Rethinking land reform in Africa
new ideas, opportunities and challenges
Rethinking land reform in Africa: new ideas, opportunities and challenges.
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Dr Sara Berry is a retired Professor of History at Johns Hopkins University and co-founder of its Center of Africana Studies. She has researched and studied issues of land, development, agrarian change, political economy and socio-economic history in sub-Saharan Africa for several decades with primary emphasis on Nigeria and Ghana. Principal publications include Fathers work for their sons: accumulation, mobility and class formation in an extended Yoruba community (1985), No condition is permanent: the social dynamics of agrarian change in sub-Saharan Africa (University of Wisconsin Press, 1993), and Chiefs know their boundaries: essays on property, power and the past in Asante, 1896–1996 (Heinemann, 2001).

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Introduction: Rethinking land reform in Africa: new ideas, opportunities and challenges
Cosmas Milton Obote Ochieng

Land reform in historical perspective
Land ownership and use has been a feature of social, economic and political contestation throughout human history (Eckstein 1955; Tuma, 1965). The Roman Land Reform Law, Lex Sempronia Agraria, encapsulates many of the issues that continue to characterise land reform debates today. These include the concentration of land in the hands of a few, and the potential social and economic inefficiencies of this. These also include questions of land ceiling or minimum and maximum individual landholdings, and land appropriation and compensation (Lintott 1992).

Arguably the most tangible of assets, land is also one of the most metaphorical, layered with multiple meanings. Land has served as a factor of production, a store of value, a status symbol, a font of cultural and community significance and a source of social, economic and political power in many societies. Not surprisingly, a history of land reform is often associated with the struggle of the landless and the poor for greater social, economic and political rights and freedoms (Barlowe 1953). Land reform was a key component of the French, Russian and Chinese revolutions. It was also an issue in the peasant rebellions and anticolonial movements in much of Africa, Asia and Latin America in the 20th century (Barlowe 1953; de Janvry 1981).

Land reform remained a significant political if not policy issue in many parts of the world for much of the 20th century (de Janvry 1981). Following the Second World War and the decolonisation movement, land reform also became a key tenet of international diplomacy and integral to the global development agenda of the newly established United Nations. The UN General Assembly adopted its first resolution on land reform in 1950 and reported on progress of reform from 1951 through the 1960s.

The UN vision of land reform sought to achieve a number of social, economic and political objectives. These include improvements in economic equality, personal freedom and solidarity and greater agricultural productivity, in addition to total output of goods and services not only in agriculture but also in the broader economy (Irving 1965; UN 1951, Stein, this collection). This ambitious and transformational vision was a response to the considerable challenges of the post-war world: decolonisation, nationalism, under-development, and the Cold War rivalry between the United States and the Soviet Union. Notably, the United States was fully aware of the potential ramifications of this vision, and supported its implementation in the early post-war period, at least with respect to land.
reform in Japan (Gilmarstin & Ladejinsky 1948; Espy 1951). The US Point Four Program “sought to foster economic and social change in agrarian countries” (Eckstein 1955, p.651). Eckstein (1955, p.651) highlights US assumptions and biases with respect to land reform at this time:

“In adopting this policy, the United States was confronted with an awkward dilemma. Active promotion of land reform inevitably involved not only a redistribution of land or farm income, but also some change in the relation of social and political forces. It is a measure which is bound to upset the prevailing socio-economic and political equilibrium ... It can unleash powerful forces and may start a chain reaction the ultimate outcome of which is difficult or impossible to predict. On the other hand, failure to introduce reform and attempts to shore up existing regimes may preserve only a temporary semblance of stability ... Therefore, the pursuit of an international land policy by the United States is implicitly and explicitly based on the assumption that short run stability must be sacrificed, regardless of the attendant risks, so as to attain in the long run a more sturdy equilibrium founded on more democratic institutions”.

This bold and transformational view of reform did not last for long – in US aid policy, international diplomacy, or developing countries, including those in Africa. Rhetorically, this vision of reform remained on the international policy agenda until the 1970s. In 1979, 145 nations could still come together and assert that:

“equitable distribution and efficient use of land, water and other productive resources, with due regard for ecological balance and environmental protection, are indispensable for rural development, for the mobilization of human resources and for increased production for the alleviation of poverty ... sustained improvement of rural areas, in the context of promotion of national self-reliance and the building of the New International Economic Order, requires fuller and more equitable access to land, water and other natural resources; widespread sharing of economic and political power; increasing and more productive employment; fuller use of human skills and energies; participation and integration of rural people into the production and distribution systems; increased production, productivity and food security for all groups; and mobilization of internal resources” (FAO 1979).

In practice however, while land reform remained a political issue in most countries, from the 1980s onwards, it increasingly became less of a significant policy issue outside parts of Africa, Asia and Latin America (de Janvry, 1981). Howard Stein (this collection) identifies some of the reasons for this shift. In general, as land policy receded from both international diplomacy and the global development agenda, the definition, motivation
and case for reform narrowed in scope and ambition – except in countries that either acquired political independence or underwent socio-economic and political upheaval or transformation in the 1980s and 1990s (e.g. South Africa).

This has particular significance for Africa. Most African countries attained independence in the 1960s and 1970s. Many post-independence reform efforts took shape just when land reform was beginning to vanish from international diplomacy and the bold and transformational UN vision of the 1950s.

Definitions, assumptions and rationale for land reform

Land reform has a multiplicity of meaning. To some, it refers to a change in the agrarian structure or the full complement of measures necessary or desirable to improve the structure or relations among people with respect to their rights in land (Barlowe 1953; Raup 1963; de Janvry 1981). To others, it refers to a range of policy measures that affect land including, inter alia, land reclamation, provision of better agricultural services and improvement in landlord tenant relations (Banerjee 1999).

Land reform is an inherently political process. As Alain de Janvry (1981, p.385) has argued, land reform is “nothing else than an attempt by the government through public policies, at either inducing a change among states of the agrarian structure or at preventing such a change”. How land reform becomes defined or framed is related to the motivation of reform proponents. Land reform is not just variously defined; it has also been used to pursue multiple social, economic and political objectives. The definition of land reform therefore has a bearing on how the success or failure of reform is ultimately judged. Definitions, motivations and rationales for land reform are not purely ‘technical’ or ideologically ‘neutral’ considerations. They are informed by multiple, often competing analytical frameworks (e.g. neoclassical, welfarist, Marxist, etc.) which are often associated with ideological frameworks (Scoones and Cousins 2009).

Today, many African countries are undertaking or implementing a second, if not a third or more ‘wave’ of land reform. Each iteration of reform has been shaped by particular analytical and ideological frameworks. During the Cold War, this was usually explicit, given the Cold War ideological rivalry and its attendant, competing intellectual frameworks. However, since the end of the Cold War, land reform has often been presented as a purely ‘technical’ or ideologically ‘neutral’ policy proposition.

Assumptions and biases underlying definitions, goals and rationale for land reform merit close scrutiny. The cost of obfuscating them can be considerable. To the degree that land reform constitutes a search for ‘desirable change’, fundamental questions arise about whose definition, motivation, rationale or measurement of ‘desirable change’ counts? A failure to critically examine these assumptions and biases can limit the scope and impact of reform, by precluding critical assessments of what is ‘desirable’, ‘feasible’, or ‘viable’. Evidence suggests that uncritically examined assumptions and biases have come
to dominate the definition, motivation and rationale for land reform in some African countries. In a critique of the concept of ‘viability’ of land reform in southern Africa, Scoones and Cousins make a startling discovery:

“Despite numerous re-organisations and notional shifts in priorities after independence, the institutional and organizational infrastructure of African agriculture – though populated by different people, with a different formal mandate and a vastly expanded target group, but often with a much depleted resource base – has remained remarkably consistent in its biases and assumptions” (Scoones and Cousins 2009, p.5).

If land reform can mean different things to different people, or if the meaning of reform is associated with different political goals and ideologies, then different definitions and goals of reform are likely to yield different results: social, economic or political. A land reform defined and designed for political purposes, for example, might not yield economic benefits and vice versa, although political and economic objectives need not be mutually exclusive.

Definitions of and rationales for land reform in many parts of Africa have focused on a relatively narrow set of questions, including most famously: (a) farm size and productivity, and (b) the relationship between land titling, tenure regimes and economic outcomes. To be clear, these are critical questions in the debate and deserve serious attention (Banerjee, 1999, Lipton, this collection). Nevertheless, relative to land reform in historical perspective, these questions are limited in scope. Moreover, in the African context, the underlying assumptions of some of these questions are problematic (Peters, this collection). Given the social, economic, political and even ecological challenges in many parts of Africa, it is curious that a number of fundamental questions that have dominated land reform since the dawn of human civilization (e.g. progressive land taxation, land ceilings, land expropriation with or without compensation) tend to be relatively scarce in reform proposals in Africa or are often casually dismissed as ‘non-viable,’ ‘political’ or ‘ideological.’ Excluding potentially transformational issues from reform because of analytical biases, and or ideological preferences or hegemony, can expose countries to the risk of ‘vicious cycle of reform’: ‘wave’ after ‘wave’ of reform that yields nothing but persistent calls for, and implementation of further ‘waves’ of reform. Land reform in Africa is more likely to succeed if there is clarity and greater scrutiny of the assumptions and biases underlying definitions, key questions, motivations and rationales for reform.

Herein lies the motivation for this collection of essays. Africa confronts significant development opportunities and challenges over the next 15-30 years. Among these are structural transformation, demographic transition and global climate change. How the continent harnesses its land resources can either help it to maximise these opportunities and mitigate the challenges or constrain its ability to do both. On the 10th Anniversary of the African Union Declaration on Land, and on the occasion of the Third Pan-African
Conference on Land Policy in Abidjan, the African Natural Resources Centre (ANRC) of the African Development Bank invited some of the leading scholars on the ‘land question’ in Africa to re-imagine these questions, with a view to highlighting new ideas, opportunities and challenges for the African land reform agenda over the next few years. These are scholars and practitioners whose seminal and pioneering works have informed, shaped and dominated the thinking on land reform in Africa and beyond. The authors were given free rein to choose their own topics, frameworks and questions and to write in their own voices and styles.

Independently, the authors chose some of the most contested issues in land reform in Africa. These include:

- The politics of land access and reform and its implications for economic development in Africa.
- Compulsory land acquisition and compensation.
- Land valuation and taxation.
- Land tenure productivity and efficiency.
- The history of interactions between structures of authority and efforts to gain access to and control over land and the way relations of authority have shaped patterns of land use, and vice versa, and the implications of this history for future efforts at land reform.
- Land markets, investments and land grabs.
- Land, peace and conflicts.
- Gender and land rights.

The purpose of this collection of papers is to help inspire fresh and critical reflection, inquiry and evidence informed policy debate and dialogue. To help do this, the African Development Bank invited the following 13 authors whose essays appear in this collection:

- Liz Alden Wily, Van Vollenhoven Institute for Law, Governance and Society, University of Leiden.
- Thomas Bassett, University of Illinois, Urbana Champagne.
- Sara Berry, Johns Hopkins University.
- Uchendu Eugene Chigbu, Technical University of Munich.
- Horman Chitonge, University of Cape Town.
- Riel Franzsen, University of Pretoria.
- Robert Home, Anglia Ruskin University.
- Michael Lipton, University of Sussex.
- Matthew Mitchell, University of Saskatchewan.
- Pauline E. Peters, Kennedy School of Government, Harvard University.
- Howard Stein, University of Michigan.
These pages present their rich, insightful take on many of the most challenging questions in the land reform debate in Africa. We hope these essays inspire further debate, research and analysis into the theory, policy and practice of land reform in Africa.

By one estimate, Africa is home to 60 percent of the world’s “unutilized but potentially available cropland”, (McKinsey 2014, p.8). However, the UN estimates that land degradation affects up to two thirds of the productive land area in Africa, and up to 65 percent of the entire African population (UNCCD 2013). Policy and institutional innovation, learning and experimentation are required if land reform is going to make a substantial contribution to sustainable development in Africa. A re-examination of fundamental assumptions and biases underlying key reform tenets is a key part of this. We end with an invitation to others to contribute their voices to this renewed thinking and effort. We welcome new research, papers and dialogue on this important subject.

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Working the land, near Yangambi, DR Congo. Photo: Axel Fassio/CIFOR.
Rethinking land reform in Africa: new ideas, opportunities and challenges.
Land reform contexts: demography/employment, farms, soil-water resources/authority

Michael Lipton

Introduction
A ‘development expert’ recently and correctly blogged: ‘Any “development expert” … should [speak of “lessons from elsewhere”] with humility. Many things that worked there won’t work here. What will or won’t replicate can rarely be known up front. The barriers to implementation even of things that would work can be notably different.

But sometimes, lessons learned and best practice actually apply … Interventions that have replicated … aren’t enough to solve [all] development challenges … but they take some credit that … [the 5% of] countries [with lowest] life expectancy see higher life expectancies than the 95th percentile did a century ago. And countries … at the tenth-poorest percentile of global income have incomes per capita almost 10 times their level in 1820’ (Kenny 2019).

What are ‘interventions that replicated, lessons learned, best practice’ in land policy?

i Where farmland is scarce and seriously unequal (increasingly almost everywhere in sub-Saharan Africa), fairly equal smallholdings (with support services) are best: obviously for equity and employment; also for efficiency and growth;

ii Land reform is a good way to get there if farmland starts very unequal, but with cautions;

iii Replicating a land reform ‘lesson’ from another country needs caution – and local knowledge of both countries. But some such lessons do apply, e.g.:

- Romania does tell water-scarce sub-Saharan African areas: land reform without adjusted water policy/hardware/software is disastrous.
- India and China do tell sub-Saharan Africa: rapid growth from smallholder-based farming is possible, but needs ongoing, locally relevant agricultural research and communication that’s smallholder-oriented [risk-cutting, yield-enhancing, pro-employment].
- Many past missteps do tell sub-Saharan Africa that, if land should be redistributed, it should be to smallholdings, not collective or co-operative farms.
- Unless land is in reasonably equal smallholdings, tenure reform alone seldom helps efficiency or equity, and may harm them.
- Land reform requires joint planning with other aspects of agriculture, and that needs substantial resources.
Definition

“Land reform comprises laws with (a) main goal of reducing poverty by substantially increasing proportions of farmland controlled by the poor, and thereby their income, power or status”. (Lipton 2010)

Farming, to bring about lasting reductions in poverty, must be reasonably efficient, innovative, and sustainable. In Asia’s Green Revolution, that came from small, reasonably equal, science-backed farms – often after land reform. Does this, suitably adapted, work in Africa? Success depends on land reform’s contexts: employment and population; smallness and efficiency; the process of reform; the soil-water environment; and public resources, authority and integrity.

Context 1: employment and population

Africa’s population will double in 2020–50 from 1,341 million to 2,489m, and sub-Saharan Africa’s, from 1,094m to 2,118m. This raises huge issues of agricultural sustainability, explored later. The potentially good news is that sub-Saharan Africa’s population aged 15–64 will grow faster, from 54.9% (600m) to 62.0% estimated at 1,313m. In 2020, every 100 people of prime working and saving age, 15–64, must support 82 dependents; in 2050, it will be only 62 (United Nations 2019). In Asia, similar shifts in 1970–2000 brought a “demographic dividend”, driving about a third of the rapid growth in income-per-person, alongside huge falls in poverty. This is because a big majority of the extra workers, especially the young, were productively absorbed in work (self-employment plus hired employment). Where that doesn’t happen, rising worker/dependent ratios bring little poverty-reduction. Growing numbers of young, unemployed poor become an increasingly desperate threat. China and India, like many other parts of Asia, enjoyed a demographic blessing, instead of a curse, mainly because they combined smallholder-oriented land reforms with huge outlays on farm research and water control, to generate employment-intensive small-farm growth. Will Africa follow such paths? Firstly, we need to establish some key points that counter prevailing myths:

(a) Sub-Saharan Africa’s current and near-term future employment does depend substantially on farming. The International Labour Organisation’s Labour Statistics, LABSTAT says that, of the region’s workers, 62% worked mainly in agriculture in 1990–2002, falling to 55% by 2018. But note 2018 numbers in a few big countries in more detail: Ethiopia 66%, DR Congo 69%, Uganda 71%, Tanzania 66%. Such numbers use ILO models from national data and are underestimates (e.g. Nigeria’s 2018 37%, v. expert estimates of 60%) (Lipton 2010). Unit costs-per-workplace of expanding mining, urban manufacturing, and skilled services in sub-Saharan Africa have proved
alarmingly high. Rural non-farm growth is more affordable but depends mainly on prior demand growth from smallholders (Haggblade, Hazell & Reardon 2007). The essence of development is eventual employment transition from agriculture to industry and skilled services, but in Asia – as historically elsewhere – it was ignited by agricultural transformation with employment expansion, slashing poverty, and later fuelling non-farm growth. This remains sub-Saharan Africa’s best and most feasible path.

(b) Farm work is not dominated by Africa’s aged. The frequent claim that the average African farmer is aged 60 is ‘fake news’. Only 7% of sub-Saharan Africa’s farm population is aged over 55, and only 27% of farm decision-takers (Help Age International 2014). The 15 sub-Saharan African countries with relevant labour surveys show higher proportions of young workers (15–24) in agriculture than of older workers (World Bank 2009).

(c) Unemployment is not small in sub-Saharan Africa. Formal unemployment (‘without work but available for and seeking employment’) is typically only 7–9%. It’s twice as high for people aged 15–24 (World Bank 2019). These data exclude ‘discouraged workers’ who have stopped looking for work that they know is not available. Most workers in the region are micro-farmers. Pending more farm science and land reform, they have little to do (off-season) on their small, ill-watered farms. Non-farm work helps, but prospers mainly thanks to demand from farmers with growing, not too unequal income.

‘Take-away’—land, demography and the employment crisis: sub-Saharan Africa will struggle to keep income growth ahead of population growth (doubling to 2050). The even faster growth of 15–64 year-olds, the main workers and savers, will help, if and only if they (and existing underemployed) are productively used. Farming must play a big role, to keep down costs per job and to spark non-farm growth. But that can happen if, and only if, micro-farms get enough land access, water control, and science to farm sustainably and employment-intensively which requires public resources. Yet while pre-Green-Revolution South Asia, agriculture and allied sectors (including land reform) received 20–25 per cent of public expenditure, most of the region has yet to achieve the Maputo target of 10% (set in 2003 by African heads of state and confirmed at Malabo in 2014).

Critical note: If population doubles in 25-30 years, farmland that was abundant usually becomes scarce. So getting to efficient and equitable landholdings, via distributive land reform, becomes more pressing – but also more sensitive, especially if there are tensions among ethnic groups. In Côte d’Ivoire ‘massive immigration [was] encouraged during the 1960s and the 70s … to farm abundant land’ (McCalllin 2010), but population growth made that land scarce and conflicted; that was a major cause of the violence and unrest of 2002–7. Land allocation between settled farmers
and nomadic herders, too, becomes more contentious as population pressure rises. In Nigeria, Tiv farmers and Fulani herders ‘lived peacefully until in early 2000s when violent armed conflict erupted over access to farm land and grazing areas … due largely to population explosion [among other factors]’ (Genyi 2017). In Tanzania and Kenya, population growth has sharply increased conflict between Maasai herders and Waarusha farmers (Kuney 1994).

**Context 2: smallness and its correlates**
What is a small farm? It depends on land quality. A family of average size might live and work ‘decently’ with 1 hectare of irrigated orchard yet struggle to survive with 20 hectares of low-grade grazing. Nevertheless, it’s not too hard to ‘weight’ land by quality (or sustainable earning power), and to develop a quality-adjusted definition of a small farm. There is massive evidence that small, fairly equal farms – and, often, land reforms that increase their share of land – have helped efficient growth, as well as employment and poverty-reduction, in Asia and sub-Saharan Africa. But why is smallness and not too unequal size a productive advantage for farms, as it is often not in factories or service providers? Farm production and labour normally occupy a lot of space and are therefore not easily watched. They also normally need time between applying labour or other inputs (water, fertiliser, cattle medicines) and outputs. Supervising and managing workers, and teaching them on the job, usually involves higher ‘transaction costs’, per unit of output, when land is used for farming rather than for factory or service production. This implies one of two things:

- In high income countries, with savings but scarce labour, farmers replace labour with tractors, combines, computers, Artificial Intelligence, robots. Big farms have advantages, in borrowing and managing equipment.
- In low and middle income countries, with low-wage, underemployed rural labour but scarce savings, farmers instead strive to slash costs of labour supervision by self-employment or direct overview. Small farms, where decision-takers can readily overview the work process, have cost advantages here.

