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## LAND GOVERNANCE IN THE 21<sup>ST</sup> CENTURY: FRAMING THE DEBATE SERIES

### Land Governance in Africa

How historical context has shaped key contemporary  
issues relating to policy on land

by **Kojo Sebastian Amanor**



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# Foreword

ILC initiated the Framing the Debate series in response to the clear need to facilitate a deeper understanding of the key topics at the centre of current land governance debates. Land governance is understood as the formal and informal rules, mechanisms, processes and institutions through which land is accessed, used, controlled, transferred, and land-related conflicts are managed. It encompasses, therefore, land tenure systems, land and agrarian reforms, and land administration.

Why now? The terms of the debate on land, agrarian reform, land tenure and administration have become increasingly diverse and complex, as a result of a rapidly and radically changing global context. The greater demand for land, for productive use, human settlements, as well as for environmental conservation and climate mitigation purposes, creates new land governance challenges. The combined effects of the food and energy crises since 2008 have led to an unprecedented magnitude of international land transactions that land reformers of the previous century did not have to deal with. In the contemporary context we are witnessing the emergence of a vibrant civil society, and larger and more influential international coalitions of farmers' organisations. In these circumstances of growing complexity with a multiplicity of actors, disputes and quarrels are often rooted in misunderstandings rather than a reflection of fundamental disagreements. A typical example of this is the current debate on land grabbing. The controversies and disputes surrounding this phenomenon in part result from the fact that the understanding of the very notion of land grabbing differs from one stakeholder group to another. Once the concept is defined in a consensual manner, the nature of the debate changes, becoming more substantive and constructive. The Tirana Declaration, adopted at the Assembly of Members in 2011, was a significant advance in this regard.

The International Land Coalition is a partnership that serves as an international platform for multi-stakeholder dialogue aimed at advancing the pro-poor land agenda. For ILC to effectively play this role, it needs to ensure that its members and partners

share a minimum of understanding concerning the issues, the debates, the interests and perspectives of key multi-stakeholder groups. A diversity of perspectives and opposing viewpoints are not only expected with regard to inherently contentious issues such as land, but they are also healthy, provided that they are substantive divergences on clearly defined issues. For this reason, the audience of the Framing the Debate series should be the broader land constituency, which itself is expanding as the land issue becomes increasingly central to global development challenges.

The Framing the Debate series comprises regionally or nationally focused thematic papers relating to on-going and emerging land-related debates. A single publication may treat a wide range of land governance issues or focus on a specific theme. We consider them to be perspective papers in which authors --typically renowned land experts-- are encouraged to put forward their personal perspectives on the issues, while acknowledging and fairly discussing other views. Avoiding the risk of over-simplifying the reality, which in many cases is complex, or caricaturing the often very sophisticated and nuanced positions held by many stakeholders, the papers published in the Framing the Debates series are ideally concise and accessible to a wide audience of land specialists as well as non-land experts.

We hope that these papers will become reference documents for understanding the current state of the land governance debate. We expect these first issues to trigger debate and pave the way for future study.

*Madiodio Niasse, ILC Director*

### About the author



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# Executive summary

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Since the 1990s there has been a resurgence of interest in land reform in Africa. Initially, land administrative reform was articulated as an essential part of the institutional reforms accompanying economic liberalism and structural adjustment. The creation of transparent and efficient processes for land titling, land registration, and the creation of land markets was seen as essential for promoting foreign investment. However, as governance reforms began to be implemented, the role of state cadastres became increasingly questioned, and new frameworks explored decentralised forms of land administration, which accorded a greater role to communities in land management and which attempted to gain formal recognition for customary land tenure arrangements and to harmonise statutory and customary tenure.

A major concern in contemporary land initiatives has been to gain a better understanding of the dynamics of customary land management and to create innovative techniques for mapping out customary holdings cheaply and extensively with the participation of rural communities. This involves institutional innovations that enable customary land arrangements to be harmonised and integrated into state management systems, and enable rural producers to claim stable property rights. This breaks through the dichotomy created under colonialism and continued in most states under early independence in which customary arrangements enabled smallholders to gain only ambiguous user rights to land, and enabled only those who were able to negotiate complex and expensive titling procedures to gain secure rights to land.

Under colonialism, titling was largely reserved for Europeans, and rural Africans could only gain customary user rights, which also subjected them to a number of coercive obligations, including forced labour and forced cultivation of particular crops. Independence resulted in the “deracialisation” of the land question, but not in accessible forms of land titling through which African peasant producers could easily secure land rights. It also created considerable hurdles within processes of land registration, which reserved titling for an exclusive and privileged minority with access to wealth and political connections. This served to undermine the land rights of the poor and to promote the appropriation of land, while undermining the emergence of rural land markets. As land becomes increasingly scarce and valuable, the ambiguousness of customary land rights has generated major social conflicts, land speculation, and land grabbing, which are becoming major concerns for governance and for economic regulation.

Important land initiatives in recent years have included programmes which seek to create community rights in land and the comprehensive mapping of the various land rights of community members, and which seek to protect the land rights of rural people and ensure that these are not appropriated by state agencies, commercial elites, land speculators, or foreign investors.

Two distinct approaches to land policy in Africa have emerged in recent years: one concerned with addressing poverty by promoting growth and land markets, the other by creating pro-poor policies that protect the livelihood interests of the poor

against the expansion of land markets. The second approach prevents the market from commoditising land in ways that undermine the rights of the poor to livelihoods; it sees land as playing important social roles in the construction of identity and in social cohesion and welfare provisioning. However, there have been considerable overlaps between the two approaches and synergies that relate to the harmonisation of customary and statutory tenure and increasing transparency of land registration processes. Creating stable rights for the customary sector depends upon recognition by the state of these rights and the ability of individuals, irrespective of their social status, to be able to register their rights and claims on land. The creation of functioning and transparent land markets requires recognised rights in the customary sector and the convertibility of customary rights into statutory tenure, since the majority of land in use lies under customary management.

Two distinct approaches have emerged in the promotion of customary land administration:

- » Devolving the management of customary land relations to pre-existing chiefs, councils of elders, and nobles in whom community land is vested, with claims to the root title on land;
- » Devolving land administration to elected village councils or community organisations, who then define and redefine local tenure rules through a process of negotiation and mediation.

Promoting customary land rights is not without problems, since access and control over land are frequently contested. Customary claims are often constructed on the basis of social differentiation and inequality, which often mark relations between aristocrats and commoners in historically stratified societies, migrants and autochthones (indigenes), men (husbands) and women (wives), and elders and youth. The registration of rights and the framing of their recognition often lead to conflicts as various interest groups attempt to take advantage of registration to enhance and strengthen their claims to land over others.

Women frequently feel threatened by the registration of customary rights of household heads, which undermines their own user rights. As a result, they have sometimes preferred statutory land titling or to appeal to state institutions to recognise their land rights. Where they have been insecure

about the state's protection of their rights, they have often appealed to international human rights principles and the international conventions to which the state is a signatory. This involves women in alliances that go beyond the community level into national and civil society forums. The pressures and demands emerging from this sector of society give rise to internal debate about the nature of the customary, creating pressures for reform from below and above. Pastoral peoples have also attempted to use international conventions on the rights of indigenous peoples to press for their land rights, which are often poorly recognised. Thus, these relationships are not only about land management but also about governance, the construction of citizenship, identity, and civil society, and about power relations.

During the 1990s and 2000s, the main innovations in land tenure policy frameworks have been in relation to the development of community-based solutions. These have attempted to secure more stable rights in property for rural dwellers. They have introduced simple processes through which land user rights can be registered in accordance with the economic practices that predominate in rural areas. This has arisen from the recognition that stable rights and formal recognition of those rights have to be vested in the people who exercise them rather than in the state, which can be subject to pressures from national elites or from global transnational interests and markets unless there are checks from below.

This interest in community-based solutions has fed into participatory natural resource management frameworks and the development of community forestry, including the *gestion de terroir* approach in Francophone West Africa. This approach was concerned with devolving the management of forests and natural resources to village communities and the joint management of conservation areas and forest reserves. It evolved participatory toolkits to facilitate community management and a conceptualisation of the institutional framework for community management involving interdisciplinary teams of researchers and multi-sector linkages between development agencies, government departments, and communities. By the early 1990s a number of participatory tools had evolved for community mapping, which was employed in mapping out village lands in Côte d'Ivoire. These were later extended to other countries in Francophone Africa,



and have been a major influence on registering community rights in land. This approach focuses on describing existing customary rights rather than classifying them, and includes various secondary rights and multiple rights to the use of particular plots of land and particular natural resources on the land, such as trees and pasture. These techniques have enabled rapid and cost-effective demarcation and registration of existing land rights under customary tenure.

These innovative programmes have shown the viability, cost-effectiveness, and technical possibilities of devising decentralised land registers. However, they have also revealed the political complexity of rural life. The unintended outcomes and social conflicts that have arisen as a result of land claims and counter-claims reveal that concepts of community and customary rights are often problematic, and politically constructed in ways in which the exercise of customary rights by certain groups can impinge on the rights of others. Many of the social conflicts that have emerged in Côte d'Ivoire, Congo, Rwanda, Sierra Leone, Liberia, and Sudan have dimensions rooted in land conflicts.

A second legacy of colonialism has been in the inequalities and distortions of settler colonialism and the need for land redistribution. Debates around land redistribution in southern Africa are concerned both with efficiency of agricultural production and the fate of the large population within communal areas with insufficient land or livelihood opportunities, and growing unemployment and dependence on welfare, and with notions of social justice. On the one hand, the debate is concerned with the economic implications of breaking up a commercial agricultural sector which contributes considerable wealth to the state, but which also creates major social problems, social unrest, and environmental pressures on communal areas.

The debate hinges on the relative efficiency of smallholder agriculture in comparison with large commercial estates, and the potential of a reorganisation of the economy on the basis of smallholder integration into commercial markets, to lead to a more sustainable economy capable of promoting growth and poverty alleviation. This argument is complicated by the emergence of a new class of black commercial farmers looking to expand their investment in agriculture and acquire large holdings, and the emergence of traditional authorities

controlling land and land sales in communal areas. The advantage of smallholder production is also being challenged by recent developments in the scaling up of farm units in response to recent technical and organisational developments in global food commodity chains.

A second parameter of the debate concerns the capacity of redistribution to be achieved through the market. The rise of land occupations supported by the state in Zimbabwe, the crisis in civil society brought about by an unresolved land question, and spontaneous occupations of land in South Africa are all pressures for political solutions and interventions that address the land question beyond market-based solutions. However, this is further complicated by the rise of commercial black agriculture seeking support from the state, the increasing competitiveness of the agricultural sector, and the rise of new agribusiness chains.

Similar developments are taking place through the rise of large-scale foreign investments in agriculture in several African countries, which reflects recent trends in agriculture towards increasing scale of operation, growing competitiveness in a globalised agrifood economy, and new investments in new sectors, such as biofuels. The rise of these new sectors is in danger of reproducing the colonial dichotomies of overcrowded communal reserves and large expanses of "vacant" land open to concessions and investors. Similar trends also occur in peri-urban areas, where smallholders are frequently dispossessed of land rights to make way for investments in urban real estate. The dangers of land speculation, land grabbing, and the dispossession of the rural poor, and rising demand for land and escalating land values all make it critical to put in place transparent procedures for protecting the land rights of the rural poor and marginalised people, and open forums in which different interest groups can place their land claims, grievances, and demands.

These developments will create new challenges for community-based approaches, as the demands of agribusiness on the agricultural sector act as a countervailing force on notions of the importance of environmental sustainability, equality, and livelihoods preservation. Reform of land administration is not only about creating an enabling environment for agricultural accumulation. It is as much about political citizenship, political



legitimacy, national identities, the management of civil conflicts and ethnic tensions, and democratisation. However, the essential issues continue to be about access to and control of resources and livelihoods, and the conflicts that emerge from these factors. Thus, the land question cannot be resolved through technocentric innovations or technologies for mapping customary lands, but must incorporate an awareness of the political economy of land, and of the construction of networks of group interests at the local, national, and global levels straddling notions of community identities and civil society.

# Introduction

Since the 1990s land reform has received major emphasis in development policy frameworks in Africa. Since then, the majority of African states have enacted new land policies and land reforms (see figure 1). The importance of land reform is also reflected in the official agendas of international development agencies, of regional organisations including the African Union (AU), and the large number of conferences and academic studies undertaken in recent years that deal with land policy issues. At the heart of debates over land lie concerns about access, control, investment, equity, and regulation. However, the framing of these concerns has varied in different epochs, as dominant macro policies change and as policy-makers wrestle with re-contextualising variants of the same problems within new policy contexts.

Pro-poor land reform in the 1950s was framed in terms of state interventions in assuring redistribution of land to achieve both efficient and equitable growth, by breaking up large estates (*latifundio*) to promote agricultural modernisation and investment in productive land use rather than land speculation and rentier capital in land (Barracrough 1973; Lipton 2010). Land ceilings (maximum areas of estates held by individuals) and land taxes were introduced to promote the break-up of large unproductive holdings and to facilitate the emergence of productive investment in land and the transformation of idle land into productive assets. While pro-poor land reform was prominent in Southeast Asia and Latin America, it was more limited in sub-Saharan Africa, where

a major focus in the post-war period was on promoting consolidation of holdings, large-scale estate agriculture, and state investment in mechanised agriculture.

In contrast with this, contemporary land reform initiatives arise from disillusionment with the experience of state-managed land administration and the abuses of the system, which allowed particular interest groups to accumulate land at the expense of the rural poor, whose security of access to land was undermined by state policy. Changes in land policy have been worked out in two contrasting frameworks rooted in economic liberalisation and good governance: firstly, through promoting the development of land markets within a neoliberal framework, in which land redistribution and access to land are initiated through market mechanisms that facilitate transactions and enable those in need of land to acquire it through the market; and secondly, through institutional reforms that decentralise land management and accord a larger management role to community organisations and civil society. Six dominant concerns have emerged in contemporary land policy initiatives:

- » Creating stable and secure property rights to facilitate long-term investment in land by both farmers developing their productivity and investors seeking access to land for productive ventures, including commercial agriculture, natural resources extraction, tourism, and real estate for commercial enterprises;

- » Implementing institutional reform to bring the framework for land administration into line with the concept of good governance and the synergic roles of the state, market, and civil society in promoting development and capital accumulation;
- » Devising more participatory and decentralised systems of administration to promote the harmonisation of customary and statutory tenure and the recognition of the role of land in rural economies;
- » Protecting rural livelihoods and promoting equitable development, including rights of women and of minorities. Since few alternatives to livelihoods based on agriculture and natural resources exist in rural Africa, and social welfare provisioning for rural people is non-existent (with the exception of South Africa), land is a crucial resource for rural families and important in preventing social conflicts among the most marginalised groups. The livelihood interests of rural people may be threatened by the expansion of large-scale foreign investments in land for agricultural purposes;
- » Fostering land redistribution in the wake of national independence in former settler colonies within southern Africa; and
- » Mediating social conflicts that often involve relations to land, claims on land, and social identities created around claims on land.

These six distinct concerns emerge in the context of paradigms for land administration and increasing contestation over the form of land reform. The major tensions in policies have been between approaches emphasising individualised property rights, conversion of customary rights into individual rights, and the promotion of private property markets and those that emphasise a moral economy of preserving customary arrangements and social identities to protect local livelihoods against the ravages of the market, maintain social protection policies and social safety nets based on the cohesion of community, and promote a more equitable development process.

The expansion of markets can create opportunities for producers who have been poorly served by infrastructure, lack of information, and costly transport to marketing centres. However, it can also create speculation in land and land grabbing, as those

with access to power and capital position themselves to benefit from expanding demands for mineral rights, the enclosure of farmland, and real estate. Within the sphere of communitarian/moral economy approaches, the strengthening of customary tenure arrangements has also created debates about inequalities within customary arrangements and the extent to which customary or neo-customary interests are controlled, defined, and redefined by the exercise of power by privileged, patriarchal, and elite interests.

Women's access to land has been an important arena in which concerns with the relationship between customary and individual property rights, power relations, and the changing definition of the customary have been played out. Other minority interests marginalised by customary rights include migrant labour, tenants, and pastoral peoples. These inequalities result in debates on the relevance of customary rights as opposed to universal human rights, and several groups who have perceived the construction of national and local community interests to marginalise their own interests have sought to pursue their demands in the framework, conventions, and forums of international human rights, including women and pastoral people. Inequitable access to land and natural resources, control over these resources, and the marginalisation of particular groups have been reflected in a number of violent conflicts, including in Rwanda, Sierra Leone, Liberia, Côte d'Ivoire, Democratic Republic of Congo (DRC), and Sudan.

The late independence of southern African states during the 1980s and 1990s has been followed by heated debates about the appropriate nature of land redistribution and the impact of this and of equitable land management on the agrarian sector in the region. The major issues involve the relative efficiency of smallholder and large capitalist farming and the roles of market-based redistribution, restitution, state-led reform, social movements, and forceful land occupations in affecting changing access to land. The southern African debate is polarised on the one hand by Zimbabwe, with its forceful land occupations and redistribution of land supported by the state, and South Africa, with its process of market-based land reform, which has effected little significant redistribution of land. However, land redistribution and the redistribution of lands held by the state under the formerly

centrally planned economies of Mozambique, Angola, and Ethiopia also raise important issues about the relationship between power and the market.

