

Erling Berge
**de Soto, land reforms, and the
debate on the commons**

UMB, AAS, 2011

More information

Questions

- erling.berge@umb.no

Homepage

- <http://www.erlingberge.no/>

Topics for today

- Hernando de Soto. 2000. "The Mystery of Capital"
- Land tenure and commons
 - Case: Land tenure and the need for reforms in Malawi
- What is de Soto's main message?

Why capitalism triumphs in the West and fails everywhere else

- Hernando de Soto provides empirical observations of the dysfunctional consequences of
 - Illegitimate and insecure property rights
 - Poorly enforced laws
 - Barriers to entry of markets
 - Monopolistic restrictions
- Resulting in permanent underdevelopment

Comments I

- De Soto is in academia a controversial person. His focus on “titling” is seen as misplaced and dangerous to the poor (implicitly the rural poor)

But take note:

- His book is based on research in urban areas and have no observations on land used for traditional agriculture governed by customary land tenure.
- To some large extent de Soto and his critics talk past each other
- His book is sufficiently unclear that a superficial reading of it may confirm long held and repeatedly repudiated beliefs held by many that introduction of land titles (“titling”) will be the starting point of a positive developmental process

What is a “title” ?

Basically is a

- A public record linking
- An identifiable person or company (the owner) to
- An identifiable parcel of land (the property) with
- More or less explicit implications of rights and duties the owner can expect to be legitimately enforceable

Comments II

- The basic assumption of de Soto and his followers are that a titled parcel can be used as collateral for a bank loan. Thus title will set a value on the land and give access to credit
- This is correct only if the bank believes the landowner to have incomes sufficient to service the loan and that there is a market for the parcel if the owner defaults on his loan commitment. This means for example
 - Stable identities of loan takers (owners of land)
 - A market for trade in land parcels
- This is not the case in most of the rural areas. In urban areas there may be a market if squatters can be barred from unused land, but verifiable identities may still be a problem
- The topic of de Soto's book, however, is important and in my judgement it does not say the all the things he is criticised for.

March 2011

© Erling Berge

7

After The Mystery of Capital

- His book inspired the establishment of “The High Level Commission for the Legal Empowerment of the Poor” working for the period 2005-2008
http://www.undp.org/legalempowerment/clep_archive/index.html
- And, apparently, a small industry of secondary books
 - Home, Robert, and Hilary Lim. 2004. *Demystifying the mystery of capital: land tenure and poverty in Africa and the Caribbean*. London: Cavendish.
 - Smith, Barry, David M. Mark, and Isaac Ehrlich, ed. 2008. *The Mystery of Capital and the Construction of Social Reality*. Chicago: Open Court.
 - Barros, D. Benjamin ed. 2010. *Hernando de Soto and Property in a Market Economy*. Farnham, Surrey, UK: Ashgate.

March 2011

© Erling Berge

8

De Soto, in his book, discusses 5 mysteries of capital

- Missing Information (on the poor)
- **Capital** (what is it?)
- Political Awareness (Why are the assets held by the poor invisible?)
- Missing Lessons of US History (the importance of customary law)
- **Legal Failure** (not taking customary law seriously as a source of law)

Capital

- Is created by the formal property system of a society. It
 - Fixes the economic potential of assets
 - **Integrates dispersed information**
 - **Makes people accountable**
 - Makes assets fungible
 - Networks people
 - **Protects transactions**
- Note the hidden assumptions:*
- Uncorrupted bureaucracy
 - Stable identifiable people
 - Uncorrupted law enforcement

Legal Failure

- 50-80% of the people live and work in the “extra-legal” sector
- 5 Misconceptions of current policy
 - 1) People go to the extralegal sector to avoid paying taxes
 - 2) Extralegal real estate exist because of inadequate surveying and mapping
 - 3) Mandatory law is sufficient, compliance costs irrelevant
 - 4) Existing extralegal social contracts can be ignored
 - 5) It is possible to change people’s conventions on how they can hold their assets, both legal and extralegal, without high-level political leadership

Legitimation of law reforms

- Law must build on existing social contracts
- The extralegal sector has ***developed its own law***, its own understanding of what property is, and what can be done with it
- Unless land reform builds on this, it will fail miserably as the many failed attempts at land reform already should show us

