

Markets, Politics and Land Administrative Reform in Africa: What can African Studies contribute?

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Abstract

Over the last twenty years the land question has received considerable attention in Africa, to the extent that most countries have introduced new land policies or land laws. The major focus has been on introducing institutional reforms of the administration of land rather than redistributive land reform. This has largely been concerned with strengthening customary systems of land management, integrating customary and statutory tenure into a single framework of property rights, and encouraging enhanced community participation in land administration. Land administrative reform has largely been framed through the lens of market liberalism, good governance, and civil society and community participation, rather than through a political economy framework examining processes of accumulation and appropriation of land. This paper addresses this framework of land administrative reform, tracing the logic of its conceptualisation and the extent to which this has distorted our understanding of land relations within Africa. It is argued that a framework of analysis is required that accounts for complex political factors within regional economies and production frontiers and of investment patterns within the global economy.

Land administrative reform in Africa has been characterised by two distinct perspectives. The first sees land reform as part of a process of opening up African economies to foreign and private sector investment and facilitating market expansion. The second is concerned with governance reforms and with introducing more participatory systems of planning and greater involvement of civil society in governance. The paper traces the influences of these two perspectives on land administration. The first part of the paper provides an overview of the reframing of the African land question under neoliberalism, and the logic of this within the context of the process of opening up African markets and introducing institutional governance reforms. The second part critically examines notions of the commodification of land and the nature of property; and the concept of community solidarity that underlies the land administrative reform against the backdrop of social differentiation, political alliances and the integration of communities into wider systems of capital accumulation.

Key Words

land policy in Africa, land administrative reform, commodification of land, land conflicts, communities and regional economies

Reframing the Land Question

The main framework for land policy in Africa during the last twenty years has been associated with the institutional reforms of land administration as a component of good governance. This has focused on two themes:

1. making land markets more efficient and opening up land to market relations.
2. integrating customary relations into state regulation of land and gaining recognition of customary land rights within statutory land registration.

The process of reform of land administration has been central to market liberalisation in Africa, since the opening up of investment to foreign investors and the private sector requires stable access to land and other resources, and transparent transactions. These objectives require the creation of a regulatory environment in which investors can be confident that there is a legal and regulatory structure to back up and enforce contracts and transactions of property rights and detailed information about present land ownership. Following the introduction of macro-economic reforms to facilitate markets many investors found that the ownership of lands they attempted to acquire were often contested, and that processes of registering land were intractably slow and cumbersome. Thus, they were reluctant to invest without a comprehensive reform of the regulatory environment and institutions of land management.

This new regulatory environment began to emerge in the concept of good governance, a series of institutional reforms to provide transparency, information about markets, and an enabling environment for investment. The roots of this framework of good governance in Africa can be traced back to Bates (1981), the Berg Report of the World Bank (1981) and Landell-Mills (1992). These studies depicted a rapacious state in Africa that sought to maintain political control over resources for its political allies and use this control for political domination. It was argued that this resulted in disastrous consequences: the economy was distorted by political goals and the people were alienated from state policy and frustrated in their attempts to develop economic enterprises. The objectives of reforms were to roll back state control over the economy, make the state responsible for creating an enabling environment for business, and promote decentralised management with greater civil society and community participation. According to Landell-Mills (1992), one of the aims of governance reforms was to make the state more in tune with traditions, beliefs, and structures of African people. These traditions were depicted as represented by entrepreneurship, market sensibilities, and aspirations to accumulate capital. While this appeared to give weight to African cultural values, these values were distorted to make them represent aspirations for market liberalism.

This particular framing of liberal reform has had a deep impact on administrative land reform in Africa. The first attempts at reforms of land administration were concerned with regularising land markets to make way for investors and strengthening the process of land registration through land cadastres. However, this proved to be a highly ambitious task, particularly when most land was held under customary land tenure and not formally registered. Existing land cadastres were only based in the largest cities and carried information on only a small proportion of the parcels of land within the country. They could not be used effectively for purposes of gathering comprehensive information and transparency about land in the nation and on the 'rightful' owners of the majority of plots. To make any impact on land markets land cadastres had to be more comprehensive and embrace customary land rights, which accounted for the overwhelming majority of land plots.

For instance, in Ghana, one of the earliest countries to adopt a structural adjustment programme,

initial attempts at land administrative reform centred on the creation of a Land Title Registration Act in 1986. Although statutory land titling has existed for a long time in Ghana, this has been on a voluntary basis. The 1986 legislation sought to make this compulsory, a condition for the recognition of land transactions. The aim was to make it incumbent on purchasers of land to register their acquisition of land to gain title so that a comprehensive land register could be managed, which would allow greater transparency in land and enable potential investors to ascertain the nature of ownership of the lands they intended to acquire, and who was recognised as the rightful owner. Only three land cadastres existed in the country, in Accra, Tema and Kumasi, and these did not have the capacity to register land in a timely fashion. They were mainly concerned with the registration of urban residential plots. Registration was complicated and costly. As a consequence most purchasers of urban land did not seek to gain security over their land through registration but to establish claims to the land by completing the building of residential housing. Consequently, 20 years after the enactment of the Land Title Registration Act only 111,786 applications for registration had been received and only 16,829 land title certificates issued (Amanor 2009, Gough and Yankson 2000). Most investors could find very little information on lands they intended to purchase on existing land cadastres, and frequently found their attempts to acquire land thwarted by disputes over ownership among the customary right holders and chiefs.

