



## *Land Tenure and Property Policies in East Africa*

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*Edited Transcript – Gregory Myers*

Okay, thank you very much. At the end of the day, we've really welcomed the opportunity to talk about these issues. I don't think we get enough chances to talk about how this really impacts a lot of programming that we do at USAID in a number of different areas, including economic growth, governance, natural resource management issues, and in health as well.

When Peter started, he mentioned that we sometimes like to grab these quotes that, whether they are representational or not representational, we often see quotes from newspapers or from community groups, et cetera. People say things that add some drama to the story, and so I'm going to present a couple of quotes from both Kenya and my recent trip to Sudan as well just to give a little bit of flavor. Whether or not they are representational or not, I will leave it to you to decide. In Kenya, reported in the *Standard* newspaper in March of 2008, people in The Rift Valley were saying basically, "leave this land or we will drive you out." I think that captures a certain perspective that is a bit inflammatory.

The recent political crisis in Kenya is an example of how insecure land tenure and competition over access to land are drivers of political instability and conflict. Although the recent election violence was cast as one of ethnicity, a significant root of the violence was insecure land rights, inequitable access to land and capital markets, land-grabbing, and poor land administration, such as through the land settlement or colonization schemes. Now, prior to the elections last December in Kenya, land tenure insecurity was already a source of extreme tension and political instability. Many of the grievances over land rights go back to the colonial period, however, many more grievances originate from independence, when the government established three different tenure systems for ownership of land. One was private, or free hold tenure; the second was government tenure, which was largely held under leasehold arrangements; and the third was customary, or community land. Through this tenure regime the government was able to justify taking large areas of trust land under customary tenure and privatizing that land through the creation of reserves, otherwise known as the settlement schemes, or by selling the trust land off to private commercial interests. The settlement schemes looked very much like an internal colonization program; in both



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cases for resettlement of schemes and for commercial private investment local communities have rarely been consulted. They've not been involved in the process, they don't know how the process works, and they've been unable to resist or contest these state actions.

Although known to be highly adaptable, customary systems in Kenya have been struggling to keep up with some of these changes in the economy and political system. In some instances, because of poor leadership within these customary systems, because of cooption and fragmentation, customary institutions have completely broken down and are unable to resolve disputes, exclude other groups and individuals from overexploitation of their resources, or resist illegal takings of their land by government and private individuals. Courts and administrative agencies, such as the land offices, the land registries, and the county councils are responsible for resolving disputes and resolving contested land claims, and verifying rights are highly dysfunctional. Simply put, the courts do not work when it comes to land disputes, and people do not trust the administrative bodies responsible for securing or verifying the legitimacy of their rights. Many people simply were forced to abandon land or were forced to take the law into their own hands in resolving disputes.

In 2004, the Kibaki government and parliament agreed to appoint something called the Ndungu Commission, which investigated what they were calling illegal and irregular land grants or land concessions. The Commission discovered literally thousands of these irregular and illegal grants, reported on them, and found that included in those illegal and irregular land grants there were many past presidents, Kenyatta and Moi, the current standing president, Kibaki, and also to the man who had become the new Prime Minister, Odinga. Many of the land grants were given out to patrons of the political elite. The Ndungu Commission made recommendations for the appointment of a judicial body to take back or to buy back illegal and irregularly granted land concessions. This Commission and past reports to government on land-grabbing and problems related to insecure land tenure was largely ignored by the government. Prior to the December elections, non-Kikuyu Kenyans across the country were angry, marginalized, and hoping that the elections would address land-related grievances, while Kikuyus were concerned that a change in government would result in them losing land. Many of these Kikuyu concerns came from small holders who had legitimate claims to land, who had either bought these parcels or had been resettled by the government in resettlement schemes. And of course, importantly, some of the concerns were from a small elite group of Kikuyu and other leaders whose land holdings would've been threatened by a change in the government.





Institutional failures and the inability to address past grievances all came to a boiling point again in December of 2007 after the election results were announced and many Kenyans felt that business as usual would continue. This resulted, as you know from watching the news services, in mass political demonstrations, violence, and displacement, and in a very real way brought Kenya to the verge of open civil war. The disputes over land were and are not just in the Rift Valley or western provinces as widely reported in the news, but are widespread across the country occurring in all eight provinces. In recent interviews in central and coastal provinces, respondents stated that if land issues were not addressed soon violence was likely to erupt again in eastern provinces as well as continue in the Rift Valley and western provinces.