Making better formal law requires

- Study the various extralegal sectors
- Extract the principles used by the people
- Compare it to existing law
- Adjust formal law and insert the principles used by people
- The result is much nearer a self-enforcing system of law

The extra-legal sector in Tanzania

- De Soto conducted in 2005 fieldwork in Tanzania to determine the status of its extra-legal sector: its customary law on property.
- The team of observers found what they call
 - 6 archetypes of property
 - 5 archetypes of business organisation
 - 6 archetypes of the expanded market
- We may compare these archetypes to functional elements of a modern institutional structure for economic activity
- Ref.: de Soto in Banik, Dan, ed. 2008. *Rights and Legal Empowerment in Eradicating Poverty*. Farnham, UK: Ashgate

The Archetypes

Property

- | | |
|------------------------------|--------------------------------|
| 1. <i>Adjudication</i> | 10. <i>Transparency</i> |
| 2. <i>Documentation</i> | 11. <i>Traceable liability</i> |
| 3. <i>Registration</i> | Expanded market |
| 4. <i>Fungibility</i> | 12. <i>Identification</i> |
| 5. <i>Collateral</i> | 13. <i>Redundancy</i> |
| 6. <i>Testament</i> | 14. <i>Attestation</i> |
| Business | 15. <i>Representation</i> |
| 7. <i>Association</i> | 16. <i>Standardisation</i> |
| 8. <i>Division of labour</i> | 17. <i>Contract</i> |
| 9. <i>Management</i> | |

March 2011

© Erling Berge

15

De Soto: The political challenge

- These elements of property rights exist only locally. They have no legitimacy outside the local community of users
- Legal reform (also land reform) is needed
- Changing status quo of property rights is a major political task requiring
 - **Taking the perspective of the poor**
 - **Co-opt the elite**
 - **Deal with the legal and technical bureaucrats guarding the current system**

March 2011

© Erling Berge

16

The Language of Land Tenure

- Thinking and ideas about property rights originate with land tenure
- Language: meaning of technical terms
 - Land: subsoil, surface, things attached to the surface
 - Tenure: At a minimum a system of rules defining who has the legitimate rights to appropriate which goods from a given area
 - **Property rights to land = land tenure**
- Systems of coherent forms of property rights
 - Individuals with freehold rights
 - Groups with freehold rights as a group
 - Public bodies with freehold rights

A Definition

- **Property rights provide legitimate allocation to particular owners of material or immaterial objects supplying income or satisfaction to the owner. They comprise a detailed specification of rights and duties, liberties and immunities citizens have to observe. These are partly defined by law, partly by cultural conventions, and they are different for owners and non-owners. Property rights are ultimately guaranteed by the legitimate use of power.**

Tenure systems

- Bundle of rights and duties
 - Right to well specified resources
 - Any or all of access, withdrawal, management, exclusion, alienation
 - Can be limited in time
 - Right to remainder
 - Right to exploit discovery of new resources or new ways of exploiting old resources
 - Can be limited by regulations
- Bundle can be split in many ways to constitute different systems of tenure

March 2011

© Erling Berge

19

Relation between resource and owner I

“Form” of ownership of resource (not mutually exclusive):

- Fee simple (legal person, secure possession in perpetuity)
- Co-ownership (more than one legal person holding in fee simple)
 - Ownership in common (fractional interest, devolution on descendants)
 - Joint ownership (equal interest, devolution on co-owners)

March 2011

© Erling Berge

20

Relation between resource and owner II

- State ownership (the state is holding title on behalf of a group (in trust), or on behalf of itself)
- Beneficial ownership (one or more legal persons hold use and enjoyment rights in perpetuity).
 - The trust institution distinguish between the owner at law and the beneficial owner

What is a commons?

