

## land

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## Land rights in Africa: protecting the interests of vulnerable groups

**L**and policies in Africa often overlook certain social groups, such as women, migrants and pastoralists. The rise of HIV/AIDS has created new social groups who are vulnerable to discrimination. As new policies are formed in the region, it is important to consider why these groups have been excluded, to ensure that future policies represent them more fairly.

Women have traditionally had very few land rights throughout Africa, usually only through husbands or male relatives. The few laws that do protect their interests are rarely enforced. Their resource rights are often weakened further when a resource increases in value. Women also have limited involvement in land management systems, with decisions usually being made by men.

Many land ownership systems in Africa were created when land was more abundant. As land becomes scarce, these systems are causing disputes between migrants and indigenous populations about the terms of land access, particularly the length of agreements. Pastoralists have seen large areas of their ranges lost to other uses, such as wildlife reserves and commercial ranching. Policies have often looked to prevent land degradation by controlling pastoralist activities, rather than give full ownership.

The loss of family members due to HIV/AIDS is forcing many people to sell or rent their land, as they do not have enough people to work the land or they have medical expenses to pay. In some cases people have to abandon land. Families can lose their land rights if they do not cultivate it. Land grabbing by relatives after the death of a family member also creates problems.

Whilst recent land policies have attempted to improve the rights of vulnerable groups, these have encountered several problems:

- Improved rights for women are difficult to enforce, particularly in rural areas. There is an absence of organisations to enforce these, and often a lack of awareness amongst women of new laws.
- Laws protecting pastoralist interests are rarely implemented and overall control of the land is often still held by governments.

- Efforts to introduce new measures to deal with HIV/AIDS-related land issues are complicated by the culture of silence around the disease preventing reliable data collection.

Whilst progress has been made in certain areas in improving the rights of vulnerable groups, these are often isolated cases. Raising awareness of land rights amongst these groups and creating the necessary instruments to enforce new policies are key concerns for future land policies in Africa. To achieve fairer

representation of vulnerable groups in future land policies, further changes are required:

- Women must be included in committees working on land reform programmes, to contribute their experience of land management.
- Particular attention to promote women's rights in rural areas is required, including raising awareness of new legislations, using local languages and using suitable forms of communication, such as radios and workshops.
- New land policies must consider the specific needs of HIV/AIDS-affected households, particularly children.
- Addressing land rights for migrants is vital for establishing or maintaining peaceful coexistence. Existing agreements need to be given legal recognition to avoid confusion.
- Pastoralism must be more widely recognised as a productive land use within new policies.

Disagreements over access to land create mistrust amongst families and friends and have even contributed to wars

Lorenzo Cotula, Camilla Toulmin and Ced Hesse  
L. Cotula, International Institute for Environment and Development, Drylands Programme, 3 Endsleigh Street, London, WC1H 0DD, UK  
T +44 (0) 207 388 2117 F +44 (0) 207 388 2826  
Lorenzo.cotula@iied.org

'Land tenure and administration in Africa: lessons of experience and emerging issues', IIED, 2004  
[www.iied.org/drylands/pubs/documents/LT\\_cotula.pdf](http://www.iied.org/drylands/pubs/documents/LT_cotula.pdf)



## Supporting indigenous land rights in Latin America

**As political systems in Latin America become more democratic, traditional land rights systems are returning to the forefront of political agendas. By comparing experiences across the region, it may be possible to form coherent policies to assist the returning of land to indigenous populations.**

Research from the World Bank looks at the legal recognition of indigenous land rights in Latin America. Land rights are traditionally important to many indigenous communities in Latin America. Land is not only a physical asset with economic value, but also an intrinsic part of people's lives and belief systems, a source of social power and self-worth. International researchers and policy makers are becoming increasingly aware of the need to recognise indigenous land rights as a vital component of economic development for poor people.

Several key characteristics determine the degree of security indigenous people exert over their land. These characteristics also shape the ability of indigenous peoples to participate in conservation activities on their territories. These include:

- the type of land rights, ranging from outright ownership to different forms of restricted ownership
  - the recognition of land in a manner that corresponds with indigenous territories
  - the ownership and use of natural resources as part of land rights
  - the degree of security attached to land tenure
  - the degree of autonomy for populations to manage their own affairs
  - the legal actions people can take to defend their land rights.
- Achieving an effective land rights system is not always easy, however. The different legal systems in many countries mean there are

**Land is an intrinsic part of people's lives and belief systems, a source of social power and self-worth**

different levels of ownership. Indigenous people in Costa Rica and Panama have full ownership of their lands. In Peru, however, there are laws recognising different types of land ownership but they do not state which type of ownership indigenous people have. In Colombia, laws do not clearly state whether the government or indigenous people have ownership of natural resources in indigenous territories.