So it’s not surprising that in Asia and Africa land is concentrated in small (<5 hectares) farms – and has become increasingly so, as the legacy of large settler colonial farms is wound down (Lipton 2010.) In the nine African countries with Food and Agriculture Organisation agricultural census data for 2000–2010 on farm size, 67% of farmland is in holdings below 5 hectares, and barely 1% is in holdings above 50 hectares (Lowder, Skoet & Raney 2017). If accurate, this seems to leave little scope for land reform. But these censuses: (a) don’t cover South Africa and some other ‘settler economies’ with large commercial farms; (b) don’t cover Nigeria and DR Congo, with almost 300m
people and two of sub-Saharan Africa's largest agricultures; (c) are probably evaded by some huge farms; (d) precede some recent land grabs.

So, in sub-Saharan Africa more land is in big holdings (and available for possible land reform) than meets the eye. However, most farmland is already concentrated in holdings below 5 hectares: small enough to be farmed with readily supervised, mostly family labour. Further, in Africa small farms have usually been increasing their share of land farmed. All sub-Saharan countries with two agricultural censuses between 1960 and 2010 show this – plus falling average and median farm size: Africa and Asia together had 55 country falls, 2 rises. This is confirmed by recent (post-2000) trends – even in China (Ibid; Eastwood et al 2010).

Why do small farms persist and increase? Because they work. 90% of research in Asia and Africa shows net value added is higher on smaller farms (Ibid.) Such farms saturate each unit of land (and water and equipment) with labour choosing more labour-intensive activities and crops. These tendencies increase as population and workforce grow; as unused land dwindles in quantity and quality; and as pressure rises for higher yields. True, economies of scale exist in acquiring and using farm equipment, in product marketing, and in some post-harvest processing. However, small farmers often 'get round' these problems, e.g. by purchasing tea, sugar or rubber processing from larger farms or factories, and by serial bulking-up of goods for market. In most of Asia and Africa, possible drawbacks of smallness are far outweighed by its labour-overview advantages. Only in the very long term, with development and urbanisation, does rural labour get scarce and savings for farming ample. Then – as in North America, in Australia, and increasingly in much of Europe – capital-intensity increasingly pays, and big farms, even giant farms, come to the fore.

Apart from the advantages in developing rural areas of small farms as such, small farms are also much likelier than big farms to be family farms, ‘subsistence’ farms, and part-time farms. These correlates of smallness are often seen as disadvantages. They can be, in the ‘Western’ context of big, capital-heavy farming. But usually in sub-Saharan Africa they are sources of strength, as theory and evidence show.

Family farming means that the household decision-taker and her family provide over half the farm's labour. Such workers are normally more motivated than hired labour. The head of the farm household is likelier to know their availability, abilities and weaknesses. That reduces supervision cost. While associated with small size, family farms have proved competitive with corporate farms as agriculture develops, even if farm sizes start to rise. 97–99% of farmers in Asia and Africa are family farmers; in Asia they have 85% of farm area, but in Africa only 68%. Sub-Saharan Africa's family farms also have less access to science, improved seeds, fertilisers and water control. Not surprisingly, family farms meet over 110% of their households’ dietary energy requirements in Asia, but only 64% in Africa (Graueb et al. 2016).
Subsistence farming – farm output for household use – is prevalent in sub-Saharan Africa. In Uganda 2005–6, 42% of farm output was kept by growers; in Tanzania 2002–3, 69% of cassava was kept; in Malawi, about half the calories consumed by smallholders was self-provisioned (Quan 2007). Yet some regional leaders and planners mistakenly see subsistence farms as bad for development (Amia 2017). Yes, development involves increasing participation by former subsistence farms in markets – for labour, other inputs, and eventual output. But more land, and more output, for subsistence farms is a good thing! Not only does it raise household food security and food diversity, and productively absorb labour. Also, subsistence farming has efficiency advantages in many contexts in Africa. First, the extra household food security allows the household to risk new farm ideas, and expansion into markets. Second, by consuming its farm product, the household cuts transport and storage costs. Third, the value of an extra kilo of maize to the commercial farmer is the farm-gate price she gets for it; the value to the subsistence farmer is the retail price she would otherwise pay to buy it. Since the retail price is higher, so is the production incentive to the subsistence farmer, and therefore her effort and inputs in production. Fourth, for a product like maize, output price risk deters production by commercial farmers – but, in the shape of purchase price risk, encourages it for subsistence and sub-subsistence farms (Srinivasan 1972).

Part-time farming has undeservedly become a term of abuse. Some 25–45 percent of farm households’ income in developing countries is from sources other than the farm (Haggblade, Hazell & Reardon 2007). The evidence is that, with comparable market access, part-time farms are just as productive and efficient as full-time farms (Lipton 2017).

Part-time farming has proved resilient even in fast-growing agricultures. It has special advantages where agriculture is highly seasonal, subject to uncertainties, or increasingly vulnerable to climate change. South Africa rightly seeks ways to get more land to its rural landless, and over 2m micro-farm households. Yet much of the country recently suffered two or three successive years of drought. In such conditions – which climate change will spread and worsen – poor households with small farms need the cushion of other, expansible non-farm output and income.

Part-time farms illustrate why trade unions should support redistributive farmland reform. Many such farms are worked by ‘share families,’ as Scarlett Epstein named them (Mair 1984). Typically, share families have two homes: rural, with farmers; and urban, with siblings or young-adult children working in the public sector, manufacturing or services. All are mobile between rural and urban home and work. This shows an advantage of small, employment-intensive farms for urban workers. If urban work prospects, wages, or conditions are unattractive, workers can ‘return-migrate’ to rural farms. If urban workers’ share-families have better rural
prospects via reform farmland, they are better placed to press for better urban wages and conditions. My conclusion is that trade unions should support land reform.

In summary, there's abundant evidence that small farms work. These links between smallness, and its correlates, and high yields in developing countries are evidence-based and widely agreed among agricultural economists. Yet some macro-economists (and politicians) see big farms as a source of food, import reduction, export income, savings, and migrant workers, to fuel transition to an industrial economy. It's true that a larger proportion of output is sold to cities from 1000 hectares, if they are farmed as one 1000-ha farm rather than as 500 2-ha farms. On the other hand, in Africa and Asia the 2-ha farms will normally produce more volume and value of output from the same land and water. By feeding themselves and their neighbours, small farms release food and import-capacity for the non-farm economy. Eventually, via efficient and science-backed growth, they also release labour and savings for industrial and services development. That – science-backed, input-intensive small farms, has been the basis of Asia's economy-wide success stories; it can be Africa's.

Context 3: even if small farms work, does land reform?
There are many success stories, both before and during the green revolution. In China, huge output rises after 1974 were partly because of decades of State-backed irrigation expansion and seed science, partly because of less-repressed farm prices – but also substantially because of the huge shift of land from communes to ‘household responsibility’ smallholdings.

In India and several other countries, land reform succeeded directly and formally in only a few areas, but, much more widely, it incentivised and em-powered an ongoing shift to smaller-scale, less-unequal farming (Lipton 2010). Mini-farmers found new ways to access more land, and administrators found new ways (and new incentives) to meet their needs. The path of land reform seldom runs smooth. Not all reform land comes from the biggest or least productive farms; not all land goes to efficient and poor recipients; not all land is transferred without corruption. Yet redistribution of land from large farms to individual small-farm households proved good for output, poverty reduction, and arguably efficiency even in unfavourable conditions, in parts of Ethiopia (1975–7) and Zimbabwe (2001–15) (Ottoway 1977; Scoones 2013). But warnings are needed.

First, reform should be into small, not too unequal farms, not into compulsory (or pressured) farm collectives, co-operatives or state farms. These have never worked. That's partly because they enable remote management and forced extraction of food and fuel for urban use. Even if such traps are avoided, reform into such normally huge farms lacks the advantages for labour management of reform into small family farms.
Second, small and less-experienced post-reform farms need adequate access to farm inputs, science and water; competitive credit; and output-market access. Often they can be provided by competitive markets, including marketing and credit cooperatives (not co-operative farms); big-farm providers, especially post-harvest; and existing suppliers, usually geared to large pre-reform farms. However, experience has shown that, for small, post-reform or less experienced farmers, chances of success are much improved if land reform is paralleled by public or collective action:

- Small farmers need research suitable to their conditions – e.g. less risky seed varieties, even at some cost to yields; micro-irrigation; small, robust fertiliser packaging – all with farm-researcher-farm transmission mechanisms. In most cases, providing these services to small farms is unprofitable or infeasible for the private sector on its own.
- Appropriate inputs (especially seeds, animal health care, water and fertiliser) usually need to be nudged, and sometimes mildly subsidised, for suitable times, places, packaging, and low-risk management for small and post-reform farms.
- Either low borrowing capacity or unpayable debt often brings downfall to farms, in face of risky and highly variable weather and prices. For small, inexperienced or post-reform farms, “downfall” can be forced sale of land or home, shame, even suicide. Small peer-monitored borrower groups, ‘nested’ in larger groups-of-groups responsible to an apex agency, have reached millions of poor borrowers, notably in Bangladesh. However, loan commercialisation (especially by informal lenders) has led to concealed, extortionate interest rates and farmer suicides (The Economist 2017). For small farmers to make the most of their advantages, either a State-linked apex bank focused on them, or State support and enforced regulation of approved private or cooperative lending is often required.
- As post-reform farms specialise and expand beyond subsistence, they need post-harvest services, markets and bulking-up. This is feasible through mixes of self, private and public provision, notably complementarity between small and large farms.

Third, land reform needs to avoid ethnic traps. The aim is to shift land from rich farmers to active, potentially efficient and involved micro-farmers, normally from nearby. The record of compulsory or pressured land-settlement schemes is bad. Reform designs or methods that set groups against each other should be avoided.

Fourth, radical land redistribution is best attained with a high degree of consensus; and this is usually feasible. Bigger farmers tend to have larger proportions of underused land. They incur heavy debts, often to State banks. The less competitive are often eager to quit farming. Many more, especially after one or two climatically
bad years, seek to sell some or all land. A state acquisition programme, with flexible access to funds and good negotiating skills, can often secure bargains, even of good land near areas of high demand from micro-farmers. The better large-scale farmers, even if they lose some land, can and do offset reform-induced losses (if any) by providing many inputs and services for small farmers, commercially and competitively throughout the land reform process.

Fifth, **minimising corruption is key**, as this conference agrees.

**Context 4: soil-water-environment**

In Asia’s Green Revolution, with some imperfect attention to the above five warnings, small farms following reform were not just efficient, but innovated with improved seeds from the mid-1960s to date, achieving over fifty years of rapid yield gains in wheat, rice and maize, and other crops. However, adequate water management – irrigation, *with appropriate arrangements for drainage and recharge* – is normally needed to get significant benefits from large fertiliser inputs. Otherwise, big yield gains are either infeasible, or require ‘mining’ of soil nutrients and water sources.

Even without rapid yield gains, in much of Africa deficient soil nutrients, soil binding, and water management have led to huge soil nutrient loss, erosion, and groundwater depletion. Meanwhile the lack of yield gains, plus rapid population growth, have forced extensive cropping into ever less sustainable lands (Lipton 2012). Global heating makes matters worse via increased evaporation, more extreme rainfall fluctuation, and soil baking and cracking.

For any given set of soil-water conditions, land redistribution to smaller and more equal farms in developing rural areas normally brings some yield gains. Also, smaller farms have more labour to maintain and improve land-soil-water management than big ones. However, they also face more collective-action problems, especially in water management over large areas. Small (and all) farmers normally need support in fertiliser and water management to restore and supplement depleted soil-land-water resources, let alone to get Asian-style long-term yield growth, especially with climate change.

Yet most sub-Saharan African agriculture uses *much less* irrigation and fertiliser than most of Asia, and is improving *more slowly*. Irrigation was possible for a mere 3.3% of arable land in the region in 2014-16. Eastern, West and Middle Africa equipped for irrigation, respectively, 4.5%, 1.4% and 0.7% of arable. These low proportions rose hardly at all from 2003-5, despite efforts and commitments by NEPAD’s Pillar 1 (land and water development). For comparison, in 2014-16 India equipped 45% of its arable land for irrigation (up from 41% in 2004-6); in China it was 52% (56%) (FAO 2017).

Fertiliser use per arable hectare in sub-Saharan Africa rose by 25 per cent, from 2003–5 to 2014–16, but only to 15.7kg. India’s farmers used over ten times more of
the main nitrogen, phosphorous and potassium, (NPK) fertilisers (166kg) per arable hectare and increase over the decade was faster (44%). China’s farmers used over 30 times more fertiliser than sub-Saharan Africa (526kg/ha), up 33% over the decade (World Bank 2019).

Land reform, intensive or extensive farms, and soil-water risks: You may suspect that adding 526kg/ha NPK is often too much. Indeed, many parts of China suffer severe environmental problems due to excessive, ill-managed or over-subsidised fertiliser and irrigation. But in most of sub-Saharan Africa sound environmental policy needs much more water control and nitrogen, phosphorus, and potassium NPK (and micronutrients) in farming, not less. Such intensification needs to build in science, incentives and institutions that are environmentally aware. However, given rising population (and hence rising demand for food and work) and global heating, Africa’s likely alternative to irrigation and fertiliser based intensification is ‘extensification’. That would mean ever-worse ‘crop creep’ into unsustainable lands; lost soil, water and employment; and more hunger. In these conditions, land will increasingly go out of farmable uses, as many small (and large) farms go under.

Yet intensification carries its own environmental threats. To manage them needs special approaches (e.g. collective action on water, bunding and drainage) by small farms. In keeping with an overriding employment priority, labour can be substituted for ‘using up’ water, soil, nutrients. It is wrong to advise that “issues relating to water, climate change and … land usage practices … should be separated from the issue of land reform” (Jankielsohn 2018). Instead, land (and water) reform needs to be planned and implemented in conjunction with enhanced environmental sustainability of land and water resources.

**Context 5: resources, authority and corruption**

Land reform needs resources: to connect and empower local beneficiaries; to acquire land, especially when it is cheap and near land reform beneficiaries; to maximise consensus and political feasibility via partial compensation, and via development of complementarities between larger farmers and land reform beneficiaries; and to support private or public provision of farm science, inputs, services, and market development, all focused on the needs of small farms, including land reform beneficiaries. Yet resources for land reform and its agro-rural concomitants in sub-Saharan Africa are slender, often dwindling, and fluctuating.

**Total resources**: During Asia’s land reforms – which overlapped the build-up to the Green Revolution – agriculture – including irrigation, rural development, and land reform – received about 20 per cent of public expenditure, far above African levels today. ‘African countries allocate an average of 6% of … budgets to agriculture … far below the 10% target set at Maputo … real per capita public spending on

Agricultural research is a prime example of underfunding in sub-Saharan Africa in a field that needs to be increased and redirected to smallholders, for maximum output gains from land reform to be achieved. National outlay on agricultural research is ‘fragile and faltering.’ Yet rates of return of such research are high, averaging 42% per year in 113 studies in 25 sub-Saharan countries in 1975–2014 (Pardey, Andrade, Hurley, Xuding Rao & Liebenberg 2016). Gains can be focused on the post-reform farming poor: ‘public expenditures on … agricultural extension and research in smallholder areas are almost always pro-poor’ (Mosley 2012).

**Authority:** Lip-service is almost universally paid towards ‘co-ordination’ and ‘decentralisation/bottom-up’, but without resources words mean little. Low and fluctuating resources impede joint work by authorities responsible for land reform, agriculture, and water resources. Resource issues also inhibit ‘bottom-up’ work, basing reform initiatives on mutual contact and understanding with local communities. But ‘decentralisation’ and ‘co-ordination’ are everybody’s last priority, and only buzz-words, unless they are backed by procedures and directives or clear structures of authority to make them work and must be supported by resources. Decentralised land reform committees need access to expertise in land measurement, valuation, and development for small-scale farming. Co-ordination will be everybody’s bottom priority, if it merely diverts time and cash already too scarce to discharge the basic priorities of specific ministries. Vigilance against corruption, too, is harder with few public-sector agricultural officials, often paid less than competitively, ill-supported, undertrained or unsupervised.

**Corruption control:** State distribution of land always risks corruption. The rich are tempted to pay officials to avoid reform laws; potential beneficiaries are tempted to pay officials to jump the queue. Resources (as well as authority and example) are needed to draft and enforce laws carefully, to make corruption unattractive and its control normal.

If some categories of farm or farmer are to be exempt from land ceilings, it should involve transparent decision procedures, with reform legislation drafting and practice, that minimise discretion by public officials, from local to head-of-department.
ii ‘Beneficiary selection’ is problematic. Beneficiaries should be those poor people likeliest to farm productively, innovatively and securely. But officials should not have much discretion in selecting beneficiaries; any discretion should be transparent; and its proceedings and results should be prompt, published, and appealable. That also applies to beneficiary selection by local or village ‘land reform committees’, which often tend to over-represent the rich, the old, the powerful and the male. To the extent feasible, beneficiaries should self-select by showing will and ability (a) to farm (more) land employment-intensively, and (b) to repay part of the State’s land acquisition costs by modest instalments, say over 20–30 years, with debt mitigation options for clearly proven illness or adverse weather.

iii Public and transparent processes, including appeals and legal settlements, can help minimise corruption. So can clear, up-to-date records of each household’s land ownership, tenancy and occupancy rights – often absent in Sub-Saharan Africa. This does not imply that communal tenure needs to be subjected to compulsory individual titling.

iv If land is found to be corruptly acquired, it should (as in 2018–19 in South Africa) be returned to the State for proper redistribution. Both givers and receivers of bribes should be identified and dealt with. Detection should be probable, and punishment not over-severe; ‘bribery disappears if expected penalties are sufficiently high’ but very high penalties are seldom actually imposed or believed, and just raise the size of future bribes (Basu, Basu & Cordella 2015).

v Protection of, and incentives to, whistleblowers demonstrably reduce corruption (Brooks 2014).

vi There are lessons from history. By Emperor Aurelian’s (270–273 A.D.) “salutary rigour … mischievous arts and pernicious contrivances were eradicated throughout the Roman world. But if we attentively reflect how much swifter is the progress of corruption than its cure … we must confess that a few short intervals of peace were insufficient for the arduous work of reformation” (Gibbon 1983). Corruption control takes time, patience, transparency, and resources.

vii Above all, land reform cannot be incorruptible if judges, courts and the law itself are largely corrupt; nor if there is, in land matters, little or no rule of law. However, in such circumstances, the enforcement of existing, unreformed land rights cannot be incorruptible either. In such extreme circumstances, whether land reform is sensible or not is an almost meaningless question. In more usual circumstances, the rule of law is imperfect and sometimes clouded by corruption (or by improper use of force), as is the conduct of judges and courts. Then, otherwise justifiable land reform, like any major public venture, needs to prepare for such weaknesses, using the relevant methods considered above.
Some underlying issues: Three other issues around land reform and farming loom large in sub-Saharan Africa: the weakness or absence of statistical series for much of agriculture, especially smallholder output, employment and self-employment; the role and management of communal tenure; and the role of ‘traditional leaders’ and chiefs. All three are implicated in ‘land grab’, a major source of land policy corruption. Addressing these issues requires sharply raising the persistently tiny shares of public expenditure spent on agriculture. These issues need to be addressed in the context of land reform as a priority for employment in reducing poverty, and hence the role of efficient, innovative and sustainable small-farm-based growth.

References


Rethinking land reform in Africa: new ideas, opportunities and challenges.

On whose authority? Land reform, power and economic uncertainty in contemporary sub-Saharan Africa

Sara Berry

For much of the twentieth century, both scholars and development practitioners viewed Africa as a region endowed with abundant supplies of land (Boone 2014). Apart from ‘settler colonies,’ such as South Africa and Kenya where Europeans appropriated much of the best land in the territory, and major urban centres, land was not considered a significant constraint on economic growth, a primary source of conflict, or a priority for reform. Since the 1980s, these assumptions have come increasingly into question. Competition over land intensified, land transactions became increasingly commercialised, land prices rose, and conflicts multiplied. As rival claimants turned to government officials, adjudicators, and NGOs, as well as relatives and neighbours to mediate disputes or testify on their behalf, struggles over land tangled with relations of authority as well as patterns of market exchange and access to wealth – reinforcing or destabilising established hierarchies and networks, and sparking intense debates over value, entitlement, and belonging.

Connections between contestations over land and struggles over authority have been extensively analysed in both scholarly and policy-oriented literature. By the early 1990s, advocates of structural adjustment had concluded that market reforms could not be effective unless property rights were clearly defined and consistently enforced. Donor agencies and African investors alike pressed governments to construct nationwide registers of land ownership and use them as a basis for regulating land acquisition and adjudicating conflicts.

Critics argued that land conflicts were as much about who had the authority to allocate land and settle disputes as about land use itself, and that efforts to impose uniform rules on societies where land was subject to multiple, overlapping claims and shifting boundaries would exacerbate rather than clarify lines of conflict (Juul & Lund 2002). Citing cases from a number of countries, Boone (2013; 2014) argues that conflicts over land vary in impact and intensity according to whether power over land rests with local or national authorities. In South Africa, as analysis has shown, complex programs of post-apartheid land reform foundered on intersecting political struggles at different levels of governance and social interaction (Claassens & Cousins 2008).