The framework of approaching property rights through strengthening state cadastres was questioned by a number of analysts working in community participation and agricultural development. Bruce (1993) interrogated the capacity of the state to introduce transparent management of land, given its history of allowing 'bureaucratic and other elites to grab land' (Bruce 1993: 50). Bruce (1993) advocated a framework of land management focused on 'community based' solutions. Similarly, Migot-Adholla *et al.* (1991) argued that land titling did not have a significant effect on agricultural investment by smallholders, since other factors such as infrastructure development, market efficiency, information on new technologies, and credit and insurance markets, which would enable land to be converted into collateral, were not sufficiently developed. Without these factors land titling was influenced by negative factors of securing land against the possible claims of others. Given the high transaction costs of land registration this tended to detract from investment in agriculture as farmers expended scarce capital on land claims rather than investment. They concluded that governments would be better off addressing the immediate constraints on production rather than investing in costly land cadastres. They argued that land titling should only be initiated when a demand arose from below and from the development of commercial agriculture.

These positions crystallised at the World Bank into a theory of evolutionary property rights (Deininger 2003). This argues that as land becomes increasingly scarce and subject to competition a demand will arise at the community level for institutions to regulate land, restrict access, and encourage the development of land markets. This would result in a shift from access to land embedded in customary and kinship relations to the evolution of land markets in which households characterised by underproduction would sell land to those households seeking to expand their own production. In this perspective recognition of customary relations in land and the fostering of the dynamic trends within it can result in the rapid evolution of land markets. The evolutionary school of property rights argues that land markets can be encouraged to develop by building upon informal community institutions and harmonising customary land management with statutory tenure. By granting formal recognition of customary institutions, land transactions originating from within the customary sector can be gradually held to account, regulated and shaped. The collection of information on customary

land would also enable investors to gain more information on land and enable them to identify favourable areas in which land could be acquired and hotspots to be avoided. The overall objective was to transform customary land institutions into well functioning land markets with clearly defined private property rights. Where individual rights were not clearly demarcated these could be registered as group rights in which ‘groups can internally decide on individuals’ resource access’ (Deininger 2003: 76). These rights would be transformed dynamically, as conditions of production changed, eventually resulting in individualised property. The recognition of group rights would in theory enable ‘indigenous groups’ such as herders and marginal agriculturalist to register their land and minimise encroachment by outsiders, while allowing for the internal evolution of property rights within the group.

In integrating customary land rights with statutory tenure, the World Bank and other international policy institutions could draw upon the experiences of those working in community-based natural resource management and social forestry. Most notable was the tradition of community forestry that had developed in Sahelian countries in the drought of the 1970s. This was also a period of the weakening of the state in the context of the world economic crisis. There was an increasing conceptualisation within forestry circles that environmental problems resulted from complex interconnections of institutional and economic factors that required multi-sector initiatives and community participation in building institutional frameworks for interventions.

Gestion de terroir originated in francophone West Africa in the 1980s to enable communities to initiate technical innovations and management structures to halt environmental degradation and introduce conservation measures. It legally recognised the rights of communities to manage their village resources and promoted community councils that implemented a management contract for its territory (Guèye and Laban 1992, De Haan 1998). Village lands were mapped out and zoned according to their land use. This concept of *gestion de terroir* provided the framework for the subsequent emergence of Rural Land Plans or *le Plan Rural Foncier* (PRF) in Francophone West Africa, in which the emphasis shifted from developing state cadastres to community-based land mapping (Gastaldi 1999).

PRFs were first implemented in Côte d’Ivoire in 1990, and then introduced into Benin, Burkina Faso, Guinea, and Madagascar. The PRF approach devised a simple land register in which all existing rights in land were mapped in the territories of rural communities, using aerial photographs, GPS devices, simple mapping techniques, interviews with rights holders, and community group consultations. The objective was to record all the 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). Where land was the subject of multiple interlocking user rights, these were recorded. Where land was the subject of disputed ownership, this was also recorded. This provides useful information where investors could identify hotspots with many land disputes and more stable areas in which purchases were safer. In Côte d’Ivoire this was used to create a national land title register, village by village, and to issue land certificates (Gastaldi 1999, Ouédraogo 2005, Lavigne Delville 2004) to individuals whose lands had been mapped without contestation. In Côte d’Ivoire, these land certificates could in theory then be converted into registered private land titles within a three-year period of initial registration. In contrast, in Madagascar the land titling registers were institutionalised within the process of decentralisation, which created community land registers integrated into decentralised councils. Since there has been a long process of issuing informal written documents for land transactions in rural Madagascar, land registration also recognised and regularised these

documents and converted them into land certificates (Teyssier *et al.* 2009, Chauveau *et al.* 2006).

Similar systems have been introduced in other countries. In Tanzania, the New Land Act of 1997 vested the administration of land within elected village councils, which have legislative powers to enact byelaws. The village councils have powers to register land, allocate land certificates, and adjudicate land disputes. All resident members of a village have rights to land. The Land Act recognises customary land tenure and enables these rights to be registered provided the claimant can prove that they have used the land for at least twelve years. Recognition of land also includes rights to sell customary land (Veit *et al.* 2008, Alden Wily 2003). The Land Act provides for the transformation of these customary rights into individual property. The Land Act has been shaped by two distinct influences: concerns to create stable transactions in land to encourage foreign investment, and the appeasement of rural disquiet about the growing alienation of customary land to investors (Manji 2006, Tsikata 2003, Shivji 2000), without resolving the contradictions between the two perspectives. It co-opts villagers into the commodification of land by according them rights to claim and sell land, which can end up in the hands of private investors.