There are many common problems with recognising land rights:

- failure to develop the legal organisations necessary to enforce laws guaranteed by international treaties
- time-consuming and complicated procedures for gaining legal recognition of land rights
- inaccuracy in writing indigenous laws and confusion over unclear terms, which leads to different interpretations of laws
- failure to carry out adequate consultation with indigenous communities
- a lack of legal definition of ownership rights and resource use, particularly where indigenous territories overlap with protected areas.

There is no single pattern for establishing land rights for indigenous people in Latin America. Different systems can produce strong rights

or weak rights, depending on the political determination in each country. The research shows, however, that legal systems support indigenous people more strongly when they consider not just land ownership, but the security of that ownership.

Recognising land rights is not just a question of granting titles, but involves a complex framework of legal, social and political issues that ensure these rights are effective and secure.

### **Roque Roldan Ortiga**

The World Bank, Environment Department, 1818 H Street NW  
Washington, DC, 20433, USA  
T +1 (202) 473 1000 F +1 (202) 477 6391

'Models for recognizing indigenous land rights in Latin America' Biodiversity series Paper No. 99, World Bank Environment Department, 2004

[http://lnweb18.worldbank.org/ESSD/envext.nsf/48ByDocName/ModelsforRecognizingIndigenousLandRightsinLatinAmerica/\\$FILE/Indigenous+PeoplesEDP99.pdf](http://lnweb18.worldbank.org/ESSD/envext.nsf/48ByDocName/ModelsforRecognizingIndigenousLandRightsinLatinAmerica/$FILE/Indigenous+PeoplesEDP99.pdf)

## Africa's changing landscape: new policies to resolve conflicts over land

**Land in sub-Saharan Africa provides employment, income and food for large sections of the population. The increasing pressures of population growth and land degradation are intensifying competition for land between different user groups. Further problems are created by the loss of traditional land rights and unfair land distributions, leading to violent conflict between groups. New land policies are being formed to reduce these conflicts.**

Competition for land is intense in many parts of sub-Saharan Africa (SSA), particularly for scarce resources such as pasture land and dry season water points. Overseas investors purchasing land for activities such as ranching and mining further reduce the land available to local people. Cultural differences between groups add to the tensions in

**Disagreements over access to land create mistrust amongst families and friends and have even contributed to wars**

certain areas, but land issues can also create mistrust amongst families and friends. Disagreements over access to land and resources have even contributed to wars.

In many areas, people are taking steps to improve their methods for resolving land arguments. Community structures are being developed to settle disputes without the need to go to higher courts, which is time-consuming and expensive. In Mali, 'peace committees' are used to resolve conflicts between herding groups and farmers. Activities involving leaders from several ethnic groups include touring villages to give out information and working with groups to resolve arguments.

In other areas, governments are introducing new measures to help with conflict resolution. These include:

- improving justice systems and making courts more accessible to all people in a country
- giving greater powers to local authorities and village councils to deal with conflicts
- creating special land courts to deal with the backlog of cases still not resolved.

Whilst these new institutions can help to settle individual arguments, they do not tackle the underlying causes of the problem. They are limited by a lack of funding and a lack of people able to perform these tasks. Making greater reductions to conflict over land is likely to

be a time-consuming process. New initiatives must include all the people involved. Making this process successful will require:

- greater information sharing about conflict management between organisations and between countries
- involving community leaders, local experts and both men and women from different social groups in conflict management initiatives
- targeting training and education at a number of different levels, including local community groups and civil society structures
- building on the local capacity to resolve conflicts and giving greater authority to local groups, within a framework of basic principles and justice.

In many areas, the processes which cause disputes over land to turn into violent clashes are not fully understood. Future research must look at the circumstances under which competition descends into conflict and what tools are most effective at reducing conflict. Local initiatives have often proved successful, but a larger scale approach is required to tackle the root causes of the problem.

**Lorenzo Cotula, Camilla Toulmin and Ced Hesse**  
L. Cotula, International Institute for Environment and Development, Drylands Programme, 3 Endsleigh Street, London, WC1H 0DD, UK  
T +44 (0) 207 388 2117 F +44 (0) 207 388 2826  
[Lorenzo.cotula@iied.org](mailto:Lorenzo.cotula@iied.org)

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[www.iied.org/drylands/pubs/documents/LT\\_cotula.pdf](http://www.iied.org/drylands/pubs/documents/LT_cotula.pdf)

## Does HIV/AIDS threaten people's right to land?

The HIV/AIDS epidemic in Africa creates problems in many aspects of social and economic life. One such problem is decreased security of land tenure, with dramatic accounts of AIDS widows and orphans being chased from their land. Many more people feel an increased sense of tenure insecurity. But is this the full story?