The extensive literature on tensions over African land and the conditions under which land is held, used, and exchanged tends to focus on gains and losses. Scholars and practitioners debate how different land laws and policies inhibit or promote productive forms of land use and investment, and how costs and benefits are distributed among different
categories of people (e.g. politicians, state officials, foreign investors, NGOs, ethnic groups, traditional authorities, elders and youth, men and women, rich and poor). Observers also discuss the way land policies reflect the interests of those in positions of authority or explore connections between ‘land regimes’ and social conflict (Boone 2014). Building on these and other analyses, this essay asks not only how structures of authority have impacted patterns of land use and access, but also how land arrangements have reinforced or altered relations of authority? To what extent has the commercialisation of land transactions influenced the way people mobilise and exercise power? How has competition over land and authorities’ attempts to manage it played into the concentration of wealth and power, and the impact of land arrangements on production, investment, and social conflict?

**Time horizons**

In the six or seven decades since most African countries achieved independence from colonial rule, land policies have undergone a sea change from nationalisation to privatisation. In the 1980s, faced with mounting debts and pressure from donors and creditors to cut spending and deregulate their economies, many African governments took steps to define and register rights of land ownership, assigning them to individuals or institutions. The results were mixed: in addition to confusion over what rights owners held, naming individual owners for lands previously accessed by groups of people disrupted long-held understandings among relatives and neighbours. People who were arbitrarily displaced, sometimes by their own relatives, erupted in protest, scrambling to find alternative sources of income (Amanor 2008; Mathieu 2003; Chauveau & Richards 2008). Agricultural and livestock production was disrupted, people were obliged to move, land-related conflicts increased. In some cases, land registration exercises proved so disruptive that they were abandoned before they were completed (Le Meur 2006; Bierschenk & Olivier de Sardan 2000).

Conflicts over rival claims to land divided populations, generating hostilities between ‘first comers’ – those claiming to be indigenous to a contested area – and ‘late comers’ – ‘immigrants’ or ‘strangers’ who may have lived there for two or more generations, but whose forebears were known to have come from elsewhere and whose access to land was contingent on permission from the indigenes (Lentz 2014; Boni 2005; Colin & Ruf 2011). These distinctions were not new, but land registration intensified them, sharpening divisions between ‘indigenes’ and ‘immigrants,’ and heightening struggles over history as well as land *per se*. When politicians sought to exploit these tensions, hostilities escalated, taking on regional or national proportions and, in some cases, leading to civil war (Geschiere 2009; Boone 2014; Berry 2018).

In Côte d’Ivoire, for example, simmering tensions between locals’ and migrants’ access to land in the cocoa zone of the southwest fanned ethno-regional hostilities that became embroiled in political contests following the death of the President, Dr. Boigny,
in 1993. Richly endowed with old growth semi-humid forests ideal for tropical tree crops such as oil palm, rubber and especially cocoa, Côte d'Ivoire had emerged as the leading supplier of cocoa on the world market. In 1946, Boigny, then a delegate to the French National Assembly, led a successful drive to abolish forced labour in the colonies. A surge in product prices brought on by the end of wartime restrictions on shipping, European economic recovery, and stockpiling of raw materials during the Korean War, accompanied by the end of the hated ‘corvée’ (or unpaid work) paved the way for a prolonged boom in Ivorian cocoa production. Migrants from central and northern Côte d’Ivoire as well as poorer, land-locked countries in the Sahel flooded into the sparsely populated forest belt. Welcomed by local farmers who were perennially short of labour, they were put to work clearing portions of forest land and establishing cocoa farms in their stead. In time the immigrants acquired farms of their own, prospering in the long market boom, and generating revenue for the state as well as themselves.

Building on his successful drive against forced labour, Boigny became a leader in francophone West African negotiations for independence. Elected as Côte d’Ivoire’s first President in 1960, he consolidated power in the hands of a single party and did all he could to promote the flow of French capital into Ivorian cities and migrant labour into the cocoa economy. Boigny famously declared that land in Côte d’Ivoire belonged to whoever developed it, and he deployed party cadres across the country with instructions to see that land and labour disputes were settled in favour of the migrants, and that migrants were allowed to vote, irrespective of their nationality (Akindès 2004).

When Boigny died, an intense struggle broke out over his succession—pitting Ouattara, a northerner, against two southerners—Bédié and Gbagbo, a well-known university lecturer from the heart of the cocoa belt, who positioned his party as the champion of indigenous ‘ivoriens’ who felt that they had been dispossessed by land-grabbing immigrants from ‘the north.’ Fanned by simmering tensions over dwindling supplies of uncultivated forest land and the relative prosperity of migrant cocoa farmers, divisions between the three ethno-regional parties intensified though the late 1990s, erupting into outright civil war in 2003.

Comparative histories of migration, competition over declining supplies of uncultivated land, and political tensions yield some striking contrasts and parallels in outcome. Struggles over revenues from cocoa exports between farmers and chiefs in Ghana bore little resemblance to massive land seizures and displacements of black South Africans under white minority regimes—yet in both countries, traditional authorities have experienced a resurgence of political influence based, to a large extent, on their role in land allocation (Berry 2018).

A different pattern of connection between competition over land and political authority is illustrated by the cases of Côte d’Ivoire and Kenya. In many ways, the history of the two countries provides a study in contrasts. Controlled by France during the colonial
era, Côte d’Ivoire never attracted the inflow of white settlers that dominated Kenya. But there were also similarities. Both countries lacked strong pre-colonial monarchies, and neither experienced the anomaly of governance by traditional authorities simultaneously competing and collaborating with modern nation-state regimes. Both are sites of intense competition over access to land, and well suited to the production of valuable agricultural goods. Like the semi-humid forest belt of Côte d’Ivoire, the fertile soils and temperate climate of Kenya’s Rift Valley attracted large numbers of migrants who came into conflict both with earlier land users and with competing groups of migrants (northern Ivorians, Malians and Burkinabè in Côte d’Ivoire, European settlers and non-Kikuyu Kenyans in the Rift Valley). And in both countries, competition over control of fertile lands escalated into violent conflict between different racial and ethno-regional groups.

Struggles over land in Kenya’s Rift Valley played a leading role in the Mau Mau rebellion that convulsed colonial Kenya in the 1950s. As white settlers tightened restrictions on Kikuyu migrants (dubbed ‘squatters’ by self-proclaimed white landowners), many retreated to the Kikuyu heartland in Central Province, setting off struggles with local residents that contributed to the Mau Mau rebellion. Following independence, land-hungry Kikuyu spread into the Rift Valley again, competing this time with other settlers from equally overcrowded rural regions around Lake Victoria. As in Côte d’Ivoire, struggles over land contributed to ethno-regional tensions that inflamed national politics, giving rise to harrowing outbreaks of violence during recent national elections (New York Times 2017).

**Land, instability and investment**

In addition to demographic pressure, over-grazing, soil degradation and urban growth, rising contestation over access to and control of land can be attributed to people’s search for stability in an unstable world. African economies have been beset by instability, at home and abroad. Environmental crises, fluctuations in world markets, and political struggles arising from Africans’ efforts to construct viable nations out of arbitrarily created colonial territories combined to make livelihoods precarious, while creating opportunities for a few to accumulate extreme amounts of wealth. Chronically short of reliable revenues, governments have been unable to build adequate safety nets. Faced with perennial threats of displacement and loss, people have done what they could to protect themselves and their dependents.

A comprehensive account of the ingenuity and resourcefulness with which Africans pursued even ‘marginal gains,’ (Guyer 2004; Adebanwi 2017) and the frustrations they met in the process, is illustrated by just two of the ways people have used resources to try to protect themselves against loss of livelihood: land acquisition, and investments in social relationships. In both cases, people draw on repertoires of past practice as well as current resources.

Much of the rationale for defining rights of ownership, registering and issuing titles
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to landowners rests on the presumption that people will not invest in land if their rights to it are not secure. As has been pointed out, legislation is only the first step (Byamugisha 2017). How laws are interpreted, implemented and enforced also influences patterns of land holding and use. Many transactions in land are ‘informal’ – unregistered, undocumented and beyond the scope of official regulation. Even the statutes are not always clear on which rights are guaranteed (Byamugisha 2017). The World Bank’s position has also shifted, from insisting that landowners must be free to sell land outright to acknowledging that leases may provide similar incentives for investment in increased productivity while reducing the potential for conflict by separating ownership from profit (Holden et al. 2013; Byamugisha 2017; Colin & Ruf 2011).

Proponents of titles argue they provide security, and that security is a condition for investment and, therefore, economic development and growth. Since the World Bank and others began promoting land registration and titling in the 1980s, a number of studies have pointed out that the sequence is often reversed: people invest in land in order to secure their claims to it (Besley 1995; Kevane & Gray 2001). Investments often take the form of structures attached to the land—buildings, trees, wells, fences, etc.—but may also include measures such as fallowing or intercropping that sustain soil productivity or protect crops against diseases, marauding goats and other pests. Although anchored to the land, these investments do not belong to the owner(s) of the land, but to the purchaser. Laws that secure landowners’ claims may or may not affect the ownership of land assets.

With the investment in social relations, land holdings may be secured not only by laws that deal explicitly with claims on landed property, but also by alternative sources of income and support if yields from land holdings fail. A person who can count on assistance from others is in a better position to cope with misfortune than one who cannot. It makes sense, therefore, to treat outlays that give people claims on the resources of others as investments, and the claims themselves as part of the portfolio of assets in which they invest.

Viewed in the context of endemic insecurity, practices that appear to fly in the face of rationality or common sense become understandable. Describing the precarious conditions of life and livelihood in a coastal fishing village in Sierra Leone, Jennifer Diggins (2018) recalls her initial astonishment on finding that many fishers do not eat—let alone sell—the little edible sea life they do bring in, but rather give most of it away to women who beg for a little fish to feed their families. In exchange, the fishermen receive brief verbal blessings, but no payment of any kind.

In the past, fishers’ catches were substantial enough to feed their families and sometimes their neighbours comfortably, leaving a surplus to trade. In recent decades, however, catches have dwindled, reduced by overfishing and changes in climate. Fishers and their neighbours are uncertain from one day to the next whether they and their families will eat. In these circumstances, Diggins argues, giving away fish to neighbours
holds open the possibility that others will provide assistance if a fisher is desperate. By
giving away fish today, fishers accumulate an intangible fund of obligations that they
could call on in the future.

A similar logic accounts for a range of supposedly irrational or exotic practices
described by travellers and ethnographers over many years. Before the local economy
became commercialised, Luo farmers in Kenya accumulated livestock to give them away.
“Outstanding loans are not just a kind of wealth, but also a kind of power,” (Shipton
2007, p.208). A similar argument runs through many ethnographic accounts of Africans’
reluctance to sell livestock, even when prices are attractive, and they need the money.
Whether holding on to livestock when they could be sold at a profit, performing services
for others without compensation, or ‘giving away’ goods, people accumulate social credit
that may add wealth (e.g. offspring of livestock) or be used to offset loss in the future.
Taken together, they represent investments in claims on the assets and/or services of
others. Whether these claims can be realised is another question (Graeber 2011).

Like investments in infrastructure, inventories and equipment, the effectiveness of
investments in social networks and obligations depends on the political and economic
contexts in which they occur. Just as people whose resources are limited or unstable may be
unable to pay their debts, so broader conditions of economic and political instability may
undercut the reliability of social networks as safety nets, even for their most committed
members. One of the enduring ironies of everyday economic life in Africa is that those who
need social networks the most are often surrounded by people whose circumstances are as
precarious as their own. Rather than act as a levelling device, investments in social networks
often reinforce inequality, not only in wealth but also in social power (Meagher 2010).

**Transformations in authority**

Frustrated by land titling efforts securing property rights for well-to-do male elders at the
expense of women and youth, some policy analysts have backed away from promoting
individual ownership as a condition for investment and development. Recognising that
customary tenure arrangements have not stopped African farmers from investing in land
improvements, Deininger and others (2010) have suggested that land reform programs
should issue land titles to families or communities. Group titles, it is argued, encourage
collective outlays on land improvements without dispossessing vulnerable members of
the groups. The problem, as Peters (2004), Amanor (2001) and others have pointed out,
is that ‘customary’ social relationships are rarely egalitarian. Husbands wield authority
over wives, men over women, elders over youth, etc., and may use it to extract labour
or appropriate land and other assets from their subordinates, especially when resources
are scarce or precarious. Land reforms that concentrate authority over land in the hands
of, say, heads of households tend to reinforce household and community differences in
influence and income.

A striking example of the unanticipated effects of land reform legislation has
been the recent resurgence of traditional authorities in formally democratic countries. Pressed by international donors and some of their own citizens, a number of African states have taken steps to register land holdings, define landowner rights, or strengthen land administration, in the name of securing land rights and promoting investment. Noteworthy in part because of their very different histories, Ghana and South Africa are two countries in which land reform efforts have reinforced the political power of traditional authorities (Berry 2017; 2018).

After the ANC came to power in South Africa in 1994, the newly elected government launched a three-pronged program of land reform, designed both to redress the wrongs of the past and stimulate productive and equitable patterns of land use. To reduce poverty, undo the autocratic power of apartheid-era chiefs, and give political voice to women and other unrepresented residents, the ANC passed laws establishing democratically elected Local Councils in the former ‘homelands’ (or bantustans, now called Communal Areas), and gave them authority over the allocation and management of land. To avoid a political backlash, however, the ANC allowed chiefs to retain many of the perquisites – such as offices, staffs, salaries, even car allowances – they had enjoyed under apartheid. Lacking resources, the new Local Councils were unable to compete with the old ‘tribal’ authorities, whose bureaucratic resources gave them the capacity to meet constituents’ practical needs. Residents of the Communal Areas continued to depend on the chiefs for documents such as certificates of residence, without which they could not legally obtain jobs in the cities or commercial farming areas where jobs were available (Oomen 2005; Ntzebeza 2005; Claassens & Cousins 2008).

In postcolonial societies that were not burdened with South Africa’s extreme racial segregation, traditional authorities (chiefs, ‘earth priests,’ kin groups) have also recovered much of the influence and privileges they enjoyed under colonial-era indirect rule. Nowhere is this pattern so evident as in Ghana. Despite denunciations of neocolonialism and vows to eliminate all vestiges of indirect rule, Nkrumah was ambivalent about ‘tradition’ in modern Ghana. During his reign, he deposed chiefs who had opposed his rise to power, sending some of them to prison, but courted others who supported him (Dunn & Robertson 1973; Rathbone 2000). While Nkrumah’s regime passed laws empowering the state to appropriate land as needed for public purposes, they allowed chiefs to retain authority over land.

Other African leaders have been even more ostentatious in their efforts to gain legitimacy by associating themselves with images of past African glory. Joseph Mobutu—the young army officer who seized power in Congo in 1965, renamed the country Zaïre, and made speeches about economic modernisation while draped in leopard skins and brandishing spears (Young & Turner 1985). Others who have drawn on traditional symbols and prerogatives to claim political legitimacy and promote development include the Zulu Chief Buthelezi and the present Asantehene, Osei Tutu II.
Ousted from power in 1966, Nkrumah was succeeded by a series of weak regimes, each eager to muster as much popular support as they could. Loath to offend local leaders who might bolster a regime or help quell opposition, politicians acceded to chiefs’ demands for statutory support. Beginning in 1969, the constitution of each new civilian regime reaffirmed chiefs’ authority over land, and the Constitution of 1992 (which is still in force) added a clause that gave chiefs “exclusive jurisdiction overchieftaincy affairs,” (Arhin 2001). In practice, this barred the state from interfering in matters of succession—a practice that heads of state had used to control chiefly politics to their own advantage—but it also expanded Ghanaian chiefs’ power to intervene in land transactions. Since 2007, when international investors began buying up large tracts of supposedly unused rural land, in most African countries land deals have been negotiated by the state. Declaring that they did not interfere in chiefly affairs, officials in Ghana relinquished such negotiations and investment money to traditional authorities (Boone & Duku 2012; Boamah 2014; Yaro & Tsikata 2015).

Increasing numbers of traditional authorities are presenting themselves as innovative leaders in the business of development. Equipped with secondary school or university degrees, careers in business, medicine or law, and networks of contacts at home and abroad, ambitious chiefs are using their educational and professional credentials to reinsert themselves into the apparatus of modern governance. Some, like the Asantehene, have been quite effective in attracting new businesses and financial resources to their constituencies. The fact remains, however, that they are not elected to public office, or subject to the kinds of accountability that, in theory, constrain their government colleagues. Working alongside, rather than as part of the state, they offer an example to traditional authorities across the continent of the limitations of statutory reform to control ‘informal’ modes of governance, as well as economic activity (Berry 2013).

**Conclusion**

The recent surge of African land ‘sales’ to international corporations and other large-scale investors has pushed many small-scale farmers and others off land that they and their relatives have used, sometimes for generations, making their livelihoods highly precarious. Some large land acquisitions have been purely speculative, but even where buyers have followed up, their contributions to economic development have been decidedly mixed (Hall, Scoones and Tsikata 2017). What these investments have done is to generate gains for power brokers—state agencies, politicians, chiefs and others who negotiate deals with large land buyers—and reaffirm their authority over access to and control of land. Such gains have been offset or exceeded by accompanying losses for people who were already piecing together income from several low-paying activities to make ends meet. In some cases, people have been pushed off land they were actively using. In others, however, land sold or leased to large-scale investors was considered unused because it was not occupied.
continuously but was actually a partial source of livelihood for people who were not able to earn enough from any one occupation to support themselves and their dependents. Land that would otherwise have been left in fallow, grazed periodically by livestock, or used as a source of goods such as water, fuel, wild foods, building materials, or medicinal plants has been sold to investors, curtailing many people's ability to support themselves.

As African economies have become more tightly integrated into global markets, informal social safety nets have become increasingly frayed – and increasingly necessary – as control over land and other resources becomes concentrated in the hands of powerful people with close ties to the state. This includes not only politicians and high-level bureaucrats, but also traditional authorities – men and women whose education, business connections and professional qualifications equal those of professional bureaucrats and politicians, but whose legitimacy derives from their status as living embodiments of revered ancestral traditions. Active players in contemporary economic and political affairs, they escape the accountability that elected office holders and civil servants are held to—at least in theory.

If donor-supported efforts to define and secure land ownership have worked to concentrate wealth and power in the hands of a few, while making livelihoods more precarious for many, perhaps it's time to rethink the kinds of policies that would be most effective in lifting and keeping people out of poverty. Rather than continue efforts to redefine land ownership that have so far only benefitted the rich and powerful, it might be more effective to work on increasing and stabilizing incomes, especially for people whose livelihoods are low and precarious.

Programmes to stimulate job creation are one obvious approach. As this analysis suggests, they would be more effective if backed up with support services, such as income supplements, free or low cost housing, health care, child care, and so forth. African governments should take the lead with support from international donor agencies, NGOs and carefully constructed public-private partnerships. Strengthening socio-economic safety nets might well do more than problematic ‘land reforms’ – not only to secure livelihoods, but also rebalance the distribution of power between democratically elected governing bodies on one hand, and unelected (and unaccountable) traditional authorities and patrons on the other.

References


The future of land: commercial pressures and the case for systemic law reform to secure rural land rights
Lorenzo Cotula

Introduction
A few years ago, I travelled to central Ghana, in the fertile farmlands west of Lake Volta. A global land rush was in full swing: large agribusiness plantation deals were announced at a dizzying pace in many low and middle-income countries. This transition belt between Ghana’s forest zone and the northern savannah proved popular with international agribusinesses, and I came to understand the local impacts of the deals.

One day I spoke with a farmer who, until then, had made a living growing maize and yam. Shaded by a rough straw hat, the grey-bearded man retraced how a jatropha plantation took much of his land. He thought the compensation was not enough to get land elsewhere and felt too old to establish a new farm anyway – or take a job with the plantation. He had some land left but knew they would come for that too. When that happens, he concluded, he would just stay at home.

I asked him how he felt about these developments. “I am unhappy about what happened”, he replied, “but there was nothing I could do”. As a long-term migrant, he did not own the land: the power to allocate land rested with the traditional chief, who signed a lease with the company. Behind the farmer’s experience lay not only the growing commercial pressures on land and resources, but also the way law structures property, territory and decision-making power. Confronting these issues alone seems impossible: it calls for a systemic reform agenda to secure rural land rights.

The farmer’s response illustrates the ways in which many people across the global South experience dispossession. One is the tangible dimension associated with setting up a large investment project – in this case, an agribusiness plantation. A contract is signed, transferring control over a piece of land to a commercial operator. The land is cleared, and industrial monoculture displaces a diverse mosaic of small-scale farms.