Similarly, the 1997 Mozambique Land Law attempts to resolve problems of recognising user rights while promoting new investments in land. The major innovation has been to remove the dualist framework of customary and statutory tenure. The Land Law recognises the prevalence of customary tenure and makes provisions for formal recognition of customary rights and land transactions within the customary sector. Customary and formal land holdings are integrated into one legal framework in which different types of land rights coexist. Customary land rights are given full legal equivalence to state registered land (Tanner 2010). Within the new land reform the local community is recognised as a legal entity with formal rights in land. The rights of the members of the community are recognised on the basis of the norms within the community, but also on the principle that all community members have equal rights to community property, and equal rights to participate in decision-making within the community (Knight 2010, Tanner 2010). Where users choose to register their rights, proof can include community based evidence, community participatory mapping, and evidence based upon the history of land occupation and its productive utilisation (Tanner 2010). Recognition also enables users to sell their land and a process of consultation has been institutionalised through which foreign investors can negotiate with communities for land, streamlining their access.

The Ugandan Land Act of 1998 also recognises customary rights and makes provision for the registration of customary rights, which can be converted into individual property rights and freehold title. Decentralised land boards administer land, record rights to land, verify boundaries, and can allocate unclaimed lands. Lands can be registered as individual or as group lands, such as extended families or clans. Corporate groups can register their land as group land, without defining the rights of individual members within the group or the status of individual members of the group (Mugambwa 2007, Adoko and Levine 2005).

Land Boards also dominate the administration of land in Botswana and Lesotho. Land Boards largely occur where the administration of customary land is delegated to decentralised government institutions that are responsible for interpreting customary law and adjudicating disputes over land. Traditional authorities may be represented on these Boards. In Botswana, the Land Boards hold the rights and titles of chiefs in trust for 'the benefit and advantage of tribesmen of that area and for the purposes of promoting economic and social development of the people of Botswana' (Botswana Tribal Land Act 1968 quoted in Fitzpatrick 2005: 463). Although allocation of land was originally restricted to local people, this was removed and amended in 1993, as a result of public concern (including from

wealthy citizens interested in investing in cattle ranching) that this contravened the recognition of the equality of all citizens in the constitution of Botswana (Molomo 2008).

In Ghana, reforms have involved the decentralisation of land administration to Customary Land Secretariats (CLS) under traditional authorities. These are responsible for recording ownership rights, issuing land lease documents, collecting land levies, and adjudicating disputes. Ownership of land is not only confined to local community members and the chiefs transact land with both migrants and foreign investors, who are allocated land documents that can be formally registered. Similarly in South Africa communal lands come under the administration of chiefs.

The Commodification of Land

A distinct pattern of commodification of land underlies all these recent intervention in the administration of land. The formal recognition of customary rights essentially transforms user rights into forms of private property that can be transacted on markets, and provides those who gain customary certificates or titles with the freedom to sell the land. Where the land is subject to multiple claims of rights, these can be recorded as such as clan land, family land, common property, grazing land, etc. This enables the process of commodification to continue without a critical questioning of its precepts, and allows these disputed lands to ‘evolve’ in the future into individual property, or group rights that can be transacted by a corporate structure within the group or subject to a contract. This process of comprehensive registration of customary land also enables areas not subject to claims to be transacted and sold to investors. In Tanzania, areas that are not claimed as village land can be transacted by the government with foreign investors. In Botswana, the Land Boards are able to sell land to private investors on which there are no customary claims. The CLS in Ghana register land leases sold by the chiefs to migrants and foreign investors.

While the process of decentralising land administration claims to strengthen customary rights, the forms of recognition accorded to customary land transforms it into individual property rights. It does not establish a sphere in which customary lands remain confined to members of the community, but enables recognised rights to be transacted with buyers beyond the realm of the community. This facilitates the appropriation of community land by the market. It is not a mere coincidence that those areas associated with the most comprehensive customary land titling and most ‘progressive’ land administrative reforms are the very same areas that have been associated with the most extreme forms of land grabbing, such as Tanzania, Mozambique, and Madagascar. In Tanzania, for instance, village land can be sold to external investors, provided it passes through a number of laid down procedures, including consultation with ‘the community’ and agreement to ‘compensation’ by the interested parties. Frequently, the clamour for land places great pressure on villagers to sell their lands and village council leaders are frequently bought off by investors to support their desire to purchase land and persuade members of the community to transact land. A *Daily News* report of 2009 describes how villagers were ‘deceived’ into releasing their land to investors:

[Villagers] claimed to have been short changed by the investors and given as little as 2,000/- or 5,000/- to accept a useless deal. A list of meeting participants in the villagers was shrewdly used to mean that it was a list of village government council which could authorize the offer of land to an investor. A village government member, Mr Saidi Mata said that an investor has invaded his village and ‘grabbed’ it through a village meeting which was disguised as a village council meeting. We were gathered

here in the village about 40 of us and some of the leaders lured us to sign a deal with an investor. The investor paid 6,000/- to each villager who attended the meeting. We are told that we had approved his application just because we appended our signatures. We are now regretting, he said (Lugungulo 2009).