A Commons is

- a system of usage of an area where
- a multiplicity of partly interdependent users and interests are
- appropriating one or more types of goods from
- a multiplicity of partly interdependent resources

Ownership of commons

A useful distinction

- Private commons
 - Owned jointly (devolve to co-owners)
 - Owned in common (devolve to successors)
- Public commons
 - Owned locally (local state)
 - Owned by the state (sovereign state)

Theoretical importance of commons

- Provides real world and small scale settings where ordinary people are facing social dilemmas (the tragedy of the commons scenario)
- Can use the commons as quasi-experimental observations of the conditions that allow people to overcome the dilemma and create sustainable resource management systems
- In 2009 Elinor Ostrom was awarded the Nobel memorial prize in economics for such studies

Land tenure in Norway

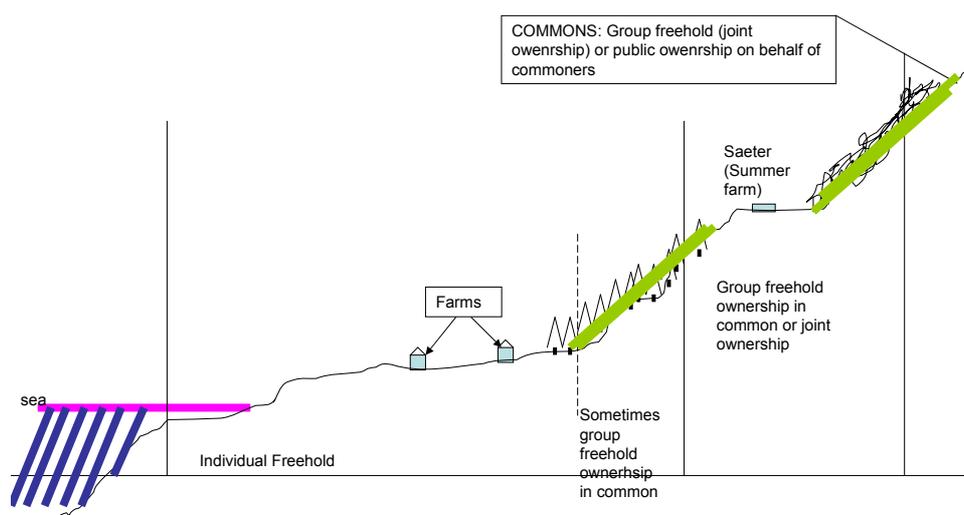
- Norway is mostly mountains, lakes, and forests
- In the mountains the state is a major owner
- Productive forest under the tree line comprise 25%
- In the forest areas private persons, the state, as well as corporations are owners
- Arable land comprise 3% of the surface
- Keeping urban areas out of the discussion
arable land is mostly held in fee simple by individual persons

March 2011

© Erling Berge

25

NORWAY: from sea to mountain



March 2011

© Erling Berge

26

Reasons for keeping some resource as commons I

Cost of management no problem:

- If there is enough for all with access to a resource there is no reason to incur the costs of enforcing property rights (open access is OK)

Human rights and equity:

- If access to a resource is essential for the survival of a family it would be seen as unjust to deny anyone access to a minimum level of the resource (at least poor households have access)

Reasons for keeping some resource as commons II

Growth strategy:

- If a community holds the view that there is safety in numbers, maximising the number of people imply resource access for every member of the community.

Exclusion technology

- If there are technical difficulties in excluding particular persons from access to a resource, keeping it in common may be the only feasible way of managing it

Reasons for keeping some resource as commons III

- Density and diversity of resources
 - If the density of a resource is low or if the diversity of resources within the area is large (larger than what one household is expected to be able to harvest efficiently) then the most sensible way of managing the resource may be to permit access for all, keeping the area as a commons

Thus, commons abound both in European history and in contemporary, so-called ‘traditional societies’.

Commons and poverty

- One difficult part of land reform is lands and resources held in common
- Poor people will to a higher degree than rich people depend on the commons
- Recording of rights to different kinds of resources in the commons will frequently overlook the resources only poor people utilise
- Then titling procedures create injustices

De Soto and Land Reform

- De Soto studies economic activities in urban areas in the third world
- He recommends legal reforms particularly for property rights relevant for economic growth in a capitalist world economy
- His critics focus on land reform in the poorest agricultural societies and concludes that “titling” at best is a wasted effort
- Let us take a look at such a society: Malawi
- And recall: de Soto says “formalise” He does not say give people titles to their land. There is a difference
- Though, in 2008 he seems to talk less of titles than in 2000!