But the deals also exposed far-reaching changes in property systems, both longstanding and recent. ‘Customary’ systems evolve over time. Peters (2004); Cotula and Cissé (2006); Lavigne Delville (2007); Amanor and Ubink (2008); Chimhowu (2019). In Ghana, political elites since the colonial era have redefined customary rules to advance their own interests, often strengthening the powers of traditional authorities and dispossessing rural people (Amanor and Ubink 2008). Around the world, there have been extensive developments in national and international law – from business-friendly land law reforms to trade liberalisation, all the way to the negotiation of international
treaties protecting foreign investment (Cotula 2016).

These two dimensions – the tangible and the intangible – reflect different time horizons: the tangible dimension is partly linked to short-term, cyclical factors such as fluctuations in commodity prices that create new incentives for commercial cultivation, or policy forces that promote transitions in land use; while evolutions in property systems are more closely related to longer-term processes of socioeconomic and political change. But the two dimensions are interlinked, because evolutions in property systems can facilitate land clearances.

Worldwide, the wave of agribusiness plantation deals over the period 2005–2015 was one manifestation of a global commodity boom and bust, and many deals in low and middle-income countries have since failed. But while narratives of resource scarcity can be used and sometimes abused for political ends, (Scoones et al. 2019) most analysts expect demand for commodities to increase longer term, driven by global population growth, changing consumption patterns and expectations, and compounded by public policy choices.

We need to understand these commercial pressures in their diverse and evolving tangible manifestations in order to draw lessons from their impacts, and on possible strategies for responding to the anticipated demand for natural resources in the coming decades. But we also need to explore the more intangible processes that drive the deals and their impacts, and the structural features of governance frameworks that favour large-scale commercial interests over the rights of rural people. Only this holistic analysis can sustain a more informed and ambitious reform agenda to secure rural land rights in the longer term.

**The commodity boom and bust**

Let us start with the tangible dimensions. From the early 2000s, public policies and market forces sustained a wave of investments in low and middle-income countries across the natural resources sectors. While the exact figures are contested, partly due to methodological challenges, (Oya 2013; Edelman 2013; Locher and Sulle 2014) evidence indicates that the global food price hike of 2007–2008 fostered a surge in large-scale land transactions for plantation agriculture, particularly in sub-Saharan Africa, but also in Asia and Latin America, for a diverse and evolving range of fuel, food, agro-industrial and ‘flex’ crops (GRAIN 2008; Deininger et al. 2011; De Schutter 2011; Anseeuw et al. 2012; Scoones et al. 2013; Nolte et al. 2016; Borras et al. 2016).

In addition, global investment in metals exploration was estimated to have increased ten-fold between 2002 and 2012, and investment in fossil fuels to have doubled over the same period (Le Billon and Sommerville 2017). Petroleum and minerals extraction began in areas that had previously been marginal in commercial terms, and petroleum operations on new frontiers resulted in several low and middle-income countries becoming producers, including Ghana (Macauhub 2014).
Governments of different political stripes saw the wave of investments as an economic opportunity – to promote growth, create jobs and generate much-needed public revenues. But the deals were accompanied by widespread concerns about the development pathway being pursued, and how the costs and benefits from commercial investments were being distributed in practice.

A vast body of research documented land conflict and dispossession, at different scales and under diverse terms, associated with agribusiness plantation projects (Schoneveld et al. 2011; UNHRC 2012; Kenney-Lazar 2012) and with extractive industry operations, (Kishi 2014; OCMAL 2015; Pichler and Brad 2016) producing differentiated impacts based on socio-economic parameters such as age, gender status and wealth (Behrman et al. 2012). Accusations of ‘land grabbing’ have become common currency in public discourses, (La Via Campesina et al. 2010) and many commercial ventures found themselves at the centre of public contestation, and in some cases court litigation, with diverse social actors challenging the deals, or the underlying public policies, to seek better terms or demand their termination (Alonso Fradejas 2015; Gingembre 2015; Grajales 2015; Moreda 2015).

More recently, deal making slowed as a result of changing commodity prices. Following the oil price drop from mid-2014, the number of active rigs in Africa and Latin America decreased (World Bank 2016). In the mining sector, exploration budgets were halved between 2012 and 2015 (SNL Metals & Mining 2016). And while new agribusiness plantation deals continue to be signed, the pace of deal making has significantly slowed compared with the peak of 2008-2012 (Cotula and Berger 2017).

However, at the local level, the pressures on resources continue to be felt. In the agriculture sector, for example, abandoned projects left behind a legacy of difficult land disputes, (Sulle and Nelson 2013; Schwartz et al. 2019) and those ventures that are still ongoing have now moved from contracting to implementation, so their land footprint has become more apparent (Nolte et al. 2016). In many contexts, shrinking political space for negotiating resource disputes is increasingly exposing activists to brutal repression and intimidation (Global Witness 2016; Oxfam 2016; RRI 2017).

Many governments continue to identify the natural resource sectors as a foundation for national development strategies; and most analysts expect that global population growth, rising incomes and changing consumption patterns will fuel demand for commodities. Therefore, pressures on land and natural resources are likely to grow, particularly in strategic hotspots where minerals, petroleum, fertile soils, freshwater and infrastructure are concentrated.

Other factors are also driving competition for valuable lands. These range from longstanding land concentration in the hands of elites, particularly in areas connected to growing urban markets (Mathieu et al. 2003; Djiré 2007; Jayne et al. 2014) to public policies promoting industrial and infrastructural development, including a renewed momentum for the establishment of special economic zones. These processes reflect
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profoundly different social phenomena and raise distinctive land governance issues. But they have in common their potential to exacerbate a resource squeeze on socially or politically marginalised groups. A brief discussion of special economic zones can help illustrate this issue.

The spread of special economic zones

Special economic zones are “demarcated geographic areas … where the rules of business are different from those that prevail in the national territory” (Baissac 2011, p.23). Broadly aimed at promoting investment to foster industrial development, special economic zones can have diverse objectives, focus and legal regimes – including export processing zones, free trade zones, industrial zones and agribusiness parks. In many middle or higher-income countries, special economic zones are used to stimulate industrial upgrading; while low-income newcomers often deploy these zones to kickstart manufacturing, including by promoting local processing of natural resource-based commodities (UNCTAD 2019).

Recent years have witnessed a new surge in the establishment of special economic zones. The United Nations estimates that there are nearly 5,400 of them in the world, more than 1,000 of which were established since 2014, with an additional 500 anticipated in the coming years (UNCTAD 2019). Existing policy initiatives may provide further momentum, with China’s Belt and Road Initiative often cited as an example. A wave of law-making has accompanied these processes: UNCTAD counted some 127 special economic zone laws worldwide, of which almost 70 per cent were adopted since 2000, and nearly 40 per cent since 2010 (UNCTAD 2019).

The vast majority of special economic zones are in Asia but the zones have been spreading rapidly in Africa too. While several South and Southeast Asian states launched their special economic zone programmes in the 1970s–1980s, many programmes in Africa were adopted in the 2000s. Today, 237 such zones were reported to have been created in Africa, of which 51 were under development (UNCTAD 2019).

Special economic zone policies differ widely, as do their ultimate outcomes. Suffice it to say that evidence on economic performance is mixed, with UNCTAD finding that many programmes “fail[ed] either to attract significant investment or to generate economic impact beyond their confines” (UNCTAD 2019, p.128). Further, the development of such zones has been associated with negative social and environmental impacts, and with concerns that, where exceptional legal regimes depart from national law in areas such as land acquisition and labour rights, they can facilitate dispossession and exploitation (Cotula 2017; Cotula and Mouan 2018).

What is clear is that, at scale, the creation of special economic zones can compound pressures on land and other resources. In terms of aggregate land area, the land footprint of the zones seems smaller than that of very large agribusiness plantation deals: UNCTAD estimates that the land area of special economic zones ranges from less than a hundred to a
few hundred hectares (UNCTAD 2019). But due to their inherent connectivity requirements, many zones are located in areas close to urban centres or transport infrastructure, and thus in higher-value and possibly more densely populated areas, so their land impacts may be felt more acutely.

In practice, research has documented the ways in which the creation of special economic zones can foster more commercialised land relations, and profound transformations in land ownership structures, including through land speculation, rent-seeking and dispossession (Levien 2018). Many special economic zones have been associated with disputes over land acquisition or converting land from agricultural to industrial use or the expropriation of homes, farms and other economic, social or cultural assets (Sampat 2010; Bedi 2013; Cotula and Mouan 2018).

**Understanding the legal structures of dispossession**

The overall result is that commercial pressures on valuable lands are projected to increase, even though the nature of those pressures and the factors that underpin them will be changing over time. This raises questions about the extent to which governance frameworks can effectively and equitably manage the growing competition for land. These questions return us to the conversation with the farmer in Ghana; his sense of powerlessness in the face of livelihood disruption, and the more intangible dimensions of commercial pressures on natural resources – particularly how evolutions in property systems affect the ways in which different land claims are protected and reconciled.

While arrangements vary greatly, both between and within countries, recurring governance patterns tend to promote exclusionary outcomes. Law plays a central role in these processes. This is not only because, in general terms, legal technique is instrumental to converting natural resources into commercial assets (Pistor 2019). Land cannot be physically removed, but long-term, transferable land rights can be traded, as can shares in landholding companies.

More specifically, and beyond the extreme diversity of socio-juridical contexts, four recurring features of the law tend to facilitate resource allocation to commercial projects (Cotula 2016):

- The extensive land allocation powers of the state, and in some countries of traditional authorities, make it easier for companies to obtain concessions over vast areas claimed by large numbers of people. This applies where the state owns all or most of the land – but also where unchecked powers of eminent domain enable authorities to expropriate privately held resources and reallocate them to commercial operators.
- Many states have reformed their national laws to compete for mobile international capital, making resources available to companies on favourable terms – from land law reforms and tax incentives to ‘stabilised’ contractual regimes (Shemberg 2008).
• While evidence shows that many traditional land use practices are resilient and sophisticated, rural people’s resource rights enjoy variable but often limited legal protection – including in jurisdictions where legislation or the constitution formally recognises those rights (German et al. 2013). For example, many land laws condition protection to proof of ‘productive use’, and skewed notions of productivity undermine the resource claims of shifting cultivators, pastoralists and hunter-gatherers (Nguiffo et al. 2009).

• A global network of international investment treaties has emerged allowing foreign investors to bring arbitration claims against the state and seek compensation for state conduct adversely affecting their business (Coleman et al. 2018). Often described as instruments of the rule of law, the treaties can protect foreign investors’ rights, and even their expectations, (Perrone 2017; Johnson 2018) against public action to withhold, reopen or revoke commercial concessions in the face of local opposition (Cotula 2015, 2016; Cordes et al. 2016).

Taken together, these features enable the state to transfer resources to businesses, and they can constrain measures that adversely affect business interests. This legal arrangement mirrors complex relations among the state, national elites and international capital: legislation that, continuing colonial legacies, vests land ownership with the state enables the elites who control state institutions to partner with businesses and capture benefits from resource extraction. Weak protection of rural resource rights facilitates these strategies, while investment treaties can protect exclusionary deals that favour international capital.

Where traditional authorities play a more prominent role, property systems are also grounded in history and political economy. In Ghana, for example, the land governance role of traditional authorities is rooted in arrangements dating back to colonialism (Amanor and Ubink 2008).

While traditional authorities locate decision making closer to rural people, ruling elites have often relied on local power-brokers to harness rural votes, and the payments, jobs and contracts associated with commercial investments can be a way to share rewards after an election. Strengthening the powers of traditional authorities can be instrumental to these kinds of transactional politics. (Boone 2003; Poulton 2014).

In other respects, the law does provide opportunities to secure land rights or obtain redress. The negotiation or ratification of international human rights instruments, for example concerning indigenous peoples’ and peasants’ rights, have established important parameters for enhancing local control over natural resources – if not always effective avenues for legal recourse. Many states have adopted legislation that, for example, recognises rural land rights and requires social and environmental impact assessments for development projects, and several reforms over the past three decades have augmented these protections.
In sub-Saharan Africa, a wave of land law reforms since the late 1990s, often adopted in connection with wider changes in political organisation, strengthened legal recognition and protection of customary land rights in several jurisdictions (Knight 2010). Innovative approaches include legislation that abolishes the presumption of state ownership for customary lands and devolves land administration to local level, for example most recently in Mali (Djiré 2017). But more implementation time is needed to assess the outcomes. Also, relatively few reforms have changed the fundamentals, and many aimed to promote foreign investment as well as secure rural land rights – creating scope for trade-offs between different policy objectives (Alden Wily 2014).

In addition, ‘progressive’ reforms can create tensions between the formal social contract reflected in the law, and the informal socio-political processes that determine how authority is exercised in practice – so implementation is often undermined by a de facto policy thrust that hollows out from within any innovative legal concepts (Guevara Gil and Cabanillas Linares 2019). For example, while some laws establish specific arrangements for governments (or investors) to consult local landholders, implementation has often fallen short of expectations in the face of a perceived policy imperative to open up resources for commercial developments.

**The case for reform**

At root, the growing pressures on land, and the role of law in shaping the ways those pressures manifest themselves, embody tensions between different conceptions of land – as a commercial asset to be harnessed for economic development, and as a basis for livelihood activities, social identity, cultural value and the collective sense of justice. Many national legal systems present a misalignment between local perceptions of land relations, and the central role of small-scale rural producers in local economies and societies, on the one hand; and legal arrangements that – on paper or in practice – favour large-scale commercial operators, on the other.

When given an opportunity, small-scale rural producers have demonstrated to be effective and resilient, yet the law often places them at a disadvantage and exposes them to dispossession. In addition, local-to-global legal regimes are geared more towards facilitating transnational investment flows than they are towards ensuring that these flows respond to local aspirations, or that governance systems enable people to seize the right investment opportunities and to advance them in socially inclusive ways.

There is a compelling case for securing the land rights of rural people – not only to protect their livelihoods, culture and social identity in the face of growing land competition, but also, in more positive terms, to recognise and support their contribution as key actors in the development process. International soft-law instruments developed over the past ten years provide guidance with unprecedented granularity on what this might entail. Relevant instruments include the Voluntary Guidelines on the Responsible Governance of Tenure.
Rethinking land reform in Africa: new ideas, opportunities and challenges.

Many initiatives to implement these instruments have provided guidance for businesses on how to address land rights issues in their operations and supply chains. While this can fill gaps in the law, advancing a bottom-up perspective to the governance of resources and of investments requires more systemic reconfigurations from local to global levels – building on recent reform initiatives and stepping up efforts to strengthen the policies, laws and institutions that underpin the governance of land and investment, both on paper and in practice.

Any reform needs to be tailored to context. But a few general pointers can be advanced. First, the interplay of local to global policy arenas requires concerted action at multiple levels. There is a need to secure local land rights at scale, but achieving sustainable results also requires addressing the global dimensions – including the international treaties and dispute settlement arrangements that protect foreign investors’ landholdings. Similarly, ongoing debates about reforming the international investment regime must be informed by a fine-grained understanding of how this regime intersects with local natural resource relations.

Secondly, the pervasive vested interests and power imbalances mean that any reform effort cannot just rely on technical fixes. While old-school approaches to assist law reform focused on delivering expertise to inform legislative drafting, law reforms can only be sustained if they recognise the politics and proceed from the bottom up, by building on insights from the field, for example about the real-life challenges rural people face and the local responses they have developed; and by recognising that political choices are at stake and require the effective participation of social actors in law-making processes (CED et al. 2019). Given the often difficult politics of implementation, there is also a need for sustained investment in politically savvy action to translate legal norms into real change.

Thirdly, addressing commercial pressures on land requires tackling often neglected land policy issues. Recognising in law and protecting in practice rural land rights, including those based on customary tenure systems and the associated socio-cultural values of land, are key priorities. But these actions do little to secure rights if land can then be expropriated with little protection or safeguard, including for commercial investments. This creates the need to also strengthen safeguards in compulsory acquisition, by tightening up public-purpose and compensation requirements; and to reform the processes whereby public authorities approve land-based investments, including screening of investment proposals, environmental and social impact assessments, and arrangements to arrive at consensual solutions based on negotiation with local actors.

**Moving forward**

Since that visit to Ghana, many jatropha ventures in Africa have failed. The commodity boom and bust has largely run its course, and different forces are now driving commercial pressures on land. I have not seen that farmer again or learned how he, his family and
community coped with the longer-term changes. But the policy imperative is more relevant than ever: strengthening the land rights of rural people so they can have greater control over land, livelihoods and processes of change.

Governments have a central role to play in addressing these issues – by conducting holistic reviews of their policy, legislative and institutional frameworks governing land and investment; and by enacting and implementing tailored reforms of the most effective levers for securing rural land rights. International instruments such as the Voluntary Guidelines on Governance of Tenure and the African Union Framework and Guidelines provide useful reference points for this work.

In these processes, governments should listen to social actors and facilitate their participation, including federations of small-scale rural producers and non-governmental organisations supporting them, and recognise that these stakeholders play an essential role both in developing reforms and in implementing them. Donor agencies should support both state and non-state actors in these efforts, and advance investment models that recognise small-scale rural producers as development protagonists.

Research can sustain this action, not only by documenting what practical approaches are effective, and under what conditions, but also by critically interrogating the challenges and the deeper-level processes at work – recognising that identifying problems is the first step towards developing effective solutions. The need for concerted action from local to global levels, and for managing the pervasive politics at play, calls for new collaborations between research and practice and between actors capable of operating at different levels and places.

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Adjusting to new era agrarianism: tackling the troubled interface of public and community property

Liz Alden Wily

Introduction
Tenure reform is offering Africa an unexpected opportunity to move into a more inclusive and equitable era of social transformation through decolonising property rights. There is increased recognition that customary land rights can no longer be treated as permissive rights of occupancy on unowned public or government land but as registrable ownership.
As community based customary tenure embraces more than 70 percent of the continent, reform in its status challenges the classical routes of growth and wealth creation. Predictably, hesitation and pushback abound. Expanding the scope of public lands is one means through which governments have indulged in grabbing the best community lands for themselves and continue to attempt to do so. Yet, tracks to new property relations between state and citizens cannot easily be closed. The global nature of the reform contributes to its force. This paper will examine tenure reform, and argue that one of many old norms is currently under challenge as reform unfolds: compulsory acquisition as affecting community lands. The paper will argue that overdue adjustments in its conceptual basis and practice could herald a new, fairer era in agrarianism, deeply significant for the continent.

The argument
Rising recognition of customary tenure as a legal property system has the potential to propel agrarianism into a more inclusive social and economic mode. It can deepen land security for several billion of the world’s rural poor, an important investment for more equitable transformation. The essence of contemporary reform is a departure from the cornerstone notion established by Roman, then European, thence global law, that property in land comes into being only on the say-so (and documentation) of the State, and is by nature individual, exclusive, and until recently in history, limited to male elites. Or, as 19th century Liberia termed it, under norms received via America, limited to those who could read and write, had glass in their hut windows, and wore top hats to church. From the perspective of two millennia, the present reform is somewhat late, and revolutionary. Nevertheless, it is in progress, and with greater acceptance than might have been expected even half a century past. The reason is before us; despite the rise of industrial capitalism, the world remains primarily land and resource dependent (c. 150 of 196 states are definably agrarian), and within the land dependent rural population, community rather than state-maintained land systems remain dominant - and vibrant. This is despite, or because of,
the challenges of social transformation. Moreover, new recognition offers both a devolved land governance regime and embraces long ignored off-farm resources for livelihood, a shift which 21st century democratisation and landscape approaches favour.

However, the agrarian world has changed in the interim, through mainly colonial state-making entrenchment of a state law norm that untitled lands belong to the State, and upon which millions thus permissively live and survive. Despite better instincts, human rights and political commitments, modern governments visibly experience difficulty releasing those same lands to their people, legal intentions aside. The given excuse is everywhere the demands of economic growth, ill-attending to restructuring old modes of growth which might involve rather than dispossess those with key means of production, land and labour. Dispossession remains the overused default. This struggles with the demands of new era agrarianism, in which the rights of both majorities and minorities cannot be fairly or so easily cast aside. The result is a messy, piecemeal process towards both land security for millions and fair land governance. These are, this essay argues, slowly carving a path forward, and laying more fitting foundations for new approaches to society and to how its economy grows. While it would exaggerate the case to predict that community based landholding will become the largest acknowledged property sector by century end, it can be more safely predicted that this sector will have established a firm presence by then. This will be alongside classes of private and a smaller but more focused public property sector.

Contemporary tenure reform
Reformism affects customary tenure in all its parts; the status of the rights it delivers and upholds; the identity of right holders who can variously be individuals, spouses, families, clans and communities; the status of the system itself as inextricably community-based. These rights form an operating regime upon which modern, devolutionary, democratised land and resource governance can build and support the better understood reach of the community’s domain. Critically, this community reach includes collective rights to shared off-farm lands which are naturally communal such as rangelands, bushlands, swamps, forest, steep areas, and in some regions mountains or arid lands sustaining seasonal rights and use.

