

Land registration is rooted in colonial processes of land acquisition for public interest and commercial production. A brief look at examples from former colonies can illustrate the lasting influence of such practices in the present day.

AusAID's support for land reform in the Pacific risks a similar mentality of privileging commercial and economic interests and has the potential to fall victim to the same failings of colonial structures, in particular injustice towards customary land holders.

Kenya

In the mid-twentieth century, the British colonial government of Kenya enacted legislation to transform communal tenure relations into individualised land holdings. Communal ownership at the time was seen as detrimental to the commercialisation of agricultural production. At independence in 1963 this process was still underway. Accordingly the Trust Land Act and the Land (Group Representatives) Act were used to facilitate transition. A report by the Kenya Land Alliance (KLA), a network of civil society organisations and individuals, which advocates effective land laws and policy in Kenya, states:

Under the Constitution and the Trust Land Act, County Councils were supposed to hold Trust Land on trust for residents in a county who owned the land according to the customary law applicable in that area. County Councils and the Central Government, however, have facilitated the alienation of Trust Land in favor of some affluent and powerful individuals thus totally disregarding the rights of local residents. The courts have also habitually ruled in favor of the registered proprietors instead of local residents

Most Trust Lands are still considered 'traditional' land with land use practices based on customary law. The authority of customary law and the viability of customary tenure have, however, been undermined through political patronage, corruption and the English/ Common law on land ownership.

Cambodia

In 2001, the 'Land Law' was passed, which recognised collective land ownership by indigenous communities and requires that indigenous peoples continue to manage their community lands according to traditional customs, pending the issuing of collective titles.

Further to this, there must be consensus amongst the entire community before any land is sold and no outside individual or group may acquire lands that belong to indigenous communities.

Nevertheless, the protection of customary land rights under law has not stopped manipulation and exploitation in Cambodia. Fraudulent documentation and physical coercion have led to title being unlawfully placed in the hands of "local officials and business entities from outside the communities." Some of the most indiscriminate land grabs have occurred in Ratanakiri Province, home to at least half of Cambodia's indigenous population. Corruption in local government and of police is often responsible.

Guatemala

The Peace Accords instituted in 1994 provided a framework for broad transformations in agrarian laws, institutions and practices. In regard to indigenous peoples, the accords sought to recognise 'the status of communal lands; guarantee indigenous peoples' participation in decisions about the use of resources on those lands; develop mechanisms to deal with indigenous communities' land claims; and establish a mixed government-indigenous commission to propose institutional solutions on these matters'. These accords were established with the approval and funding of the World Bank and USAID.

However subsequent review reports by the UN Verification Mission in Guatemala (MINIGUA) have shown that these Accords have not been fully implemented on the ground. Many laws have still not been passed; there is a lack of institutional set up to enact and enforce the accords and relevant bodies are plagued by inadequate funding.

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