Concerns about the relationship between smallholders and large-scale commercial estates and the role of land in providing livelihoods for the poor have also been captured in recent debates about “land grabbing”. The main lines of contention in this debate are between the necessity of pursuing development policies based on encouraging foreign private investment and land markets to facilitate investment, against the needs to protect and safeguard the rural poor from expropriation of their land by investors, and the relative efficiency and potential of smallholder and large-scale agriculture to bring about a lasting agricultural transformation.

This study aims to outline the main contemporary debates on land within Africa, and the frameworks and contexts that influence the framing of land policy. The land question is placed within a historical context, which examines the changing frameworks of land administration across the continent and the influences of past policies on the present. The historical framework helps in identifying the specific economic, political, and social factors that have shaped the land question in different sub-regions. A historical framework is important because it shows the main contours in the evolution of debates and the often circular nature of debates, which are continually reframed and revisited in new epochs. In this context, debates about customary versus statutory tenure, user rights, historical claims on land by first-comers and nobles, individual property rights and the need to create land markets for productive investments, the relative efficiency of smallholder and large estate agriculture, and the need to protect livelihood interests and prevent the emergence of a landless class of unemployed people continually resurface in discourses on land.

This study does not set out to provide a critical analysis of the major academic theories on the land question in Africa. Rather, it focuses on the framing of the land question in the context of attempts to apply major policy directions to specific contexts; the innovations that have developed in non-state land administration, and the conceptions of the linkages between state and civil society; the growing awareness of the impact of

power relations and social differentiation within communities; and the reflections and insights that have developed in the policy-related literature on attempts to implement new approaches to the land question in specific sectors and among particular groups.

By “policy”, this study refers to the wider entity of all groups involved in policy-making and advocacy, including governments and bureaucracies, international financial institutions and development agencies, NGOs, development researchers, and other civil society associations, rather than to the narrow field of government planning. The study does not provide technical or policy recommendations for resolving the major problems in land administration. Rather, it proceeds from a belief that better understanding of the contexts in which the underlying issues have emerged can contribute to future policy directions based on reflections and deliberation.





# PART 1: A HISTORICAL FRAMEWORK

## A continent of diverse socio-political formations

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Customary land tenure relations in Africa are often characterised as traditional and unitary. They are seen to be based on notions of communal tenure, in which land is vested in a chief or council of elders, who administer the land on behalf of the community and in the interest of the collective. This is assumed to ensure that land is wisely managed to safeguard the interests of future generations and to promote equity. In recent years this stereoscopic view of land tenure in Africa has been challenged by a number of anthropologists, sociologists, political economists, historians, and legal experts working on the social and political dynamics of land and related development policy issues (see, for instance, Colson 1971; Chanock 1991; Cowen and Shenton 1996; Lavigne Delville 2000; Peters 2004; Pottier 2005; Amanor 2007; Lund 2008; Berry 2009; and collections edited by Benjaminsen and Lund 2003; Kuba and Lentz 2006; Ubink and Amanor 2008; and Ubink *et al.* 2009).

The frequently presented framework of an essential, African, culturally defined customary land tenure is problematic, since prior to colonial rule, in the nineteenth century, there were distinctly different socio-political economic formations within the continent. Some societies were organised around centralised political states with hierarchical social formations and the emergence of distinct social classes of producers.

Other societies did not have a centralised state apparatus: there was no distinct political elite controlling a coercive state apparatus, and political cohesion was either established by a council of elders rooted in villages or age-grade associations, or in gerontocratic rule embodied in the complementary opposition of lineages, or earth priests claiming ritual powers to intercede in the control of the fertility of the earth. Other societies were highly mobile, such as pastoralists, who moved between different seasonal grazing lands.

In non-centralised societies, the control that earth priests (*chefs de terre* in Francophone Africa) exercised over land was based on their claims to be the direct descendants of the original settlers of land. The original settlers were believed to have established a direct relationship with the deities of the land that enabled them to conduct sacrifices and rites of intercession to ensure its fertility and the maintenance of a moral order that contributed to that fertility. This conferred on the heirs of the original settlers control over the relationship between people and the earth, powers over the agricultural calendar through control over sowing rituals, and rights to administer and allocate land to subsequent settlers and to conduct rituals concerned with the land on their behalf. The earth priests distributed land to strangers who wished to settle, and they were consulted in settling disputes. The arrival of new

people seeking land strengthened the legitimacy and claims of earth priests, since the act of allocating land reinforced their claims over the land and won them supporters. However, the expansion of population could also weaken these claims, since ritual power over new areas needed to be delegated.

As other groups grew in strength and wealth, they could challenge the claims of the first-comers. As a result of the complexities of migration, settlement history, demographics, changing family fortunes, networks of gift exchange, and fission of groups, the first-comer principle was often breached. Rival versions of settlement history came into being and were used to stake claims on the land (Kuba 2006; Hagberg 2006; Lentz 2006). The legitimacy of earth priests was often dependent upon political negotiation and manoeuvring. Frequently, the first-comer principle was challenged by later settlers, and a distinction sometimes developed between the first-comers and the people of power (Kuba 2006; Galvan 2004; Izard 1985; Nicolas 1975; Fortes 1940), laying the foundations for the emergence of states in which earth priests continued to perform rituals, but now on behalf of new secular rulers.

Many centralised states emerged throughout Africa. By the nineteenth century, many of these had expanded into empires with large bureaucracies, which were maintained by extracting surplus from a peasantry that consisted of tribute-paying subjects, slave labour, or semi-free labour that gained access to land by performing labour services and providing surpluses to the ruling classes (Forde and Kaberry 1967; Fallers, 1965). In some states, the rulers allocated tribute-paying provinces to members of the ruling administration, who raised revenues from their subjects. In others, subjugated rulers of provinces were responsible for providing tributes to the rulers. This frequently led to a distinction between a ruling nobility and commoners, between nobles with rights to administer and allocate land and to extract revenues from those who produced from the land or were expropriated to it as servile labour working for their masters, and a freer peasantry that gained access to land in exchange for providing nobles with food, labour, and tribute or taxes. These types of regime were typical of the Interlacustrine Region of the Great Lakes of East Africa (Itandala 1986; Fallers 1965; Steinhart 1967; Beattie 1954, 1960; Mair 1961; Chilver 1959; Maquet 1961), the West Africa states (Forde and Kaberry 1967; Ajayi and Crowder 1985), the Sudan, and Ethiopia.

By the nineteenth century, social differentiation among rural producers had become more pronounced. Several African states attempted to modernise, as their economies became increasingly integrated into the world economy as primary crop producers in the early part of the century, and subject to political pressures from the growing imperial ambit of European states and increasing pressures from these for land and mineral concessions (Idahosa and Shenton 2004). Growing imperialist rivalries between European powers in the late nineteenth century resulted in them carving out zones of protection within Africa.

# Colonial rule and land frontiers

Under colonial rule, three distinct land frontiers emerged in Africa: settler colonies, concessionary colonies, and zones of autonomous peasant production. Settler colonialism was most characteristic of southern, eastern, and northern Africa, concessionary exploitation confined to Central Africa and the Congo basin, and autonomous peasant production predominant in West Africa (Wallerstein 1974; Amin 1972).

From 1825 French settlers began to occupy Algeria, and between 1825 and 1847 some 50,000 French people settled there. In 1830 France invaded and captured Algiers. However, conquest was slow, as it met with considerable resistance. Land was appropriated by the French administration and allocated to settlers for modern agricultural development. In South Africa, European settlement began in the late eighteenth century, as strategic outposts were developed in the Cape of Good Hope for Dutch and then later British shipping to Southeast Asia. When diamonds and gold were discovered in South Africa in the late nineteenth century, further European migration occurred both for mining and farming. From there, European settler populations began to expand northwards, with farming providing an alternative economic base to mining in colonies without viable mining resources, such as in Southern Rhodesia. Colonial administrations organised military campaigns to appropriate fertile lands for European settlers and to quell African resistance and push the African populations back into more marginal areas.

Settler farming populations largely dominated areas in which African socio-political structures were considered to be insufficiently centralised or regionally based to be able to organise cash crop production (Wallerstein 1974). Thus in Kenya, while the land rights of the sultanate were preserved under typical indirect rule arrangements, those of the non-centralised farming and pastoral peoples within the Rift Valley were expropriated as Crown Land to make way for white settler farms. Similarly, in the Interlacustrine area, in societies where central states had been consolidated and political control established over peasant production and trade, such as in the Buganda area of the East Africa Protectorate, Rwanda, and Burundi, a system of indirect rule was established.

Peasant proprietor production predominated in areas that were characterised by well-developed markets and trading towns, a pronounced social hierarchy reflected in the development of pre-colonial states that controlled trade and agricultural production and labour (Wallerstein 1974; Amin 1971). These characteristics were particularly well developed in West Africa, both in states controlling large agrarian hinterlands and in the networks of urban-based, long-distance traders and Islamic brotherhoods in the Senegambia area. In West Africa, export crop production for the European trade began in the early nineteenth century. The organisation of export crop production in the early part of the century had drawn on domestic slave labour. European import-export mercantile trading companies had been associated with this

trade throughout the nineteenth century, providing Africans with European industrial produce and exporting agricultural produce to Europe. These companies had built up political relations with African states and traders over a long period. In West Africa, European settlers were confined to small numbers of planters within Côte d'Ivoire and Guinea. However, they failed to prevail over African farmers, who were the major suppliers of export crop produce.

The concessionaire system tended to develop in areas in which pre-existing trade was not well developed and in which trading companies were willing to invest in agriculture, forestry, and mining within a given area (Amin 1971). Large concessions were allocated to chartered companies, which gained monopoly rights to exploit all the resources within that area and to develop transport infrastructure and administration. Unlike in the areas under peasant proprietary production, resources within the concession were regarded as belonging to the chartered company, for which the local population had to perform labour services. The concessionaire system was highly exploitative, coercive, and brutal and gained particular notoriety in the Congo Free State under King Leopold of Belgium. Suret-Canale (1971: 34) comments on the concessionaire systems in French Equatorial Africa and French Congo:

*The concession-holders ... considered the natives as freely available for forced labour and proceeded to seize all their property, including cattle, under the pretext that the product of the soil was included in the concession.*

Areas under concession tended to be less economically sustainable than those under peasant proprietor cultivation, as concession holders frequently used their legal rights over concessions to engage in speculation, or indulged in the most inhuman exploitation of the African population, which acted as a disincentive to increased production (Suret-Canale 1971; Amin 1971).

The granting of concessions to chartered companies responsible for developing the infrastructure, administration, and exploitation of the territory was a feature characteristic of

all the major European powers in the early phase of colonial development, but largely proved to be unworkable and was transformed. It existed longest in French Equatorial Africa and the Congo, and in the Portuguese colonies where the chartered companies were not of Portuguese origin and insisted on the full terms of their contracts (Suret-Canale 1971).

While the concessionaire regimes of French Equatorial Africa and the Congo were originally associated with chartered companies, they paved the way for mineral extraction and the development of large-scale industrial plantations, since the lack of rights of African peasant proprietors and the lack of a European settler class created favourable conditions for large estates to be acquired for industrial agriculture. Lever Brothers initially attempted to establish plantations in West Africa. The company was unsuccessful as a result of the hostility of colonial administrations to direct European investment in large estates and its impact on African smallholdings, and the political influence of European trading companies, which felt threatened by direct capitalist investment in agricultural plantations. Unsuccessful in gaining access to land in West Africa, Lever Brothers eventually established its oil palm plantations in the Congo (Nworah 1972; Suret-Canale 1971).

From the 1870s, growing competition in a contracting world market resulted in increasing conflicts between European and African merchants and increasing competition between European powers to gain control over markets and access to African produce. This resulted in rivalries between British, French, German, and American industry to secure markets and to control these markets by conquest and the establishment of colonies (Wallerstein 1974). The colonisation of the African hinterland was fuelled by missionary and philanthropic organisations that demanded that the internal slave trade and "barbaric" human rights violations within the continent be quelled (Idahosa and Shenton 2004). This phase resulted in European powers establishing claims on African land by conquest, and the alienation of land to European investors and settlers through concessions and freehold grants. This heralded an age of "constructivist" imperialism, in which European capital was invited to invest in the development of infrastructure and industry in the African hinterland. However, large flows of European capital were not forthcoming. The European mercantile trading firms operating here were often

highly critical of the modes of colonial conquest, military campaigns, and imposition of colonial rule, which disrupted their operations (Morel 1968; Suret-Canale 1971). Colonial conquest encountered internal resistance.

By the early twentieth century, colonial policy in the peasant production areas of West Africa had moved from constructivist imperialism to one of “indirect rule”, or association in French West Africa. Colonial administration developed as an alliance with local chiefs within a framework for “native administration”, based on the promotion of individual peasant proprietors producing cash crops for European markets (Cowen and Shenton 1996; Conklin 1997; van Beusekom 2002). Within this framework, colonial administrations sought to protect peasant proprietors from the expropriation of land by European concessions, while maintaining coercive pressures to encourage entry into cash crop production. The expansions of peasant production and colonial administration were inextricably linked, with taxes and custom duties raised from peasant cash cropping forming the basis of revenues for colonial administration and development. To ensure participation in and expansion of the cash crop production sector, several forms of coercion were introduced to ensure the deployment of labour in cash cropping and for public works. This involved maintaining some notion of customary administration, through which political coercion could be used to shape the market. Rural people’s access to land became determined by notions of customary rights and obligations that involved peasants providing labour services, tribute, and taxes to their chiefs, in which chiefs and nobles in alliance with the colonial administration could direct the economic activities of their subjects. Thus, the colonial administrations maintained and adapted the customary privileges of rulers and ensured their interests in the promotion of cash cropping.

For instance, in the Hausa Emirates the British prevented servile labour from abandoning their masters without payment of manumission. They also collected head taxes on slaves. These demands ensured that servile labour worked for its manumission and that masters made their slaves work in cotton and groundnut production to ensure that they raised cash revenues to meet their tax obligations (Lovejoy and Hogendorn 1993). In the Fouta Djallon highland region of Guinea, the Djallonke people continued to work on the lands of the Fulbe masters,

while the Fulani became major suppliers of *corvée* labour for public works (Boiro 1996; Diop 2007). Similarly, Rimaibe farmers worked for Fulbe overlords in the Seno area of Burkina Faso on land that the Fulbe claimed to control (Lund 1999), and the Songhai-Zarma of Niger and Mali established overlordship over cultivators (Olivier de Sardan 1984). Under colonial rule in Northern Nigeria, to prevent runaway slaves moving beyond the Hausa emirates, lands were placed under the trusteeship of the colonial administration, which prevented the free movement of peasant subjects into new frontier areas beyond the control of the traditional rulers (Lovejoy and Hogendorn 1993). Within the French West African empire, rural people were subject to the *indigenat*, which prescribed corporal punishment for violation of customary dictates, including labour and tax obligations and military conscription.

Under colonial administration, rule by chiefs and control over land were used to ensure that a supply of migrant labour was recruited for the main export-producing zones and for colonial infrastructure and public works programmes. These concerns reproduced two co-existing features of customary tenure. The first was associated with chiefly privilege, in which allodial rights (root title) in land were vested in chiefs and assured them rights to the labour services of their peasant subjects and rights to direct their economic activities and to make byelaws. The second gave the peasant subjects customary user rights to land as members of the community or of lineages, but also obligations to perform services to their chiefs.

This appeal to customary land relations rooted in tradition was adapted and remoulded to the colonial context, to support export crop production and migrant labour for export agriculture. Before the colonial period, the privilege of the landlord was not based on control over land but control over people, and the power to expropriate people to the land and set them to work. Under colonial rule a relationship of political power and patronage, based on domination over people and ability to appropriate their labour, was transformed into an economic relationship between landlord and tenant within a capitalist market economy. A duality based on the relationship between chief and peasant mediated by the colonial authority replaced an earlier relationship between captive and noble (Olivier de Sardan 1984). Colonial rule also created new roles for chiefs and invented new types of chief, such as the warrant chiefs in

areas in which secular political chiefs had not previously existed. New secular chiefs created by colonial rule often displaced earth priests. While this created a form of decentralised political administration in which Africans had control over land and local administration, it also served to extend forms of political coercion that ensured participation in export crop production, and forced or conscripted labour for export production and public works. By the 1920s and 1930s, these new forms of unfree labour under African colonialism were of growing concern to the League of Nations (Cooper 1996).