It is around this last attribute that most contention arises. For, with the stroke of a pen, a modern land statute can end the long status of communal lands as wastelands, terres vacantes et sans maîtres, herrenlos, baldios, or mawaat, deemed by their lack of purposeful transformation and collective nature as unowned, and disposable at will by the State. In contrast, at least the house and farm, region to region has enjoyed de facto security, as acknowledged peaceable occupation and use, less easy to dislodge without some reparation. In agrarian economies including in Africa, these were the target of 20th century farm-focused redistribution for growth, the target of compulsory conversionary
individualised titling. These regularly dislocated rights from their familial and communal context and social assurance regimes.

Current land reform is somewhat different. Its principal construct is socially collective entitlement (as compared to corporate titling), a formal, state-provided and executed process. In some states it is provided in plural forms, issued, for example in Peru, Bolivia, Colombia and Brazil to indigenous, intercultural, former slave, peasant, coastal, or other present-day community forms, each distinctive in one or two attributes as sought by the owners or deemed needed for their protection.

This diversity illustrates a less tangible reformism in the expanded nature of property in land itself. It delinks the rooted convention that property is automatically fungible and alienable, a commodity exchangeable sight unseen through paper transfers. New typologies of indefeasible property within the community land sector now emerge, including parcels which are inalienable and indivisible in perpetuity (Alden Wily 2018a). Just as important, mirror conditions are at times being placed on the State, where the owner is a vulnerable, marginalised or indigenous group, or the subject lands too important environmentally or customarily to permit transfers. New laws often render such properties ‘impresscriptible’, that is, inviolable, irrevocable, unable to be seized, extinguished, or converted by governments. The consent of the community owner to land use changes such as mining is increasingly also required. These new versions of property have tremendous potential for transformation in a major sector of public property: protected areas. These are still losing quality and cover under state tenure and governance in Africa, as the Food and Agriculture Organization’s periodic issue of ‘State of the World’s Forests’ reminds us. Indigenous forest peoples in particular, are actively looking for restitution on both agreed conservation and tenure terms, such as the above. This is an important area of devolutionary democratisation to which present-day reforms point, only touched upon lightly in this short paper, other than to note that discarding outdated 20th century property norms includes challenge of positions that only the State may own resource areas of national importance. Experience and new practice suggest the contrary is more accurate in many regions; that the devolution of owner-conservation to communities can provide a key to more effective and sustained protection.

A global reform

A snapshot of the scope and nature of global tenure reform is in order. My own research of 100 national land laws in 2018 shows that 73 recognise customary and other community-derived rights as lawfully possessed property (Alden Wily 2018a). Fifty-three percent of laws are new, enacted since 2000. Over three quarters establish collective property with equivalent legal force and effect as private properties. This reform has come about in 45 percent of countries through mainly constitutional declarations, in effect, turning customary landholders into legitimate and protected owners overnight (e.g. Brazil,
Vanuatu, Brazil, Laos, Kyrgyzstan, East Timor, Ecuador, Uganda and Kenya). All but one (Ghana) reinforce this with land law provision for case by case survey and registration of the property, a strongly encouraged procedure to double-lock and defend ownership. Other countries (55 percent) recognise community ownership only through such titling.

Notably, even where customary tenure has been officially extinguished as feudally exploitative (e.g. China, Cuba, Mauritania, Eritrea), or subject to elected community consensus, land collectives have been adopted. The utility of collective tenure comes into play here, enabling China, for example, to formally devolve ownership and governance of over two-thirds of the rural lands and resource to village communities, and within which context the rights of individual families to houses and farms have become steadily more alienable since the 1980s. In Armenia, the countryside is largely owned and governed today by some 900 elected community governments, the domain of each clearly demarcated. Private houses and farms are registered by the elected council, while pasturelands are retained for communal use. This is similarly the case in Tanzania where 60 percent of the country area is owned and governed as 12,450 distinct village land areas.

There are countries where collective possession is provided only for off-farm resources. Examples include titling of forestlands to forest communities in India and Guyana, and issue of exclusive rights to pasturelands to specific communities, now throughout much of Central Asia, from Uzbekistan to Mongolia. Forms of this are also available in Mali and Niger. Practicality has led to sustained customary arrangements in a number of European states, ever more sophisticated each century, covering swathes of pastures and forests in the Austrian and Swiss Alps, smaller proportions of forests in Sweden and Norway, and upland pastures and lowland bogs in Ireland. More recently, one million hectares of forests and pastures in Spain, Portugal and Romania have been formally restored to community ownership, as offering more effective protection than their centralisation into remote state agencies proved able to provide, and as significantly, often overlapping lands designated as national parks and reserves, which retain status as community-owned.

The utility of socially collective tenure also explains its emerging adoption in poor city areas and slums. This is already well-entrenched in Laos and Vietnam and is beginning to see adoption and adaption in Asia and America, often using the community trust model first developed in USA half a century ago.

Reformism continues to evolve, expand and refine, including through inter-country learning. Laws of the last five years are notable for their stronger requirement that governance be vested in elected bodies, accountable to all community members – the latter termed community assemblies in countries as far apart as Vanuatu, India, Romania and East Timor. New laws also provide clearer guidance on how individual and family rights can be securely nested under collective title, often gaining attributes as transferable and absolutely alienable within boundaries of community rules. Formalising communities
as legal entities and titling procedures are being simplified, made cheaper and more accessible. This includes reviews of excessively costly, bureaucratic and time-consuming procedures, such as for Aboriginal communities in Australia, now acknowledged as disempowering not empowering. In stark contrast, and with one or two earlier exceptions such as in Ivory Coast, African communities are most easily able to register themselves and their lands without forming corporate entities. The simplest route now offered is for communities to list members through a witnessed meeting, and to update the membership register at stipulated intervals (e.g. in Kenya and Liberia).

If the spread of evolving legal provision for community land ownership seems large, this is due to the immensity of the sector. Perhaps the surprisingly similar fate which indigenous and customary landholdings have seen is less surprising when it is remembered that only ten or so of today’s 196 states did not endure European colonisation including its property norms. By area, the community land estate is generally estimated as five or six billion hectares, or covering half the world’s land mass, and its occupants, around 2.5 billion people (Oxfam et al. 2016). The vastness of the estate derives not from the relatively limited area under cultivation in most regions, but from the multiplicity of off-farm forests, rangelands and swamplands integral to community domains under community regimes.

As suggested above, it is the status of these areas which gives governments most pause. This is because community properties lawfully acknowledged or registered only rarely derive today through restitution from the titled private sector, the major source under land redistribution reform in the 20th century (Kay 2002). Most community land derives today from lands held by government under classifications of national, public or government property; areas where untitled community lands have been so expansively parked for one or more centuries.

It is fair to say that what most marks (and drives) contemporary global land reform is less farm centred than off-farm centred. The status of woodlands and rangelands as historically integral to land use and livelihood systems has been a major concern. Sometimes the two conjoin. A good example is a federal instruction in 2006 in India to states to recognise up to 40 million hectares of forest as the property of around 10 million forest dwellers. These indigenous peoples (‘Scheduled Tribes’) live by a system of intertwined forest product and in-forest cultivation evolved over centuries (Tripathi 2016). The rights of up to eight million are presently challenged by tiger conservationists, now being considered in the Supreme Court and arousing heated political debate.

In short, delivery of community lands depends upon political will. Although already substantial, its path is not smooth. Delaying and revisionist tactics flourish, including in judiciaries especially when petitions are laid at their door. Social polarisation continues as farms fragment, urbanisation expands, and external pressures on governments bolster an inclination to advance growth through easier routes including reverting to old property
norms and processes (Patnaik and Moyo 2011).

Nevertheless, it is difficult to convincingly claim that collective land security will not continue to accrue. The momentum of precedent is substantial. Modern rural community is not so unconnected, unaware, or so oppressed in unevenly democratising society, that opportunities to challenge injustices, join forces with others, including in national and transnational movements, are not enjoined. Moreover, local consciousness of the increasing value of the domain as a whole is growing and prompting new levels of territorial definition and demand for security.

Agrarian transformation no longer follows paths of European industrialisation driving millions through coercive enclosures to cities and promised factory employment. Indeed, for all the polarisation that continues, the huge values of lands and resources still keep millions on the land, albeit a declining proportion of population over time. If anything, the socio-economic continuity and social assurance of community member-ship becomes more, not less, valuable as challenges gather. Transformation itself takes unpredicted turns. Research in Africa suggests the growth point is not the large commercial estate but middle sized farms, mainly created by city professionals and retired civil servants, probably with links to the home village and locality (Jayne et al. 2016). Their investment less voraciously undermines smallholding than the researchers first assumed, instead injecting money into the local economy, stimulating youth employment, opening sales outlets and machinery hire. These smaller investors are part of another striking transformation, manifest less in whole families moving into town than sending members there for education and jobs, reconstructing community across country-town lines, linking foodstuffs, money, and expertise, including in the matter of securing lands, in which urban members have as much shareholding interest as their home cousins. As Araghi states ‘Social classes do not simply end and die, they live and are transformed through social struggles’ (2009, p138). The same can be said for communities, remaking themselves across unconventional lines. In fact, this is their historical adaptive mode as conditions change.

Finally, the fact remains that despite housing most of the world, cities and towns absorb little area, density being their advantage. Most of the county remains beyond, providing space for the rising demand for food, fibre, fuel and livestock, and, it now transpires, to protect nature and its critical carbon banks. Demand for localised custodianship and sustainable use will not disappear. Unanticipated streams of investment can be expected. It is symbolic that the Intergovernmental Panel on Climate Change research on climate and land in August 2019 advocates secure community landholding to help mitigate climate change. Scientists confirm the substantial contribution that community-owned forestlands already make. In one study, 22 percent of forest carbon in 52 countries studied (Blackman and Veit 2018) was reduced, owing to owner-management by indigenous communities. From several directions, advancing collective tenure is an agenda increasingly difficult to ignore.
Community lands and land reform in Africa

The World Bank estimates the present rural population (including North Africa) at 697 million people, rising to 1.2 billion by 2050. Levels of titled private rural lands are extremely low, except in Rwanda, where no community lands now officially exist, and in Zimbabwe, Namibia and South Africa, where large estates remain. A conservative working figure, which better statistics will in due course modify, is that 625 million Africans acquire, hold and sustain lands under customary regimes, or an estimated billion people in 2050.

Estimating the community land domain is less speculative. Some countries have data for lands they classify as customary, communal, community, village or tribal lands. Where these are not available, an estimate may be gauged by excluding urban, titled, protected area and an additional one percent of country area to cover public service areas like airports and roads. This results in a customary land estate in Africa of two billion hectares or 78 percent of the continental area (LandMark 2019). This does include Sahelian desert, on the grounds that these too are customarily held, albeit at extremely low density and mostly seasonally activated. FAO’s online data (FAOSTAT) show only 12 percent of lands were under cultivation in 2017, suggesting that up three-quarters of the customary land estate in Africa this estate comprises off-farm communal resources (c. 1.7 billion hectares).

How much of this estate is legally acknowledged as the property of communities is difficult to reliably estimate. Gradations of recognition exist. These range from laws which set aside defined areas for the exclusive occupation and use of customary landholders (e.g. Zimbabwe, Senegal) to laws where recognition is applied to the status of customary lands wherever they are (e.g. Liberia, Burkina Faso). Relevant laws have been enacted in 39 of 54 countries since 1990, 21 since 2000. The most recent is Liberia’s Land Rights Act, 2018.

The reach of reform varies. Collective ownership is (at least on paper) assured in 53.7 percent of states. Provision is strongest in 10 (18.5 percent): Uganda, Tanzania, Kenya, Mozambique, South Sudan, Burkina Faso, Malawi, Mali, Benin, Liberia. Positive provision but with one or two limitations prevails in 19 states (35 percent): Angola, Namibia, Swaziland, Lesotho, Sierra Leone, Gambia, Nigeria, Guinea, Ethiopia, Zambia, Togo, Morocco, Algeria, Tunisia, Niger, Ghana, Senegal, Madagascar, South Africa. A common shortfall is to acknowledge the land as owned by a community but to fail to provide for this to be formalised through registration (e.g. Ghana); to enable customary lands to be registered only by their exclusion from the community land as leaseholds (e.g. Zambia); or to retain customarily owned lands under state overlordship in circumstances where this is not the case for privately registered properties (e.g. Namibia, Morocco, South Africa).

More serious limitations exist in the 25 remaining states (46 percent). Sometimes this is due to the virtual absence of community-based land holding (e.g. Mauritius, Seychelles, Cape Verde), to replacement of customary regimes (e.g. Eritrea, Egypt, Rwanda), to
exclusion of collective tenure (e.g. Burundi), or to the unchanged position of customary lands as unacknowledged as other than lawful occupancy and use (e.g. Cameroon, Equatorial Guinea). Islamic principles protecting customary rights have been effectively suspended in Egypt and Sudan, but help sustain new types of collective entitlement in Algeria and Tunisia.

New supportive laws are anticipated in Madagascar, Senegal and Sierra Leone, and potentially CAR. Slowdown is also seen, such as where promised new policies fail to appear after a decade (e.g. Nigeria, Zambia, Cameroon), important land bills remaining ominously suspended (e.g. Ghana, South Africa), or enacted laws see zero application (e.g. Congo, Angola). Meantime, new categories of national, government or public lands multiply, including for growth corridors (Mozambique, Tanzania); overlapping customary/public lands continue to be allocated to speculating elites (Uganda); national parks are defiantly expanded into community lands (Tanzania), and new forest reserves gazetted before communities have the chance to title and zone their lands (Kenya). State land grabbing can be so determined in Kenya that even schools built on community lands can be peremptorily vested in state agencies, despite a history of school lands being allocated to wealthy persons by political fiat or corrupt officials.

Other roadblocks arise through alliances between state and traditional leaders. Traditional leaders baulk at surrendering what is, as often as not, colonially-encouraged ownership over their ‘citizens’ lands. Presidential assent of Malawi’s Customary Land Act was delayed after chiefs demanded changes. Zambia’s national land policy has struggled for approval for years as chiefs resist the demise of lucrative land allocation powers. This is also the case in Namibia, where at least one paramountcy has been shown to have disposed over one third of his people’s lands, mainly to elites and outsiders. Ghana’s new land law may be resting beyond the reach of parliament while vote-wielding chiefs consider the implications.

Towards fairer compulsory land acquisition
Conflicted community and State interests routinely clash in the course of state-directed developments. The Programme for Infrastructural Development in Africa (PIDA), led by the African Union-African Development Bank, illustrates the ambition of intentions to link all countries by road or rail and related developments, acknowledging that eight million square kilometres will be affected (PIDA 2019). Domestic infrastructure, mining and energy projects, along with commercial estate farming take their toll on local land rights. Direct foreign investment is a major player, which research suggests is strongly biased to poor, but land and water rich, economies characterised by low institutional transparency, high tolerance of corruption, and fragile land security (Lay and Nolte 2018).

On what grounds and with what reparation lands are taken has become a global concern, driven in good measure by those affected. Already by 2000 in India, protest
boiled over so extensively that compulsory acquisition for the first time became a subject for mobilisation among mainstream political parties (Kabra and Das 2019). International alertness has risen, agencies (including the African Union) warning of unjust takings, banks issuing guidelines to investors, private companies revising their own codes of conduct with more requirement for host country transparency and implementation of social and economic development. Host governments are confronted with dozens of claims by aggrieved companies, resulting in termination of eleven Bilateral Investment Treaties by 2016, and adoption of new models, including increasing investor protection (Singh and Ilge 2016). From the grassroots up, communities protest and petition commissions and courts against both government and investors, at times even forcing governments to go to court against an investor (Perez et al. 2011). Documentation on the impacts of compulsory acquisition on local populations abound (Singer and Price 2019).

On the back of evidence that expropriation mostly delivers pauperisation from which the already poor rarely escape, revised World Bank and other guidelines now urge governments to treat acquisition as a development opportunity for affected poor. Governments are advised to avoid forced evictions, pay equitable attention to untitled and titled holdings, and implement resettlement and rehabilitation schemes over meaningful post-acquisition time frames. Gender sensitivity is advised.

**Benchmarking India’s landmark law**

Legal change on compulsory acquisition is most advanced in Asia. India’s new law is held up as an example to follow. Its title reflects a new orientation: The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Its purpose is described as ‘An Act to ensure … a humane, participative, informed and transparent process for land acquisition … and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status’ (Preamble). The law’s innovations include paying compensation at twice the market rate in rural areas and doubling this as solatium to cover intangible losses; special safeguards for tribal peoples and scheduled castes; required majority consent where private companies or commercial public partnerships are the beneficiaries; prohibiting eviction prior to both payment of all compensation and evidence of alternative sites for resettlement. Where affected families or communities are relocated outside their home district, they are granted an additional 25 benefits along with payment of 50,000 rupees (c. USD 700). There are also limits on the amount of cultivated land that may be acquired, to safeguard food security. Communities and individuals may also request compensation for lands taken over the previous decade where this was not provided. Acquired land may not be sold on for more than 40 percent of its appreciated value with the profit to be shared with the original owner.
While some Indian States in the federation have diluted some terms in the law, others have adopted it without change. Some have developed their own social justice mechanisms, particularly where acquisition is for housing schemes, and through which by pooling lands, the dispossessed may secure smaller but higher value plots or apartments. Hoda writes that the law has resulted in a quantum increase in the bargaining power of poor landowners, tenants and sharecroppers, and that, although they grumble, State authorities and investors are reconciled to the vastly raised costs of compensation, settlement and rehabilitation as justified for fairness and equity and sharp reduction in violent conflicts (Hoda 2018, p.17).

A work in progress
Constitutional law is a good place to start to assess change in Africa, as compulsory acquisition is one of the oldest subjects in constitutions. However, despite only six of 54 African Constitutions being older than 1993, most go no further than the three fundamentals provided 230 years ago in America’s Constitution and in France’s Declaration of the Rights of Man; that land takings must be for a public purpose, executed through a legal process, and subject to a fair and prior indemnity. In fact, only a third of African constitutions require prior indemnity, most from Francophone Africa (Alden Wily 2018b). Only 36 percent guarantee the deprived holder access to a court. Over the last 30 years, the scope of public purpose has grown exponentially including listing economic development as a justified purpose (11 constitutions), and protection of the acquired land rights of investors (Zambia, Ethiopia, Mauritius, Botswana). The proportionality clause usually found in colonial Anglophone acts, that the State must ensure that the hardship caused to owners does not outweigh the value of the taking’s purpose, has quietly been dropped.

Not a single Constitution obliges the State to enter into consultation with affected possessors towards amicable consensus. Yet, as a study of litigation in Kenya implies, conflict could be dramatically reduced through such consultation, as 87 percent of cases involved abuse of process and procedure (Omwona 2016). Judges in one case advised that ‘…the public need not only be invited but also must be given adequate opportunity to participate … to the extent that the end product must be deemed owned by the same public’ (Kenya Law 2016).

Fortunately, newer compulsory acquisition laws are becoming more generous than constitutions suggest. From a sample of 50 laws from all regions Tagliarino (2019) shows that 54 percent are new or amended since 2000. However, among the African sample, only Rwanda provides a sufficiently clear definition of public purpose to allow for judicial review. Only Lesotho obliges government to minimize the amount of land taken. Only Lesotho and Burkina Faso require conduct of a social impact assessment prior to expropriation. Burkina Faso, Lesotho, Ethiopia, Rwanda, South Sudan, Tanzania, and Zambia more amply require government to consult affected people. These six also
compensate customary landholders irrespective of whether or not they hold formal title. Eight of 20 African laws do not limit compensation to house and farm plots. Only Ghana and Tanzania require intangible values to be assessed. Legal obligation to resettle displaced persons is weak in all laws excepting Ghana, which requires this in ‘exceptional’ cases.

Signs of change exist in the flurry of new resettlement policies. Legal change seems more piecemeal. Only one article in Liberia’s new land rights law addresses compulsory acquisition but does helpfully require government to explore leasing in preference to acquisition. A new Land Values (Amendment) Act, 2019 in Kenya has raised alarm around its constitutionality, as it does not provide for undeveloped community lands to be valued; does not require flexible valuation techniques to ensure livelihood and social values are covered for lands outside the market; and undermines constitutional requirement to pay compensation promptly. Civil society actors are piloting valuation methods appropriate to rangelands, these being in the front line of takings for a major road, rail and pipeline and development corridor, which threatens to absorb a million hectares of mainly pastoral property (Kibugi et al. 2019).

Similar concerns are being raised in Uganda, where takings of customary lands especially for oil development have displaced many and raised grievances. New law was drafted (2013), rejected (2016), a new framework plan developed jointly by oil companies and government (2016), found wanting, with now a national resettlement and rehabilitation policy (2017) under further modification in 2019. A constitutional amendment was tabled in 2017 but withdrawn in 2018, amendments instead made to the elderly Compulsory Land Acquisition Act, and a new regulation on land valuation issued (2018). In April 2019, the Commission of Inquiry into Land Matters recommended the launch of a special Land Tribunal to handle the plethora of acquisition-related disputes and it is expected to advise on other measures before the end of its term.