Tanner (2010) notes a similar process of consultation in Mozambique where villagers are also pressurised to release land to investors. Since land markets are in the process of being established and land increasingly commodified, it becomes difficult for villagers to place a value on the land, which also becomes an object of speculation. Villagers are not fully aware of the value of their land and often release it at low prices, allowing investors to make windfall profits. Tanner (2010) documents cases where community members in Mozambique sold beachfront land to investors for US\$ 390 per hectare. Investors subsequently packaged this land for holiday home development selling 10 hectare plots for US\$ 200,000. Although the Mozambique Land Law claims to be socially inclusive and to create a legal framework in which customary rights are given full equivalence to state registered land, Tanner (2010) notes a distinct trend towards concentration in the registration of land, in which large areas are been formally registered by a small number of applicants. For instance in Zambezia Province, 11 percent of the approved applicants registered 74 percent of the registered area of land. Tanner (2010) identifies a trend of the gradual expansion of investors into communal lands and the displacement of rural people through market transactions.

This trend of displacement of rural producers is also associated with accumulation at the national level. In Botswana, a dominantly cattle herding economy, with the removal of the restriction of customary land rights to 'tribesmen' the process of administration of land has been accompanied by the privatisation of rangelands which are then converted into cattle ranches. This has worked against the interests of those who lack capital to fence land and establish ranches as individual property (Molomo 2008, Quan 2000, Peters 1994). The expansion of ranches has led to a decline in common grazing lands.

Although customary land administration purports to enable various group rights and multiple rights in land to be recorded, this is difficult to achieve in practice, since customary rights are often fluid – they change over time and occur within changing land boundaries and ecological zones. In the West African Sahel, many pastoralists have lost grazing land as farmers have moved into these areas and gained recognition of their ownership of individual plots of land, although the pastoralists may have been the original settlers. In the Ferlo region of Senegal, Juul (1993) notes that two distinct Fulani herding groups have co-existed over a long period of time. The first were semi-sedentary combining agriculture with herding. The second group, the Foutanke, focused solely on herding, had larger herds and used mobile management strategies moving between different grazing grounds. Mourides farmers later moved into the area establishing large groundnut farms. The Mourides were able to make successful claims on the land and were able to register areas with critical grazing resources as their own individual property. As farmers increasingly encroached into the area and established successful claims on land the agropastoralists also resorted to acquiring land titles for their own lands. This created further problems with long-term implications for the Foutanke whose seasonal grazing grounds became subject to ownership claims from the other groups with a more sedentary presence in the area.

Initiatives such as *gestion de terroir* and village lands in Tanzania have also eroded the grazing grounds of pastoralists, as agriculturalists have claimed and registered these areas as their own village

lands, some of which may be sold to investors at a later date.

Brockington (2002) argues that pastoralists include many groups that are both ethnically and economically differentiated. Some of the wealthier groups have been able to take advantage of customary land administration to gain access to land, which they convert into ranches. While some international NGOs have taken up the cause of the loss of land of particular pastoralist groups, such as the Maasai, this privileging of particular ethnic groups serves to further the marginalisation of poorer pastoralists, who often come to constitute members of multi-ethnic poor communities. This privileging of 'indigenous' communities often compounds the poverty of poor pastoralists who lose resources to the wealthier more visible groups. These powerful groups are able to shape group identities in alliance with external interests, furthering the accumulation of rangelands and making the plight of the poor invisible (Hodgson 2011).

Early debates about land administrative reform argued from the perspective of the interests of smallholder farmers. Since then the centrality of smallholders to agricultural development initiatives has been questioned. The *World Development Report* of 2008 (World Bank 2008) depicts an increasingly socially differentiated ('heterogeneous') rural structure in which flagging farmers are expected to make way for more entrepreneurial farmers, by exiting agriculture or transforming themselves into hired labour. This makes way for increasing accumulation of community land by prosperous farmers. The World Bank (2009) report *Awakening Africa's Sleeping Giants* also posits two potential roads to agricultural development in Africa, one, characterised as the Thailand road, based on smallholder commercialisation, and the other, the Brazilian Cerrado path, associated with the emergence of large-scale agriculture. Contemporary narratives of agricultural development argue that Africa can only meet its food requirements by modernising agriculture to incorporate new seeds and inputs and this can only be achieved by replacing subsistence farmers with commercial farmers and creating opportunities for aspiring commercial farmers to gain access to land. Recent research points to the emergence of a middle stratum of commercial farmers made of retired civil servants and traders who have accumulated capital and wish to invest it in commercial agriculture (Jayne *et al.* 2016). The ambitions of this group have been made easier to achieve by the commodification of village lands and emergence of land markets.

Community and Hierarchy

The narratives of governance reforms represent the emergence of decentralised community land administration as a strengthening of the rights of the majority of small-scale producers. However, customary relations often embody forms of inequality, patriarchy, and coercive political relations (Peters 2004). Strengthening these relations or forms of community management may strengthen rural privilege and the ability of the rural nobility to represent their narrow interests as community interests or customary values and dispossess the rural poor of their resources.

This is most obvious in the context of gender relations in land, where women may not hold rights to land in themselves but acquire these through husbands or male relatives. Since women often have limited public representation within customary forums their ability to represent their own interests are limited (Whitehead and Tsikata 2003, Joireman 2007, Hunt 2004, Manji 2001). The expansion of commercial agriculture and commodification of land often erodes women's access to land, as men expand the areas under which they cultivate commercial crops, or lease out land to other commercial farmers. Without direct claims on land or an ability to represent their own interests, titling of customary lands can undermine the use of land by women. In Tanzania, Tsikata (2003) argues that in

the context of increasing liberalisation and sale of land to private investors, women organised within the Gender Land Task Force to support the creation of a Lands Bill that would support rural women's interests. However, this failed to reform customary land in favour of women. As a consequence some women supported the liberalisation of land markets, since this would enable them to purchase land (if they had the means) and register it. In South Africa, the Rural Women's Movement has opposed the strengthening of the rights of traditional rulers to administer land, since this undermines women's rights in land. It has been involved in a legal challenge on the constitutionality of the Communal Rights Land Bill (Rural Women's Movement of South Africa 2010). In other instances, such as in Uganda, women have been involved in challenging customs, and in portraying customary codes as a distortion by patriarchal male interests that seek to erode women's access to land. The Land Equity Movement of Uganda (LEMU) seeks to challenge the erosion of women's rights within the customary system (LEMU n.d.).