The most recent crisis after the election led to many people being killed and displaced more than 500,000 people, at least 300,000 of which are currently in refugee camps; this does not include the many thousands of people displaced following the past elections and crises. These individuals too are looking for a resolution of their land claims. Ethnic regionalism and nativism are now defining the post-election crisis, with Luhya and the Rift Valley and western provinces telling Kikuyu that their land is in the central province and to “get out, don’t come back, or we will kill you,” and Kikuyu telling Luhyas and Koangins [spelled phonetically] to “leave central Kenya.” This has the potential for, at the very least, larger numbers of displaced people, reducing agricultural production and investment, and at the very worst, additional killings and political instability in Kenya.

The government of Kenya, perhaps aided by misguided international concern over food security and humanitarian conditions in the refugee camps, is overly focused on resettlement and moving people out of the camps as quickly as possible, rather than addressing the causes of displacement. This is a recipe for disaster.

A methodology for relocation. Who should be relocated where, on whose land, and under what circumstances is critical. In the absence of such a strategy and under pressure to move people out of the refugee camps, IDPs may very well be put in dangerous conditions where they could be killed or could become the triggers for new grounds of violence, as happened following the last two elections in Kenya. A strategy must also be developed to address land and assets that were stolen from IDPs by local residents. To resettle people without addressing this issue sets a very bad legal precedent in Kenya.





At the end of the day the real losers in Kenya's land tenure and property rights problems and the past crises are women. Women who make up more than 50 percent of the agricultural workforce are very much dependent on access to land, which is not easily secured directly through customary or statutory law, and particularly on secondary property rights, such as for subleasing agricultural land or access rights for collecting wood, plants, fruits, and for grazing sheep and goats. Women will have an increasingly difficult challenge to access those rights when they attempt to resettle in Kenya.

Now, turning quickly to Southern Sudan, I would like to make some similar observations and start with a few interesting quotes as well. In this 90 days I spent a fair amount of time in Southern Sudan and Kenya during that period of time and had a chance to talk to a number of different groups of people affected by the conflicts in both countries. And I'd like to share with you three quotes from Southern Sudan. One of these quotes was a statement made to me in February of 2008 by a traditional leadership council: "We are developing hatred for this new government, the Government of Southern Sudan." In a blog that was posted in March of 2008 somebody said specifically, "we will drive the Dinka out, out of the Juba area, by any means necessary." A third quote I'd like to share, again from February, comes from Bari traditional leaders in and around Juba, who stated, "we don't want the Government of Southern Sudan here. They're giving away our land."

So land tenure security is intrinsically connected to political, social, and cultural identity in Southern Sudan, and the conflict over land is symptomatic of the greater regional struggle for control over the south. As a result, land tenure and property rights are a key component of the Comprehensive Peace Agreement, the CPA, and is also a key component in the Interim Constitution for Southern Sudan. The CPA mandated that the development of a land commission to help address land tenure related issues and foster the development of land policy in intergovernmental coordination. Nevertheless, land tenure and property rights remain highly political and sensitive in Southern Sudan, and land-related disputes could easily contribute to or be the trigger in violent conflict between groups or states in Southern Sudan.

Complications over land access and tenure insecurity are more contentious in areas where there are numerous, overlapping, and competing land claims. Overlapping claims are a result of historical rights and competition, for example, between agricultural and pastoral groups and between ethnic groups, as a result of displacement and post-war IEP refugee movement and return, or attempts to return, and where there are competing claims over natural





resources, such as for agriculture, grazing, or for mineral exploitation. Increasingly, there are also overlapping claims resulting from the expansion of urban areas, for example, in and around Juba and agro/pastoral peri-urban areas. The greater the diversity of ethnic identity that exists in a geographic area the more pressing the land issue becomes in maintaining peace and stability. The Government of Southern Sudan has not yet been able to establish a land policy or land law. As I stated, a land commission has been established, but it lacks technical staff to develop policy or law or to coordinate a broad-based discussion on land tenure related issues for southern Sudanese.

Government institutions in Southern Sudan are extremely weak, and in the area of land tenure administration they are even weaker. The Government of Southern Sudan has not yet established clear institutional and administrative lines of authority. In short, it's not clear which administrative body, ministry, agency, if any, has responsibility for developing land tenure and property rights policies, laws, administrative rules, and then implementing them. In the interim, different levels of government, state, county, and national, are competing with each other over who has the right to distribute land in various areas of the country and specifically in Juba, the new capital for Southern Sudan, and other regional state government areas. And what I think is a very recent, interesting example is the East Equatoria state where the capital is located. It was recently announced that the state government would give out the property rights to up to a million parcels of land in and around Juba to citizens who wanted land. This is an area that is already highly populated by IDPs, and it's also home to a local Bari community group.

