a National Land Policy instrument published in 1995. The only points of disagreement with the Report were on matters of location of radical title and the structure of land administration. It is expected that that policy instrument will form the basis for a new basic land law for that country.

The ultimate outcome in land policy development in all three countries is to clarify their national positions in respect of all matters conceiving access to, control and use of land. It is to be expected that even in Uganda and Kenya where authoritative statements of land policy do not exist, some such formulations will eventually emerge. That is the direction which other countries outside East Africa, such as Malawi, Zimbabwe, Swaziland, Lesotho and South Africa are actively pursuing. Apart from providing a basis for legal development in this area, such statements are important pointers towards the direction of future land development in each country. They also afford opportunity to domesticate global principles of land development as these from time to time emerge.

C. LAND POLICY CHALLENGES IN THE 21ST CENTURY

The range of issues covered by many of these policy and legal instruments often go beyond the five issues identified above. The manner in which these are treated, however, is not always satisfactory or rigorous. A number of land policy challenges, therefore, still remain and are likely to dominate public discourse in the twenty-first century. Four of these are readily apparent.

The first is to design truly innovative tenure regimes to suit the variety of complex land use systems that characterise the African landscape. The assumption by policy makers in Kenya that a tenure system suited to agricultural communities can also serve pastoral and nomadic economies is simply not tenable. Attempts to provide for the management of pastoral areas through the establishment of group ranches in Kenya, communal land associative in Uganda, and village sovereignty over land in Tanzania do not appear to have resolved that issue either. Much more thought and design will be needed in this area of policy.

The second is to provide a framework for the orderly evolution and development of customary land tenure and law. There are three dimensions to this challenge. Firstly replacement strategies of customary tenure change must give way to evolutionary and essentially adaptive models (Bruce and Migot-Adholla, 1994). The nature and the manner of secretion into existing tenure structures of these adaptive models will require more systematic investigation. Secondly, the relative position of individuals in communities in which they live will need clarification in the design of new land rights systems. For even though it is relatively obvious that individual rights to land exist alongside community rights in all customary tenure regimes, no serious attempts have been made to address this issue in land tenure legislations in the region. The most recent attempt is in Zimbabwe where the Rukuni Commission of Inquiry into Appropriate Agricultural Tenure Systems urged that this issue be attended to (Government of Zimbabwe, 1994). Thirdly, the various regimes of customary tenure in existence in each country will require harmonisation into a common regime for all land held under customary law. This would make land administration and development more integrative and universal. The tendency to emphasise the unique features rather than commonalities in customary land tenure analysis must therefore be abandoned.

The third is to democratise land administration systems and structures. Note has been taken of the fact that existing land rights systems are characterised by a heavy administrative overload and that this is by and large inefficient and extractive. Land policy development must seek to install a simple, accessible and broadly participatory framework for land administration irrespective of tenure category. Although the Uganda's Land Act 1998 attempts to do this by transforming power over land matters to directly and indirectly elected boards and tribunals, only time will tell whether this approach will cure the maladies of bureaucratic overload (Okoth-Ogendo, 1998c). Similarly the jury is still very much out on attempts in Tanzania to transfer most land administration functions to village councils and committees.

The fourth is to design a framework for this codification of customary land tenure rules and their integration into statutory law. Most intractable will be the codification of rules relating to the transmission of land rights in *mortis causa* and their modification to suit a statutory system of administration. This challenge must, however, be approached with caution. First, customary land tenure rules form part of community norms which govern behaviour in spheres other than land matters *per se*. Codification and integration must tread softly among those spheres. Second, although customary rules are largely unwritten, there is no reason why this should always remain so. The operation of the Laws of Lerotholi as part of Basotho customary land law is instructive here. Third, customary land tenure is an organic system which responds, *inter alia*, to changes in external stimuli such as technology and population growth just like any other. The process of codification and integration must not assume that customary land tenure is static or immune to change,

No satisfactory attempts have been made thus far to confront these challenges in all three countries. One hopes, however, that as more and wider regional experiences become available, appropriate lessons can be drawn and used in the design of appropriate land rights regimes in the region. Kenya is especially poised to confront these challenges as the constitutional reform process, whose mandate includes the review of land rights, gets underway.

D. CONCLUDING STATEMENT

The last two decades have seen an unprecedented preoccupation with land policy development in sub-Saharan Africa (Okoth-Ogendo, 1998a). In Eastern and Southern Africa, for example, all countries except Angola and the Democratic Republic of the Congo (former Zaire) are currently engaged, at various levels of detail, in the evaluation and re-evaluation of their land policies, laws, agrarian structures, and support services infrastructure. While emerging paradigms do not suggest spectacular breakthroughs in the design of new land rights systems, considerable gains in land policy process formulation and the clarification of legislative goals have been made. Land rights systems are being more consolidated and rational, and the corpus of land law less complex and pluralistic.

Further, clear recognition has been given of the centrality of land policies in the management of sustainable development paradigms in Africa. For this reason, one must not expect pressures for reform to subside. Experience from all three countries suggests policy responses to these pressures must not be regarded as a one-shot or diapositive affair. For even in conditions of relative stability in land relations, such as appears to have been the case in Tanzania in more than seventy years, pressure for reform which lie buried within their structure will eventually explode into demands for fundamental change. How each country responds to that explosion is entirely a matter of context, commitment and resource availability.

REFERENCES

Bruce, J.W. and S.E. Migot-Adholla, *Searching for Land Tenure Security in Africa*, Kendall/Hunt, Iowa, 1994.

Chidzero, B.T., *Tanganyika and International Trusteeship*, Oxford University Press, 1961.

Government of Tanzania, *Report of the Presidential Commission of Enquiry into Land Matters* (under the chairmanship of Issa G. Shivji), Dar es Salaam, 1991.

Government of Zimbabwe, *Report of the Commission of Enquiry into Appropriate Agricultural Land Tenure Systems* (under the chairmanship of M. Rukuni), Harare, 1994.

Maine, Sir Henry, *Ancient Law*, Murray, London, 1861.

Okoth-Ogendo, H.W.O., 'Land Tenure and Agricultural Development in Kenya and Tanzania - A Comparative Study', *Journal of the Denning Law Society*, Dar es Salaam, 1969.

Okoth-Ogendo, H.W.O., *Tenants of the Crown: Evolution of Agrarian Law and Institutions in Kenya*, ACTS Press, 1991.

Okoth-Ogendo, H.W.O., 'Agrarian Reform in Sub-Saharan Africa...', in Thomas J. Bassett and D.E. Crummey, *Land in African Agrarian Systems*, University of Wisconsin Press, 1993.

Okoth-Ogendo, H.W.O., 'Land Policy Reforms in East and Southern Africa: A Comparative Analysis of Drivers, Processes and Outcomes', Paper for an International Conference on Land Tenure in the Developing World, Cape Town, South Africa, 1998a.

Okoth-Ogendo, H.W.O., 'Implementing Land Legislation in Uganda: Drawing on Comparative Experiences', Paper for a DFID technical workshop on Uganda's Land Act 1998, Jinja, Uganda, 1998b.

Okoth-Ogendo, H.W.O., 'Legislating Land Rights for the Poor: A preliminary assessment of Uganda's Land Act 1998', Paper for the Uganda Land Alliance Workshop, Mukono, Uganda, 1998c.

Okoth-Ogendo, H.W.O. and Tumushabe, G., *Governing the Environment*, ACTS Press, 1999.