Under colonial rule, land was often vested in the colonial state as a result of conquest. However, land was also vested in traditional rulers. In reality there was not much difference between these two relationships, since native authorities were under the trusteeship of colonial officers who ratified and defined the byelaws that they could make. In French West Africa, by virtue of conquest, land was assumed to come under the sovereign control of the colonial authority. However, the state recognised African communal property. A 1904 decree declared that African communal lands could only be granted to individuals by approval of the governor-in-council. The decree also initiated a process of land registration of African lands. By 1925 this system was recognised to be a failure and was overhauled, and a simpler, more decentralised process of registration of user rights (*constatation des droits fonciers des indigènes*) was introduced. However, by 1936 only 1,512 titles had been issued, of which 1,351 were in Côte d'Ivoire. Outside the coastal export crop zone, there was little demand for land titling on land that was usually sparsely populated and managed under shifting cultivation (van Beusekom 2002). In contrast, in Equatorial French Africa land administration was based on a concessionaire system, which gave minimal recognition to African communal property (Suret-Canale 1971).

In British West Africa, land in Northern Nigeria and the Protectorate of the Northern Territories of the Gold Coast lay under the colonial state, while in Southern Nigeria, the Gold Coast, and Northern Sierra Leone, it lay under chiefs. The exact relations obtaining in different areas of British West Africa depended on the nature of social organisation of the people within the colony, the historical relationship of the chiefs with the colonial administration, and the history of land sales.

In contrast with West Africa, in southern and eastern Africa commercial agriculture was largely the domain of European settler farmers. European colonial rule made way for settler farmers by expropriating the land of African settlers and releasing it to European farmers on a freehold basis. In many areas within eastern and southern Africa, there was no well-developed regional trade linked to international trade and state control. Thus, within this area, it was more difficult for colonial administrations to organise African participation in export crop production.

Following the construction of the Uganda-Kenya railway, which was completed in 1901, the British Foreign Office decided to promote the development of the area to offset the high costs of the railroad by encouraging white settlers on large tracts of fertile land to develop export crops. Most of this land was situated in the White Highlands, and Africans were removed from this area and confined to native reserves. These native reserves were vested in the British Crown and subject to customary tenures that prevented land being sold, leased, or rented. The Africans were not permitted to grow export crops since this was construed as a threat to the interests of the settler farmers. Chiefs, who were appointed by the colonial authority to administer native lands, enforced these new customary tenures. The effect of land alienation was to create a serious surplus population within the reserves, which resulted in unofficial migrations into the White Highlands, large numbers of squatters, and displacement of ethnic populations beyond their assigned reserves. This situation continued into the 1950s until the Mau Mau revolt, when the colonial authority implemented a programme of land reform based on the intensification of African agriculture (Kitching 1980; Leys 1975; Berman 1990; Kanyinga 1996; Kanyinga *et. al.* 2008). Similarly, in South Africa the Lands Act of 1913 limited African claims on land to native reserves, which constituted only 13% of the land area of the colony (Thwala and Khosa 2008).

In Uganda, a different situation obtained. As a constituent part of the British East African Protectorate, the future of Uganda had initially been envisaged to lie in settler colonisation. However, the British colonial administration was impressed with the political formation in Buganda, which comprised the Kabaka (ruler) and a network of provisional governors and village chiefs. Chiefs provided protection to peasant



farmers (*bakopi*), who in exchange provided their lords with tribute (*busulu*) and labour services. The peasant farmers had rights to occupy and use land and pass it on to their kin, to graze and water their livestock, and to use tree products. The colonial administration sought to develop an alliance with the rulers for the establishment of colonial rule under the 1900 Buganda Agreement. This arrangement allocated 9,000 square miles of the territory as British Crown land, and 8,000 square miles was given out to 3,700 Buganda dignitaries as private freehold estates (known as *mailo*), of which 350 square miles were allocated to the Kabaka. The dignitaries were able to gain rents and labour services from their tenants, and also provided conscript labour and taxes to the colonial administration.

As the peasant tenants rapidly took up cotton and coffee cultivation, the landowning dignitaries increased their rents and exactions and accumulated considerable capital, often accruing higher earnings than the top colonial administrators. As cash crop production expanded, the *mailo* holders increased rents from 10 shillings per annum to one-third of the crop. Plans by the colonial authority to develop settler agriculture did not succeed and, with declining numbers of European settler farmers, the colonial administration turned its attention to the peasant subject tenants on the *mailo* estates. The two main concerns were that the accumulation of the *mailo* estate holders would destabilise rural peasant production, and that the high rates of extraction of surplus rents would act as a disincentive for the further expansion of export crop production. From the 1920s, the chiefs were seen by the colonial administration as a rentier class, who stifled commodity production and appropriated a large share of the surplus. In 1922 the colonial administration introduced the *Busula* and *Envijo* laws, which laid down the rights of customary tenants and the privileges of landlords, fixing rents and taxes on export crops and making eviction of tenants illegal unless they had violated the terms of their contracts.

During the 1920s the colonial government sought to limit the incomes of chiefs. Fixed incomes for chiefs from supervised native administration treasuries were introduced, and the chiefs were transformed into functionaries involved in tax collection, enforcement of rules on cash crop production, recruiters of communal labour, and enforcers of environmental byelaws. These measures effectively reduced the incomes of *mailo*

owners, who then began to sell and rent out parcels of their estates to tenants. This resulted in the rise of small capitalist peasant tenant farmers, which came to dominate export crop production within Buganda (Jorgensen 1981; Gutkind 1963; Doornbos and Mwesigye 1994).

Portuguese colonialism combined elements of the concessionaire system with European settler farmers and indigenous peasant production. During the 1850s a concessional system was promoted in Angola and Mozambique, which granted exclusive rights to companies to exploit land, resources, and people. Legislation enacted in 1856 established the ownership of the Portuguese state over colonial land and its right to allocate concessions outside of land occupied by indigenes. During the 1920s a concept of vacant land was introduced which recognised communal areas available for the use of communities, outside of which land could be granted to concessionaires. Only Portuguese citizens could exert property rights, and while Africans could in theory become citizens through mastery of Portuguese culture and education, very few attained the status of *assimilado*.

However, the development of large Portuguese estates was limited and, as a result of poor productivity, many Portuguese settlers took to trading crops produced by African cultivators and acquired at low prices. Forced labour, labour conscription, migrant labour conscription, bonded labour, and forced cultivation of export crops loomed large in Portuguese colonies, with the colonial government participating in the recruitment of contract workers for individually owned European plantations. By the 1930s, local chiefs were integrated into the system of administration and made responsible for recruiting contract labour, raising taxes, enforcing compulsory cultivation of particular crops, and allocating land according to colonial directives (Vail and White 1980; Clover 2005; Dinerman 2006).

The expansion of a European settler class occurred relatively late in the Portuguese colonies – in the 1960s, as a result of a deliberate policy of settling Portuguese farmers in the colonies. This led to the development of successful export sectors of coffee in Angola and cotton and sugar in Mozambique. It also resulted in the increased displacement of African producers, who were often forced into labouring on European plantations. Dissatisfaction rapidly spread,

laying the foundation for the emergence of anti-colonial resistance and to the wars of independence in the various Portuguese colonies during the 1960s and 1970s (Vail and White 1980; Clover 2005; Dinerman 2006).

Although distinct patterns of land ownership occurred under the different colonial regimes, these tended to reproduce similar arrangements. Up to the 1940s these included the following features:

- » A densely settled zone of export production, which most often depended upon an influx of migrant labour;
- » A zone of labour reserves, in which people were forced to migrate to meet tax obligations and sustenance, which became dependent upon remittances from the main export cropping zones and from mining areas;
- » The vesting of user rights in both African export crop producers and subsistence farmers in labour reserves under customary tenure systems, and the almost exclusive granting of rights of ownership and individual freehold to European settler farmers.

The ownership of land was either vested in the state, to manage in communal areas under customary norms, or vested in chiefs under a system of indirect rule. The professed aim of this was to prevent speculation in land, the development of land markets, alienation of land to European planters, and the emergence of a landless class (Cowen and Shenton 1996). While chiefs were the only group that could transfer land to Europeans, the signing of concessions had to be ratified by the colonial authority. This did not prevent land sales within this zone, but enabled chiefs to gain formal control over land sales as the allodial owners of land. In areas such as the Gold Coast cocoa belt, large areas of land were sold to migrant farmers (Hill 1963).

However, disguised land and rental markets developed, as ways of evading and circumventing chiefly monopoly over land sales. Land was frequently the subject of contestation and litigation, in which colonial precepts of customary norms were challenged. The colonial precepts of what constituted customary rights did not easily correspond with the processes of commodification of land and labour that obtained under export crop production (Amanor 2008). The conceptions of

custom and tradition were increasingly adapted and moulded by the objectives of colonial rule and peasant proprietorship under export crop production. Beyond this notion of customary land as tied up with chiefly administration lay an economy of land sales, rentals, and mortgages that were not officially recognised, but which were central to export crop production. The customary realm of chiefly administration was subject to contestation from below. The attempt by chiefs and elders to adapt customary privileges and tenure relation to new conditions of commodity production were often contested by commoners, youth, and women, who constructed an alternative domain of customary rights (Chanock 1991; Amanor 2007).

# Late colonialism and modernisation

By the late 1930s, colonial administrators had become dissatisfied with the existing land tenure relations within the colonies. The customary privileges of chiefs were increasingly seen as exactions, constraining the expansion of peasant agriculture, and the contestation of customary land produced insecure rights in land and considerable expenditure in litigation. In French West Africa during the 1920s, colonial administrators began to revise their views on chieftaincy and to see political formations as more diverse, with more concerns with authority within extended lineages, the family, and villages, in which structure and hierarchy were grounded more in kin relations. Through a framework of *colonisation indigène* they sought to foster a framework that would promote social cohesion and the gradual evolution of modern family farms based on the adoption of modern technology, permanent mixed agriculture, and individuated property rights. Resettlement projects such as the *Office du Niger* provided a social experiment in resettlement to produce modern cohesive communities (van Beusekom 2002).

By the 1930s in British West Africa, there were growing concerns that the practice of indirect rule had failed to promote development. The colonial state needed to facilitate the development of African agriculture. However, the development of modern agriculture was seen to require clearly developed individual property rights, and under “tribally owned” land individual farmers would not be willing to invest capital in land over which they could not claim direct ownership. As

the Governor of Nigeria, Sir Bernard Henry Bourdillon, stated in relation to the development of the oil palm industry: “The main difficulty here is that in most of the palm belt the land is tribally owned, and the individual will not invest capital in a permanent crop to which he has no individual right” (Bourdillon 1937, quoted in Cowen and Shenton 1996: 295).

This framework of individuated property rights on peasant farms was implemented in Kenya following the Mau Mau uprisings. The British colonial response to the uprisings was the Swynnerton Plan. Swynnerton argued that the main problems of the African reserves did not emanate from land hunger and the expropriation of land by white settlers; rather, the main constraint was customary land tenure, which discouraged investment in modern agriculture (Kanyinga 1996). The Swynnerton Plan aimed to provide African farmers with security of tenure through individual land titles, which would encourage farmers to invest profits and labour in the development of the farm, and use land to gain collateral for farm investment.

To prevent seizure of white settler farms, the Swynnerton Plan initiated a settlement scheme in which lands adjacent to the White Highlands were allocated to African farmers. This included 987,000 acres of high-density (low-income) plots and 180,000 acres of low-density (high-income) plots. By the early 1970s, 5,000 families had been resettled on low-density and 29,000 families on high-density plots. The Swynnerton Plan



sought to consolidate land fragments into single holdings and register them as individual plots. It also opened up export crop production to African producers. Between 1955 and 1964 the value of African peasant production was to grow three-fold (Leys 1975). The Swynnerton Plan was not concerned with creating an equitable distribution of land, but with fostering the development of an enterprising stratum of middle-income farmers, interested in accumulation rather than supporting political dissent. This would increasingly result in social differentiation and the consolidation of a richer stratum of farmers: “able, energetic or rich Africans will be able to acquire more land and bad or poor farmers less, creating a landed and a landless class. This is a normal step in the evolution of a country” (Swynnerton 1955: 10).

In the late 1940s colonial policy also began to promote state mechanised agriculture. This sought to integrate mechanisation into peasant production as a way of raising production while preserving forms of community, giving way to the construction of community development as a form of modernising rural communities along collectivist lines. This often took the form of large resettlement schemes, which sought to overcome

the constraints of low productivity while preventing the disintegration of communities and the emergence of landlessness. The land in these projects was vested in the state. The majority of these schemes were not successful, as peasant cultivators were often reluctant to respond to the directives of state-led development run as a command economy (Cowen and Shenton 1996; Grischow 2006; Hodge 2007). However, they were influential in laying the groundwork for post-colonial experiments with villagisation, irrigation projects, and some of the early contract farming schemes.

Although new models of agrarian development came into being during the 1930s and 1940s, colonial policy continued to retain coercive and repressive features, including forced labour. It was not until 1947 that the *indigenat* was repealed in French West Africa. The economic depression of the 1930s and the deprivations of the post-war period and the injustices of colonial rule fuelled the development of nationalist movements agitating for independence. Many of the radical anti-colonial movements were equally against the structure of chiefly rule, through which colonial rule implemented rural administration.

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# Post-colonial nation-building and state-led development

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With the attainment of independence, land became a prominent policy issue. Colonial land laws needed to be rewritten to reflect the change in nationhood and to clarify the relationship between state, people, and territory and the entitlements and obligations conferred by citizenship. The types of land administrative reform introduced into nationalist programmes varied, reflecting the different types of national coalitions and alliances that dominated in different states and their class interests, and the relationship between these national coalitions and international development. Two different types of national coalition prevailed at independence. The first comprised a radical coalition, which was often built in opposition to chieftaincy, and embodied support among trade unions with a rural populist, protest mass base. The second was more elitist, with support among rural chiefs and elites and urban business and professional classes (Mamdani 1996). Ethnic associations were also important within nationalist coalitions, aligning rural populations with rural chiefs and elites or in opposition to dominant ethnic elites.

Radical coalitions in Guinea, Senegal, and Mali sought to introduce land reforms that carried out some form of land redistribution. In Guinea, the Fulbe nobility, which continued to support French colonialism, attempted to thwart the Parti Démocratique de Guinée (PDG) local organisation in the Fouta

Djallon region. On attainment of independence, the PDG supported land reform in the Fouta Djallon with a policy of “land to the tiller”, in which ownership rights were vested in the state and user rights were secured through cultivating or developing the land (Diop 2007). In Senegal, the ruling party introduced the *Loi sur le domaine national* in 1964, which placed all land that had not been registered as individual property under the state, and gave the state powers to allocate land to farmers based on their established cultivation of the land and their maintenance of it in cultivation. The law sought to encourage cultivation by preventing landowners from holding land that was not being productively used in perpetuity. The land reform recognised the rights of productive users rather than introducing ceilings on cultivation or redistribution of land on the basis of areas cultivated.

In the version of “African socialism” promoted by Senegal’s first president, Léopold Senghor, the customary privileges claimed by the Senegalese aristocracy were interpreted as a violation of the ancient African tradition of communalism and communal land tenure, which the ruling party intended to re-establish. These reforms were justified as developmentalist, since they promoted more efficient utilisation of the land and rewarded those who developed it with recognition of rights in the land. They did not seek to promote an equitable redistribution, but

to ensure that land was utilised rather than accumulated. This also had some negative features, where land was appropriated from small farmers who were considered to be backward and allocated to progressive modern farmers in the interests of development. In the Casamance region of Senegal, land was alienated from peasant farmers to aspiring capitalist farmers, and those who were “productively” using land were encouraged to apply for title (Boone 2007). These reforms were progressive in that they enabled tillers who had been denied access to land according to customary privilege to gain recognition of their rights in the land they cultivated. But they also enabled bureaucratic patronage and the allocation of land to national political elites for agricultural accumulation at the expense of peasant farmers (Boone 2007; Hesselting 2009; Galvan 2004; Faye 2008).

A similar developmentalist ideology for land administration characterised post-colonial Tanzania, although this lacked the strong rural social differentiation that characterised some areas of Senegal. In Tanzania, the ruling party under Nyerere advocated a return to traditional land tenure systems in which farmers were entitled to land so long as they cultivated it. Unconditional freehold title to land was abolished and radical title remained vested in the state as under colonial rule, with the state under independence now adopting the rhetoric of representing the will of the people, as embodied in the principles of “African socialism”. This blend of state-led developmentalism rooted in a communal tradition resulted in the villagisation experiment, in which nine million farming and pastoral people were resettled in new collectivist settlements without consultation or consent. With the adoption of liberalisation in the 1980s, many of the wealthier elements among the displaced people began to seek redress for the loss of their customary land holdings (Shivji 2000).

In Ethiopia, in the absence of colonial subjugation, a strong feudal aristocracy maintained its control over the state and land until the 1970s. The economic and political crisis of the late 1970s and the concentration of land in the hands of the nobility, the church, and state personnel led to rural discontent and land hunger. This contributed to the political turmoil in which the Derg junta was able to establish military control over the state. The Derg immediately launched a land reform programme in 1975, which nationalised the lands of the

nobility and landholding classes and redistributed them to the peasantry. Peasant associations were made responsible for land administration, including redistribution, resolution of disputes, and tax collection. Sale of land, mortgaging, and sharecropping were banned.

