



# **Land Rights Reform and Governance in Africa**

***How to make it work in the 21<sup>st</sup> Century?***

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United Nations Development Programme

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# Table of contents

<b>Abstract</b>	<b>1</b>
<i>Resumo</i>	2
<i>Resumen</i>	3
<i>Résumé</i>	5
<b>Summary</b>	<b>7</b>
<i>The Context</i>	7
<i>Tenure insecurity is a socio-political condition engineered intentionally or otherwise by policies – and is remediable by policies</i>	
<b>Looking for Root Causes</b>	<b>7</b>
<i>The denial of customary lands as private property lies at the heart of insecurity</i>	7
<i>Wrongful attrition has especially affected common properties and the poor</i>	8
<i>The commons as the capital of the rural poor</i>	8
<i>20th Century Remedy</i>	9
<b>The Promised Reform</b>	<b>9</b>
<i>Liberation of customary tenure from a century of suppression</i>	9
<i>Recognising customary land interests as private property rights</i>	10
<i>The helping hand of governance and natural resource management reforms</i>	10
<i>Constraints</i>	11
<i>Helping customary owners get hold of investment - or helping investors get hold of customary lands?</i>	11
<b>Enabling Reform</b>	<b>12</b>
<i>Adopting developmentally-sound and poverty-focused change</i>	12
<i>Focusing upon the commons due to the losses they face and their value for the majority poor</i>	12
<i>Clarifying collective private rights</i>	13
<i>Helping the poor make use of their capital</i>	13
<i>Shaping land reform in the right directions and with public will</i>	14
<b>I. Introduction: Tenure Insecurity, Poverty and Power Relations</b>	<b>17</b>
<i>Tenure insecurity is a socio-political condition engineered by policies – and remediable by policies</i>	17
<b>II. The Subordination of Customary Land Rights</b>	<b>23</b>
<b>III. Attempts to Make Amends</b>	<b>29</b>



<b>IV.</b>	<b><i>An End of Century Turn-Around: Towards the Liberation of Customary Land Rights</i></b>	<b>33</b>
<b>V.</b>	<b><i>Launching Reform through New Policy and Law</i></b>	<b>37</b>
<b>VI.</b>	<b><i>The Need to Assure Success</i></b>	<b>45</b>
<b>VII</b>	<b><i>How To Make Land Reform Work?</i></b>	<b>57</b>
	<b><i>Cited References</i></b>	<b>63</b>
<b>Box</b>		
	<i>Box 1. Trends in the Treatment of Customary Rights in Sub-Saharan Africa</i>	37

# Abstract

**T**he main argument of this paper is that insecurity of land tenure is a socio-political condition that can be made – and unmade. Its origins lie in 19th and 20th century policies which failed to accord indigenous and customary occupancy their deserved status as private property interests. This has deprived millions of poor of the protection they need to withstand the worst effects of social transformation and the commoditisation of land. Lands and resources owned in common have been most affected, the more valuable having been withdrawn from local custodianship or reallocated to outsiders and investors. Reforms of the 20th century often improved the access of poor to land through land redistribution and other schemes but made customary rights less secure. Entitlement programmes that converted customary occupancy into individualised European-derived tenure forms have widely extinguished secondary and common property interests.

In Africa (the focus of this paper) over 90 percent of the rural population access to land through indigenous customary mechanisms, and around 370 million of them are definably 'poor'. With exceptions, customary access to land has been no more than permissive and often remains so. People with customary rights to land often live on land that is actually classified as government or public land. While rights over farms and houses are not routinely interfered with, common property ownership of pastures, forests and woodlands see constant attrition through state appropriation and reallocation to investors or interest-holders of its choice. Yet these lands provide substantial support to livelihoods, especially of the poor who often have no or little farmland. The lucrative and rising values of pasture, forest and woodland are still typically captured by governments in the form of logging, agribusiness land leasing and other fees. This deprives poor communities of a crucial capital base which could help them escape poverty.

A new wave of global land reform is underway within which the legal status of customary rights held by rural Africans and other indigenous populations around the world is improving. In a small but growing number of cases in Africa, customary rights are now accorded equivalent legal force with those acquired through non-indigenous systems and may be registered under state law. Support for the devolved governance of these rights at local levels, and building upon customary norms, is also growing.

Constraints upon the delivery of real security abound. The paper points to the need for a more action-based and community driven evolutionary process. This, it is argued, will better resolve conceptual confusions that still surround customary tenure and which frustrate sound policy development. It will also better trigger the local level empowerment and institution-building needed to more appropriately shape, drive and sustain political will towards real removal of the chronic tenure insecurity of the poor. It will also help limit the impacts of reform that is broadly market-driven and in the African context, often seeks more to bring as much customary land into the market place for investor acquisition than to secure customary rights and benefits. Approaches which work from the community level and which focus upon the security of least secure properties will also bring threatened commons to the centre of reform, facilitating the evolution of stronger constructs for the ordering and protection of collective rights. Securing those rights in clear and inclusive ways will lay a foundation from which their generally poor shareholders of these properties may begin to reap the benefits.

## Resumo

A principal hipótese deste documento é que a insegurança quanto a posse da terra é uma situação socio-política que pode ser construída – e desfeita. A sua origem encontra-se nas políticas dos Séculos XIX e XX, que não concederam à ocupação indígena e tradicional o estatuto de propriedade privada que mereciam. Esta situação privou milhões de pobres da protecção de que tinham necessidade para resistir aos piores efeitos da transformação social e da comercialização da terra. As terras e os recursos detidos em comum foram os que mais sofreram e os mais valiosos foram retirados à posse local ou atribuídos a pessoas exteriores ou a investidores. As reformas do Século XX melhoraram muitas das vezes o acesso geral dos pobres à terra, mas tornaram também os direitos tradicionais menos seguros. Os programas de criação de direitos que converteram a ocupação tradicional em formas de posse individualizada de tipo europeu extinguiram quase totalmente os direitos de propriedade secundários ou comuns.

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