Using Remedies to Regularise Access to Land

Jude Wallace and Ian Williamson
Context

World Bank land policy development –

1975  Economic focus

2003  Land Policies for Growth and Poverty Reduction

Changes of policy new theories and new applications

Implications – change of focus from titling and LAS to land delivery through ground-up, participatory approaches
Relative titles

Examples

Legal, equitable and possessory.

Compare freehold, mining, forestry overlays.
Standard rights analysis

Property theory, tenures, land rights are for formalised systems.

Proposed model -
relies on pre-legal social formalisation of expectations through recognition repeat behaviour
Incorporates formalisation into minimal legal order
permits adaptation to formal systems.
Tools for building relativity of title

Prioritisation system (system of order of interests)
Alert system (holders must disclose)
Transparency mechanisms (transaction disclosure)
Discovery systems (searching systems)
Removal systems (overreaching)
Possessory Titles Recognition

Reliance on behaviour not rights– simple policing of interference with land occupancy.

Provision of remedy – local access and enforcement system

Building of expectations – pre legal, socially based expectations

Transfer into formal system - .......
Derivative sources

English experience

Anti-eviction

Land management focus
Possessory Remedies Tool Box

Articulated and popular land policies
Remedies to reverse aberrant behaviour
Inclusion of customary, etc, tenures
Transaction and inheritance tracking
Overlaying occupation patterns
Focus on local behaviour and capacity
Betterment strategies
Anticipation of hard cases
Future Challenges

Incorporation of labour based land distribution

Integration of informal credit systems

Improved capture of transactions, inheritance and passive alteration of land use

Articulation of rights to water, servitudes, roads and services
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<thead>
<tr>
<th>Aspect</th>
<th>Support</th>
<th>Critique</th>
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<tbody>
<tr>
<td>Workable legal order</td>
<td>Order can be very immature.</td>
<td>However, minimum legal order is frequently insufficient in long term</td>
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<tr>
<td>Current position</td>
<td>The point of the model is to stabilize, not judge</td>
<td>However, many current possessors will lack moral or other validation. The neutrality of the model can validate terrorist, intrusive, or opportunist anterior behaviour. Platteau 2004</td>
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<td>Colonial history</td>
<td>Capable of operating in Anglophone and Francophone Africa</td>
<td>Neutrality needs careful consideration in any context</td>
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<tr>
<td>Aspect</td>
<td>Support</td>
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<tr>
<td>Timing</td>
<td>Disruption of land management systems is a continual constant</td>
<td>Model assumes post conflict, high social and institutional disruption</td>
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<td>Relationship with</td>
<td>Focus on behavior of removal or of interference with possession is title neutral</td>
<td>However, sooner or later, rights focus must develop</td>
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<td>rights system</td>
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<td>Minimalist approach</td>
<td>Relies on regulating behaviour in relation to land, not land rights</td>
<td>Can regulate land access for growing period beyond harvest</td>
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<td>Existing systems</td>
<td>Customary systems are reinforced</td>
<td>Inherent complexities in land distribution in customary systems is not accounted for</td>
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THANK YOU