Developments in a different vein are underway in South Africa. These follow heated debate around the proposal to expropriate certain lands without compensation, and in a context where takings are primarily from expansive private lands. An advisory panel reported to the President in July 2019, concluding there were few cases where no reparation could fairly apply, and proposing a Differentiated Compensation Policy. This is to list distinct situational typologies and relevant measures for each (Government of South Africa, 2019).

**The challenge: acquisition as proactive development**

Five reforms are required to achieve fairness for rural majorities in Africa. First, expanding definitions of public purposes needs to be reined in, and an acquisition needs the caveat that this is subject to documented effort to find a better alternative to the site, and to consider leasing rather than acquiring the land in all but obviously unworkable circumstances. Encouragement for communities to engage directly with investors under
agreements in which State and civil society serve as adjudicators and monitors is also required (already entered into new community land acts in Kenya and Liberia).

Second, where acquisition is unavoidable, this historically punitive process deserves reconstruction as a proactive development, using the measures that any modern development project pursues to identify, fund, and work with affected communities to achieve positive outcomes.

Third, especially where significant numbers of poor or whole communities are affected, a participatory approach towards amicable consensus, if not formal consent, should be legally required as elemental to good governance, launched from the outset, and to cover all matters.

Fourth, compensation, including prioritising replacement of lost social, cultural, and livelihood values through replacement lands is needed, even should these require purchases from the private sector. Policies and laws must guard especially against dispersion of communities. While displacement removes valuable land and resources from communities, dispersion extinguishes social history, identity and social assurance mechanisms deployed daily within the community. These losses can prove costly and pauperise families further. Failure to avoid dispersive remedies also ignores the huge if intangible value of community throughout African society, including its role in mitigating many sharper effects of social change.

Fifth, underlying all of the above, is the contextual challenge of moving out of colonial-induced thinking that the state is rightfully and appropriately the majority land-owner, that in all cases it must own each and every asset of even tangential public purpose. Some states overcome this by realigning public lands as a synonym for government property by vesting public purpose lands at national, local government and now community level (Mozambique, Tanzania). They also facilitate the long overdue distinction between designating an area protected for conservation and its ownership. This has helped communities in many countries to develop thriving community owned protected forests and wildlife reserves on their own lands, and more significantly in terms of paradigm change, including lands designated as parks or reserves of national importance. There are good reasons why forest peoples in Kenya, Uganda and DRC for example are presently petitioning courts, including the African Court, for restitution of degraded government owned and managed reserves to their ownership, subject to agreed conservation and tenure conditions, and provisional piloting. More immediately, in the context of compulsory acquisition, declaration of new State-owned Protected Areas, taking yet more community lands, needs to cease, investment diverted to delivering sufficient tenure security that communities feel safe setting aside key areas within their domains for managed conservation. On such democratising changes, more equitable new era agrarianism can build.
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Rethinking land reform in Africa: new ideas, opportunities and challenges.
The significance of descent-based ‘customary’ land management for land reform and agricultural futures in Africa

Pauline E. Peters

A brief history of dispossession and misguided land policies

Colonial regimes in Africa recognised none of the signs of ‘property’ over land they were used to, labelled it *terra nullius*, and appropriated it as state territory. In the 1930s, the British introduced ‘customary tenure’ to govern African use of agricultural land, but denied it the status of property, extending only use rights to land users, subject to the state's ability to appropriate land for ‘development’ or ‘public interest’. The French had no law of customary tenure but divided the land into a tiny portion of land registered as ‘private property’, leaving the vast majority of land, including that under the use of Africans, as ‘untitled’. In practice, this was used by African people in customary modes very similar to those in Anglophone countries. After political independence, most African regimes retained these divisions, seeing the benefit to the state in maintaining ultimate ownership of the vast amount of landed resources.

Although some commentators complained that customary tenure was an obstacle to increasing agricultural production and productivity, the desire to maintain social order took precedence over privatisation. But during the last few years of colonial rule, ‘development’ led to attempts to convert customary tenure into private property although most were pre-empted by political upheavals before independence. The main waves of ‘land reform’ came after independence, the first during the 1960s and early 1970s. The oil price hike, increase in agriculture, trade protectionism in Europe and the US, and overall economic decline were followed by a shift by donors from sectoral development programmes to structural adjustment and liberalisation. The now well-documented disastrous results of liberalisation led to a further wave of ‘land reforms’ in the 1990s, which has intensified with the sharp acceleration in demand for land into the present century.

Literature has exhaustively documented the earlier waves of land reform. The premises of the land tenure interventions were that the ‘customary’ status of landholdings lacked the ‘security’ required for agricultural investment, that it constituted an obstacle to modern agriculture, and that formal tenure through titling would provide an incentive and access to credit and trigger commercialisation. In fact, customary tenure was ‘secure’ enough for widespread investment in export crops like cocoa, coffee and tea, as well as for the substantial production of food staples. Moreover, in most cases, the projected outcomes of land reforms did not materialise: small farmers were not able to acquire credit even with a registered title, and the process often exacerbated conflict over land,
encouraged speculation, and frequently ended by displacing precisely the people supposed to benefit from the titling. Longitudinal studies have shown that the main hindrances to modern production were lack of infrastructure, and other conditions essential for small to medium scale agriculture.

The same conclusions are reached in a recent systematic comparative review, first published in 2014, of twenty cases of land titling over the past 30 years: in Latin America and Asia, the studies show gains to productivity ranging from 50 to 100% after tenure recognition (usually titling). In contrast, in Africa there were zero or modest gains to productivity ranging from 0 to 10%, and also weak impacts on investment and income. Across all regions, there was little evidence of discernible credit effects. The authors suggest, as did researchers from the 1970s-80s, that the primary productivity constraint in Africa was not ‘tenure insecurity’ but overall poverty and the absence of complementary public investments in infrastructure and services (Lawry et al. 2017).

Studies continue to echo the earlier literature on the failure of reform understood simply as registration and titling. A typical conclusion is that:

> allocating land titles to smallholders in Zambia [is] not leading to the sorts of beneficia changes in smallholder production systems and investment strategies needed to drive productivity growth and agricultural-led poverty reduction … our findings suggest that smallholders with title to their land are not statistically significantly different in terms of crop and livestock productivity than customary rights holders, despite having higher levels of education and greater access to off-farm capital” (Sitko et al. 2014, p.800).

Others point to the institutional competition and confusion caused by land reforms, increased competition among various authority figures (such as chiefs versus local councils versus landholders) which sometimes escalates into civil conflict, so inhibiting rather than increasing ‘security’. There is thus general acceptance among analysts that much of the failure of land reforms to achieve their own goals has been to myopically fixate on land tenure to the exclusion of political economic conditions and processes. In addition, I argue that a major factor has been failure to understand the landholding systems in place.

**Landholding as central to social support structures**

Most sub-Saharan African landholding systems are based on descent. This fact has been completely ignored by land reforms and, with few exceptions (Colin 2008; Ryan 2018), by most discussions of ‘the land question’. When colonialists called African landholding ‘communal’ they saw no ‘property’, no ‘owners’ or ‘responsible’ managers. Nothing could be further from the truth either then or now. Entitlements to land are based on being a member of a descent group such as clan or lineage: ‘patrilineal’ for persons descended from
male ancestors, ‘matrilineal’ from female ancestors, and ‘cognatic’ where there is parity between female and male ancestors. There are usually internal hierarchies of responsibility and obligation regarding access to land, such as a ‘traditional leader’ or ‘chief’ as the overall ‘trustee’, with rights and responsibilities delegated to elders, and to heads of constituent units such as compounds. Max Gluckman (1965) long ago referred to these as ‘nested’ systems, a term recently used to describe very similar arrangements in rural South Africa (Cousins 2008). Another way to describe these arrangements is that they combine group and individual entitlements and responsibilities. Someone can say ‘this maize field is mine’ but also say ‘this land is ours’. It is precisely this mix of individual and group that flummoxed colonialists. Western theory and convention create an opposition between individual and group rights, inhibiting understanding different premises of social organisation.

The systems of landholding form an ‘invisible’ or ‘hidden’ structure of social support. Localised descent-based groups (or lineages) connect with non-localised networks of descent group members who, in turn, are related through marriage to others, forming wide kinship networks. These, in turn, intersect with relations built on friendship and other forms of association (religious, work, etc.) Since most African countries do not have universal welfare or insurance systems, these intricate social relations are absolutely central to the lives of the vast majority of African people for everyday efforts to achieve a decent livelihood and support in times of crisis from unemployment, illness, death, and so on.

Therefore, disrupting landholding entitlements, which form the central node of this ‘hidden structure,’ is also to cause serious disruption to responsibility, obligation and interdependence. At minimum, such land reform interventions produce less ‘security’ of access with exacerbated competition and conflict, but at worst, they seriously undermine the social relations that provide support to populations with few other sources of maintenance.

**Descent-based landholding and gender analysis**

Another area where ignoring the descent basis of customary landholding across Africa leads to ineffective analysis and policy formation is gender analysis and the widespread claim that ‘women’ are discriminated against by ‘men’ in access to land. Across most of Africa, people follow patrilineal lines of inheritance and succession. Sons are the primary heirs of land plots from fathers. Unmarried daughters may be given temporary access to land by their fathers (or lineage elders) though the norm is that on marriage a woman will gain entitlement to land from her husband’s descent group. On divorce or death of the husband, the ex-wife or widow will either lose that access if she returns to her natal family or she will retain access only for her lifetime as long as she does not remarry someone outside the husband’s lineage and/or as the mother of her sons who are heirs to their father. Many commentators see this as discrimination against women. But to understand the gendered social relations around land, one cannot make headway using the homogeneous term ‘women’ because distinctions among women turn on kinship,
descent and marriage – there are critical differences for women in the status of daughter or sister as contrasted with wife or widow.

In patrilineal groups, in-marrying wives and widows are barred from holding land in their own right because, as members of a different lineage, they represent the potential for land to be removed from the husband's lineage. Thus, in cases when husbands refuse wives' or widows' independent rights to land, the husband's sisters and daughters – that is, women of the same lineage – support them to the point of “chasing the widow away”. Thus, this is not a question merely of men against women but of the differences between lineal descent identities from which derive land rights. To suggest that the reason wives and widows in patrilineal systems are not allowed rights in their own name to land used in marriage is ‘men’ discriminating against ‘women’, is to completely miss the logic of the landholding systems and the motivations of local actors.

There is no doubt that where husbands resist efforts by government or other agencies to extend land rights to wives and widows in their own names, some of their resistance is a fear of diminished authority over their wives. But to assume that male bias is the only cause of resistance is to misrepresent the situation. One example comes from Tanzania when men, instructed to include wives’ names on land titles, collected few title deeds. As one man explained, the worry was “the land would go to the family of the wife if the husband died first and not to his children” (Howard Stein, personal communication). ‘Descent group’ would be far clearer than the vague English term ‘family’ and explains his concern that his descent group’s land would go to the descent group of his wife.

Perhaps the clearest illustration of the mistake of using the general term ‘women’ to understand land matters comes from the minority pattern of matrilineal-matrilocal types of inheritance and post-marital residence. Matrilineal inheritance means children inherit from their mother’s lineage rather than their father’s. And matrilocal residence is when husbands move to their wives’ village after marriage. In this minority pattern, only daughters inherit land while sons gain access to land from their wives’ lineage, for the duration of the marriage. In other words, this is a mirror image of the patrilineal patrilocal systems. Here, it is husbands who can never be ‘owners’ of the land they acquire from their wives’ lineages and are usually ‘chased away’ if the wife dies or they divorce. (Note that it is only in matrilocal groups that daughters inherit land).

The costs of not recognising the descent group basis of landholding are seen in the recently passed Land Law in Malawi. It was designed to be ‘gender equitable’ that is, to prevent discrimination against ‘women’. But because the designers ignored the descent basis of landholding, they ignored the fact that in areas following matrilineal and matrilocal practices, the law, if implemented, will disinherit millions of women because in those areas only daughters inherit land and sons gain access to land from their wives (Peters & Kambewa 2007; Peters 2010; Johnson 2012; Berge et al. 2014).

A South African study indicates the enduring role of the descent group and the
transformations in entitlements over time. Certain groups in the Eastern Cape own titled ‘family’ land inherited from forebears who acquired title in the nineteenth century (Kingwill 2014, p.241; cf. Kingwill 2016). The titleholders conceive of the titled land as the property of all recognised members of a patrilineally defined descent group (marked by a common surname). The title itself is seen as defining the boundaries of the land but not as benefiting the titleholder to the exclusion of other recognised lineal members. All recognised members, regardless of gender, are considered to be beneficiaries of the title. Unlike both the customary law that vests property in the eldest male, and unlike state law that assumes a Western style nuclear family with conjugal division of property, the practices Kingwill names “African freehold” take the patrilinear descent group as the holder and beneficiary of title.

**Beyond land reforms – who benefits from ‘security of tenure’?**

Earlier critiques of land registration and titling programmes pointed to the huge production of crops on land under customary tenure as evidence that the latter was not inherently ‘insecure’ in the sense of inhibiting investment. However, the disruption caused by land reforms frequently reduced security of tenure which was compounded by accelerating demand for land from a growing population faced with declining employment and income, and rising inequality associated with the crises of the 1970s, liberalisation programmes, and increasing protectionism of trade by rich countries. Across Africa there is widespread competition and conflict over land, an increasing incidence of land transfers in ‘vernacular’ land markets including ‘sales’ that are frequently disputed, and destabilising struggles over land at all social levels (Lavigne-Delville 2003; Mathieu et al. 2003; Kishindo 2004; Chimhowu & Woodhouse 2006; Colin & Ayouz 2006; Boone 2007). In this context, the security of customary tenure is being jeopardised.

This fraught situation has been exacerbated by the widespread ‘land rush’ taking place across Africa since 2007, driven by demands for land for production and speculation. In addition, programmes designed to improve production and productivity among existing land users have been responsible for the appropriation of customary and common land and for the reduction of security and livelihood chances for the majority. As a result of these intersecting processes, many millions of small to medium scale users of land and land-based resources across the sub-continent are in danger of dislocation, dispossession and consequent deprivation and distress. This, of course, is the very opposite of the dominant development aims of ‘reducing poverty’, ‘increasing income’ and ‘food security’ across Africa. I will argue that, to make the latter goals achievable, both ‘the land question’ and agricultural production have to be paired more equitably and based on existing flexible social organisation, including landholding, and on the skills, knowledge and visions of land users.

Sara Berry concluded that Africa had moved from being “a continent of land abun-
dance in the first half of the twentieth century to one of increasing land scarcity at its end” (2002, p.639). But the general consensus was that there were “comparatively low levels of international corporate competition for land in Africa due to high costs, associated with poor infrastructure, and low prices of internationally traded agricultural commodities” (Woodhouse 2003, p.1717). The change since around 2007 has been extraordinary. The rapid international increase in efforts to acquire land and landed resources (for biofuels, other crops, timber, minerals etc., as well as speculation) exacerbates the accelerating demand for land by African states, and by nationals such as middle-class people and politicians acquiring land for cultivation and for an investment (Cotula 2013; Jayne et al. 2014). These demands interact with conflict about legitimate authority over land among competing social actors (Colin & Woodhouse 2010; Lund & Boone 2013), including political parties, a lethal combination that has already fuelled civil war (Chauveau & Richards 2008; Berry 2009). Meanwhile, the millions of small-scale users of customary land struggle to derive a livelihood from their smallholdings and access to dwindling and increasingly enclosed common land, including grazing and watering areas. These linkages among local, national and global dynamics of land acquisition reveal mounting socio-economic and political inequality across Africa. In addition, research reveals competing visions for African agriculture in “the underlying debate [of] large- vs. small-scale agricultural futures” (White et al. 2012, p.625), a long-standing debate about agrarian studies now centre stage within the changed political-economic, social, and environmental conditions of the new millennium.

A major reason why “Sub-Saharan Africa is the site of the most speculative major land deals” (Borras et al. 2011, p.209) is the extraordinarily low price asked for land. In the words of the Chief Executive Officer of an investment company, “African farmland prices are the lowest in the world” and “it is really the last frontier” (Palmer 2010, p.5; cf. Alden Wily 2012, p.769). This, of course, is because ‘customary’ tenure is regarded as not full property, or what a World Bank land expert refers to as the “weak recognition of land rights at the country level” (Deininger et al. 2011, p.218). Such rights are being set aside by governments for “the public benefit” or “development,” so allowing existing land users to be displaced easily and the ‘price’ of land charged to investors, whether foreign or national, to be low. Inevitably, this encourages speculation, as reflected on the website of Emvest Agricultural Corporation, a “vehicle for South African, UK and other investors to diversify their investments into African agriculture,” which declares that “agriculture is an excellent defensive investment in the long term with expected real price appreciation of soft commodities and land in Africa” (White et al. 2012, p. 630). The International Finance Corporation, the World Bank’s private-sector arm, has funded many agencies engaged in acquiring large areas for land for agriculture or mining and timber. Much financing is through intermediaries like private equity funds and commercial banks, often with problematic results (IDI 2017). Shepard Daniel links the “huge support” given
by the World Bank Group to private equity funds for investing in agriculture in Africa to the explicit development aim to “transfer … land to the most productive users”. But Daniel questions whether the generous finance extended to private equity funds is the appropriate vehicle for development and poverty elimination when “fund managers have the mandate to invest in almost any asset class in any location provided the return potential makes investment sense”; in short, issues of socioeconomic benefit to others, let alone environmental sustainability, are not their concerns (Daniel 2012, p725; cf. Clapp and Isakson 2018).

More has been written about large land deals devoted to large-scale agricultural projects than about the “slower, less visible, longer-term process of accumulation and increased social differentiation” taking place as “local and national elites—from government officials and business people through to the more dynamic farmers—have been acquiring land . . . to store value, run agricultural ventures, and to position themselves as intermediaries with international players” (Cotula 2013, p.174; cf. Ubink & Amanor 2008). More information is now being produced (Jayne et al. 2014; Boamah 2014). Nevertheless, large-scale land deals continue, despite some that are not (fully) implemented, and overall, their outcomes been less productive than planned. A need for caution exists in a fast-moving and under-researched situation, and “land deals … need to be analysed in particular places and times in order to capture the ways in which the deals shape – and are shaped by – the institutions, practices and discourses of territory, sovereignty, authority and subjects” (Wolford et al. 2013, p.194; cf. Hall et al. 2015).

So far, however, “mounting evidence [shows] that, to date, the deals have failed to deliver their hoped-for benefits (Cotula, 2013, p.13); “the expectations for host countries and populations [are] rarely fulfilled” (Anseeuw 2013, p.165); and there is “doubt concerning the claims made about the benefits of large-scale land deals” (Hall et al. 2015, p.26; cf. Schoneveld 2017). There is serious shortfall in jobs and income to replace the land given up, and promised infrastructure such as roads, schools, and hospitals has not always materialised, presenting “a cautionary tale on the potential of large-scale land deals to contribute to poverty reduction and inclusive development” (Cotula et al. 2014, p.922; cf. Ansoms 2013; Greco 2015). Large-scale projects often lead to the loss of water, farmlands and common resources, thus reducing, rather than improving, livelihoods (Hall et al. 2015).

In some cases, the value produced by the large-scale land project was considerably less than that produced by the displaced, small-scale land users. An Indian-owned plantation in Ethiopia displaced farmers raising livestock and growing crops well adapted to the soil and planted maize that failed (Shete & Rutten 2015, pp.76-77). This may well not be an isolated case since, as Tony Weis explains, the usual criterion of productive agriculture promoted by champions of large-scale industrial agriculture is yield of single crops whereas the measure of unit output per area has found that small-scale, intensive, multi-crop farms equal or even outdo industrial mono-crop agriculture, as well as providing
greater stability over time (2007, p.166). Moreover, much small to medium scale produced crops remain locally, contributing to food security and family incomes. Overall, the outcomes of many large-scale agricultural projects on land often appropriated from customary and productive users, are poor to negative. Furthermore, even when large schemes are reduced in size or abandoned, the land does not revert to the former small-scale users but to the state or other private agents (Cotula 2013, p.45).

When the 2008 World Development Report recommended “sharply raising smallholder competitiveness in medium and high potential farming activities”, the recommended way to do this was “by better integrating smallholders into global agro-food commodity chains” (Akram-Lodhi 2008, p.1149), that is, through outgrower or contract farming. But the research on contract farming and plantation labour is disheartening about these potential routes for the millions of existing land users to move out of poverty. The underlying premise of the report and much of current agricultural policy and programmes is that “the small-scale agricultural producer or peasant farmer is economically backward, marginal and unproductive” (Veltmeyer 2009, p.395). The theory that forcing land into markets will lead to the ‘most efficient’ users acquiring it, and that those ‘exiting’ the land will find jobs and livelihoods in the wider economy derives from the so-called agricultural and industrial revolutions in Europe, especially Britain, where the enclosure and privatisation of common and customary lands forced millions into then proliferating factories and towns. But this is not a likely outcome in Africa. The industrial and manufacturing growth is far too slow to absorb even the current numbers, especially of young people, seeking employment, let alone if millions more are forced off the lands they currently use. As a recent research team concluded: “Continued rapid alienation of land to medium and large-scale investors is likely to exacerbate localised land scarcity, restrict the potential of smallholder-led development, and put unrealistic pressure on the non-farm economy to absorb Africa’s rapidly rising labor force” (Jayne et al. 2014, p.35).