However, this only mediated the extraction of rents from the peasantry by the landowning class without addressing the additional issue of land hunger among a significant section of farmers. The major focus of agricultural policies was on promoting large-scale state farms and farmer cooperatives rather than redistributing land to smallholders with insufficient land. However, only 4% of cultivated land was under state farms and 2% under cooperatives by the mid-1980s. With less than enthusiastic support for voluntary cooperatives, the Derg launched a policy of villagisation in 1985. This forced rural people to relocate to new villages, which were provided with better infrastructure and services, and permitted more government control over production. By 1988, 12 million people had been relocated (Clapham 1990).

The Derg fell in 1991 as internal dissent grew. The new government, the Ethiopian People's Revolutionary Democratic Front, introduced more decentralised policies and aspects of a free market economy integrated within a dominantly statist economy. Since then, land has continued to be vested in the state for the Ethiopian people and rural land markets have been discouraged, although leasing and contracting of land are tolerated. User rights are recognised within a zoning system and registered, and lands are periodically redistributed according to the needs and size of households (Adenew and Abdi 2005).

In Mozambique, independence led to the nationalisation of the land of European settlers and companies, the majority of whom had abandoned their land in the war for independence. These lands were transformed into state farms and farmer cooperative ventures. These reforms were carried out without addressing issues concerned with the impact of colonial appropriation on the lands and livelihoods of smallholder agriculture, and without attempting to right the inequities within this sector. During the early independence period, chiefly authority was opposed by the ruling party for its collaboration in implementing some of the most coercive colonial policies. Modernisation policies resulted



in compulsory villagisation (*aldeias*) to reorganise the village economy for more effective service provisioning and political administration. However, state-led development proved ineffective in raising agricultural productivity, partly as a result of a failure to mobilise labour (which under colonialism had been carried out by forced labour and compulsion) and managerial inexperience (Dinerman 2006).

During the 1980s new economic liberalisation policies were introduced, which encouraged privatisation. The policy against chiefs was relaxed and they were again reintegrated into rural administration to facilitate improved production and administration. Chiefs began to play important roles in mobilising the rural population for tax payments, top-down agricultural campaigns and promotion of export crop production, controls on the movements of people between districts, resolution of social problems, and management of land and natural resources (Dinerman 2006; Norfolk 2004). Privatisation also resulted in the allocation of former state lands and new concessions to aspiring commercial farmers and foreign investors, including returning Portuguese and white settler farmers from Zimbabwe. Increasing contestation of these land allocations by rural dwellers has resulted in a new land reform that gives increasing recognition to customary rights in land and consultation with communities about the allocation of land as concessions (Norfolk 2004; Knight 2010).

Under the leadership of Nkrumah, the Ghanaian state espoused a radical form of African socialism. However, this did not impact on land reform. The anti-colonial movement had brought the Convention People's Party (CPP) party into conflict with the powerful chiefs within the Akan area. The anti-colonial movement had also been a movement against chiefs. However, the CPP was opportunistic in relationship to chiefs, cultivating those who supported the CPP but opposing the hegemonic ambitions of the large Akan chiefs, who were linked with the opposition party. With attainment of independence, the CPP government sought to clip the wings of the chiefs. It vested the revenues from the treasuries of the Traditional Authorities in the central state; these included revenues collected on land sales, rents, and concession fees within the state. It did not transform the underlying tenure relations or the claims of the chiefs on the land established in the colonial period. Following the colonial arrangement,

lands in the southern forest belt continued to be controlled by chiefs, while in the north they continued to be vested in the independent state.

Given that the monopoly control of cocoa exports by state marketing boards formed a significant source of revenue for the state, it did not interfere in the internal organisation of land tenure and labour that was responsible for the rapid expansion of cocoa frontiers. Most of the labour on which the cocoa industry depended was migrant labour drawn from the northern savanna regions of Ghana and from neighbouring Sahelian countries, including Upper Volta, Niger, and Mali. Workers were largely employed as annual labourers (paid at the end of a year) or sharecropping tenants. Outside of the forest zone, the state promoted large state farms in food production and agro-industrial sectors, on land expropriated by the state. The overthrow of Nkrumah and the subsequent election of Busia (himself a member of an important chiefly family) saw the resurgence of chiefly interests and a consolidation of their control over land and land revenues. However, chiefs frequently managed lands in the interests of national elites, rather than local farmers, colluding with politicians and the bureaucracy to expropriate land for commercial farming in the "national interest" or the "interest of development" (Konings 1986; Amanor 2008).

In Côte d'Ivoire, the ruling party had radical roots in the trade union and anti-colonial movement, but these interests had become moderated with time, and significant elements within the party represented both large cocoa farmers of Baule origin and chiefs, including its first president, Félix Houphouët-Boigny. In alliance with the Rassemblement Démocratique Africain (RDA), the Parti Démocratique de Côte d'Ivoire (PDCI) had organised in both Upper Volta and Côte d'Ivoire for the end of forced labour and independence. In contrast with the Ghanaian cocoa industry, the main cocoa farmers within the Ivoirian forest zone were migrants from the Baule region. Baule farmers made demands for rights to purchase and own land outside their region as citizens of Côte d'Ivoire. Cocoa had developed later in Côte d'Ivoire than in Ghana, and during the early independence period the state was actively attempting to promote the rapid expansion of the crop (Chauveau and Léonard 1996; Chauveau 2006).

To facilitate the rapid expansion of the cocoa frontier, the Ivorian state encouraged migrants from surrounding Sahelian countries to participate, and recognised their rights in the land they cultivated. Chiefs within the forest region were encouraged to give land to migrants. Land was allocated through the neo-customary system of *tutorat*. This established a relationship of patronage between indigenous landlords and migrants, in which the migrants paid initial sums of money and made annual gifts and contributions of labour (*prestations*) in return for land. A set of institutions was created, based on the neo-customary relationship of the *tutorat*, to facilitate the transfer of land to migrants, without giving it the character of an irrevocable alienation. Since this was represented as a relationship of reciprocity rooted in a moral economy, the terms of the transactions were not specifically laid out, but frequently evolved over time in relation to economic change (Chauveau 2006, 2000) and developments of the cocoa frontier. These rights were guaranteed by the state, but without the tenants gaining any formal legal recognition of them. Chiefs who participated in the allocation of land to migrants for cocoa development were rewarded by the state with resources for local development.

The stability of the rights of migrants in land was dependent upon the recognition of these rights by the state, in the context of the central importance of cocoa to national development and the contribution of migrant labour to the expansion of the frontier. Thus, changes in dominant coalitions within government and the relationship between the state and cocoa marketing could affect the land rights of migrant farmers, as occurred in the early 2000s. These relationships facilitated the rapid expansion of the cocoa frontier in the 1970s and the rapid emergence of Côte d'Ivoire as the major cocoa producer in the world, accounting for over 40% of world output. Since land could be acquired on more favourable terms than in Ghana, Côte d'Ivoire eclipsed its neighbour as the favoured destination of rural Sahelian migrants. As in Senegal, these innovations represented the reorganisation of land tenure to meet developmentalist goals, but also reflected an accommodation of chiefs and migrants to facilitate the rapid allocation of land for frontier development.

In Uganda and Botswana, chiefly interests have been represented within nationalist coalitions, and their political prominence has resulted in their ability to influence the definition and

administration of customary tenure. In Uganda, conflicts between commoners and nobles, and relations between the state and chiefs, have resulted in a history of political instability that is closely associated with land relations. During the decolonisation phase, the chiefly Buganda elite formed its own royalist political party (*Kabaka Yekka*) and formed an alliance with Milton Obote's Uganda People's Congress to successfully contest the 1962 election. The Kabaka became the first head of state and the Buganda Kingdom was able to retain a system of local government dominated by chiefs, with its own police force, courts, and treasury. By 1966 this alliance had broken down as the Kabaka made new demands, including territorial claims. The ensuing struggle for power turned violent and the Buganda were defeated. In 1971 Idi Amin launched a military dictatorship, after which his administration made alliances with Buganda chiefs, in which elected chiefs formed an important part of district administration.

While the return of Obote in 1980 led to the repression of Buganda political elites, the National Resistance Movement, under Yoweri Museveni, formed an alliance with Buganda royalist elements. Since then, there has been resurgence among the Buganda royalists. In recent years they have built up considerable presence and political administration over Buganda lands, and have attempted to gain a revenue base from their subjects and to re-establish royalist control over *mailo* land (Kanyinga *et. al.* 1994). This has included attempts to lobby the recent land reform process to win the rights to collect rents from *mailo* lands under their domain. However, there is also much resistance to these pressures within Ugandan civil society and also among the large rural constituency of tenant farmers (Englebert 2002; Joireman 2007).

In Botswana, with the attainment of independence chiefs (*dikgosi*) retained an important role in local administration and development and were represented in national political and development policy deliberations through the House of Chiefs (*Ntlo ya Dikgosi*). The Tribal Lands Act of 1968 decentralised customary land management and within the structure of decentralisation placed it under Tribal Land Boards, with jurisdictions specific to ethnically defined territories. The Land Boards each consisted of ten members, of whom half were elected by the village assemblies (*kgotla*) presided over by the *dikgosi* and the other half nominated by the Minister of Lands

and Housing. The *dikgosi* were made *ex-officio* members of the Land Boards. While the role of the *dikgosi* in the Land Boards has declined, following tensions between the chiefs and the national bureaucracy in the management of land, they still play a role in overseeing land allocation.

Botswana's Tribal Land Boards and the Tribal Lands Act have resulted in a definition of land rights that is ethnically determined, with the allocation of land restricted to members of a "tribe" and citizens wishing to acquire land outside their tribal area having to apply for a certificate of exemption from the Ministry of Local Government, Lands and Housing. This has raised much concern, in that it is seen to be in contradiction with the constitution, which recognises the equality of all citizens. Moreover, the Tribal Land Boards recognise the customary laws of the dominant Tswana group above other groups and accord recognition to Tswana chiefs on the boards, while not recognising the rights of ethnic minorities. Ethnic minority groups have been challenging the domination of Tswana values in nation building, which they see as a violation of their citizens' rights. While rights to land are ethnically defined, since the 1970s the government has encouraged a process of privatisation of rangeland through a policy of fencing. The Land Boards have been the conduits through which allocations are made for commercial ranching. However, the criteria for applying for commercial rangeland are stringent and require considerable amounts of capital. They have thus served to undermine the land rights of the rural poor while securing large areas for commercial farmers (Molomo 2008; Quan 2000; Peters 1994).

In Kenya, land allocations through resettlement schemes have also acquired ethnic overtones, arising partly from the fact that the main political parties in the decolonisation phase organised around ethnic divisions. Kikuyu farmers, the main groups displaced by the allocation of land to settlers during the colonial phase, began to acquire land in many resettlement programmes outside of their ethnic territories, leading to a perception that they were acquiring land at the expense of other groups. The resettlement schemes have led to a consolidation and accumulation of land among aspiring capitalist farmers of different ethnic groups, particularly following the split within the Kenya African National Union (KANU) between its radical and liberal wings. The ruling party used grants of land to build up political support and control dissent (Kanyinga 1996; Berman 1990).

The eventual transfer of land in the Highlands from white settlers was not based on a programme that sought to address the specific injustices of colonial appropriation, on restitution constructed on historical claims, or on land redistribution to the land-hungry. It was based on the notion of "willing buyers, willing seller", but this was widely mediated by political connections and patronage. As a consequence, land accumulation has been closely associated with the misappropriation of land by the politically powerful and the bureaucracy, and political power has been widely used to support land accumulation. This has resulted in increasing social differentiation of holdings, the emergence of a small number of Kenyans with large estates and large numbers of land-hungry smallholder farmers, and in increasing ethnic conflicts around land and perceptions of ethnic land rights. During the 1990s this intensified into a process of intensified land grabbing of remaining public lands (Klopp 2000) and violent struggles, as communities attempted to defend their lands and their use of public land. Resistance also took the form of forceful land occupations by communities without sufficient land and legal representation in courts by national minorities including Maasai, Ogiek, and other pastoral groups for restitution of their ancestral lands. There has been growing civil society unease and demands for accountability and the application of the rule of law (Kanyinga *et. al.* 2008; Klopp 2000). This resulted in the appointment of a commission of enquiry into land administration in 2003.

These processes of accumulation, rural social differentiation, decentralisation and centralisation of administration, and political alliances have resulted in varying outcomes in relation to the land question. However, these factors have all developed within a framework of national development, influenced by theories of agricultural modernisation and the role of the state in national development in the post-war period. High levels of state political intervention were characteristic of land administration and the recognition of land rights in the early post-colonial period before economic liberalisation. This has constrained the emergence of land markets.

Processes of political intervention and state-led development have been translated into land administration through the concepts of eminent domain (the ultimate ownership of the land by the state and its right to expropriate land for public

purposes) and land titling cadastres. Eminent domain enables the state to gain land through compulsory acquisition for public purposes, often expressed since independence as being in “the national interest”. However, this principle has frequently been abused since the colonial period, and land acquired compulsorily has been used to benefit political allies and elites. Where land is vested in the state and individuals only gain rights in land through their use of it, under compulsory acquisition by the state landholders only need to be compensated for the value of the development they have undertaken on the land in question. For example, in Tanzania before the current land reform, under the Land Acquisition Act of 1967 “vacant land” that was nominally developed, or not developed, in accordance with “good estate management” attracted no value in compensation claims (Dunning 1968). The rationale behind this conception is that the owner has gained access to the user rights in land without exercising the obligation to develop that land.

This notion of rights established through development can also be used by the state to recognise the claims of the user over the land above those who claim historical rights of ownership, as has underpinned the redistribution of land in Senegal. In other instances, compensation to the developer/user of the land is based on the value of their development (such as the value of the crop), while compensation for the value of the land itself is vested in the holder of allodial title, the chief, as obtains in Ghana. This gives chiefs an economic interest to collude in the expropriation of land for “the public” or “national interest” (Konings 1986; Vlassenroot and Huggins 2005). When combined with a notion of private titling, this protects those who hold registered titles from expropriation of land, while enabling those who do not hold titles (the vast majority of the peasantry) to lose their land without compensation for the value of the land or the loss of livelihood. Vlassenroot and Huggins (2005) describe how Hunde chiefs in eastern Congo, in collaboration with government agencies, sold large parts of the forest to aspiring commercial farmers, who then turned them into ranches. Similar mechanisms have been used in many states to effect the appropriation of the land of the peasantry and its allocation to aspiring commercial farmers with close ties to the political administration. These aspiring commercial farmers and landowners then secure the appropriated land through registration.

Land titling has been central to post-war international development paradigms. The main argument advanced for land titling is that it gives farmers greater incentives to make long-term investments in land and in its productivity. Titling provides security of ownership, enables farmers to gain credit for farm investment by offering their land as collateral, and facilitates the emergence of land markets, which enables land to be distributed according to the needs of individuals, with less efficient or land surplus users offloading land on the market, and more efficient users purchasing land from less efficient users through willing transactions (Smith 2003; Prosterman *et al.* 1990).

Pro-poor land redistribution has been an integral part of land tenure reform in post-war development policy frameworks (Borras 2007). The basis for articulating distributive land reform has included the following:

- » Smallholder farmers are more efficient than large mechanised estates;
- » An equitable distribution of land and secure and stable access to land provides a foundation for better livelihoods and employment and helps the poor to benefit from broad-based development initiatives;
- » It also promotes democratic rights, local empowerment, and political stability.

However, land redistribution has not gained much currency within Africa in the post-war period. Comprehensive land redistribution programmes have occurred only in Ethiopia, Zimbabwe, and to a limited extent recently in South Africa. Most of the land titling programmes have focused on enabling wealthier, commercially aspiring farmers to gain access to land and to consolidate their holdings. Cumbersome and expensive techniques for land registration have tended to exclude the poor. As a result, land titling has frequently been an instrument for undermining the informal rights of rural people in land, and for transferring land under customary management to the politically and economically powerful, as has been particularly evident in the case of Kenya, where land titling has been central to land reform since the 1950s.



# Economic liberalism, good governance, and the revival of custom

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With the introduction of structural adjustment programmes (SAPs) in Africa from the early 1980s, land administrative reform received high priority. Land reform became subject to two countervailing pressures emerging from structural reforms. The first conceptualised land reform within the context of promoting land markets. This was concerned with promoting private rights in land, expanding land titling programmes, facilitating the ability of state institutions to rapidly process land registration, and introducing transparent and efficient registration processes and comprehensive information systems that resolved land litigation and disputes over ownership. This would allow land purchasers to conduct transactions with confidence and encourage foreign investment. The second approach emerged out of concerns with governance, related to rolling back the state, decentralising administration, and giving greater roles in development administration to civil society and communities. This questioned the interests and capability of the state in promoting equitable solutions to the land question, given the recent history of “the abuse of the state’s power of land allocation to allow bureaucratic and other elites to grab land” (Bruce 1993: 50). Bruce advocated a framework for land management that would explore community-based solutions (Bruce 1993).