Land tenure in early modern Europe is similar to customary tenure in Malawi

For both we find

- Village settlements with individual use rights to arable fields and collective use rights to the “waste”: the commons.
- Time gradient: The arable reverts to commons after harvest (the open field system)
- Space gradient: Decreasing individual rights from the settlement by way of outfields to the mountains

Background on Malawi



- Malawi is a country with lakes, plains, and mountains in the southern part of the Rift valley

March 2011

© Erling Berge

33

Land area of Malawi distributed according to the formal tenure system

Year	1965	1970	1975	1980	1985	1990	1995	2000
Land area (mill ha)	9.42	9.42	9.42	9.42	9.42	9.42	9.42	9.42
Type of land tenure								
Customary	8.01 85.0%	7.69 81.6%	7.53 79.9%	7.50 79.6%	7.40 78.6%			7.04 74.7%
Public	1.17 12.4%	1.54 16.3%	1.66 17.6%	1.70 18.0%				2.02 21.4%
Private	0.24 2.5%	0.20 2.1%	0.34 3.6%					0.36 3.8%
-Leasehold	0.08	0.08	0.24					0.29
-Freehold	0.16	0.12	0.10					0.07

March 2011

© Erling Berge

34

Formal land law in Malawi

- **Rules are copied or adapted from English land law including the hidden presumption of patrilineal devolution**
- **Customary land vests in the president**
- Chiefs can authorise use and occupation

Observations indicate

- The formal law does not provide the regulations that people need.
 - The reasons relate both to system design and to the fact that we are all fallible humans
 - In particular it does not provide sufficient security of use and occupation, or the means to reallocate use to new users in a reliable manner
- The problems have been recognized by the law reform committees
- A proposal for legal reforms have just (2010) been presented to the government (Khaila commission)

March 2011

© Erling Berge

35

Problems tied to government land ownership

- Large scale conversion from customary lands to government lands
 - Usually with no agreements or compensations
- Reallocation of government lands to
 - National parks
 - Wildlife areas
 - Forest reserves
 - **Leaseholds for industrial agriculture**

March 2011

© Erling Berge

36

The estate economy

- Tea
- Coffee
- Tobacco
- Sugarcane (alcohol for adding to petrol)

Most of these industries use **leased land**

March 2011

© Erling Berge

37

A tea estate



March 2011

© Erling Berge

38

Packing tobacco



March 2011

© Erling Berge

39

The fishing industry

- Major lakes:
 - Malawi, Malombe, Chilwa, Chiuta, Kazuni
- Major rivers:
 - Shire, Bua, Songwe, North Rukulu, South Rukulu, Ruo, Linthipe
- Fishing rights are unclear
- Except in Lake Malawi major fisheries are collapsing