Hierarchical principles within customary land systems do not only affect women. Colonial Rule bolstered a patriarchal order of chiefs, elders to maintain control over the population, coerce farmers into cash crop production, and provide forced labour and taxes. Political coercion was used to establish wage labour, migrant labour, and cash cropping. For instance, in the Futa Jallon of Guinea the Jallonke were conquered by Fulani in pre-colonial times and turned into a class of servile farmers providing labour services and surplus crops to the landowners. The colonial authority established a close relationship with the Fulani, and enabled them to maintain the servile subjugation of the Jallonke in return for providing forced labour (Boiro 1996, Diop 2007). The deep sense of injustice felt by the Jallonke resulted in them becoming active in the anti-colonial struggle led by the Parti Democratique de Guinea (PDG) (Schmidt 2005). Following independence redistributive land reform was implemented in the Futa Jallon, which granted land to the cultivators and enabled the Jallonke to possess their own land. With the turn to market liberalism and decentralised communitarianism during the 1990s, a pilot RFP project was introduced in the Futa Jallon concerned with mapping community lands. The Fulani overlords took advantage of this to demand restitution of lands seized by the state in the early independence period and they forcefully ejected Jallonke farmers from the lands they claimed, resulting in violent community conflicts (Boiro 1996, Diop 2007). Thus, far from representing an inclusive land institution, customary land tenure in this instance was structured by hierarchical relations rooted in histories of subjugation and notions of historic privilege.

In Ghana, the strengthening of traditional authorities in the 1992 Constitution and their control over pilot CLS has emboldened them to extend their interests in land. Chiefs have become involved in the redefinition of customary rights, which is used to appropriate the land of local and migrant cultivators. Boone and Doku (2012: 10-11) cite the case of the Wassa Amenfi Customary Land Secretariat where the chiefs have used the process of registering land to renegotiate tenancies and re-designate migrant farmers that acquired land through outright purchase as 'tenants'. Boni (2005) describes similar processes in Sefwi, where chiefs are retrospectively converting land purchases by migrant farmers into tenancy agreements. In peri-urban, Kumasi Ubink (2008) also reveals that chiefs are appropriating the lands of small-scale cultivators and reallocating them to real estate developers, who are willing to pay large amounts. This involves re-inventing customary laws to enable the appropriation of farmlands in the vicinity of expanding urban housing. In these instances, the chiefs appropriate and commodify land, using custom as a veil for appropriating land from the local economy and relocating it within commercial circuits.

Communities and Regional Economies

The notion of community embodied in governance reforms is of a group representing the unitary interests of a locality in an inclusive fashion. In contrast, with this communities are often integrated into regional economies or ‘vernacular markets’ (Chihowu and Woodhouse 2006). This brings different groups into wider alliances of capital accumulation, and conflicting interests into village sites. Villages are often part and parcel of economic frontier activities that incorporate migrant and autochthonous populations, aspiring capitalist farmers and migrant labourers. The expansion of these systems result in increasing land shortage for poor local farmers and youth, which is often exacerbated by economic downturns. This results in increasing immiseration and a sense of loss and betrayal of a birthright that becomes manifest in ethnic conflicts.

In Côte d’Ivoire, the cocoa economy of the 1970s and 1980s was built upon a social contract between the state, migrant farmers with capital, migrant labour from Sahelian countries, and land holding communities in the southwest with surplus land but little capital to invest in the development of land (Chauveau 2006). The state negotiated with councils of elders within these communities to release land to migrants in exchange for development initiatives within the area and support for local communities. The state recognised the rights of cultivators to gain rights in the lands that they cultivated, in a bid to attract investment in cocoa and migrant labour into the cocoa economy. The chiefs and elders released land to migrant farmers through the elaboration of a neo-customary institution, the *tutorat*. This established a relationship between chiefs, elders, and migrants based on notions of patronage and annual prestations of gifts. As demand for land grew these prestations increased in value to reflect the scarcity value of land, and were understood by migrants to constitute a form of land sale. The communities in the southwest were re-compensated for their loss of land by the state through the redistribution of state cocoa revenues in development projects and social welfare provisioning. This continued until the economic crisis of the late 1990s, following the collapse of world cocoa prices in 1989, which resulted in large urban unemployment, declining state social provisioning and welfare, and rapidly declining standards of living. In political circles, this crisis was blamed upon the influx of migrants and this was taken up by youth in rural localities, who began to attack migrant farmers and eject them from the land (Chauveau 2006, Babo 2013, Kouamé 2010). Attempts to introduce community land management and a new land act played into this xenophobia, with notions of the pre-eminence of customary land rights, the exclusive rights of Ivoirians and of autochthones. Embracing slogans of ‘Ivoirite’ and ‘land for Ivoirians’, many rural youth in the southwest attacked migrant communities. This interethnic violence eventually escalated into a civil war between the north and south of the country.