The assumptions within modernisation theories that customary land tenure was static, backward-looking, and incapable of change and adaptation were subject to critique by a number of researchers influenced by new institutional economics. Mighot-Adholla *et. al.* (1991) argued that, far from being static, African land tenure systems were evolving along a continuum from communal systems to individual property rights. The points that various systems of land tenure occupy along this continuum are rational adaptations to population pressure, scarcity of land, and the commercialisation of agriculture. Thus, as populations grow and demands for land increase, resulting in conflicts, there is a necessity to invest resources in developing institutions to secure land rights. As agriculture becomes more commercial and farmers make more investments in technology, demands for credit and insurance facilities grow to enable them to finance further land investments. It is only when these conditions obtain that land as collateral becomes important, and that titles to land can be converted into loans to finance agricultural growth. Without these conditions obtaining, the transaction costs of titling the land are higher than the investment opportunities, and thus largely inconsequential.

In a study of Ghana, Kenya, and Rwanda, Mighot-Adholla *et. al.* (1991) found no direct relationship between productivity and

variation in land rights. They concluded that other factors were important in influencing productivity, including infrastructure development, market efficiency, and availability of information on new technologies. They argued that land titling did not convert into higher productivity because the necessary credit and insurance markets did not exist that would enable farmers to convert title into credit, and credit into new technology and insurance against risk. They concluded that governments would be better served focusing on other constraints to productivity, rather than developing costly land titling programmes and cadastres. They argued that, since state titling programmes are expensive and have high transaction and information costs, they should only be initiated when there is a demand from below and increasing opportunities for commercial agriculture. Without this demand, farmers may choose to gain title for defensive reasons, to prevent their land been reallocated to other people by the state. Mighot-Adholla *et al.* concluded that state land titling programmes can unintentionally result in a general climate of land insecurity, resulting in farmers spending scarce resources on safeguarding their land, rather than investing in its development.

By the early 1990s, two distinct positions on land reform had emerged within the World Bank, one committed to land titling and the other to a harmonisation of the statutory and customary spheres. This recognition of evolving and adaptive customary land tenure systems has led to the conceptualisation of a theory of evolutionary property rights. This argues that, as land becomes increasingly scarce, institutions will arise at the community level (or there will be a demand for such institutions) to restrict access to land and encourage the development of land markets. This will reflect a shift from institutions embedded in custom and kinship to market relations. Households suffering from underproduction and stress will sell out land and better-endowed households will purchase land, resulting in the emergence of land markets (Demsetz 1967; Deininger and Binswanger 1999; Platteau 1996; Carter and Zimmerman 1993). Thus, recognition of customary rights can form a viable strategy for fostering the development of more comprehensive and transparent land markets, and for creating a framework in which institutions for comprehensive land titling are gradually and incrementally created and rise in response to demand.

This has led to a paradigm shift, from an approach concerned with displacing customary land relations by statutory tenure to one that encourages the harmonisation of customary and statutory land management systems. This argues that, where institutions to enforce property rights are not well-functioning or do not enjoy wide acceptance, an appropriate option is to build upon existing informal institutions and structures rather than attempt to devise new ones (Deininger 2003). This approach aims to integrate indigenous rural institutions into national land management, reduce the transaction costs of land management in national land administration, and rely on informal mechanisms where they are appropriate (Platteau 1996). The overriding objective is to gradually build well-functioning land markets and private property rights.



## PART 2: LAND DEBATES TODAY

### Community participation and community-based solutions

The rise of community forestry in the 1980s had a major influence on land administrative reform. By the 1980s, in Francophone Africa experiences in community forestry had been synthesised into the *gestion de terroir* approach. *Gestion de terroir* is a multi-sectoral, decentralised, and participatory approach to sustainable development. Its aim is to promote the sustainable management of a village territory by a village group, which draws up a plan for its own mapped-out territory. *Gestion de terroir* promotes integrated participatory development at the local level. A team of development officers from various departments mobilises villagers to participate in a “bottom-up” approach to community development, and the community group implements a management contract for the territory (Guèye and Laban 1992; de Haan 1998).

The *gestion de terroir* approach provided the framework for the subsequent development of Rural Land Plans (*le Plan Rural Foncier*, or PRF). PRFs were first implemented in Côte d'Ivoire in 1990, and were also introduced in Benin, Burkina Faso, and southern Guinea. The PRF approach devises a simple land register in which all existing rights in land are mapped in the territories of rural communities, using aerial photographs, GPS devices, interviews with rights holders, and community group consultations. The objective is to record all existing rights in specific plots of land of all landowners and land users, and

the nature of these rights (such as if the land can be sold or transferred to heirs), using simple mapping techniques and consultations with the communities, landowners, and land users. Where land is the subject of disputed ownership, this is also recorded. This can be used to create a land title register, as in Côte d'Ivoire, and to issue land certificates. In Côte d'Ivoire, these land certificates could then be converted into private land titles (Gastaldi 1999; Ouédraogo 2005; Lavigne Delville *et. al.* 2002).

In Madagascar a decentralised land register has been implemented, based on the PRF approach, which attempts to harmonise management of agriculture with natural resources. Prior to this, a system of formal registration existed based on the Torrens system, in which the state maintains a register of land titles that confers full rights to ownership by the holder of the title certificate. However, this was so complicated and cumbersome that government agencies had difficulty in managing and updating it and, as a consequence, it has had little impact on registering existing land rights. Within communities in Madagascar, people have developed their own initiatives of informally recording land rights in written documents. Recent reforms have taken these local initiatives and developed mechanisms through which they can be regularised and recognised within local administrative systems (Teyssier *et. al.* 2009). The aim of the policy is to transfer

management of specific areas of land to rural communities, based on a contract negotiated between the community, local council, and the state.

These contracts make provisions for the management of natural resources, including forests and farmland. A community land register is created based on simple and flexible survey mapping that aims to identify and map all existing agreed rights in land, and with the mapping carried out with community participation in the presence of all relevant parties. After the mapping is done, land certificates are issued to individuals, which describe the nature of the rights they hold in a particular plot of land. The aim has been to establish a neutral process that takes stock of existing relationships, rather than prescribe categories of land and pre-existing notions of customary arrangements. However, the mapping has experienced difficulties in reducing secondary rights in land (where there may be a series of overlapping rights and different domains in relation to grazing land and rights in trees) to mappable criteria based on notions of land manager and farmer (Chauveau *et. al.* 2006).

In Ethiopia a system of decentralised land registration and certification has been implemented in the Amhara, Tigray, and Oromia regions. These use simple techniques and community institutions to map out land rights of various households, including women who have recognised rights. Farmers are directly involved in land measurement and registration, through committees elected from within the community. Provisions are made for training farmers in land registration. Registration techniques involve estimates of the land area based on traditional methods and written descriptions of boundaries according to particular landmarks. In addition to this, small plot holders may have their lands registered as groups. Although this process is simple, it is effective and has enabled the rapid registration of lands. In the past, registration has been used to carry out redistributions of land to ensure equity. However, this often disrupts farming strategies and security over the land, and there have been no redistributions in recent years. Land registration is perceived as providing farmers with tenure security, which enables them to lease out or lease in land (Adenew and Abdi 2005; Haile *et. al.* 2005). However, this process of participatory community land mapping is being overlain with more centralised and formal surveys (supported with donor funding).

In Tanzania, the Village Land Act of 1999 set up a system of community-based management of land, in which the administration of land is devolved to elected Village Councils. Within clearly demarcated Village Land Areas, Village Councils are responsible for registering land, preparing land certificates, and adjudicating land disputes. Resident members of the village have rights to land, which they can also sell. A ceiling of 20 hectares has been established on the amount of village land that can be held by village members. Currently, there are about 10,000 Village Land Areas (Alden Wily 2003, 2008).

In Uganda and Mozambique, customary rights in land are fully recognised as private property rights, and consultations are developed with rural farmers and communities in recognising and registering customary land rights. In Uganda no decentralised institutional structure exists for land management at the community level. However, the Uganda Land Act of 1998 recognises customary tenure as legal and equal to other forms of tenure, recognises user rights to land established through long-term occupancy, provides for the registration of customary rights to land, and creates an institutional framework for decentralised land management at the district level (Nsamba-Gayiyi 1999).

In Mozambique, the new land reform laws recognise the local community as a formal legal entity based on its occupation of land. Within its land borders, the land rights of the various members of the community are recognised on the basis of their recognition within the norms of the community. Local community rights are established through claims based on “joint titling”, based on notions that all community members, including men and women, have equal rights to community property, rights to participate in decision-making, and an equal say in management decisions (Knight 2010). This recognises community rights without attempting to pre-define what constitutes the community or customary rights. This is up to the members of the community to define through dialogue.

# Harmonising and devolving land administration

By the 1990s two distinct approaches to land administration had emerged. The first was concerned with promoting land markets and individual property rights. The second was concerned with governance issues, securing land rights for the poor, defending livelihood rights, and promoting decentralised land management to the community level, and a process of subsidiarity which delegated decision-making to the lowest level that could make and implement appropriate decisions.

These approaches are not mutually exclusive, since advocates of land titling recognise that a successful titling programme depends upon being able to reach deep into rural localities to regulate land affairs, and upon the recognition and conversion of customary rights into individual property rights. Advocates of customary rights, on the other hand, recognise that successful community rights in land can arise only from a recognition of customary rights by the state and by a harmonisation of customary and statutory tenure, in which customary tenure is accorded the status of statutory rights in land (Lavigne Delville 2005, 2000; Toulmin and Quan 2000).

Land administration is often dysfunctional. The prescribed forms of land tenure recognised by the state often do not have much currency in rural areas, and the dominant practices are not recognised by the state. Those advocating for customary tenure systems argue that intermediate systems need to

be created that will establish a bridge between formal and customary systems, and enable a harmonisation of customary and statutory tenure based on the recognition by the state of local land tenure rights and the legitimacy of existing rights. This requires the decentralisation of management down to the community level and a recognition of the rights of communities to manage their own land affairs within the context of an open and transparent legal system that recognises procedural conditions to guarantee fairness and external monitoring by the state (Chauveau *et. al.* 2006).

However, the convertibility of customary tenure into individual property rights or the demarcation of areas of customary village lands beyond unoccupied areas claimed as state lands can also serve to undermine customary tenure. Platteau (1992) has addressed these concerns. He argues for a dual system of land tenure in which private rights co-exist with communal rights and both sets of rights are guaranteed by the state. To prevent disequalising tendencies from emerging, where wealthier farmers begin to acquire the land of the poor, Platteau argues that private titling within this system should not be transferable and that customary or group titles should remain within the group:

The stabilisation of such an agrarian structure would involve both the granting of officially registered individual titles to small peasant cultivators and the checking of restratification tendencies through state regulation of land markets (Platteau 1992: 248).

However, such regulation of land markets tends to introduce zoning systems and tends to force the evolving dynamics of customary tenure into rigid precepts, which externalise the customary from market developments and prevent customary users of land from using markets. This will tend to constrain the dynamic elements of the customary in relation to the market. Moreover, if customary rights are determined by use, this means that land not under contemporary use can be demarcated as public land and reallocated to investors, and moved outside of the customary systems. One of the major interests in demarcating lands under customary tenure has been to define areas that are not in use and can then be sold to investors free of contestation by customary users. This can result in the rapid erosion of community lands that serve many other purposes other than continual production of crops.

Alden Wily advocates that these “unused” lands should be recognised as the property of communities, as “community-owned private properties”. These lands should come under the management of community groups, including the rural poor, who should have rights to transact and use resources for the benefit of the community. Rural communities would be able to mortgage substantial parts of their common properties and gain substantial incomes and concession and user fees for their use by members outside the community, thus enabling them to gain valuable incomes and revenues.

Alden Wily further argues that rural communities are not backward-looking traditional entities constituted by councils of elders and chiefs, but modern living communities in search of “inclusive, democratic and accountable procedures in order to retain popular adherence in a modernizing world” (Alden Wily 2006: 42) and to manage common property resources such as woodlands and pasture that depend upon shared ownership. Thus, her vision of customary rights is of modern secular rights invested in a democratically constituted community, in which all members are involved in decision-

making. Developments in the Mozambique land reform programme work within similar precepts (Knight 2010), of not zoning land into community and non-community land and not pre-defining the community as some traditional entity, but enabling the members of communities to adapt their land management systems to contemporary needs and enabling the community to transact the resources under its administration with investors and other groups.

This vision of a democratic union of smallholders practising democratic governance over community-constituted property is, however, dependent upon the following three assumptions:

- » The community is not characterised by marked social differentiation between privileged and underprivileged members;
- » The village is relatively homogenous, and not made up of different ethnic groups, constituted through long histories of migration and movements of population;
- » The community is not characterised by established “vernacular land rental and land markets” (Chihowu and Woodhouse 2006), in which lands are transacted in various forms between members of the community, and between individual community members and migrants.

Where these conditions do not occur, definitions of user, owner landholders, customary rights, and community become more complicated, and subject to politicisation and contestation.

In several areas of Africa, rural communities are characterised by socially stratified populations. Local land markets and the co-existence of diverse populations frequently coalesce as a result of frontier development and the movement of farmers and labourers involved in cash crop production (Peters 2004). This often results in complex land relations, in which secondary rights in land leasing, sharecropping, and rental arrangements are common. These relations are often subject to change in which customary arrangements are adapted to economic transformations and changing factors of production, and reinvented in the context of political struggles to gain advantage from change. This is particularly prevalent in dominant export-producing areas.

In the Fouta Djallon area of Guinea (which combines highly inequitable customary tenures based on vestiges of servile labour/master relations and high population densities, resulting in land scarcity), the introduction of economic liberalism following the death of President Ahmed Sekou Touré in 1984 resulted in the former Fulbe landlords re-appropriating their lands as their customary privilege. While the state introduced important reforms in freeing captive labour and securing land rights for tillers, it did little to safeguard these rights. It did not create an institutional framework for recognising rights in land, or a system of comprehensive land certification in rural localities. It merely transferred the rights of the landlords to the state. As a result, the rights of cultivators depended upon the goodwill of the political administration for their recognition. A change of regime has undermined these rights and seen the resurgence of the old privileges of the Fulbe landlords, in much the same way as they exercised them during the colonial period (Diop 2007; Boiro 1996). This illustrates the importance of recognising individual rights to land and establishing processes for the recognition and registration of rights from below. Although notions of masters (nobles) and servile labour were abolished with independence, “these are still very much alive in the social life of communities” in Fouta Djallon (Boiro 1996: 80). While Guinea has introduced a process of community-based participatory land reform based on PRFs, notions of village committees representing both landowning and land-using interests are difficult to sustain.

In other instances, landowners and chiefs constantly change and redefine customary relations as land becomes scarce and more valuable. Various types of chief, factions of chiefs, and other land authorities may make claims to have rights to transact and control land, appealing to different traditions. Chiefs who were created by colonial authorities as part of the rural administrative machinery often attempt to transform their colonially acquired privileges into “authentic tradition”. For example, chiefs in the Upper East Region of Ghana were to a large extent a creation of colonial rule; before this, land matters were managed by earth priests. In contemporary times, as land values begin to increase, earth priests and chiefs are contesting rights to sell land based on their reconstructions of tradition (Lund 2008).

Chiefs may also attempt to reconstruct their rights to land to take advantage of its current commodification. Ubink (2008) describes how in peri-urban areas around Kumasi in Ghana chiefs are appropriating land from farmers for sale to residential property developers, without compensating the land users. They have justified expropriation by inventing new customary rules, such as that when the outskirts of the town expand to meet farmland, the land reverts back to the chief.

In the eastern Congo, Vlassenroot and Huggins (2005) argue that chiefs played important roles in the early post-colonial period in facilitating the expropriation of land from peasant farmers to aspiring capitalist farmers. This was achieved through a process of undermining previously dominant customary land allocation frameworks. As in peri-urban Ashanti, one strategy was to invoke a “right to return” (Vlassenroot and Huggins 2005: 136), in this case when the land user or the witnesses to the original contract had died. Other options were to develop new types of contract that involved new customary payments or transformed rights to land into a rentier relationship in which the cultivator gained rights to cultivate land for a pre-defined period through payment of rent.

Boni (2005) reports that in Sefwi Wioso, a major cocoa-producing area in the western Ghanaian forest, in the early colonial period chiefs gave lands to migrant farmers (the main social groups developing cocoa) as gifts. As more farmers moved in to cultivate cocoa, generating a demand for land as a commodity, gifts were replaced by land sales, and then later by sharecropping. Each subsequent development was made to apply retrospectively to earlier arrangements, as custom was reinvented to reflect the scarcity value of land. Farmers who had originally purchased land found in later epochs that these transactions were reinterpreted by chiefs as customary prestations by potential land users to get access to the use of land. At a later date these use rights in land were converted into sharecropping arrangements. Since the expansion of cocoa farming resulted in increasing scarcity of land for local youth, the chiefs were able to play off frictions between youth and migrants over land. Through this appeal to tradition within the context of commodification, chiefs are able to rewrite the rules not only of custom but also of the market, transforming what appeared to be market relations in one period into high-value customary prestations.