March 2011

© Erling Berge

40

From a fishing village by Lake Malawi



March 2011

© Erling Berge

41

Processing fish at Lake Malawi

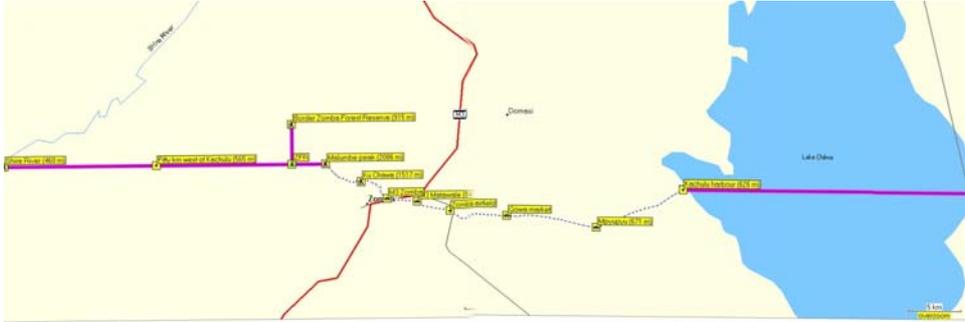


March 2011

© Erling Berge

42

Chilwa to Malumbe

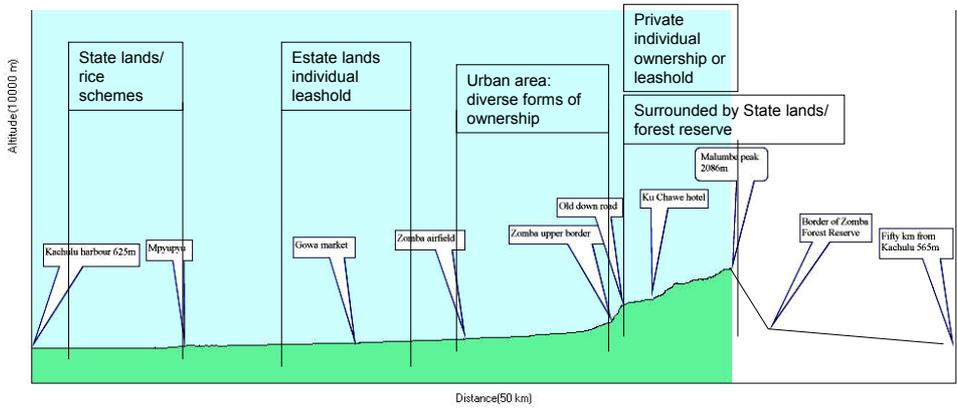


March 2011

© Erling Berge

43

Malawi: from lake to mountain around Zomba



March 2011

© Erling Berge

44

Customary land tenure

- Land was considered to belong to all members of a community, individuals and families had rights to use it
- The village community was also a lineage
- Chiefs were custodians of the land, managing it on behalf of their people (lineage)
- Land could not be alienated by sale (e.g. in the sense of sale in English land law)
- Kinship and residence determined access to land
- Rights to use the land could be inherited
- Malawi is interesting because they have a strong matrilineal culture with female ownership of land

March 2011

© Erling Berge

45

Customary land tenure

- Technical language
 - Bundles of rights comprising ***resource specific rights*** to some of the following
 - Access
 - Withdrawal
 - Management
 - Exclusion of other stakeholders
 - Alienation of any or all rights for a term or forever
 - Fee simple: NOT PART OF CLT
 - Easements / Servitudes: NOT PART OF CLT
 - Residual / Remainder: NOT PART OF CLT

March 2011

© Erling Berge

46

Conflicts between Customary Law and Statute Law

- The court system of Anglophone Africa was bound to enforce customary law unless
 - It was seen as repugnant to natural justice or morality
 - It was seen as inconsistent with statute law
 - It was seen as inappropriate to the particular circumstance of the case
- This still is the case - more or less

March 2011

© Erling Berge

47

Customary Land Administration (1)

Malawi:

- TA - Traditional Authority, The Chief with, or without, his advisers (induna) can do the following
 - Land allocation
 - Land forfeiture
 - Settle land disputes
 - Impose reasonable regulations on land use
 - Accept surrender of land
 - Appropriate unused land for his personal use
- The authority of the chief may in some matters be delegated to the Village Headman

March 2011

© Erling Berge

48

Customary Land Administration (2)

Malawi:

- Initial allocations to households were in theory tailored to needs but would often be affected by relations between chief/ village leader and recipient so that closer relatives got more.
- As needs changed households could get supplementary allocations from the reserve of unallocated lands

Land allocation procedure 2007

- The parents presented their request for land to the village headperson who accepted the request and proposed a date when they could walk around the land allocated to them. In June 2001 they made an agreement to pay 'chizulamanga' (money paid for the first walk around land allocated to a new operator/owner) amounting to K1000. After the first walk they were charged K13000 as operating fee for the land which was paid over a period of a year by instalments.
- (Field notes 2007 from Kasungu)

Matrilineal land use rights (I)

Malawi:

- At TA or GVL level rights were held by the “fuko” (the group of matrilineal relatives) with the “nkhoswe wamkulu” (eldest male member) as its executive
- At village level rights were held by the mbumba (the group of sisters defining the lineage) with the “mwini mbumba” (their [mother’s] senior brother) as its executive
- If the village comprised more than one mbumba the VL was the manager of unallocated land, the first authority in conflicts, and provided the official “land register”