Similar ethnic tensions have also existed in Eastern Congo. Land tenure was historically based on a system of clientage in which chiefs gained tribute from their subjects to whom they allocated land (Vlassenroot and Huggins 2005). From the sixteenth century small numbers of Banyarwanda herders from Rwanda moved into the Kivu area, some of them becoming tributary clients of Hunde chiefs. During the early colonial period, a large influx of Banyarwanda labourers moved into the Kivu area. Wealthier Banyarwanda migrants began to purchase land from the Hunde (Mararo 1997). Population densities were high in the Kivu area and there was limited land that could be given out to migrants. Therefore, chiefs found new ways of expropriating land from indigenous farmers, inventing an array of neo-customary conventions regulating land, which enabled them to invoke a ‘right of return’ of land back to the chiefs (Van Acker 2005). These trends intensified during the 1970s when investments in land became a major source of accumulation for aspiring capitalists (Mararo 1997). During the 1970s

traditional authorities actively colluded with the state in the alienation of land to aspiring capitalist farmers (Vlassenroot and Huggins 2005, Van Acker 2005). Prunier (2009) writes that by the 1990s land in the Masisi *territoire* of Kivu became extremely concentrated with 512 families, of which 503 were Banyarwanda, claiming more than half the land. The largest holding was 230,000 hectares, while the average holdings were of less than one hectare, including most of the land occupied by the majority of Banyarwanda people.

This process of land accumulation led to increasing social differentiation and the emergence of a local labouring class with very limited access to land. By the early 1990s, these trends resulted in mounting ethnic tensions. Disaffected local farmers began to organise against their chiefs, refusing to recognise them and pay tribute. They also began to form local militias organised against the Banyawaranda, whose numbers rapidly grew with the arrival of new migrants from Rwanda (Vlassenroot and Huggins 2005, Huggins 2010, Autesserre 2010). In the North Kivu area, in which the Banyarwanda were most concentrated, they came to constitute about 40 percent of the population by the 1990s (Prunier 2009: 48). Local chiefs attempted to impose new tributary exactions on Banyarwanda landholders, which the Banyarwanda attempted to resist. Faced with increasing difficulty in controlling migrant Banyarwanda and problems of legitimacy with the farming population for alienating large tracts of land, the chiefs then turned on the Banyarwanda as a convenient scapegoat, mobilising ‘those local youngsters that had shown their preparedness to take up their machetes for the defence of their own community’ (Vlassenroot and Huggins 2005: 146). This resulted in widespread ethnic violence, in which it has been estimated that between 6,000 - 10,000 people were killed and 350,000 displaced (Vlassenroot and Huggins 2005), before escalating into an extremely violent civil war.

In these examples, communities become sites of complex processes of capital accumulation and social differentiation, involving alliances between aspiring capitalists, chiefs and local elites, and the state, which get played out as interethnic conflicts between migrants and autochthones.

Conclusion

The dominant framework for land administration in Africa is built upon discourses about community, in which customary institutions are seen to provide an inclusive framework in which smallholder farmers can be guaranteed access to land and rights in land. However, the rights that have been allocated through institutional reforms are essentially property rights that convert user rights into market commodities. This creates pressures on rural communities to transact these rights with investors, which facilitates a process of capital accumulation and social differentiation. This in effect transforms the village into a site of accumulation, through which its residents are drawn into market economies as labourers and commercial farmers. The harmonisation of customary and statutory tenure facilitates the commodification of land, and its transfer into the hands of those most able to add value to the land. To understand this process, assumptions about community solidarity and customs need to be critically examined against the backdrop of larger regional economies operating within global markets. The dynamics of adaptation of customary land relations reflect complex political and economic processes that are transforming localities. Thus the analysis of land relations and land markets needs to go beyond a framework of the study of the institutions, and the harmonisation of customary and statutory relations. It is important to understand the processes of the commodification of land, the historic role of customary institutions in this process of commodification, and the political ramifications on social relations of production, values, and social identities. This requires policy,

institutions and notions of community and civil society to be subject to critical investigation. This provides an important area of research for an interdisciplinary African studies approach to critically examining the dominant policy narratives on land.

References

- Adoko, J and S. Levine 2005. *Land Rights: Where are we and where do we need to go?* Kampala: Land Equity Movement in Uganda (LEMU).
- Alden Wily, E. 2003. 'Community-based Land Management: Questions and answers about Tanzania's new Village Act, 1999'. *Drylands Programme Issue Paper* 120.
- Amanor, K.S. 2009. 'Securing Land Rights in Ghana'. In *Legalising Land Rights: Local practices, state responses and tenure security in Africa, Asia and Latin America*. Eds. J. Ubink, A. Hoekema, and W. Assies, Leiden: Leiden University Press, pp. 97–132.
- Autesserre, S. 2010. *The Trouble with the Congo: Local violence and the failure of international peacebuilding*. Cambridge: Cambridge University Press.
- Babo, A. 2013. 'The Crisis of Public Policies in Côte d'Ivoire: Land law and the nationality trap in Tabou's rural communities'. *Africa* 83(1): 100–119.
- Bates, R.H. 1981. *Markets and States in Tropical Africa: The Political Basis of Agricultural Policies*. Berkeley: University of California Press.
- Boiro, I. 1996. 'The Guinean Land Tenure System: A methodological approach to sustainable resource management. Case Study Kollangui-Pita (Fouta Djallon)'. In *Managing Land Tenure and Resource Access in West Africa: Proceedings of a Regional Workshop*. Gorée, Senegal, November 18–22, 1996, Convened by L'Université de Saint-Louis, GRET, IIED, Ministère Français de la Coopération and British Overseas Development Administration, London: IIED, pp. 71–83.
- Boni, S. 2005. *Clearing the Ghanaian Forest: Theories and practice of acquisition, transfer and utilization of farming titles in the Sefwi-Akan area*. Legon: Institute of Africa Studies, University of Ghana.
- Boone, C. and D.K. Duku 2012. 'Ethnic Land Rights in Western Ghana: Landlord-stranger relations in the democratic era'. *Development and Change* 43(3): 671–693.
- Brockington, D. 2002. *Fortress Conservation: The preservation of Mkomazi Game Reserve*. London: James Currey; Bloomington and Indianapolis: University of Indiana Press.
- Bruce, J.W. 1993. 'Do Indigenous Tenure Systems Constrain Agricultural Development?'. In *Land in African Agrarian Systems*. Eds. T.J. Basset and D.E Crummey, Madison: University of Wisconsin Press, pp. 35–56.
- Chauveau, J-P. 2006. 'How does an institution evolve? Land, politics, intergenerational relations and the institution of the *tutorat* amongst autochthones and immigrants (Gban region, Côte d'Ivoire)'. In *Land and the politics of belonging in West Africa*. Eds. R. Kuba and C. Lenz, Leiden; Boston: Brill, pp. 213–240.
- Chauveau, J-P., J-P. Colin, J-P. Jacob, P. Lavigne Delville, and Le P-Y. Meur 2006. *Changes in Land Access and Governance in West Africa: Markets, social mediations and public policies*. London: IIED.
- Chihowu, A. and P. Woodhouse 2006. 'Customary vs Private Property Rights? Dynamics and trajectories of vernacular land markets in sub-Saharan Africa'. *Journal of Agrarian Change* 6(1): 346–371.