The problem is not straightforward; many issues have an impact on the security of tenure apart from HIV/AIDS. These include gender relations, growing pressure for land and a lack of off-farm economic opportunities. These issues overlap with HIV/AIDS to decrease the land tenure security of particular groups.

Research examining the relationship between HIV/AIDS and land rights in three Kenyan districts shows:

- There was no evidence of 'distress sales' of land due to HIV/AIDS in any of the three sites.
- There was some evidence of widows having their land 'grabbed' by the family of deceased husbands, but there was not always a link to HIV/AIDS in these cases.
- The poorer people are, the more likely it is that HIV/AIDS will increase insecurity of land tenure.
- The relationship between HIV/AIDS and tenure insecurity is very different across the three sites. It depends partly on cultural responses to HIV/AIDS. Where social stigma and shame related to the disease was most severe, the impact on tenure insecurity was greatest.

HIV/AIDS does increase the vulnerability of certain groups to loss of tenure. However, this link is not always present and is not the most frequent situation. This contradicts a widely held view that tenure loss due to HIV/AIDS is widespread. The Kenyan government has recently expressed the intention to create a national land policy that will ensure tenure security.

Many households in Africa experience land tenure insecurity, irrespective of their exposure to HIV/AIDS

Considering this, the research recommends:

- The constitutional review should consider clarifying laws concerning land rental. Many AIDS-affected households currently cannot farm their land because they do not have enough labour. They are also unlikely to rent out their land, because of their fear of losing their land rights.
- Weaknesses in current legislation make it difficult for those without money or who

## case study

### Environmental degradation in Mali

The government in Mali has identified poverty and population growth as the key causes of natural resource decline and environmental problems, such as soil degradation. Their National Environment Action Plan calls for increasing revenues and diversifying the income-generating activities of poor farmers to prevent further environmental damage.

In reality, there is little evidence to support this assumption. Research to determine whether poor people cause environmental degradation, conducted across farms in a cotton-producing region of southern Mali, found that:

- There is no clear relationship between household poverty and soil quality, which contradicts the argument that poor people are a direct cause of soil degradation.
- Farmer wealth encourages some practices that are good for the environment, such as appropriate fertiliser use, but also encourages environmentally damaging practices, such as heavy pesticide use.
- There is an increasing awareness among farmers that current production systems are unsustainable.

There is little evidence that poverty and population growth are the key causes of natural resource decline and environmental problems

The research shows that the amount a household was involved with cotton farming correlated with the extent of damaging environmental practices. This suggests the amount of cotton cultivation is the major cause of land degradation, rather than the level of poverty.

However, the Malian government has been reluctant to recognise the environmental problems associated with increased cotton cultivation. Dramatic production increases during the late 1990s mean that cotton-producing areas are seen as the success story of rural development, even though the environmental costs are high. In fact, the government plans to increase the area of land under cotton production over the next few years.

More effort is needed to sustain the quality of soils in southern Mali. Unfortunately, a shift towards more sustainable production methods is not a popular option with the government and donors, because it would mean short-term losses in production and revenues. The research recommends that:

- The government, non-governmental organisations and local farmers work together to increase technical support for alternative agricultural practices. These include no-till agriculture, the production and application of organic inputs and subsidies for donkey carts.
- Experts should consider more experiments with organic cotton. It offers a higher world price and a lower environmental impact.

William G. Moseley

Department of Geography, Macalester College, 1600 Grand Avenue, Saint Paul, MN 55105, USA  
T +1 651 696 6126 F +1 651 696 6116  
Moseley@macalester.edu

Environmental Degradation and "Poor" Smallholders in the West African Sudano-Sahel: Global Discourses and Local Realities in African Environment and Development: Rhetoric, Programs and Realities, edited by W. Moseley and B. Ikubolajeh Logan, Ashgate Publishing, 2004

have low literacy levels to formalise their land holdings. There are many areas of the current land registration system that could be revised to facilitate formalisation of tenure rights even within the existing legal framework.

- Low levels of awareness concerning land policy and HIV/AIDS need to be addressed. One solution could be a communications policy to create public awareness of policies, rights and procedures.

There is good reason to be concerned about the impact of HIV/AIDS on land rights and access for vulnerable groups. However, many households experience land tenure insecurity, irrespective of their

particular exposure to HIV/AIDS. Death in the family usually causes tenure insecurity and, in the words of several respondents in Kenya, 'AIDS is just another way of dying.'

Michael Aliber, Cheryl Walker, Mumbi Machera, Paul Kamau, Charles Omondi and Karuti Kanyinga  
T +27 12 302 2730 F +27 12 302 2701  
maliber@hsrc.ac.za

'The impact of HIV/AIDS on land rights: case studies from Kenya', compiled by the Integrated Rural and Regional Development Research Programme, the Human Sciences Research Council and the Food and Agriculture Organization  
[www.fao.org/sd/dim\\_pe3/docs/pe3\\_040902d1\\_en.pdf](http://www.fao.org/sd/dim_pe3/docs/pe3_040902d1_en.pdf)

## Can land redistribution policies promote rural growth?

**M**any people in rural areas have little access to arable land, making it difficult to escape from poverty. A reform of land redistribution policies could be effective in reducing rural poverty, particularly in countries with large amounts of unused state land and under-used private land.