March 2011

© Erling Berge

51

Matrilineal land use rights (II)

Malawi:

- Land transactions witnessed by the VL was valid
- At HH level rights were held by the “banja” (family). Land rights are at HH level use rights to specific parcels for specific individual persons
- The “mwini mbumba” is responsible for allocating land to his sisters and their daughters in the area of the “mbumba”, to protect their interest in the land, and to resolve disputes
- Men were supposed to get land through marriage (chikamwini)

March 2011

© Erling Berge

52

Gender issues in land tenure

- In the north:
 - Patrilineal remain as before, the only new feature is
 - Females can become chiefs
- In the centre:
 - Sons inherit land in previously matrilineal villages in the centre. Parents think the land should go to their children
 - Chieftaincies are as in the matrilineal system
- In the south:
 - Daughters own land while sons use land through their wives. Case: 14 sisters pursuing a brother for not vacating the land he has cultivated for more than 20 years
 - Matrilineal system seems strengthened

March 2011

© Erling Berge

53

Land reform –contemporary drivers I

1. Population growth → land scarcity → increase in conflicts
2. Transfer of land to commercial agriculture → land scarcity → increase in conflicts → blaming the powers that transfers land
3. Land tenure ideology among donor organisations → individual titling solves the problem (but are not sure what the problem is)

March 2011

© Erling Berge

54

Land reform –contemporary drivers II

4. Social change makes it difficult for people to achieve their private goals about security of tenure and devolution of land. Interference from government, traditional authorities and lineages.
5. Customary law is changing, or eroding. Determining what the law says is increasingly difficult (mortality, shifts in population, corruption)
6. Matrilineal land holding is maintaining its strength. It is not taken serious in land reform

Major problems for land reform in Malawi

- Land management problems
- Gender issues in land tenure
- The commons
- Corruption

2010 Land reform proposal

- The Khaila commission finished its proposal in 2006
- Transfer of ownership of land from the president and the government to the traditional authority chiefs (to be held in trust ownership)
- TA power over land to be exercised in a committee
- Reforming the land surveying services and open up for titling on demand
- In 2010 the proposal was presented to the government

Land reform and de Soto

De Soto says

- The extralegal sector has developed their own law, their own understanding of what property is and what they can do with it. Unless land reform builds on this, it will fail miserably as the many failed attempts at land reform already should show us
- Extract the principles used by the people
- Take the perspective of the poor

The perspective of the poor in Malawi

- Land is needed for current livelihoods
- Secure access is the paramount interest
- Land satisfies some common emotional/ cultural needs for belonging and identity
- Land will enhance a person's social status'
- Land can be an investment for
 - retirement security
 - the future security of children

Land reform (incl. titling) is important

- BUT it is no instant fix. Land reforms take time
- There is no such thing as getting it right on first try. It took England some 800 years to get it working reasonable - if not right.
- Land reform needs to be an ongoing process
- In history *titling is not the start - it is the end result*

General sources for title claims

- Land registers
- Wills from deceased persons with rights in the land
- Contracts between persons concerning rights in the land
- Formal law concerning rights in land
- Cultural beliefs and practices concerning rights in land (customs)

Land reform issues in current Malawian customary land tenure

1. Usage of sales and rental contracts
2. Enforcement of court decisions and investigation of witchcraft accusations
3. The problem of in-migrants ... (obwera)
4. Increasing land scarcity
5. Fragmentation of villages and an increasing hierarchy of traditional leaders

1 Contracts for sale and rental

- Usage of sales and rental contracts (at variable levels of formalisation) to assign use rights to land needs regulations and enforcement systems
- There is need for specification of the rights that can be traded
- There is need for procedures for validating and enforcing such contracts

2 Enforcement of court decisions and investigation of witchcraft accusations

- Customary law tribunals seem in certain cases incapable of enforcing their decisions
- The high court says magistrate court has no jurisdiction in cases involving customary law land: But can people afford to take a case to the high court directly?
- If a suspicious death occurs and seems to clear the way for land grabbing what should people do?

3 “Obwera” losing out ...