The same contradictions are seen in the multi-million dollar programmes influencing land and agriculture in Africa. The G8 New Alliance for Food Security and Nutrition set up to reduce hunger in Africa is self-described as “a shared commitment to achieve sustained inclusive, agriculture led growth in Africa” and specifically to “help lift 50 million people out of poverty in Africa”. The Gates and Rockefeller Foundations’ programme AGRA (A Green Revolution for Africa) describes itself as “a truly African organisation that is closely involved in local partnerships and global networks, all of which are working to improve African food security, increase agricultural productivity, and reduce rural poverty. Our close ties to smallholder farmers across the continent and our intimate understanding of African agriculture make us a valuable partner”. The US Millennium Challenge Corporation set up large five year grants or ‘compacts’ to selected countries among the ‘poorest’ countries. The first two concentrate on agriculture, the third includes agriculture. All these programmes have as explicit partners the huge multinational agro-
supply and agro-food companies like Monsanto, Cargill, Syngenta, SABMiller, Unilever, DuPont, General Mills, and Yara.

Many researchers point to the conflict of interests in such partnerships. One of the clearest examples is the G8’s New Alliance, “Cooperation frameworks” set up with African countries requiring governments to change or introduce policies and land laws to make it easier for private companies to acquire land for “private agricultural investment” (Maganga et al. 2016, p.7; cf. Sulle & Hall 2014). Similarly, researchers tracking the New Alliance programme in Malawi find it concentrates on large-scale production, particularly on “high value irrigated production” and requires “the appropriation of land from the very smallholders who were at the centre” of a previously smallholder-focused programme (Chinsinga & Chasukwa 2015, p.133). Maganga and colleagues point out that this is not a core element of the African Union’s own agenda for agricultural policy in CAADP (Comprehensive Africa Agriculture Development Programme), while Cooksey states that: “From 2008 to date, CAADP’s Africa-owned policy narrative has been steadily sidelined by the US-led G8 mobilisation of (support for) global agribusiness, with assistance pledged by aid agencies and philanthropies” (2013, p.28). As with the G8 Frameworks, the MCA grants are given to eligible countries only if they agree to adapt their land and related policies according to what is billed as “good governance.” In practice, according to Jeanne Koopman, this means that “grants ... are conditioned on government acceptance of land tenure systems that take customarily owned land from peasant-pastoralist control and make it into a commodity that can be sold or leased ...” (2012, p.656), often with negative effects, as she shows for the flood plain farmers and pastoralists of Senegal. Similarly, Sulle and Hall conclude that, so far, New Alliance programmes, “instead of reversing [the] chronic under-investment in smallholder agriculture, [appear to lead to] the adoption of corporate agriculture, either turning smallholder farmers into wage workers and hooking them into value chains in which they have to compete with MNCs, or expelling them to search for alternative livelihoods in the growing cities. Although tempered by promotion of ‘outgrower’ schemes, in practice this agenda promotes large-scale commercialisation” (Sulle & Hall 2013, p2).

These conclusions raise the question why the belief persists that large land deals funded mainly by foreign capital are the main way to bring investment to African agriculture and to improve small land user incomes. Reasons posited include the lure of foreign capital not only to African states but to domestic elites, especially those with political influence; the extremely low cost of African land compared to other parts of the world—a benefit for foreign and African elites acquired at the cost of ‘customary’ landholders; the interests of major agribusinesses promoting seeds and fertilizers who are explicit ‘partners’ of major donor-funded agricultural programmes; and an old but persistent prejudice against small-scale production in Africa and the conviction that the solution lies in large-scale modernised agriculture (Cousins & Scoones 2010). Researchers
also find that farm lobbies are increasingly dominated by urban-based and politically influential medium to large scale farmers who steer agricultural policies in their favour through subsidies targeted to ‘progressive’ farmers and programmes of commodity price support and import tariffs which reward those with big surpluses to sell yet harm the majority of small-scale land users who are net buyers of food (Byerlee et al. 2006).

Yet the view that small-scale agricultural production is backward and has to be ‘modernised’ by being made commercial, ‘integrated’ into markets, and eventually absorbed into large-scale production is out of touch with the history and 21st-century position of small-scale agriculture and other land uses. Small producers have long been active in markets for production and consumption. According to the Food and Agriculture Organization, they continue to produce the bulk of ‘traditional’ staple foods across Africa, while they also account for the largest proportion of private investment in agriculture (FAO 2012). The “faith in the technologies of commercial [large-scale] agriculture” is so strong that such facts are ignored, and concern about increased food imports produces the decision that “the small-scale agricultural sector has failed, notwithstanding the fact that imports are largely made up not of the traditional food staples grown by smallholders, but of wheat and rice [which are] preferences among the urban population” (Shete & Rutten 2015, p.31). One could add that these imported foods are frequently promoted through reduced import tariffs forced on African states and through the huge subsidies accorded agricultural producers of wheat, maize and rice in countries outside Africa.

The lack of systematic support to agriculture, particularly to small and medium scale producers, has greatly worsened with structural adjustment, market liberalisation, and an increasingly unequal global market in agricultural commodities. Many experts have made bold recommendations such as improved infrastructure (especially transport and irrigation), improved agricultural research based on close working relations between African farmers and scientists (Kloppenburg 2010; Richards 2010), “careful attraction of agribusiness investments,” and “open access to high-value markets” (Oya 2012, p.13), “long-term investment in institution building, a willingness to radically rethink current market liberalisation policies and . . . costly interventions to make farming profitable” (Dorward & Kydd 2004, p.359). Small and medium-scale users of land are key actors providing food to local markets, bringing income into the hands of the majority rural and urban poor, and to push the process of equitable development. “Small farm development is not only desirable for its impacts on poverty, but also feasible … [given] broad consensus on the policy implications”, particularly the provision of public goods (Wiggins et al 2010, p.1346; cf. Lawry et al. 2017). Bill Gates’ statement that “The great thing about agriculture is that once you get the right seeds and information, a lot of it can be left to the marketplace” could not be more wrong! (Synder & Cullen 2014).

While small to medium scale production is more likely to provide people with ‘decent’ work than large-scale alternatives, the well-established fact that the majority of rural land
users will continue to depend on ‘diversified’ non-agricultural income sources means that initiatives are needed to encourage the development of employment in manufacturing and industry, which so far has been totally insufficient in most African countries. Moreover, many researchers emphasise the role of agriculture in development, including industrialisation. “The idea that industrialisation can proceed on the basis of global markets and non-agricultural growth does not take into account the vital importance of domestic market size for local manufacturing growth and the critical role that agriculture can play in determining domestic market size” (Carlson 2018, p.718).

Finally, the environmental benefits of small to medium scale use of landed resources may be underestimated since research in the United States and Europe shows the high environmental costs of conventional industrial, large-scale agriculture with its high dependence on chemical fertilizers, pesticides, fossil fuels, and vast mono-cropping (Weis, 2007). As Weis stresses, this is not to project romantic or “rose-coloured views of … small-farm practices,” since that plays to the “facile binaries … such as dynamism and progress versus stasis and backward traditionalism.” It is to recognise the continuing importance of small to medium land users and their great potential for production if they are not continually undermined. It is to understand “how – in an age marked by ecological degradation, hyper-productivity and alienating work – they can be a crucial part of more efficient, ecologically rational agricultural systems that sustain dignified livelihoods into the future” (2007, p.9). According to Ward Anseeuw, the “marginalisation of smallholder agriculture” exacerbates “the root causes” of the land rush (2013, p.169). None of this is to “suggest that external investment in agricultural land is a bad thing” (Sitko et al 2014, p.801) but to emphasise that more productive and equitable land use is more likely if small-to-medium scale land users are a central part of agricultural and economic ‘futures’ (Oya 2012). A large body of research on land and agrarian futures supports the calls for “multiple paths for agriculture – including (re)turn towards mixed, small-scale farming which must now be consciously motivated by ecological and social values” (Friedmann 2019, p.1103).

**Conclusion**

The clear need for reducing the vulnerability of millions of users of customary, communal or common land to appropriation is to extend legal protection to both customary rights as property and the means to enforce protection of those rights. Legal recognition has not prevented appropriation (Colin 2008; German et al. 2013; McAuslan 2013; Maganga et al. 2016; Alden Wily 2017). Many look to the reality of African “family [descent-based] holdings” designed “to guarantee all present and future members access to a livelihood, a form of ‘social security’ against poverty and exclusion that the State is unable to replace” (Lavigne-Delville 2014, p.17; cf. Cousins 2007). Lavigne-Delville discusses the potentially more appropriate approach to increase security and decrease conflict by rural land maps that allow people to identify local land rights and participate in new local administrative
bodies to manage disputes. These land maps “are a tool to formalise existing land rights, as they are in the field … without transforming them into private [and exclusionary] ownership” (p.7). Subsequent research shows that even these are not immune to political machinations (Lavigne-Delville et al. 2019). No single formula is guaranteed success, and the political challenges are significant. But so far, the evidence for increasing production, productivity, and reducing poverty through large-scale production, even when it involves small-to-medium scale outgrowers, is scant. The time has come to provide greatly needed support services to smaller land users, to secure ‘customary’ land as property that will be less vulnerable to appropriation, to assure them of a land-based value compensation in cases of land alienation to which they have agreed, and to see them as partners in ‘development’ efforts rather than as obstacles.

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Rethinking land reform in Africa: new ideas, opportunities and challenges.


Rethinking land reform in Africa: new ideas, opportunities and challenges.
Institutional transformation and shifting policy paradigms: reflections on land reform in Africa
Howard Stein

Introduction
From the early post-war period, land reform formed the core of global strategy for economic and social transformation in developing countries. In 1948, the United Nations General Assembly passed the Universal Declaration of Human Rights (UN 1948). Article 25 set the tone with the commitment to the “right to a standard of living adequate for the health and well-being” for everyone which included “food, clothing, housing and medical care and necessary social services and the right to security”.

Quickly, thereafter, the UN recognised its central role in supporting economic development in underdeveloped countries (Resolution 198, 1948) including the importance of addressing under-nourishment through improved protection and distribution of food (Resolution 202, 1948).

In November 1950 the General Assembly formally recognised that its role in promoting development included both industrialisation and agricultural transformation. In line with this, the Assembly passed its first resolution on Land Reform understanding that livelihoods could best be secured by addressing the development needs of rural populations where most of the world’s poor already lived. The resolution called for an investigation into “the agrarian structures” that “impede economic development” (401v).

In response in 1951, the Department of Economic Affairs produced the first significant UN study on the subject entitled “Land Reform: Defects in Agrarian Structure as Obstacles to Economic Development” (UN 1951).

Two elements were clear in this study: that reform was about changing the agrarian structures defined as “the institutional framework of agricultural production” (p.4–5); secondly, at the core that transformation was “the redistribution of land ownership by the division of large estates among small farmers and landless farm laborers” (p.68).

Over time, this commitment began to evolve. By the 1980s, the idea of institutional transformation and redistribution that was at the heart of reform was replaced by a singular focus on formalising individual private property rights. In 1981, the World Bank set the tone for Africa with the publication of the Berg Report which argued that individual farmer incentive structures were key, defined as “all those aspects of the farmer’s environment which produce his willingness to produce and sell” (World Bank 1981, p.53-54). While the focus was mostly on agricultural input and output, market privatisation and liberalisation, the World Bank began to also focus on the importance of guaranteeing...
individual private property rights in rural areas.

The 1989 report on Africa considered the lack of investment in land improvements to result from the “transitory nature of land use rights” and called for incentives to include “the right to permanently cultivate land and to bequeath or sell it” to “help rural credit markets to develop, because land is good collateral” (World Bank 1989, p.104). Increasingly thereafter donors began to redouble their support for formal property rights with large-scale land registration efforts.

This paper will explore in detail the original conceptualisation of land reform as an institutional construct. It will further trace the evolution of its theoretical reconstruction and diachronic transformation into the ideal representation of individualised property rights. The paper will then draw on the experience of Tanzania, based in part on a ten-year project examining the impact of property right formalisation and poverty in four regions of the country. It will then consider how an institutional conception of land reform as redistribution can provide insights into addressing the current challenges of rural development drawing on examples from Tanzania.

Tanzanian research context
Since 2009, the author together with Kelly Askew, Faustin Maganga, and Rie Odgaard have undertaken a study to evaluate the impact of the formalisation of land rights in Tanzania across four regions. The areas studied encompass a range of livelihood patterns pursued by rural populations (farming, agro-pastoralism, pastoralism, and hunting/gathering), and a broad range of Tanzania’s 120+ ethnic groups. In the process, we have surveyed more than 2000 households in 40 villages and completed hundreds of semi-structured interviews with villagers, government officials, bankers, NGOs and donors. This paper draws on published and unpublished material gathered from these research efforts.

Early post-war land reform: insights from the past
Land reform has a long history preceding the second world war period when it was widely popularised. Following World War I, a wave of land reform in a number of European countries like Czechoslovakia, Estonia, Latvia, Romania, and many others aimed at dividing large estates and countering radical threats for change from domestic Communists sympathetic to the Bolshevik takeover in Russia (Moody 1933; Textor 1923). Bernstein (2002) sees the period of 1910–1970s as the golden age for land reform and part of the developmental philosophy of state-led transformation. However, there was a qualitative shift after World War II when the frequency, geographical breadth, resource commitment, legitimisation, political pressures and theoretical understanding dramatically altered.

The first United Nations report on Land Reform (United Nations 1951) set the tone for change by situating the reproduction of rural poverty in the broader framework of agrarian institutions and structures. The “agrarian structure” which underpinned rural
livelihoods was derived from “the institutional framework of agricultural production” (p.4–5). This institutional framework included the average size of land holdings, their distribution by type of ownership or tenancy, the land tenure system, land tenancy, rental system and income distribution. Other dimensions are the organisation of marketing and production, the system of agricultural credit and financing, the system of rural taxation, and government-supplied services to agriculture including technical, educational, health, water supply and communication. Agrarian social structures, in their view, had domestic and foreign origins with an impact on incomes, mobility, production viability and development (p.5).

The discussion of agrarian structures on land redistribution tends to pivot on “the question of what acreage provides a subsistence minimum” (United Nations, p.6). The minimum cannot be measured by size but is a reflection of the mix of crops and the intensity of cultivation linked to important issues like the availability of irrigation. The report continues with an observation arguably highly pertinent in Africa today:

“...even when allowance is made for differences in intensity of cultivation, it is possible to state there are many countries in which large numbers of farms are too small to provide a subsistence minimum for the cultivator and his family, or to provide them with full employment: This feature of the agrarian structure many be the result of the extreme subdivision of farms resulting from pressure of population on the land or of inequality in the distribution of land ownership; or it may result from the operation of both these factors”. (United Nations, p.6).

Lack of distribution was exacerbated by land alienation from money-lenders as those so close to or below subsistence often required emergency funds. However, as we will discuss below, this is only one of many sources of land alienation in Africa today where “the rate of land transfers have been picking up speed” and where “they commonly take place without the consent of local actors or their full understanding of what the transfers implies in terms of present and future land rights” (Ansom and Hillhorst 2014, p.1). More commonly “land grabbing” is present in any form of “non-transparent” and “non-voluntary” land transactions. However, this might be insufficient since fully transparent, “voluntary” legal transactions can cover land grabbing if legal institutions have been captured by powerful, well-connected actors for their personal gain (Ansom and Hillhorst 2014, p.2). As we will see below, in the case of Tanzania, land can be also taken by the state for “reserve” purposes.

From an institutional economic perspective, the problem compels us to consider even deeper layers of theoretical constructs. Land transactions are distributive mechanisms driven by and embedded in the shifting power relationships driving transactions. Even if adjudicating systems of land markets are not captured by the well-connected, underlying
conditions can still create the asymmetries of power that lead to greater land concentration at terms which exacerbate rural inequality. Neoliberalism altered the terrain of power and the working rules affecting the terms of transactions for farmers. In African countries that arguably emasculated the position of poor farmers in any transactions (Stein 2020, in press).

The United Nations report also focuses on the issue of tenancy which is a “powerful obstacle to development” since there is little incentive for tenants to increase production as large proportions of any increase go to the landowners. Depending on the terms negotiated, rents can reduce peasants to bare subsistence or worse, and shift the risks of prices and weather onto tenants’ shoulders. Finally, landowners are less concerned with capital investment and tend to prefer tapping interest income through loans to small cultivators. Different regions have varied traditions of tenancy. However, it is a growing challenge in the face of the rising landlessness we see in Africa.

Other institutional features contribute to the concentration of land and the economic marginalisation of the rural poor. Shortage of credit can be both the cause and the effect of poverty. The lack of access to credit reduces both productivity and income, while reliance on local money lenders leads to high interest and debt which contributes to the chronic problem of consumption exceeding production. High debt can lead to landlessness and land falling into the hands of money lenders and others with wealth and influence (p.37–43). An example can be cited from the coffee-growing region of Mbeya, Tanzania where the researchers encountered ‘Panki’ loans, as part of the usurious practices of local money lenders at rates that could exceed 3000 per cent. Panki moneylenders proved more than willing to accept land titles as collateral for initial loans to cover $120 for three bags of fertilizer. In contrast, banks would not accept proof of title as collateral even for modest loans. ‘Panki’ was Swahili slang used to denote the shaving of the heads of punk rock musicians, which they felt accurately depicted the nature of these loans (Stein et al. 2016).

The main problem is “the structure of banking systems is not adapted to the needs of small farmers” (p.37) which is a feature we have seen in our research in Tanzania (Stein et al. 2016). Systemic, organisational land reform also means altering the practices of agricultural finance which could include government credit agencies and agricultural co-operative credit societies (p.39).

The United Nations report also challenges the notion that issuing individual titles is a panacea for many of these issues though it recognises that it might be helpful in ensuring water rights in some areas. The report’s authors point out that there are clear dangers including facilitating the “alienation of peasant-occupied land to large landowners and speculators” (p.26). They point to the domination of communal tenure in Africa which they define as where “land is held on a tribal, village, kindred or family basis and individuals have definitive rights in this land by virtue of their membership in the relevant social unit” (p.28). They argue that “available data suggest that the communal system of land tenure in Africa have not proved in themselves to be so inflexible as to
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The question of the influence of land tenure in Africa is therefore not whether traditional systems of land tenure present per se a powerful obstacle to economic development, but rather whether the new forms arising from the increasing invasion of the subsistence economy by an economy based on exchange will lead to economic development, without in the long run destroying much of the land for agricultural production or resulting in abuses detrimental to the social and economic welfare of the community (p.29).

The authors of the UN Report also shared their concerns about the “disruptive influence” of land alienation in African colonies “where large-scale land concessions to Europeans have been granted”. This situation is apparent today in many countries where farmers and pastoralists have been evicted to make way for investors (p.29). In places like South Africa, Kenya and Northern Rhodesia the “reserves set aside for indigenous occupation are insufficient to support their populations…” (p.33). At the same time the expansion of commercial cash crops on alienated land depleted labour otherwise used for the production of food crops for local populations (p.31).

Land reform up to 1951 had two main goals: “transfer of land to peasant cultivators and the abolition of the tenancy system” in the sense of providing land to those formally renting it. The earliest reform effort transpired in the wake of the 1910 Mexican Revolution. Up to the revolution, land was predominantly controlled by large Hacienda estates which employed labour under semi-feudal conditions. Between 1922 and 1945 roughly 17.5 million acres was transferred to village control from the Haciendas using the Ejido system of tenure.

In this system, village households were allocated plots that they controlled as long as they cultivated the land. They lost their allocation if they ceased managing it, but it could not be sold to large estate owners. The UN report hailed the social impact of the reform, that in their view, freed much of the rural population from the shackles of semi-serfdom. Those remaining employed received far more favourable terms with many supplementing their income and improving their standard of living with the proceeds from their Ejido village cultivation. While overall food production rose, the results could have been improved if farmers increased the size of their holdings and they received more institutional support like increased access to credit. This provides an important lesson when considering current issues in reform in Africa.

A 1992 study by Heath analysed the long-term impact of the Mexican reforms. By 1988, there were 3.1 million households in 28,058 Ejido villages. Two-thirds of farmland was moved into this sector. At the time, proponents of liberalisation blamed the Ejido village system for problems with Mexican agriculture and called for a shift to full privatisation. However, Heath’s study (1992) found little or no difference between the productivity of
fully privatised farms compared to those in Ejido villages and raised concerns about the social dislocation which could result from liberalising land markets. Both private small farmers and those farming in the Ejido village system faced the same systemic problems like lack of access to credit. Privatisation would also likely lead to the consolidation of property and the growth of larger farms which have been proven to produce more idle land. In 1981, private farms left 27% of the land out of production but among small landholders with less than five acres, the figure was a much tinier 6%.