Independent research looks at market-based land reform in South Africa. Redistributing land can increase agricultural output; when small-scale farmers have secure access to arable land – in the form of land titles, long-term rental or improved tenure – they are likely to increase their investment in land. This enables them to produce more food and raise their income. Expanded land-use or ownership rights also increase farmers' access to sources of credit. The benefits of more balanced land ownership may contribute to faster economic growth in a country.

One approach to land redistribution is compulsory land reform, where land is bought from the current owners (often at a level below market prices) and shared more evenly, usually amongst small-scale farmers. However, previous compulsory land reform processes have often been damaging:

- Wealthy landowners sometimes use measures such as sub-dividing land or offering unproductive land for purchase.
- Resistance to the compulsory taking of land can cause political instability and oppressive state responses.
- Many schemes have been inefficient, due to an expansion of time-consuming land reform bureaucracies.
- Two of the most useful functions of land markets – allowing more efficient producers to increase their land and encouraging inefficient farmers to quit agriculture – are often blocked.

A market-based approach depends on the demand for land, as it involves voluntary exchanges between willing buyers and land sellers. Rather than depending on the government to identify people willing to buy or sell land, those who are most keen to farm more productively are likely to identify trading partners.

To tackle South Africa's chronic rural poverty, the post-apartheid government set a target of the voluntary transfer of 30 percent of the country's total arable land to three million farmers between 1994 and 1999. However, by the end of 2000, less than 0.8 percent of the country's arable land had been sold by private landowners.

In 2001, the programme was reorganised to provide more financial assistance, to deliver agricultural extension support and to improve access to irrigation. A new requirement that farmers receiving land should make a contribution (cash or labour) to obtain a grant has led to concerns that

the poorest people may be priced out of the programme. However, it is hoped that offering different grant sizes will facilitate the emergence of competitive small and medium-sized farms.

Despite early problems, South Africa's experience has demonstrated that market-based land reform can:

- ensure that more land is actually farmed
- improve agricultural efficiency and increase farmer incomes
- allow farmers receiving land to obtain private loans
- reach more sections of the rural poor
- be cost-effective and affordable for developing countries – it has delivered results while only requiring one percent of the South African government's expenditure.

Market-based land reform can help to reduce poverty but it must be complemented by policies to increase agricultural productivity and promote integrated rural development. These policies must address problems such as the availability of credit, the provision of relevant extension services and technology, and access to irrigation and markets. State involvement is needed to assist very poor landless families to join market-led schemes.

**Frederico Neto**  
fredarticles@yahoo.com

'Innovative approaches to rural development: moving from state-controlled towards market-based land reform', Natural Resources Forum, 28, pp50-60, 2004

**When small-scale farmers have secure access to land they are likely to increase their investment in the land**

## useful websites

Arid Lands Information  
[www.alin.or.ke](http://www.alin.or.ke)

FAO Land Reform, Land Settlement and Cooperatives  
[www.fao.org/sd/IN1\\_en.htm](http://www.fao.org/sd/IN1_en.htm)

First People's Worldwide  
[www.firstpeoples.org/land\\_rights/title\\_page.htm](http://www.firstpeoples.org/land_rights/title_page.htm)

IDRC - People, Land and Water  
[www.idrc.ca/plaw](http://www.idrc.ca/plaw)

IWGIA Indigenous Peoples and Land Rights  
[www.iwgia.org/sw231.asp](http://www.iwgia.org/sw231.asp)

Land Research Action Network  
[www.landaction.org](http://www.landaction.org)

Land Tenure Centre  
[www.ies.wisc.edu/ltc](http://www.ies.wisc.edu/ltc)

OXFAM Land Rights in Africa  
[www.oxfam.org.uk/landrights](http://www.oxfam.org.uk/landrights)

Southern African Regional Poverty Network  
[www.sarpn.org.za](http://www.sarpn.org.za)

The Programme for Land and Agrarian Studies  
[www.uwc.ac.za/plaas](http://www.uwc.ac.za/plaas)

World Bank – land policies  
[www.worldbank.org/landpolicy](http://www.worldbank.org/landpolicy)

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**Institute of Development Studies**  
**University of Sussex, Brighton, BN1 9RE, UK**

T +44 (0) 1273 678787 F +44 (0) 1273 877335 e mail [id21@ids.ac.uk](mailto:id21@ids.ac.uk)



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