Vlassenroot and Huggins (2005) argue that, during the colonial period, Banyarwanda migrants from the Rwanda border areas moving into the areas controlled by Hunde chiefs were initially welcomed by the chiefs, who envisaged receiving new sources of wealth in the collection of tribute. However, the local farmers viewed the new migrants with hostility, seeing them as competitors for land. Denied free access to land, the Banyarwanda migrants began purchasing land. Nevertheless, the chiefs still expected the migrants to pay tribute for lands under their domain. The growing tensions resulted in a major violent conflict, which lasted for two years at the beginning of independence, as the migrants rebelled against what they saw as chiefly abuse.

Similar frictions also underlie the land conflicts in Côte d'Ivoire, which erupted into civil war in the early 2000s, as friction grew between migrant farmers and indigenous youth with limited access to land. In the west of the country, the movement of migrants into cocoa production was structured by the *tutorat*, a neo-customary tributary type of institution in which land receivers made monetary payments to gain access to land and to acknowledge the claims of landowners on it. At one level this was represented as a gift, a fact that was necessitated by the Ivoirian state's dictum that land fees were not to be levied on migrant settlers. But the monetarisation of the *tutorat* for access to land, and the increasing monetary value of the payments in relation to the scarcity of land and its perceived value, led the migrants to believe that these payments were for the purchase of land. In the early years of cocoa expansion, some of these fees realised in land transactions were used in the education of local youth, who largely moved into urban areas in search of employment.

As the Ivoirian economy suffered from recession during the mid-1980s, many of the unemployed youth returned to their home villages, where the elders depended on rents from migrants and migrant labour on their farms. With little avenue for gaining access to land or employment as labourers (since these roles were filled by migrants), the youth built up resentment against the migrants, on whom they blamed their woes. This first took the form of making demands for the renegotiation of the terms on which land was released to migrants, by demanding a return by elders to authentic customary principles that they had supposedly violated. In 1998

a Rural Land Law was announced. This contained controversial clauses that established the priority of the customary rights of indigenes, denied the rights of migrants to legally own property, and attempted to transform the *tutorat* into a formal land lease. The law differentiated between "customary rights conforming with tradition", which were vested in indigenes, and "customary rights ceded to third parties", which were vested in migrants (Chauveau 2009).

This was interpreted by the youth in western Côte d'Ivoire as a justification for denying migrants rights in land and intensified ill feeling against them, which eventually erupted into violent confrontations. However, these notions of authentic community and customary rights were being used by recent returnees from urban areas, who had moved back to the rural areas as a result of an urban crisis and a lack of viable opportunities, to vent their frustrations on longstanding migrants who had been central in the rural economic transformation (Chauveau and Richards 2008). Chauveau and Richards (2008) conclude that policy approaches that attempt to strengthen notions of a mythical cohesive community against the state may exacerbate incipient conflicts, and result in unintended and perverse outcomes. They argue that what is required is a recognition of the various economic and socio-political interests competing over land within national frameworks for social, economic, and political reform and land administration.

Conflicts between locals and migrants are not confined only to land, but often reflect deeper structural tensions between land and labour, in which both youth and migrants are involved as labourers. In Ghana during the late 1960s, tensions arose between migrants and youth in the context of competition over employment rather than land. Unable to gain access to family land, which was becoming increasingly scarce, local youth in the forest zone of Ghana increasingly gained their livelihoods through working as farm labourers. They had to compete against Sahelian migrants, many of whom came from areas with long traditions from the early twentieth century of labouring in the cocoa industry. These migrants often worked on terms that the local youth considered unfavourable, including as annual labourers, remunerated after a year of work, and in various forms of sharecropping labour. Frictions resulted in the repatriation of Sahelian labour and its movement into



Côte d'Ivoire. While local youth labour increasingly replaced the Sahelian migrants, the terms of labouring changed to daily labour contracts. With economic recession during the 1970s, farmers suffered from declining stocks of capital with which to hire labour, and so hired labour was replaced increasingly with short-term sharecropping contracts (Amanor 2005).

In other instances, limited horizons for youth, limited access to land, and conditional access to land on the basis of labour services have led to increasing dissatisfaction of youth with regards to the injustices of customary relations within the community. This has resulted in youth joining insurgent movements and taking up arms, as in eastern Congo and southwestern Sierra Leone (Chauveau and Richards 2008; Vlassenroot and Huggins 2005).

Dominant export cropping areas often have long traditions of land sales and complex land leasing and renting arrangements that in some instances precede colonialism (Chihowu and Woodhouse 2006). Amanor (2010) traces land sales for oil palm production in southern Ghana to before the 1830s. The complexity and history of land and labour relations in many export-producing areas often contravene the simple characterisation in much of the African literature of the customary as being associated with non-commoditised relations and social values of land. It is important to recognise the importance of these commoditised relations within the framework of customary landholdings. Several land reform processes give recognition to existing practices of sales, leasing, and mortgaging within smallholder farmer sectors, including in Tanzania and Ethiopia, and the security accorded by registering user rights to land can facilitate these types of markets. These arrangements often involve complex and changing social relations, in which the terms and scope for negotiations are often influenced by power relations and changing economic factors in production.

In many instances, the increasing recognition of customary rights and devolution of power to communities and customary institutions have strengthened and empowered chiefs and dignitaries, including in Ghana, South Africa, Mozambique, and Uganda. In Ghana, chiefs have been able to construct themselves as a central part of rural civil society, have established development and welfare foundations that have

gained funding from donors, and have gained hegemony over community forest committees and land secretariats, which have become synonymous with chieftaincy.

While chiefly elements have been able to exploit the recent interest in strengthening recognition of customary land tenure, often to further their own narrow interests, they have not always been successful. In Uganda, during the process of formulating a new land law, Buganda royalists lobbied government to vest the *mailo* lands in the Kabaka to hold in trust for the people of Buganda. The intention was to gain rental incomes from this to finance the Buganda royalist government. This was resisted by the National Resistance Movement (NRM) government, which sought to resolve the impasse on *mailo* land by recognising the rights of occupancy of farmers. By limiting the amount that could be charged as ground rent, recognising the customary rights of farmers to land through extended occupancy, and supporting the convertibility of customary rights in land into recognised title, the Land Act undermined the economic interests of the owners of *mailo* land. After an acrimonious struggle, the 1998 Land Act was eventually adopted (Englebert 2002).

In this instance, rural landed privilege was not able to impose its interests, and land reform policy responded to the demands of the large numbers of tenant farmers and civil society coalitions, and the need to solve the impasse in land management in relation to productive and equity concerns. Similarly, attempts to enact a Communal Land Rights Act (CLRA) in South Africa, which attempted to decentralise land administration within the communal areas to unelected traditional councils, was challenged by several groups, who argued that the act was unconstitutional and would undermine their tenure security. In May 2010 the South African Constitutional Court declared the CLRA to be unconstitutional in its entirety (Rural Women's Movement of South Africa 2010).

The contours of what constitutes the customary and the community vary in different contexts, and depend upon various coalitions of forces. In some instances, the state chooses to devolve decentralised management to traditional authorities. However, civil society groups may challenge this as a violation of their democratic rights, as in South Africa. In other rural situations, chiefs may be able to gain a monopoly over rural civil society, as in Ghana, effectively gaining control



over land and natural resources. Where chiefs are considered too powerful by the state, the state may attempt to limit their participation in land management by building up civil society representation in definitions of the customary, as in Uganda.

In other instances, unequal relations between different groups and internal disputes may undermine the unity of communities. Complex commodity relations with long histories of land and labour transactions traverse many communities within export-producing areas. Competing groups may appeal to the state to introduce legislation that strengthens their claims against other groups, on the basis of authentic customary rights, their importance to the national economy, or on the basis of political relations. Appeals are often made in terms of colonial borders, used to define who are insiders and outsiders, autochthonous, migrants, and non-nationals, in spite of the long histories of movements of people before the establishment of colonialism. These claims do not fit easily into notions of autonomous communities representing unitary community interests. The community is often a nexus of complex social, economic, and political relations, with regional and national ramifications.

# Women's land rights

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Discourses around land administrative reform and gender have added many insights to the relationship between customary and statutory domains and social differentiation. Gender perspectives frequently reveal the customary to be an area of unequal social relations that do not favour women's interests (Whitehead and Tsikata 2003). Gender analysts have revealed how the customary and statutory work together to marginalise and extinguish women's rights in land. Land registration and titling often exclude women's interests by encouraging a single registered owner of household land, which results in men being recorded as the owner. Since mass registration involves the conversion of customary rights into statutory ownership, men have been able to manipulate the historical precedents of what constitutes customary relations to gain greater control over land at the expense of women.

Colonial rule created a hierarchical and patriarchal order of chiefs and elders through which colonial administration was implemented. This reflected a hierarchy of interests, in which the privileged were able to define what constituted the customary. The social changes that came about through the adoption of new export crops resulted in new values in land, which often resulted in declining access of women to land as men expanded into export crops (Whitehead and Tsikata 2003). This has resulted in a new and acute sense of the value of land, which probably was not a perception of earlier epochs, and has served to exclude and erode women's access to land (Khadiagala 2001; Hunt 2004; Tripp 2001). Frequently,

when women attempt to pursue their land claims through customary avenues they are discriminated against or, as Khadiagala (2001) records in Uganda, exhorted to "behave like women" in accordance with cultural norms. As a result of this treatment, women often seek to pursue their land claims through formal institutions, such as magistrates' courts, legal aid clinics, and government offices rather than customary tribunals, which they do not consider to be impartial.

In South Africa attempts to enact a Communal Land Rights Bill, which would decentralise land management to traditional rulers ("tribal authorities"), met with widespread opposition from women's groups, such as the Rural Women's Movement Kwa-Zulu Natal, who objected to the fact that, while women were to be represented, this representation was not through democratic elections by women (Rural Women's Movement Kwa-Zulu Natal 2003). The Rural Women's Movement also objected to the lack of accountability of traditional rulers in the sale of land, the lack of secure rights held by women to own land in their own right, and the implications of registering individual rights in customary land for women. Together with four rural communities and the Institute for Poverty, Land and Agrarian Studies (PLAAS), the Rural Women's Movement Kwa-Zulu Natal successfully made a legal challenge to the constitutionality of the Communal Land Rights Bill.



Unequal relations of gender and age have structured even the most egalitarian societies in Africa. In modern contexts, in which agriculture becomes increasingly commoditised and land increasingly scarce, these inequalities work to displace women's access to land, and individualised property evolves. While customary arrangements may have the characteristics of being flexible, adaptable, and negotiated, the outcomes of these negotiations are dependent upon local structures of power and representation. Women's interests in land are frequently marginalised, since women have limited representation within customary institutions for resolving conflicts and managing land (Whitehead and Tsikata 2003; Joireman 2007; Hunt 2004; Manji 2001). Far from being rooted in moral consensus and shared values, communities are constructed on processes that create insiders and outsiders. Those with access to power in the community define who are insiders and outsiders and who has the right to set the rules and define the boundaries of exclusion and the moral values of the community. Thus community tribunals, councils, and other local governance structures tend to be vehicles through which the politically powerful can establish control and punish those who deviate from prescribed practice and norms (Khadiagala 2001).

Debates on women's rights in land have centred on three different approaches. The first is a rights-based approach, which appeals to universal declarations on women's rights to which African states are often signatories. This creates pressures for the state to introduce or reform legislation to comply with universally agreed women's rights. The second approach is to support formal titling initiatives, since this gives women the possibilities of co-ownership of family property, ownership of property in their own right, and the ability to bequeath property to their own heirs. However, women also experience land loss and threats to their access to land and livelihoods as part of communities, as a result of the allocation of large tracts of village land to private investors, commercial farmers, and for use as conservation parks. In these circumstances, women have also sought to advance and protect their interests in land by supporting decentralised customary management of land and the reform of customary land rights (Whitehead and Tsikata 2003).

In the case of Tanzania, Tsikata (2003) argues that women's interests in land arose in the context of the increasing liberalisation and allocation of land to private investors. As a result of these concerns, women organised within the Gender Land Task Force to support the creation of a Lands Bill, which would support rural women's interests. The Lands Act made provisions to address some of the concerns of women, but it fell short in respect to reforming customary law. As a result of this, some women supported the liberalisation of land markets, seeing land titling and registration as creating opportunities for women to purchase land and have it registered in their name (Tsikata 2003).

In other instances, women seek to advance their interests by attempting to redefine the customary. They demand greater female representation on local councils. They challenge the patriarchal interests on which customary land rights have been interpreted, in which the contemporary portrayal of the customary is seen as a distortion that patriarchal male interests have managed to impose, rather than being an essential part of the customary. For instance, the Land Equity Movement of Uganda (LEMU) writes in its broadsheet on *Linking Land Tenure and Agricultural Modernisation: Making PMA relevant for all*: "We need to move the battlefields for women's land rights: instead of accepting the distortion of customary law and trying to pass legislation to overrule it, we should challenge the erosion of women's rights from within the customary system itself" (Land Equity Movement of Uganda n.d., p.4).

The literature on gender and land is important in drawing attention to a tension between the customary as a site of resistance to the state, and a political node around which local-level political capacities can be built, and the customary as the site of unequal rural social relations that need to be reformed to strengthen women's security in land. There are dangers that the harmonisation of the customary and statutory can further undermine the land rights of women, with the statutory being used to reinforce their marginalisation within the customary. However, women have also been successful in demanding greater accountability and representation of their interests in both national and community sectors, and in developing linkages between the two sectors to achieve civil society reforms (Whitehead and Tsikata 2003; Khadiagala 2001; Tripp 2001; Manji 2001).

Within existing land tenure programmes, notable gender-sensitive reforms include the increasing recognition of women's rights in land and the registration of land in the names of both married men and women (Ethiopia, Tanzania); the recognition of women's rights to be represented on customary Land Boards (Tanzania); the division of land between both parties following divorce (Ethiopia); the rights of women to gain land in their own right (Tanzania, Uganda); and the rights of women to sell their land (Tanzania, Uganda).







# Pastoral land rights

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Pastoralists mainly inhabit drylands that receive less than 1000mm of rainfall each year. These drylands cover about 40% of Africa's landmass. They are susceptible to cyclical patterns of short and more persistent droughts. Pastoral management is based on the utilisation and management of different types of seasonal pasture. This frequently includes dry season and rainy season pastures. Dry season pastures are deliberately not used during the wet season to enable them to regenerate for use during the dry season. Permanent use of one area is avoided to prevent depletion and degradation of pasture, and large tracts are left idle during the rainy season (Mwaikusa 1993). In the more arid zones, pastoralists need to use much larger grazing grounds that often include dry season grazing areas at a considerable distance from wet season pastures. In the wetter areas the frontiers of pastoralism are interlocked with agriculturalists, giving rise to agro-pastoralism, in which farmers moving into grazing lands combine agriculture with livestock and herders take up agriculture as a complementary economic activity.

Drylands are characterised by unstable disequilibria environments (Behnke and Scoones 1993; Sidahmed 1992; Niamir-Fuller 1999; Warren 1995), in which erratic rainfall is an inherent characteristic. As a result, pastoral management strategies are adaptive and opportunistic. Herders are not concerned with the management of fixed territories of land, but adjust their grazing grounds in relation to climatic factors, in which they may have to negotiate access to new pastures

with their neighbours (Behnke 1994; Beyene 2010). This results in pastures being held as common property rather than individual property, in which multiple users negotiate and compete for rights. The boundaries of rangelands are not stable and they are often constructed out of political interests and contradictory claims of different groups, rather than constituting distinct, authoritative and historically defined categories (Behnke 1994). As a consequence, pastoral rights in land are not easily reduced to individual title, and pastoral areas are easily colonised and encroached upon by other users.

In some instances in the Sahel, rights to pastures may be established through the control of wells and access of livestock to water rather than through land (Thébaud 1990). Similarly in Botswana, Peters (1994) documents how the drilling of boreholes by herders has strengthened their claims on land. Administrative edicts that boreholes should be sited five kilometres apart have led to a perception that drilling boreholes establishes rights to pastures for a distance of five square miles around the borehole. These individual rights to pasture established through ownership of boreholes straddle a conception of communal grazing lands, frequently resulting in conflicts between herders. In addition, the establishment of cultivated fields in and around the boreholes and on the perimeter of rangeland results in the increasing constriction of communal grazing areas.

Pastoral management strategies have been poorly understood in national policy frameworks, where pastoral lands are considered to be under-used, poorly managed, and degraded. This leads policy-makers to assume that pastoralism is outmoded and that pastoral lands would be better protected, managed, and conserved if they were allocated to other sectors. These perspectives legitimise the appropriation of pastoral lands and heighten the vulnerability of herders. However, pastoralists make considerable contributions to national economies. In Mali, Mauritania, and Niger, pastoralists contribute up to 20% of GDP, while they contribute up to 10% of GDP in Tanzania, Uganda, and Kenya. In Sudan, pastoral products contribute up to 25% of the value of total exports (Mwangi 2009; Lane 1998). A number of empirical studies on the drylands suggest that pastoral land use may be a better rational adaptation to marginal productive rangeland than individual holdings and conversion to ranches (Thébaud *et al.* 1995; Behnke and Scoones 1993; Behnke 1994; Homewood and Rogers 1985; Brockington 2002; Lane 1998).