- De Haan, L. 1998. 'Gestion de Terroir at the Frontier: Village land management including both peasants and pastoralists in Benin'. In *The Arid Frontier. Interactive Management Of Environment And Development*. Eds. H.J. Bruins and H. Lithwick, Boston: Kluwer Academic Publishers, pp. 209–277.
- Deininger, K. 2003. *Land Policies for Growth and Poverty Reduction*. Washington: World Bank; Oxford: Oxford University Press.
- Diop, M. 2007. *Réformes foncières et gestion des ressources naturelles en Guinée: Enjeux de patrimonialité et de propriété dans le Timbi au Fouta Djallon*. Paris: Karthala.
- Fitzpatrick, D. 2005. "'Best Practice' Options for the Legal Recognition of Customary Tenure". *Development and Change* 36(3): 449–475.
- Gastaldi, J. 1999. 'Le Plan Foncièr Rural en Afrique de l'Ouest'. *Etudes Foncières* 83: 37–41.
- Gough, K.V. and P.W.K. Yankson 2000. 'Land Markets in African cities: The case of peri-urban Accra, Ghana'. *Urban Studies* 37(13): 1485–1500.
- Guèye, I. and P. Laban 1992. 'From Woodlots to Village Land Management in the Sahel'. *Dryland Issue Paper* 35.
- Hodgson, D.L. 2011. *Being Maasai, Becoming Indigenous: Postcolonial Politics in a Neoliberal World*. Bloomington: Indiana University Press.
- Huggins, C. 2010. *Land, Power and Identity: Roots of violent conflict in Eastern DRC*. London: International Alert.
- Hunt, D. 2004. 'Unintended Consequences of Land Rights Reform: The case of the 1998 Uganda Land Act'. *Development Policy Review* 22(2): 173–191.
- Jayne, T.S., J. Chamberlin, L. Traub, N. Sitko, M. Muyanga, F.K. Yeboah, W. Anseeuw, A. Chapoto, A. Wineman, C. Nkonde, and R. Kachule 2016. 'Africa's Changing Farm Size Distribution patterns: The rise of medium-scale farmers'. *Agricultural Economics* 47: 197–214.
- Joireman, S.F. 2007. 'Enforcing New Property Rights in Sub-Saharan Africa: The Ugandan Constitution and the 1998 Land Act'. *Comparative Politics* 39(4): 463–480.
- Juul, K. 1993. 'Pastoral Tenure Problems and Local Resource Management: The case of northern Senegal'. *Nomadic Peoples* 32: 81–90.
- Knight, R.S. 2010. 'Statutory Recognition of Customary Land Rights in Africa: An investigation into best practices for lawmaking and implementation'. *FAO (Food and Agriculture Organization of the United Nations) Legislative Study*.
- Kouamé, G. 2010. 'Intra-Family and Socio-Political Dimension of Land Markets and Land Conflicts: The case of Abure, Côte d'Ivoire'. *Africa* 80(1): 126–146.
- Land Equity Movement of Uganda n.d. 'Linking Land Tenure and Agricultural Modernisation: Making PMA relevant for all'. Information paper. < www.landinuganda.org/ accessed on 25 October 2010.>
- Landell-Mills, P. 1992. 'Governance, Cultural Change and Empowerment'. *Journal of Modern Africa Studies* 30(4): 543–67.
- Lavigne Delville, P. 2004. 'Registering and Administering Customary Land Rights: Current Innovations and Questions in French-Speaking West Africa'. In Proceedings of Expert Group Meeting on Secure Land Tenure: 'New legal frameworks and tools' International Federation of Surveyors (FIG) Commission 7, UN-Gigiri in Nairobi, Kenya, 10-12 November 2004. < https://www.fig.net/resources/proceedings/2004/nairobi_2004_comm7/papers/ts_04_1_delville.pdf/