The land commission, again a body appointed by the national government and mandated by the CPA, announced a few days later that the state government had no authority to do this. Following that, a few days later the state government responded that it did have the authority to do so and promised people that it would move ahead with its commitment to grant rights to land and once again encouraged people to submit claims to the land commission. This, as far as I know, has not been resolved. It is not clear where this land would come from or if either the GOSS – the Government of Southern Sudan – or the state government has the authority to give out land rights under existing legislation. At the same time, Bari traditional leaders in Juba have complained that they have not been consulted and that they will resist, in their words, any attempt to distribute land to, by, or for the Government of Southern Sudan. This debate between traditional leaders, state government, and the Government of Southern Sudan has taken on ethnic dimensions, and this is very worrisome.





In this confusion over who has the rights to administer land private individuals and groups have been able to grab access to land and/or displace weaker individuals and groups. This grabbing too has a definite ethnic dimension and could undermine political cohesion in Southern Sudan or pit ethnic groups against ethnic groups which together have previously fought hard to create a new state. This of course could lead to widespread violence, killing, and population displacement.

Okay, now I think Peter's going to talk a little bit about our experience or our research in Northern Uganda.

[Break for Peter Hetz presentation]

Okay, so having overwhelmed you with all those statistics, one I find the most alarming is the HIV infection rates in these camps. We have a few takeaway messages that I think we will then be able to use as departure points for discussion.

Almost 50 percent of African states return to war within 10 years. War in Africa is too often a symptom of a fundamental problem with land tenure and property rights, including issues related to competition between statutory and customary systems, inheritance, land use by one minority at the expense of a majority, unclear or unendorsed rules for natural resource access, a manipulation of large areas of land by state authorities, corruption, conflicting economic and governance objectives, and the repeated disenfranchisement of the losers and/or vulnerable groups following the conflict. All of this we see in the three examples that Peter and I just illustrated.

Secondary post-conflict conflict over land, natural resource access, and use and housing often erupt as people leave camps and start for home. Conflicts involve IDPs, landless people, and immobilized soldiers. This is a repeated theme that we have seen in Mozambique, Angola, Rwanda, Burundi, which has just re-erupted, Sudan, Kenya, Northern Uganda, and Liberia, among others. There are often competing messages and objectives given by donors in the international community over resettlement post-conflict situations, and frequently a misunderstanding of the role of land tenure and property rights as triggers or drivers in conflict as humanitarian organizations pushed people to resettle as quickly as possible. In many cases, people cannot go back to where they came from, even if you can agree on where they came from. We need to refine our foreign assistance programs to better link our various goals, such as those for humanitarian assistance, displacement, and land tenure security. We





need to think carefully about the appropriate sequence of interventions in property rights and reforms before, during, and after the conflict. We need to focus on land tenure and property rights issues during the conflict and not wait until after people have already left or are trying to leave the camps. We need to look closely at the different impacts on men and women and on vulnerable groups. Women may have no place to go, particularly if they are infected with HIV/AIDS or if they've been raped, if they have children and are unable or unwilling to identify the fathers. We need to consider such things as land banks, land tenure reforms, or land trusts dedicated solely to the needs of women and vulnerable groups as a means to acquire access to assets and generate income. We need to consider establishing an informal but formalized system of registering legitimate land claims where customary systems still are recognized and supported. This could happen while the conflict is ongoing. This would not be an official registry or a cadastre, but it would serve as a written record that can serve as a focal point for further rights registrations, dispute resolutions, and claims security or legitimacy once the dust actually settles.

We need greater public information and awareness, and we need to use this as a primary tool for helping people in post-conflict settings to understand their land and natural resource rights and responsibilities in post-conflict settings. Only informed people can make informed judgments in support of peace, good governance, and rule of law. We need to think about supporting programs and reforms that adapt customary systems rather than replace them with statutory rules. While the latter may seem a lot cleaner and easier, it is often a recipe for disaster. Customary is not static and it is not a romantic situation. Customary systems are an alternative to formality, they are often cheaper to administer, and often have local legitimacy, but they may need some tinkering or social engineering, such as around inheritance, collateral, individual rights within groups, and particularly for women's rights.

We must support legal and institutional reforms that give the most people the greatest number of opportunities to access resources and secure their rights.

With that, I would like to thank you all very much for listening to us today and we would like to offer you the opportunity to ask us questions now.