Pastoralist land use strategies are not easily translated into policy. Land policies have tended to confer land rights on the basis of individual claims to specific plots of land. Policies that recognise rights to land based on development and investment in the land have worked against pastoralists and in the favour of farmers, who have frequently been able to claim rights over land established in dominantly pastoral areas. As a consequence, pastoralists have lost considerable areas of land to other land users. While policies have attempted to limit the expansion of livestock on common land, they have supported the conversion of pastoral lands to other economic uses and the appropriation of pastoral lands. This has involved conversion of pastoral lands into farmlands allocated to competing farmers, privatised ranches, wildlife and conservation parks, and to agro-industrial and horticultural land uses.

From the 1960s to the 1980s, the dominant policy in pastoral areas in eastern and southern Africa was one of supporting the conversion of grazing commons into individual ranches, which was most pervasive in Botswana and Kenya. This involved costly processes of fencing, titling, and introducing new technologies and breeds of livestock, which excluded the majority of poor pastoralists while supporting the movement of aspiring capitalist farmers into the livestock

sector. The promotion of individual ranches was often accompanied by policies promoting destocking of herds in pastoral areas (Lane 1998).

In the West African Sahel, farmers have been able to gain control over rangeland through recognition of their rights to individual plots of land by government agencies and local councils. In many instances, pastoralists have claimed that they were the original users of the land and that they invited the farmers into the area (Mwangi 2009). In agro-pastoral areas, pastoralists often benefit from pasturing their cattle on crop stubbles, while farmers benefit from the manuring of the land. However, as farmers expand the area cultivated in relation to the development of cash cropping, it is frequently difficult for pastoralists to protect their land.

Juul (1993) explored this dilemma in the Ferlo region of Senegal, where the Mouride brotherhood was colonising large areas with tractors for groundnut production. While national laws allowed farmers to claim lands they were productively managing as property, they also recognised grazing lands to be common lands in which all nationals had rights. This prevented herders from excluding farmers from common property rangelands. Within the southern Ferlo area, two distinct Fulani pastoral groups existed. The first were semi-sedentary, combining livestock and agriculture; the second were Foutanke Fulani, who moved into the area from the Fouta area as a result of drought. The Foutanke had larger herds than the semi-sedentary Fulani and utilised more mobile pasture management strategies, exploiting a wider range of pastures seasonally. The Mourides were able to make many successful claims on land, including access to areas with critical portions of seasonal grazing lands, and registered them as their own individual plots. Many of the semi-sedentary pastoralists also began to register portions of their rangeland as farmland to defend critical resources against encroachment from farmers. This, however, had long-term implications for the mobile management strategies of the Foutanke, although at the time of the study the semi-sedentary herders were not excluding other groups from grazing their livestock on their registered land (Juul 1993).

The introduction of *gestion de terroir* approaches to participatory natural resource administration in the Sahel has also created some problems for pastoral people, since it results in a more rigid spatial definition of land use based on fixed village boundaries. This poorly represents the interests of mobile and migrant communities with no fixed territorial customary claims on land, including pastoral communities. This results in less institutional flexibility in negotiating access to resources between pastoral people and farmers, since the pastoralists have little input into the management of the terroir of local farming communities and the village grazing grounds are treated as the domain of the village (Mwangi 2009; Lane 1998).

East African pastoralists have suffered from considerable land loss. During the colonial period, pastoralists in Kenya lost significant areas of lands to white settlers. The subsequent titling and land redistribution schemes linked with land grabs have resulted in further land loss, as large areas of land have been allocated to commercial farms and, recently, for horticultural and cut-flower development. In Tanzania during the villagisation campaign, pastoralists were often moved into new villages and allocated designated grazing grounds around the villages. Destocking campaigns were introduced, since the village territory did not provide sufficient pasture for the livestock. While herders were forced to destock, land resources were made available to other sectors, including agro-industries and commercial wheat development (Mwaikusa 1993; Galaty 1999).

With the introduction of liberalism in the 1980s, the appropriation of rangeland has intensified. A significant amount of rangeland has been converted into wildlife and conservation parks, associated with the development of tourism. Pastoralists are often evicted from game reserves in the erroneous belief that overgrazing by cattle will result in the destruction of the habitat (Homewood and Brockington 1999; Brockington 2007; Igoe 2006; Galaty 1999). An international coalition of western conservation NGOs and business interests has been highly vocal in calling for the creation of exclusive reserves (Brockington 2007; Spierenburg and Wels 2010). However, before the creation of parks pastoral peoples co-existed with wildlife. Most of the game parks in East Africa have been created on lands that were originally pastoral grazing lands. Since the 1980s the expropriation of pastoral lands has

intensified in these countries, resulting in considerable unrest. In both Tanzania and Kenya, pastoral people have organised associations to mount legal claims against attempts to evict them from their land, and to claim restitution of areas in which they were historically settled (Brockington 2007, 2002; Igoe 2006; Hodgson 2002).

Recent land reform initiatives based on customary rights have attempted to recognise the land rights of pastoralists. The Tanzanian Land Act explicitly recognises the rights of pastoral people. However, this has not prevented continued expropriation of pastoral lands for foreign investment. Agricultural settlements can register grazing lands as their own village lands, which can later be converted into General Land and sold as leases to foreign investors. The Ugandan Land Act enables common land associations to obtain customary certificates for their common lands and group rights to manage and protect their interests in rangeland management.

Since the early 1990s a number of international NGOs have been working to promote pastoral land interests (Igoe 2006; Hodgson 2002). However, it has been difficult to create appropriate frameworks through which pastoral rights in land can be secured, since rangelands are often subject to multiple and competing interests, and pastoral interests are often diverse and socially differentiated into wealthy and poor (Homewood 2002). Brockington (2002) argues that pastoralists include many different social groupings, which are differentiated by ethnicity and wealth. This is often lost on international NGOs, who frequently try to project them as unitary groups. Many international NGOs have taken up the cause of the land loss of Maasai in Kenya and Tanzania, while ignoring the plight of other groups, or the internal differentiation between wealthy and poor Maasai. For instance, NGOs working around the Mkomazi reserve in Tanzania have often focused on promoting the interests of Maasai. Igoe (2006) argues that a focus on the plight of “marginalised Maasai” acts to the detriment of the poor within multi-ethnic communities and often results in Maasai elites being able to use donor funding to expropriate resources from more marginal pastoral villagers.

Hodgson (2002) argues that, given the lack of political support for pastoralists nationally, one of the most viable strategies for pastoralists is to “become indigenous”, seeking support

from transnational NGOs and forums involved in supporting indigenous people, although few African states have subscribed to the international convention on indigenous rights. This has enabled pastoral associations to gain access to resources, legitimacy, and international visibility. Hodgson argues that this assumes that the members share a common interest, whereas in reality most pastoral communities in Tanzania are ethnically mixed, which means that only a few groups are singled out for representation and resources. This has resulted in increasing ethnic tensions within the pastoral NGO movements and conflicts over representation. External pressures often influence the ways in which community-based groups are organised and project their identities. Powerful groups within the community frequently shape group identities in alliance with external interests.

Mwangi (2009) argues that policies aimed at strengthening customary management of resources and promoting bottom-up community-based solutions to land and natural resources have made valuable contributions to the evolution of new decentralised systems of rangeland management across Africa. However, they have also brought in a number of unanticipated and difficult to solve problems, which reflect the complexity of social, economic, and political interests in African drylands. Mwangi argues for a new approach to pastoral land rights, which focuses on representing multi-actor interests in dialogue.

# Market-led land redistribution in southern Africa

Under colonial rule, land policies in southern Africa aimed to promote the development of white settler agriculture, while deliberately undermining black peasant agriculture. The majority of the rural African population was restricted to reserves, where they provided a cheap source of labour for the mines and white farms. This resulted in a racially skewed distribution of land: at independence, whites in Zimbabwe held 46% of the land and in South Africa they held 70%. In both South Africa and Zimbabwe, national liberation movements articulated demands for land restitution and redistribution. In both countries, governments adopted a market-based redistribution programme promoted by donors and the World Bank. The World Bank market-based reform programmes combined commitments to a radical populist agenda of promoting redistribution to individual smallholders as both efficient and equitable, with the proviso that this be carried out through a market-based programme of “willing seller and willing market”, rather than through state expropriation and redistribution of land (Binswanger and Deininger 1993).

In South Africa, land reform consisted of three programmes: redistribution to poor and land-hungry elements; restitution of land to former owners dispossessed of their lands; and tenure reform, which aims to create secure rights in lands for the rural population in communal lands. Land redistribution was built upon a state grant package disbursed by the Department of Land

Affairs (DLA) and NGOs, which enabled participants to purchase land and use the remainder of the grant for its development. However, by the end of 1999 only 1.3% of agricultural land had been transferred to black ownership. While land tenure reform was originally construed as promoting individual land rights in the communal areas, it has increasingly centred on the promotion of control by traditional authorities over communal land and their increasing role in rural local government.

By 2001 new NGOs and social movements had emerged, which became increasingly critical of land reform and pressurised government to intensify the process. These included the Trust for Community Outreach and Education (TCOE) and the Landless People’s Movement (LPM). These NGOs have had a strained relationship with the African National Congress (ANC) government, as traditional authorities are given more of a more central role in land policy than NGOs (Hall and Ntsebeza 2007). Without a strong social movement in which to articulate demands, and influenced by development in Zimbabwe, a number of sporadic land occupations have occurred, particularly in the Kwa-Zulu Natal area. However, in contrast with Zimbabwe, these have found little support within government, which is committed to supporting large-scale commercial agriculture and traditional authorities (Lahiff and Cousins 2001).

In Zimbabwe, as in South Africa, land reform initially followed the “willing seller, willing buyer” model, until the mid-1990s. This coincided with the failure of the structural adjustment programme and the failure of the state to raise significant external financial support either for its development programme or in support of land redistribution. The state looked to land reform as a possible avenue for restructuring the economy, supporting African accumulation by various social groups, and gaining rural political support, during a period of tense relations between the government and international donors and with domestic political forces led by the Movement for Democratic Change (Moyo 2007; Moyo and Matondi 2008). Land occupations led by war veterans, who became closely associated with the state, and state-led expropriations of commercial white farms were used as an avenue for restructuring the economy.

The pattern of land redistribution has been complex. Land reform has addressed the imbalance of the racial legacy and created less disparity in sizes of holdings, but it has also fostered new inequalities. It has extended access to land to over 150,000 families, with smallholders occupying 72% of the land, and has also reduced the average size of holdings (Moyo and Matondi 2008; Moyo and Yeros 2005). Scoones *et al.* (2010) have recently argued, on the basis of recent research in Masvingo Province, that there is evidence of significant redistribution to smallholder farmers and of a steady increase in yields in smallholder farms. This reflects the development of a new agrarian structure, in which a much wider variation of farm sizes now exists, with a more equitable distribution of land. This is also characterised by the emergence of innovative commodity chains with an incipient agribusiness sector supplying inputs, buying produce, and servicing the agrarian economy (Scoones *et al.* 2010). They argue that the future success of these developments will depend upon government providing support for different categories of farmers and ensuring viable support services and access to markets for smallholders (Scoones *et al.* 2010).

Ntsebeza (2007) has argued that the commitment to protecting existing property rights in South Africa represents a fundamental contradiction within land reform policy, which prevents any meaningful redistribution. Private land rights are most prevalent on commercial white farms, and protecting

these rights prevents land redistribution. In contrast, Hall (2007) argues that the main tensions in policy are between market-led land reform processes within the policy context of the liberalisation of agriculture. This has forced the sector to be more competitive and to operate without support services, and has resulted in many bankruptcies. The highly competitive nature of commercial agriculture creates barriers for new African entrants into farming, which makes it difficult for them to be economically viable. Thus, redistributive land reform in southern Africa needs to tackle issues related to securing economic opportunities and livelihoods for those who have been denied, rather than a narrow focus on rights of ownership.

The framing of land reform in southern Africa is closely related to perceptions of the efficacy and viability of commercial and smallholder agriculture. One approach sees commercial agriculture as surviving only as a result of political support, which has distorted its viability. Colonial settler policies favoured white commercial agriculture, but in the process they destroyed the viability of African agriculture, which was condemned to survive in overcrowded reserves robbed of land. Under these conditions, land reform serves both to right a historical injustice and to create a more equitable and efficient system of agriculture. Land reform in this context can be framed within a neoliberal market-based context of promoting “pro-poor” land markets based on “willing buyer, willing seller”, within a more participatory, bottom-up framework of supporting community-based rights (Cousins 2007), or within a more radical framework of political interventions to facilitate more rapid distribution and to create the conditions for a viable smallholder sector to exist, including social movements engaged in land occupations (Ntsebeza 2007). A second approach argues that commercial agriculture is the most efficient form and that any attempt to break up commercial holdings will have negative impacts on the economy, and that the land-hungry are better absorbed into the industrial labour market rather than converted into smallholders (see Hall and Ntsebeza (2007) for a more detailed overview of these perspectives).



# Foreign direct investment in land

In recent years there has been a growing perception that increasing foreign direct investment (FDI) in land for food production and biofuels (also known as land grabs or large-scale land investment) is leading to growing land shortages in Africa. This followed the political crisis that emerged in Madagascar after the announcement of plans by a South Korean firm, Daewoo Logistics, to lease up to 1.3 million hectares of land for maize production, with the company promising to spend USD 6 billion over 25 years on infrastructure projects. The deal never came to fruition, as it generated a political crisis in which the president was forced to stand down and his successor reneged on any deal, announcing that “Madagascar’s land is not for sale nor for rent”. Since then, a large number of other investments in land have been uncovered in Ethiopia, Ghana, Mali, Sudan, Mozambique, and Tanzania. Paradoxically, a significant number of these countries are those that have been at the forefront of introducing land reforms that have either devolved administration to community institutions, empowered customary land rights, or supposedly created secure rights in land for rural people. This opening up of lands to foreign investment is not a new phenomenon, or a change of direction in policies – although the scale and intensity of investments may have increased in the past two years, following the global food crisis, and led us to talk about a new “land rush” (Anseeuw *et. al.* 2012). Since the early 1990s, Mozambique has made large tracts of land available to Zimbabwean and South African commercial

farmers. In Tanzania, foreign investments in land, conservation parks, and wildlife tourism escalated during the early 1990s, resulting in much social unrest that created demands for a review of land policy.

During the early 1990s, donors and states promoted land tenure reform as a way of creating a favourable environment for foreign investment. Within this context, land tenure reform projects sought to create information systems on land holdings that would facilitate more efficient land registration and facilitate timely and secure transactions in land. This led to the concept of “one-stop shops” that would facilitate the acquisition of land by foreign investors. In countries in which the majority of used land lay under customary management and tenures, the security of land transactions was critically dependent on developing accountability and transparency in the customary management of land to facilitate its conversion into private property. Failure to do this could result in protracted litigation in land and conflicts, which would undermine the confidence and patience of investors. In addition, in the case of Tanzania, land reform was also influenced by popular unease with the extent to which land had been alienated to foreign investors by the state, in the tourist, conservation, and wildlife sectors, and the implications and impact of this on rural access to land and livelihoods.

During the late 1980s and early 1990s, several states set about implementing land tenure reforms, with the intention of delimiting areas that the state could open to transaction with foreign investors, and establishing the modalities and institutional frameworks through which community organisations could negotiate land with investors. These work in different ways in different countries, depending on the institutional configuration for land administration. In Tanzania there are demarcations of “Village Land”, which comes under the control of elected village councils, and “General Land”, which is managed by the state. Most land allocated for foreign investment comes under General Land, but Village Land can be converted into General Land, with the state in theory paying compensation to the village for the loss of land. However, in practice compensation is negotiated between the Village Council and the investor, and paid by the investor. Investors begin negotiations for land at the Tanzanian Investment Centre, where suitable areas are identified and scrutinised. If this forms a part of Village Land, the investors will negotiate with the elected village council, the district council, and then the village assembly (Cotula *et. al.* 2009; Sulle and Nelson 2009).

In Mozambique, investors are required to consult with communities. However, unlike in Tanzania, there are no elected representative village committees. Negotiations often start with village chiefs, elders, and political party representatives, before a meeting is organised with the village community. The community may negotiate compensation, and partnerships involving employment and social benefits. However, no contracts are signed. There are no clearly defined procedures to ensure transparency or that negotiations are binding (Nhantumbo and Saomão 2010). In Ethiopia, the regional governments control land. A national investment promotion agency identifies suitable land for allocation to foreign investors. This is based on a zoning system, which identifies “wasteland” or “virgin land” with no pre-existing cultivators that is suitable for FDI. While land reform in Ethiopia protects the rights of the peasantry and redistributes land, it effectively delimits this area of peasant cultivation, redistributing increasingly small plots of land that often exclude rural youth, while preventing resettlement in new areas which are reserved for foreign investors (Rahmato 2009). In Ghana, on the other hand, land comes under the

control of traditional chiefs, who are able to negotiate leases with investors without the participation of the land users (Tsikata and Yaro 2011; Nyari 2008).