accessed on 21 October 2017.>

- Lugungulo, A. 2009. 'Villagers Feel Betrayed as Investors Rush to Buy Land'. In *Daily News* 26 December 2009. Quoted in Land Rights Research and Resources Institute (2010) *Accumulation by Land Dispossession and Labour Devaluation in Tanzania: The case of biofuel and forestry investments in Kilwa and Kilolo*. < <https://landportal.info/library/resources/accumulation-land-dispossession-and-labour-devaluation-tanzania-0/> / accessed on 21 October 2017>.
- Manji, A. 2001. 'Land Reform in the Shadow of the State: The implementation of new land laws in Sub-Saharan Africa'. *Third World Quarterly* 22(3): 327–342.
- Manji, A. 2006. *The Politics of Land Reform in Africa: From communal tenure to free markets*. London: Zed Books.
- Mararo, B. 1997. 'Land, Power, and Ethnic Conflict in Masisi (Congo-Kinshasa), 1940s–1994'. *The International Journal of African Historical Studies* 30(3): 503–538.
- Migot-Adholla, S., P. Hazell, B. Blarel, and F. Place 1991. 'Indigenous Land Rights Systems in Sub-Saharan Africa: A constraint on productivity?'. *World Bank Economic Review* 5(1):155–175.
- Molomo, M.G. 2008. 'Sustainable Development, Ecotourism, National Minorities and Land in Botswana'. In *Land and Sustainable Development in Africa*. Eds. K.S. Amanor and S. Moyo, London: Zed, pp. 159–183.
- Mugambwa, J. 2007. 'A Comparative Analysis of Land Tenure Law Reform in Uganda and Papua New Guinea'. *Journal of Pacific Law* 11(1): 39–55.
- Ouédraogo, H.M.G. 2005. 'Etude comparative de la mise en oeuvre des Plans fonciers ruraux en Afrique de l'Ouest: Bénin, Burkina Faso, Côte d'Ivoire'. *Etudes Juridique de la FAO en ligne* 42.
- Peters, P. 1994. *Dividing the Commons: Politics, policy and culture in Botswana*. Charlottesville: University of Virginia Press.
- Peters, P. 2004. 'Inequality and Social Conflict over Land in Africa'. *Journal of Agrarian Change* 4(3): 269–314.
- Prunier, G. 2009. *From Genocide to Continental War: The 'Congolese' conflict and the crisis of contemporary Africa*. London: C. Hurst & Co.
- Quan, J. 2000. 'Land Boards as a Mechanism or the Management of Land Rights in Southern Africa', In *Evolving Land Rights, Policy and Tenure in Africa*. Eds. C. Toulmin and J. Quan, London: IIED, pp. 197–206.
- Rural Women's Movement of South Africa 2010. 'The CLRA has been Declared Unconstitutional'. 11 May 2010. <<http://rwmsa.org/2010/05/11/clra-declared-unconstitutional/> / accessed on 15 December 2011>
- Schmidt, E. 2005. *Mobilizing the Masses: Gender, ethnicity and class in the nationalist movement in Guinea, 1939–1958*. Portsmouth: Heinemann.
- Shivji, I. 2000. 'Contradictory Perspectives on Rights and Justice in the Context of Land Reform in Tanzania', In *Beyond Rights Talk and Culture Talk: Comparative essays on the politics of rights and culture*. Ed. M. Mamdani, New York: St. Martin's Press, pp. 37–60.
- Tanner, C. 2010. 'Land Rights and Enclosures: Implementing the Mozambican Land Law in practice'. In *The Struggle over Land in Africa: Conflicts, politics and change*. Eds. W. Anseeuw and C. Alden, Cape Town: HSRC Press, pp. 105–131.
- Teyssier, A., R. Andrianirina Ratsialonana, R. Razafindralambo, and T. Razafindrakoto 2009. 'Décentralisation de la gestion des terres à Madagascar: Processus, enjeux et perspectives d'une nouvelle politique foncière'. In *Les politiques d'enregistrement des droits fonciers:*

- Du cadre legal aux pratiques locales*. Eds. J-P. Colin, P-Y. Le Meur, and É. Léonard, Paris: Karthala, pp. 273–298.
- Tsikata, D. 2003. 'Securing Women's Interests within Land Tenure Reform: Recent debates in Tanzania'. *Journal of Agrarian Change* 3(1&2): 149–183.
- Ubink, J.M. 2008. 'Negotiated or negated? The rhetoric and reality of customary tenure in an Ashanti village in Ghana'. *Africa* 78(2): 264–287.
- Van Acker, F. 2005. 'Where did all the land go? Enclosure and Social Struggle in Kivu (DR Congo)'. *Review of African Political Economy* 103: 79–98.
- Veit, P., R. Nshala, M.O. Odhiambo, and J. Manyindo 2008. *Protected Areas and Property Rights: Democratizing eminent domain in East Africa*. Washington: World Resources Institute.
- Vlassenroot, K. and C. Huggins 2005. 'Land, Migration and Conflict in Eastern DRC'. In *From the Ground Up: Land rights, conflict and peace in Sub-Saharan Africa*. Eds. C. Huggins and J. Clover, Nairobi: African Centre for Technology Studies; Pretoria: Institute for Security Studies, pp. 115–194.
- Whitehead, A. and D. Tsikata 2003. 'Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Return to the Customary'. *Journal of Agrarian Change* 3(1/2): 67–112.
- World Bank 1981. *Accelerated Development in Sub-Saharan Africa: An agenda for Action* (Berg Report). Washington: World Bank.
- World Bank 2008. *World Development Report 2008*. Washington: World Bank.
- World Bank 2009. *Awakening Africa's Sleeping Giant: Prospects for commercial agriculture in the Guinea savannah zone and beyond*. Washington: World Bank.