- Woman buys land from village head in 80ies
- Woman dies 2002, mother inherits
- Sons of sister to village head claims this land
- VH, GVH, TA are unable to protect the inheritor. She loses the land she inherited and another garden is taken as punishment:
- “if I had the land in my hands it was not possible to protect it through land rights just because they say I am an outsider (obwera)”
- Also the son of the woman is threatened: “sometimes there are threats from the same family that they are going to take my land [that he got from his mother] away because we don’t belong here (obwera)”

Field notes 2007 Chiradzulu

4 Increasing land scarcity I

Renting of arable customary land ca 1985-90

- Land transfers are supposed to be approved and witnessed by the mwini mbumba and VL
- “In practice, however, it seems that these transactions are often entered into without the approval of the leaders, because families believe they have the right to do whatever they want with their land, provided they do not sell it. The use of cash in transactions involving customary land may be the first step in the commoditisation of land and it may, therefore, be one short step from leasing to outright sale of land.” (Kishindo 1993-94:65)

4 Increasing land scarcity II

2007: One generation after 1985-90

- Scarcity is increasing and land transactions become difficult.
- Sale, renting and lending today entails insecurities about tenure relations (Can I keep the land after renting it out?)
- Sale of land is formally prohibited. This is used against those who bought use rights earlier (e.g. in the 80ies and 90ies)
- Renting out land induces risk of losing land to the renter

March 2011

© Erling Berge

67

4 Increasing land scarcity III

Sales disappear: fewer and fewer have land to sell

- “I have never bought land before because I have never come across someone selling land.”
- “I have never sold land because I don’t have land to sell.”
- “But even if I had land in this village I would not have sold it, because there is shortage of land.”

Field notes 2007 Chiradzulu

March 2011

© Erling Berge

68

4 Increasing land scarcity IV

Renting disappears from view

- “I rented in land from Mr. X last season at a price of MK1500. **This is done between the two of us because it is against the village regulations to rent in land.** I have been renting land now for almost four years from different people.”
- “I don’t rent out land just because I don’t have enough land to do so. Long-term renting is done between the owner and the operator **secretly** as I said before. It does not involve a third party at all.”

Field notes 2007 Chiradzulu, my emphasis

March 2011

© Erling Berge

69

4 Land scarcity

- Previously villages would relocate if resources were dwindling, or it would spilt and one part relocate if there was serious political cleavages
- The customary system of land use work very well as long as there is vacant land
- Land scarcity arrived with
 - Introduction of industrial scale commercial agriculture
 - Population growth, natural as well as migrations forced by wars
- It was intensified by the allocation of land to national parks, forest and wildlife reserves

March 2011

© Erling Berge

70

4 Implications of scarcity

- Scarcity creates competition for access to land
- Scarcity creates prices - also for use rights
- Scarcity creates distributional conflicts - also among siblings
- People experience uncertainty and insecurity about the future of their children
- With little unallocated land available access to already allocated land become important
- People do not necessarily feel secure on land they rent or buy

But note in particular:

- People feel secure about holding land they have gotten from their parents

4 Malawians reacted to scarcity as expected

- A system for lending and renting developed
- Written contracts for sales and rentals appeared
- Sales apparently came before renting
 - Sale of use rights were observed already in the 80ies

4 Documented consequences

- Where scarcity is most pronounced the insecurities multiply for some people, in particular the “obwera”: the newcomers, those not members of the mbumba
- Sales disappear
- Rentals become secret
- Unscrupulous chiefs are seen to misuse their land management powers with impunity

March 2011

© Erling Berge

73

5 Villages and leaders
Malawi is a country of villages.
What does that mean?

- Some urbanites are not tied to place
 - Some do not indicate rural roots.
 - But they do buy or rent land to grow their own maize (aka “food”)
 - Their numbers are probably growing, but not much is known of this
-
- Most people are from villages ...