There is considerable debate about the merits and demerits of FDI in agricultural land in Africa. At one end of the spectrum, land grabbing is seen as undermining the livelihood interests and rights of rural people, and as the action of rentier states that are more interested in opening their borders to foreign capital than protecting the rights of their citizens. At the other, FDI is seen as a viable option in the context of a vicious cycle of seriously constrained smallholder agriculture, where the state is unable to invest in developing a viable infrastructure to support agricultural development, support services, and markets. Under these conditions, advocates of FDI in agriculture argue that it can facilitate the generation of wealth and infrastructure development.

The development of foreign investment in large-scale agriculture has led to a re-evaluation within the World Bank of its commercial smallholder approach. This upholds the efficiency of smallholder agriculture over large commercial estates and argues that large agricultural estates are only made viable by the distortion of agricultural markets by entrenched political interests. In 2010 the World Bank released a major report on the viability of promoting large-scale agricultural FDI in Africa (World Bank 2010). While the report vacillates in supporting FDI in large-scale commercial agriculture, it attempts to identify the conditions under which large-scale agricultural investment may be a viable strategy. It argues that this may be the case where large areas of unused land exist in areas where smallholder agriculture is constrained by low productivity, lack of availability of labour, and limited migration. Under these conditions, large-scale mechanised agriculture may be a viable option that can address the labour constraints. The transfer of technology and development of infrastructure resulting from the development of mechanised agriculture could provide suitable incentives for the further development of smallholder agriculture. Proceeding with caution, the report argues that the existence of large tracts of land that are not cultivated suggests the existence of constraints that hinder the development of smallholder agriculture. It argues that it is important to identify these constraints and to assess the possible investments that can reduce poverty and promote

growth. In these areas, the report argues that African states face a choice of either developing a dual structure of a few large farms surrounded by many smallholders, or a larger base of medium-sized farms. It cautions that in many instances outside investors have failed to realise the potential of large-scale agriculture and have contributed to loss of livelihoods, displacement of small farmers, and environmental degradation.

Similar findings are contained in the World Bank (2009) report *Awakening Africa's Sleeping Giant*, which looks at the prospects for agricultural development within the low-populated areas of the African Guinea savanna zone, which extends from north of the forest zone in West Africa to the southern Miombo woodland forests of Mozambique. This report examines the viability of two different strategies for agricultural development in this zone: the first based on large-scale mechanised agriculture on the model of the Cerrado in Brazil, and the second on support for commercial smallholders, based on the model of northeastern Thailand. While there is evidently considerable debate within the World Bank on future agricultural strategies, this position marks a discernable shift from the commercial smallholder approach based on assumptions of equity and efficiency. No longer is a category of undifferentiated smallholders assumed to be in the vanguard of agricultural development for the next millennium. The report heralds the beginning of a new approach to making policy within the contexts of specific developments and diverse and socially differentiated production units integrated into different types of market within distinct and differentiated regional economies.

The development of FDI also reflects recent developments in agribusiness and agrifood chains, and the increasing shift from smallholder contract farmers to larger-scale farm units. As supermarkets increasingly source food supplies directly from farms and production networks in the South, concerns about standards, quality control, labour conditions, stringent sanitation and phytosanitary conditions, and the logistics of organising “just-in-time production” have created considerable pressures for smallholders to be able to meet the rigours of food governance chains. This has resulted in the scaling up of farm production units involved in horticultural production in Africa, in which larger, more capitalised units with access to more technology and information are replacing smallholder

contract farmers. This transforms the rationale for land reform. In its previous formulation, the inverse relation (the propensity for smallholder agriculture to be more productive than large-scale agriculture) was a major justification for pro-poor land reform. If smallholders are no longer more productive, this rationale is undermined:

*The inverse relationship is a powerful rational for land access policies that redistribute land toward smallholders, increasing both efficiency and equity... Even if small farmers use their resources more efficiently than larger farmers, there may still be disadvantages in being small. While smallholders have an advantage in overcoming labor supervision problems, other factors can erase their competitive advantage. Yields on land allocated to crops might be higher on larger farms, which tend to apply more fertilizer or other inputs. And the gap might be increasing over time. As agriculture becomes more technology driven and access to consumers is mediated by agroprocessors and supermarkets, economies of scale will pose major challenges for the future competitiveness of smallholders. These different mechanisms can all reverse the small farm labor advantage, or make it irrelevant, leading to a potential decline of the family farm (World Bank 2008).*

If smallholders are no longer viable, efficiency demands that they sell their land and allow the more efficient farmers to establish economies of scale or, as the *2008 World Development Report* pithily comments: “Preparing people to migrate out of agriculture is the flipside of the economy’s structural transformation as agriculture grows” (World Bank 2008: 248). The World Bank envisages that social welfare provisions can be made to ease this transition, which will in effect serve to shift the social welfare and livelihood functions of land (and community) onto the state and enable the emergence of land markets and a leaner and more efficient agriculture.

This ultimately creates a tentative framework for a new approach to land administration, which challenges the basis of community-based solutions rooted in protecting livelihoods. This levers agrarian policy into an analysis of complex, socially

differentiated economies with highly specialised sub-sectors and food commodity chains, which are emerging out of the structural transformations that are accompanying the expansion of global food chains. Within this context, there will be pressures for land policy to promote agricultural accumulation and the emergence of optimal-sized farms in specific sectors. This will also challenge notions that land reform must serve social welfare objectives of maintaining and protecting the livelihoods of the poor, and preventing a surplus agricultural population from emerging, by implementing other mechanisms and state interventions to support the development of social welfare programmes. However, this framework remains hesitant since it holds profound and unsettling implications for rural society.

Deininger (2011) has pointed out that there are significant risks with the process of FDI in that such investments involve considerable areas of land, are concentrated in a few countries, and are associated with countries with weak governance and poor land information systems. While some analysts of FDI advocate the establishment of voluntary codes of conduct and increasing transparency (Von Braun and Meinzen-Dick 2009; Vermeulen and Cotula 2010), others argue that FDI is the product of the liberalisation of land markets that has taken place since the early 1980s, which has opened up spaces for foreign investment in land. Codes of conduct thus serve to legitimise these investments and open up new markets for multinational corporations (Zoomers 2010; Borras and Franco 2010).

Much of this investment is speculative, particularly in the wake of the world financial, food, and fuel crises, with new investors attempting to secure new food supplies for themselves, or alternative sources of fuel, or to invest in commodities given fluctuations in financial stocks. Large multinational corporations already control many of these investments. Given the present weakness of the state in Africa, investment in large-scale agriculture can become entrenched, with little oversight by the state to protect the interests of rural people or the environment (Dauvergne and Neville 2010; Zoomers 2010; White and Dasgupta 2010). Shifts in global markets and investment opportunities can intersect with local social relations to further erode the access of poor people to land and to favour coalitions between multinationals and national

commercial agrarian capital. The study of international investments in large-scale land acquisitions needs to be subject to critical investigation of its impact on rural producers and their access to land and livelihoods, rather than assumptions about inherent negative outcomes.

# Conclusion

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Under colonialism, customary land tenure was important in building up a rural administration for the production of export crops and labour services. Access to land by peasant cultivators was based on customary rights, which created a number of obligations that ensured integration into the colonial economy. These obligations resulted in labour services, tax provisions, compulsory crop cultivation, and political subservience to a chief. Since the system of chieftaincy was transformed under colonial rule, and adapted for the purposes of colonial administration, this often led to local conflicts over land and the marginalisation of many claims, as the colonial authority buttressed the claims of those it chose to represent. This resulted in an element of insecurity in land tenure, limited user rights for the peasantry, and the institutionalisation of ethnicity as a principle of colonial administrative organisation and of access to land (Colson 1971; Vlassenroot and Huggins 2005; Mamdani 1996). On the other hand, colonialism supported the development of accumulation in agriculture, a class of settler farmers with freehold title in certain areas, and the designation of large areas of the interior as a labour reserve, performing labour services for commercial agriculture. This ensured labour migrations, which contravened the notions of customarily held tenure in discrete ethnic political formations, and limited the land areas under communal tenure, particularly in the settler colonies. Thus, customary tenure was buttressed within a highly inequitable social structure, in which the concerns were to coerce labour and cheap export crop production out of the rural population, rather than promote an equitable development.

With the achievement of independence, these structural inequalities were not methodically addressed by the post-colonial state – during this period, land was widely regarded as being readily available and not a problem in Africa. While some of the worst inequalities associated with unfree labour were addressed, the underlying framework of the post-colonial state was to promote agricultural modernisation through state investments in mechanised agriculture or through the promotion of private sector commercial agriculture. In this framework, customary land tenure was seen as outmoded and an impediment to development, which would be achieved through large-scale estate agriculture and the consolidation of agricultural holdings. While rural communities continued to hold land through user rights based on customary relations, commercial farmers could gain security in land through registering it in government cadastres, which granted them security to invest in the land and to use it as collateral for productive investments. Although this dual structure worked to encourage productive use of land, enabling smallholder participation in export crops (often controlled by state marketing boards), and new investment in commercial farming, it increasingly led to the appropriation of land by commercial farmers from smallholders, widespread speculation in land by the political strata, and the use of land by state agencies as a way of building political coalitions. It left many land disputes from the colonial period unresolved. Since the procedures for registering land were cumbersome, expensive, and lacking in

transparency, titling became the exclusive privilege of a wealthy minority. This did not facilitate the emergence of land markets, through which land could be relatively easily purchased and transferred. Since the vast majority of the population held land under customary arrangements, it resulted in vast areas of land being unregulated, subject to rival claims, and left many land users holding land without any security, and vulnerable to land loss.

The rapid expansion of agriculture into new frontiers during the 1960s and 1970s, as a response to favourable commodity prices and rapid urbanisation leading to demands for food commodities, has resulted in increasing land shortages in many areas. With increasing demands for land in many sectors, the emergence of land hunger, the expansion of urban real estate into peri-urban areas, and the potential profits to be made from speculation in land, the indeterminacies of customary land tenure and of land markets has become increasingly untenable. In the context of increasing land hunger and difficulties in accessing land to make a viable livelihood, land has become a source of violent conflict, as different land users compete with one other for access to it. These land disputes can have an ethnic dimension, where groups feel their rights are being eroded by new groups moving into spaces they formerly occupied, as livelihood options contract; a gender basis, as women find their access to land constricted by new commercial opportunities; or a class basis, as the rural poor find their access to land restricted within the community or as a result of the expansion of commercial agriculture.

With the introduction of economic liberal reforms, land governance policy has become an important part of institutional reform. However, the significance of land policy reform has also become a subject of debate. Generally, land governance reform is seen as important in promoting more equitable development. The objective of land governance is to create a balance between economic prosperity and social justice and rights (Zoomers 2010). But the paths to equity are subject to debate. The two basic positions are between those who argue that equity is best assured in the context of the development of land markets, which allows land users to acquire land assets they require and to dispose of excesses, and those who argue for some kind of social protection policies, in which land is seen as an important asset for rural

livelihoods and for social safety nets, and where rural dwellers need to be protected against the vagaries of land speculation and concentration brought about by land markets.

Land markets do not in themselves operate for the benefits of poor people or create transparency. The opening up of land markets can create avenues for land grabs and speculation by the wealthy and by international investors. The divestiture and selling off of state landed resources under adjustment policies have frequently enabled the wealthy and sections of the political elite closely allied with ruling parties to benefit from lands originally appropriated from customary land users. The opening up of land markets in Africa under liberal market reforms has created avenues for increasing international speculation in land and natural resources, particularly in the context of the financial and food crises, which threatens the landed resources of the poor. Distress sales by the poor are not the product of willing participation in free markets. Market-based land reform in South Africa has had little impact on land redistribution, and increasing competitiveness in commercial agriculture has resulted in increasing concentration in production rather than more inclusive participation.

A turn towards the customary is not necessarily a panacea to solve the ills of the market. Customary authorities are often involved in longstanding relations with the state and national elites, and have often been mobilised to facilitate the appropriation of land to commercial sectors. Customary authorities are also not averse to realising monetary benefits from land in the form of rents, tribute, other customary payments, and land sales, or to dispossessing land users to make way for commercial transactions. Most rural areas are integrated into production markets, and to expect land to operate outside the market in an economy increasingly subject to pressures of “marketisation” is unrealistic. These areas are subject to long histories of labour and other types of migration, in which migrants have gained access to land through sales, renting, and gifts and have contributed to the development of the area. Reformulating some form of pristine customary governance can result in the loss of land by migrants and encourage ethnic conflicts. Forms of land governance that zone off areas under communal governance, where land sales cannot occur, from areas subject to commercial transactions are in danger of creating future land scarcity in communal



areas, while reserving large areas for commercial and foreign investment. This reproduces the colonial dichotomy between native reserves under peasant production and “vacant lands” under the state, which were granted to commercial farmers and foreign concessionaires.

Customary land tenure is not inherently equitable and may deny the rights of some social categories, such as women or youth, to land, and customary authorities may attempt to marginalise and downgrade other groups, such as migrants and pastoralists. The alliances established under colonialism for local administration in relation to colonial boundaries, and around claims to be traditional or original settlers, provide a minefield of potential disputes and conflicts associated with customary land rights. Thus, the customary is also subject to various forms of political rivalry and conflicts and alliances with political factions within the state. As a result of this, many of the most marginalised groups have appealed to precepts other than the customary to frame their land grievances. These include women’s organisations appealing to human rights principles and holding the state accountable to its international human rights declarations. Pastoralists, often denied national rights to land or subject to the erosion of their land rights by the customary claims of farmers, have also appealed to international indigenous rights forums.

Registering or formalising customary rights often results in a political process of negotiation in which groups seek to advance their own interests at the expense of others, and in which assumptions about the nature of the customary may lead to the denial of the rights of other groups. In advancing their interests in land, groups often use notions of prior ownership, ancestral rights, development and use of land, rights to political administration, sustainable environmental management, and appeals to cultural and moral norms to assert the ascendancy of their claims on and control over land. Those who experience a marginalisation of their land and resource claims with communities or the rural economy sometimes appeal to human rights and to civil society groups advocating human rights.

From the disputes that arise over the interpretation of the customary, it becomes clear that the customary domain is not about retaining a quaint and Arcadian past, but about the negotiation of future rights. These claims on land are often

interlinked into wider networks based on notions of civil society, access to donor funding, neo-patrimonial political networks, agribusiness networks, and economic activities that are highly commoditised and transcend the notion of a local moral economy. The various actors within a locality participate in one form or another in a complex economy of socially differentiated producers interlinked into global commodity chains and differentiated regional economies. A better understanding of the implications of this for land management within specific localities requires an approach focused more on political economy that examine the interconnectedness between community management of resources, regional and national economies, and the construction of civil society and citizenship. However, at the heart of these claims are control of and access to land.

In the contemporary period, one of the major innovations in land governance has been the creation of simple, low-cost, and accessible technologies for managing community lands and for registering community land holdings. Institutional frameworks for decentralising community land management and harmonising it within national land management frameworks have also been achieved. While major technical innovations have been accomplished in implementing cost-effective mapping of community lands, many of the political dimensions prove to be highly elusive and complex. Land administrative reform has often been promoted as leading to a win-win situation, which resolves both equity and efficiency. However, in reality this is often not the case. Land management involves a highly politicised process of diverging interests, and is about exclusion as much about inclusion (Borras and Franco 2010a).

Many attempts to introduce reform in the interests of the poor result in unforeseen political consequences and struggles. This is particularly the case when the community is viewed as a mass of undifferentiated interests, which can serve to disinvest less powerful members of their land rights, such as women. Thus, it is important to recognise the political dimensions of the land question, the relationship between claims on land, social identities, and political claims, and the extent to which communities are embroiled in a wider political economy, which links up economic production and social protection with political networks, power relations, and a wider global economy of investment and accumulation.

Within this, the tensions which need resolving are between creating an enabling environment for foreign investors and commercial farmers and securing the rights of rural people to land; creating spaces for rural migrations – which must be a feature of a modern economy – without creating local resentment and conflicts; and creating equal access to land and stable land rights within communities of small-scale producers. These factors need to be resolved within a unitary framework that meets the needs of various types of producer and creates linkages and security to enhance their productivity, rather than within a dualist framework that creates insecure rights for the majority and secure and clearly defined rights for the wealthy. This framework is necessary to minimise social conflicts over land, ensure greater transparency in land management, and ensure that smallholders and other customary land users can continue making important contributions to the national economy and to their communities.

While it is extremely difficult to achieve these objectives, recent initiatives in attempting to implement pro-poor land reforms have resulted in an increased awareness of the dynamics of customary land management, their political implications, and the need to create innovative institutions that facilitate dialogue among multiple interest groups within the construct of community and across civil society. These are the major achievements that have emerged from contemporary land governance that need to guide future developments of land forums, policy debates, and new policy initiatives.

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