March 2011

© Erling Berge

74

5 Villages and leaders Identity and place

- For many people their identity is closely tied to the identity of a place. They come from so and so a village located in TA xx
- Maintaining this identity entails regular, not necessarily frequent returns to this place
- Occasional returns are triggered by events such as funerals and clearing of graveyards
- Sometimes the link entails retirement to the village in old age and/ or burial upon death

March 2011

© Erling Berge

75

5 Villages and leaders Belonging to a village

- Coming from a village entails having land rights in the village.
- The rights may vary:
 - From real rights demonstrated by growing food (read: maize) on land allocated to you in some way even if you live elsewhere
 - To wishful thinking based on a stipulation that your cousins or aunts/uncles will give you land if you go there. The thinking can be maintained as long as one do not go there

March 2011

© Erling Berge

76

5 Villages and leaders

What is a village?

- Scarcity of land will prevent new villages from relocating to virgin or contiguous land like they used to
- What then is a village in current society?
 - A social unit? (another word for mbumba)
 - An administrative unit? (made for receiving subsidies)
 - A political unit? (village leader on the payroll of the government)
 - A geographical unit? (a point and a name on the map)

March 2011

© Erling Berge

77

5 Villages and leaders

Fragmentation of villages and hierarchy of leaders

- Older villages split into mbumbas but the new “development villages” remain within the old village. Relocation is impossible
- The number of positions of authority above the village leader is increasing. This new hierarchy of traditional leaders is expected to cause problems for land management. The costs for the users of their services may increase and validation of land transactions may become increasingly difficult

March 2011

© Erling Berge

78

5 Villages and leaders

New villages and lines of authority

- New villages and leaders add to the problems of land management
 - The increasing number of nodes in the chain of traditional authority adds new costs for the users of the services provided by the chiefs
 - The increasing number of villages fragments and may destroy some information on valid land claims. In particular the transition period will create difficulties

5 Villages and leaders

Villages are transforming

- *The social units* called villages are becoming more numerous.
- Some villages become pure lineages consisting only of the mbumba with the household lands
- Others remain geographically contiguous and socially heterogeneous
- Some dissolve and cease to exist

5 Villages and leaders Why fragmentation of villages and village lands?

Some of the drivers for this development are

- The distribution of subsidies in the form of coupons targeted at the most needy
- The payment of chiefs from government
- The payment of chiefs by users of their services
- The acquisition of development projects
- The increased prestige accorded chiefs (of all kinds) for a larger number of subordinate units

5 Villages and leaders Land management problems

- The fragmentation of villages in a situation with land scarcity creates problems for the village leader's role as land manager
- Group village leaders do not know enough (or anything) about land transactions in their area
- The land register supposed to reside in the village leader's head may not be there for new village leaders not brought up and trained to remember
- The possibilities for conflicts among village leaders increase with the number of leaders and the interleaving of their lands

More topics for land reform: Legislation of equality?

- It is difficult to legislate equality in land tenure issues
- Rules must be simple and people must understand them and agree on their legitimacy
- A culture of equality needs nurture but must grow by itself
- What the judiciary can and must do is to go an extra mile to treat sexes equally in all cases taken to court and in particular to enforce the judgement

March 2011

© Erling Berge

83

More topics for land reform: Corruption in land administration?

- Supply of title
 - Is it possible to offer opportunities for titling without opportunities for public employees to enrich themselves in the process?
(bureaucrats must be trustworthy)
- Justice must be seen to be done
 - Adjudication of conflicts must occur without opportunities for public employees to enrich themselves in the process

March 2011

© Erling Berge

84

More topics for land reform: Problems are linked

- The insecurities of contracts for sale or rental of use rights are increasing
- Chiefs allowed to misuse their powers are compounding the problems
- The recent mushrooming of new villages and leaders will add to both of these problems

More topics for land reform: Political power

- In our day leaders need to earn the allegiance of their constituencies by the means afforded by a democratic society by delivering
 - Justice in decision making
 - and displaying
 - Trustworthiness in actions
- This applies more importantly than anywhere in land reform since land is at the core of most people's livelihoods

Practical conclusions

Do not solve big problems with simple ideas

Land reform is tied to other goals

- Political empowerment
- Good governance
- Rule-of-law

In land reform the best advice is to

- Point out directions, not end states
- Change comes step by step at several margins
- ***Keep it simple, local, and practical***

And, basically, I think, this is what de Soto says