The UN report also acknowledged the widespread reform throughout Asia in places like Turkey, Burma, China, and North and South Korea. In Taiwan, the report notes the 1949 reform that restricted rent charges to tenants. But two additional changes thereafter also proved critical. The 1951 reform sold off 61,000 ha of formerly leased public land to 122,000 families. The 1953 reform focused on large-scale reform of land which the state purchased and sold off in installments to tenants. 140,000 hectares were compulsorily purchased from landlords and resold to 109,000 farming families. An additional 29,000 families purchased them directly from landlords. By 1960, 65% of land was owned by those farming it, up from 36% before 1953 while the number of tenant farmers fell from 39% to only 14%. Unlike the limited land redistribution efforts in Mexico, the changes in Taiwan were more comprehensive.

A crucial change was an institutional shift from private market responsibility to the state. The parastatal farmers' associations took on fertiliser distribution, rice collection, processing and storage. Other government agencies directly purchased agricultural products and distributed them directly to the military (Apthorpe 1979). The government intervened in other ways too. High interest and short-term money lending practices by landlords were replaced with farmer association and government-backed loans based on central bank lending rates. Agricultural research and extension were dramatically expanded along with infrastructure like irrigation. The government also started a system of bartering rice for fertiliser to make it widely available. The government distributed rice at low prices to keep wages competitive in the early stages of post-war industrialisation. The results were a dramatic increase in agricultural production from 3.5% annually in 1950-55 to 10.2% in 1955-60 and 8.2% in 1960-65 (Mao and Schive 1995).

The Taiwanese strategy was used widely in Asian countries to support industrialisation. It took a number of different forms, but the key was to keep nominal wages down to maximise profitability but use government policies to increase the real value of the wages. Taiwan provided cheap rice. Singapore provided inexpensive housing for workers with provident fund money. China used the iron bowl by effectively subsidising private workers with family members in state enterprises. To date, little evidence of this kind of systemic industrial policy thinking is apparent in the strategies of African countries considering industrialisation (Stein 1995).
The World Bank and early land reform in Africa

The broad consensus in favour of land reform was given an additional boost in the early 1970s by the World Bank's expansion into socioeconomic issues like poverty and inequality. From its inception the Bank's interest was in providing rural infrastructure in support of agricultural development. In the 1960s, the focus expanded into rural credit and farm input access with some moderate involvement in tenure issues particularly around irrigation access and investment (World Bank 1974). A 1972 report on the agricultural sector identified land distribution as central to the issue of inequality:

- In developing countries, land presents a much higher proportion of total wealth than in developed countries, and inegalitarian patterns of land ownership are a major source of income inequality. Furthermore, the owners of land usually possess political and economic power which can be exercised in ways that harm the interests of the bulk of the rural people (World Bank 1972, p.30).

Hence, it concluded that ultimately rural life cannot be improved if “land ownership is highly skewed.” (World Bank 1972, p.35). For the Bank, the focus of land reform was clear, “social and equity issues are the main concerns...thus where there are exploitive landlord tenant systems...reform incorporates changes in the rights of tenants, redistribution to ownership to existing tenants or the replacement of the landlord by the tribe or the community...reform may require subdivision of large holdings or transfer to the state...may involve the transfer of some land from the state to individuals” (World Bank 1974, p.5).

While previous reports on individual countries recognised this connection, they took the view that “the distribution of land was a matter of national policy and internal politics and that Bank Group—as an external lending agency—should adhere to the existing policy and not advocate a rapid redistribution of land” (World Bank 1974, p.36). One exception was a 1967 loan of $18 million to redistribute land from former French-owned estates to small farmers in Tunisia to allow them to cultivate in a cooperative manner. Administrative incapacity led to the cancellation of the loan which underscored the difficulties to the World Bank of lending for reform-related projects. Still, the World Bank committed to two alternative types of support: countries that agreed to land reform could be assisted with financial and technical assistance or, where there was no interest in land reform, the Bank should enter into a dialogue with governments to support land reform when governments finally agree to projects but reject them “if tenure arrangements are so bad that they frustrate the achievements of Bank objectives” (World Bank, 1974, p.41).

However, there were few opportunities in Africa for the World Bank to intervene in support of land redistribution. Wily (2011) estimates that of the 50 governments involved worldwide with the classical reform of allocating land to the tiller from 1917 through the 1970s, very few were in Africa due partly to the absence of feudal or Asian style landlord-
tenant systems. Only Egypt (1962–69) and Ethiopia (1975) formally redistributed farmlands to eliminate exploitative tribute, tax and labour systems. Changes in land tenure through 1990 took the form of nationalisations by socialist states for collectivisation (Tanzania, Mozambique, Senegal, Somalia, and Sudan) or privatising “archaic” customary land tenure aimed especially at liberating land from social or collective responsibility. The latter would become the main focal point of reform though it was still in evidence from the colonial period.

Early on, the Bank was ambivalent about the benefits of privatising tenure arrangements by issuing legally recognised titles to individual plot holders. For example, the 1961 World Bank report on economic development in Tanganyika saw existing land tenure as an impediment to economic development but acknowledged that the transition from traditional communal to formal individual title could result in a large class of landless peasants. User rights to individual plots were secured with evidence of active use or maintenance. The report thus advocated a broad multi-sector approach to improving land use and agricultural development with heavy government intervention through planned settlement schemes. However, the World Bank did undertake titling efforts in other African countries. In Malawi, the Bank from 1968 to 1978 supported individual plot registration as part of an agricultural development programme. The aim was to demarcate 1.2 million hectares and to allocate titles to 109,000 households or 10% of Malawi’s rural population. However, the results were disappointing with 22% of the targeted land demarcated and only a small fraction of the farmers’ land registered (Owens et al. 2018). Bank support of privatisation was also present elsewhere early on.

Kenya was one of the first countries to launch large-scale privatisation with the 1944 pre-independent Swynnerton Plan which aimed to secure tenure through individual titling and registration of private plots (Wily 2011). Over time, pastoralist groups in Kenya have consistently suffered under new tenure laws. In pre-colonial times, the Maasai councils of elders negotiated grazing rights for their cattle but during the colonial period, the Maasai were moved multiple times to make way for parks or to allocate land to white settlers. In 1968, drawing on the support of the World Bank and USAID, Kenya formalised Maasai rights by creating group titles to ranches. After the mid-1970s, with the support of donors including the World Bank (in their adjustment loans), the Maasai took the privatisation of property rights further with the division of the land into individual plots with titles. The Maasai elite gave the most fertile portions of land to themselves or well-connected wealthy individuals at the expense of the less connected, particularly women and children. Significant portions of the ranch fell under the control of non-Maasai through the resale of plots or illegal registration of plots to people outside the village. Private sector players also moved in to create ‘conservatories’ for tourists using multiple year leaseholds leading to the further alienation of land from the Maasai (Stein and Cunningham 2017).

Over time, efforts to correct “bad tenure arrangements” increasingly became linked with reform aimed at formalised individual private property rights. How did this come about?
Competing theories of land reform

Lehmann, writing in 1979, explores the confluence of multiple theoretical traditions underlying the rationale for reform to that point. Evolutionary and historical thinkers operating in a Marxian tradition pointed to the need to remove vestiges of feudal-style lords by giving land to direct producers. A second element arose from the Structuralist tradition promoted by agencies like the United Nations Economic Commission for Latin America and the Caribbean that was inspired by non-Marxist egalitarianism. They argued that large land holdings were underutilised and impeded shared growth and development. A third element was based more on neo-classical style economic arguments: Land is simply a factor of production and its inefficient use is a product of market failures or imperfections. Poor peasants use capital and other inputs more efficiently than large land holders but are impeded from accessing these inputs compared to rich peasants and landlords by their lack of access to land. Hence, redistributing land to poor peasants overcomes this market imperfection.

The main problem with the neo-classical argument for land reform was that it was weak and largely in conflict with its major tenets as the two systems of partial and general equilibrium do not really generate a basis for redistribution. To Walras, land was largely seen as capital since it generates income on a continual year-by-year basis. Walras did attempt the argument that land was different due to its fixity, but his position was less than cogent since in the general equilibrium system, prices are always aimed at allocating a fixed quantity of goods, and land is no different to any other factor. Attempting to distinguish land by referring to it as “natural capital” which is not reproducible has no meaning in the Walrasian system that has no concept of time. There is no distinct concept of rent being part of the theory of income generation. Land should be treated like any factor of production in which private ownership is rewarded for its contribution to production. The idea of redistributing land should be no different than the idea that capital should be allocated to others which is an anathema to neoclassical economists and their commitment to private property rights which is at the heart of the price-reward nexus.

A similar problem arises in the Marshallian partial equilibrium analysis that is based on the separation of long and short-term periods and is subject to short run factor fixities. Temporary prices can be above long run prices, which can lead to higher than normal returns. Rent in the Marshallian system is a category assigned to all factors which are fixed, and land has no real special status. Hence, neither the Walrasian or Marshallian systems are able to provide a special theory of land that would justify its nationalisation (Atkins 1988).

The more contemporary neoclassical justifications were generated in the 1960s and 70s, when there was a broader consensus around reform (Lipton 1974; Dorner 1964; Warriner 1969; Cline 1970). Driven by social and political forces pushing for equity, the justification ultimately arose from the empirical observation of the inverse relationship
between the size of the farm and the output per acre. Hence the argument contested the idea of economies of scale. Thus, redistribution was justified not just for considerations of equity but also for social efficiency reasons. Even if private profits are higher in large farms the result was not socially optimal where labour surplus is present.

The microeconomics of it are fairly straightforward and are argued using neoclassical theory. Large landowners employ labour up to the point of private profitability where the wages are equal to the value of the marginal product of labour. Small farmers apply family labour and produce more intensively because the opportunity cost of production is below the market wage. However, in the neoclassical world of free and competitive markets this should disappear. The only way it can persist is if the failure of labour and land markets generates a duality of non-competing worlds. This does not explain the origins, only that in essence you have two different decision making systems operating under different institutional settings driven by the property ownership system. Smallholders are driven by survival not profit maximisation.

Reform by nature is institutionally transformational, and hence, the redistribution can only be equity and efficiency enhancing in an institutional ceteris paribus world. Moreover, redistribution of land itself can improve access to land, countering underlying market failures and related price distortions and hence affect the production decisions that underpin the advantages of small-scale production. Structuralist, Marxian and institutional economic arguments above, which are more strongly related to development as a product of social change not methodological individualism, tend to provide a stronger theoretical basis for reform (Atkins 1988).

These approaches waned in academic and policy circles and were replaced by neoclassical economics. As the political imperatives for reform disappeared, so did the strength of the forces in favour of the redistribution of land to the poor. Land reform soon became synonymous with formalising and strengthening private property rights. What were the origins of this and how did it relate to neoclassical economic theory?

**Reform and Private Property Right Formalisation**

Debates over the ownership and control of private property were presented in earlier centuries in the works of great philosophers like Locke and Hobbes. Arguably however, the most important contribution in laying the groundwork for justifying the formalising of individual property rights in land came from the work of Harold Demsetz (1967).

Demsetz carefully weighs the advantages of individual property rights over communal property rights. Private property rights are not always advantageous. They to some degree are evolutionary and the result of a natural process:

- Property rights develop to internalize externalities when the gains of internalization become larger than the cost of internalization. Increased internalization, in the main,
results from changes in economic values, changes which stem from the development of new technology and the opening of new markets, changes to which old property rights are poorly attuned.

Demsetz points out that prior to the fur trade in North America, the externalities associated with hunting game were small in 17th century North America and hence there was no evidence of private property. However, with the arrival of the fur trade and the beginning of husbandry, private property started to appear in North America in the 18th century to prevent poaching and overhunting. Private property could be kept communally or privately. Demsetz argues that individuals in a communal setting will maximise their right to the land by overhunting or overworking the land because the cost is born by others. The problem is that the costs of reaching a communal agreement are expensive as is the cost of policing the agreement. This is complicated because it also fails to take into account the fully expected benefits and costs of today’s decisions on future generations.

By contrast, the private property owner has incentives to reduce externalities and invest in the land:

“The resulting private ownership of land will internalize many of the external costs associated with communal ownership, for now an owner, by virtue of his power to exclude others can generally count on realizing the rewards associated with husbanding the game and increasing the fertility of his land. This concentration of benefits and costs on owners creates incentives to utilize resources more efficiently” (p.356).

Externalities do not vanish, but they are greatly reduced since they are negotiable typically by a smaller number of directly affected parties. However, what is crucial is that one individual without the impediments of others can decide on the income-maximising stream of costs and benefits from an array of alternatives including “the supply and demand conditions that he thinks will exist after his death” (p.355).

Authors like North and Thomas (1977) take the argument a step further and argue human progress has been predicated on “exclusive property rights that reward the owners and provide a direct incentive to improve efficiency and productivity…this change in incentives…explains the rapid progress made by mankind in the last 10,000 years” (p.241).

The idea that individual private property rights provide unimpeded decision-making and the incentives to maximise the short and long term production of land provided a very powerful allure to neoclassical economists and their explanation for the poor performance of African agriculture from early on. Drawing on the work of Demsetz, Allen and other neoclassical writers, Johnson (1972) places African problems like land disputes, corruption and inefficiency in the use of land to poorly defined rights. Land is best utilised when land rights are clearly defined with “legal tenure and certainty”, where cost-reward structures
internalise the costs and benefits and the freedom to legally enforce contracts as long as they have no effects on outsiders for which the contracting parties are not made to compensate. In his view, individual cultivator systems best meet these stipulations as long as property rights are clearly defined, legally guaranteed and contract enforcement remains at low cost. In contrast, communal land fails miserably on all three counts since rights are unenforced, costs and benefits are not internalised and there are no contracts to enforce so the latter is irrelevant. Investment in land will be almost non-existent and the quality of land will invariably erode. Landlord-tenant systems are also inferior because the cost of enforcement is higher.

While ideas have power in themselves, the drift toward formalisation as reform in Africa required a confluence of forces that altered the terrain of policy decision making both in international policy circles and within Africa itself. A key shift was in the growing interest and prioritisation of land adjudication in the World Bank. This was a natural development of the growing domination of neoclassical economics in the Bank from the early 1980s and the ease in which it jettisoned the equity and poverty concerns of the 1970s to adopt the neoliberal agenda of the adjustment era (Stein 2008).

As we saw above there was no solid theoretical rationale for land redistribution in neoclassical economics. At the same time, there was an intrinsic affinity to the formalisation of individual property rights on land. Studies from the Bank are diverse in their conclusions and methodologies for example Jacoby and Bart (2006) which was unable to show any benefits in titling in Madagascar. The general thrust after the 1980s was towards generating quantitative studies illustrating the benefits of property right titling though the nature of these benefits have varied over time. Feder et al. (1988), for example, argue that the lack of formal land titles has impeded the use of land as collateral to access credit markets. Feder and Feeny (1991) have a slightly different focus: “secure and individual property rights over land, or secure and long-term use rights on land induce exertion of higher levels of labor and management effort and higher levels of investment to protect and enhance land fertility” (Feder and Feeny 1991, p.146).

There was a comparable move in policy terms. Very early on, structural adjustment programmes began to incorporate titling components. For example, the Kenya second structural adjustment loan of 1982, contained the following provision:

“\textit{The de facto subdivision of large farms is legal, in the sense that it is not an offense under the Land Planning Act. However, granting of titles has been stymied by lack of financial and technical resources for survey, adjudication and provision of basic services. The structural adjustment program therefore aims at accelerating the process of regularization of de facto subdivision of large farms so as to realize the output potential of the high quality land involved}” (World Bank 1982).
Over time, there was a broadening consensus in the donor community on the importance of private land rights formalisation. Wily (2011) surveyed the efforts across sub-Saharan Africa and found at least 32 states undertaking some form of redistribution or land tenure changes from 1990. Efforts were state-led but very heavily donor-influenced. International agencies have made a sustained effort to reduce restrictions on land markets and to offer them more widely to foreign investors. This was the initial impetus for state-led reforms in places like Mozambique, Uganda and Zambia. At the same time, there have been internal pressures from wealthy elites for greater privatisation including the removal of limitation on land acquisition and speculation and a push back against the costly and time-consuming nature of land transactions (Wily 2011).

The focus on length and cost of land transactions coincided with the World Bank’s metrics on ‘Doing Business’ and its more focused application since 2013 on “Enabling the Business of Agriculture”. In both Tanzania (2005) and Uganda (2004), World Bank land registration efforts were part of the private sector competitiveness projects aimed partly at improving their ‘Doing Business’ rankings in Africa (Stein and Odgaard 2019).

Wily (2011) makes a number of wider observations about the changes in land reform since 1990. First, land redistribution efforts have often been generally disappointing. The restitution of white-owned land in Namibia and South Africa was driven by World Bank market assisted norms. Less than three million acres of the 26 million marked for transfer from white to black farmers in South Africa was achieved through 2009 with even lower figures for Namibia. Second, land has become increasingly fungible with the removal of restrictions on customary lands. Third, access of rights to foreigners through the retraction of restrictions and the simplification of procedures has become widespread and encoded in new land laws. Fourth, efforts to formally register land are nearly ubiquitous and pushed as the route to tenure security in “even after a century of demonstrated difficulties in applying this at scale” (p.12).

Recognising customary rights often still has less legal force than property rights provided through non-customary registration procedures. State seizure of customary land has often occurred without sufficient compensation. Customary rights over natural resources have seldom been recognised. State concessions for mining rights or timber harvesting are often allocated without sharing the benefits with local communities. How has all of the above played out in Tanzania?

**Customary rights, formalisation and the shifting contours of land policies: the case of Tanzania**

In Tanzania, the 1923 Land Law gave authority over all land matters to the Governor who granted rights of occupancy and land usage. The amendment to the law in 1927 recognised customary or deemed rights in accordance with “native laws and customs”. After independence the government maintained the same approach to land rights with the
Governor’s authority transferred to the President. Beginning in 1967, Tanzania undertook major land reform including nationalising expatriate estates, abolishing freehold tenure, outlawing the sales of land and the creation of Ujamaa villages along main roads aimed at providing government economic and social services. In 1969, Tanzania incorporated privatised lands and other properties into state farms under the rubric of the National Agricultural and Food Corporation (NAFCO). In 1975, comparable state effort in livestock management was generated under the National Ranching Corporation (NARCO).

Voluntary movement into Ujamaa villages gave way to increasing pressure on rural inhabitants to resettle. Roughly 5000 villages were created between 1967 and 1972 housing two million people or roughly 15% of the population. Between 1973 and 1976, the government forcibly relocated millions more into villages. By 1977, it is estimated that 13 million of 17 million rural inhabitants were living in 8000 villages. Villages had both plots that were collectively cultivated, and contiguous individual plots meant for potential access for state-owned tractors. Customary rights were continued but circumvented to some degree by elected village governments and village land committees. Land holdings were equalised and landlessness largely absent. New land was generally available and could be allocated to newcomers and children of families living in the villages (Silwal 2015; Wily 2011; Haki Ardhi 2009).

The shift away from state control of land and land redistribution toward reform based on individual private property rights was gradual. The Local Government Finances Act of 1982 repealed the Villages and Ujamaa Villages Act of 1975 that provided the legal basis for the Ujamaa villages. A key turning point was the publication of the Tanzania National Agricultural Policy in 1982 arising from the task force of Professor Simon Mbilinyi, who subsequently became the Principal Secretary of Agriculture. In the background, the World Bank was busy pushing its privatisation agenda in agriculture with the “legalization of the private sector in agricultural input and output, marketing, production, agro-processing and transport” (World Bank 1983, p.188). A World Bank team led by Uma Lele met with officials in Tanzania in 1982. Later that year, the World Bank submitted a green cover edition of the Tanzania Agricultural Sector Report and sent a mission in 1983 for discussion with the government. Shortly after the Tanzania cabinet published a White Paper on “The Agricultural Policy of Tanzania”.

The new policy covered a variety of agricultural subjects but was noted for its commitment to increase private sector activities in all aspects of agriculture. This included improving the security of land for all private forms of agricultural production to “develop the long-term productivity of land” including a minimum of 33 year leaseholds and encouraging the formation of new private farms for export crops (Business and the Economy 1984). The adoption of the new approach in agriculture along with other reform measures paved the wave for a full-scale structural adjustment package agreed in 1986 (Campbell and Stein 1992).
In 1990 the National Investment Promotion Policy further encouraged private investment in land. It created the Investment Promotion Center (IPC) to attract foreign direct investment. The policy emphasised that “there are extensive areas of arable land, outside designated village land, which are still available for lease by private or public investors” (URT 1990, p.13 quoted in Sundet, 2004, p.74). The myth that there was unoccupied land in Tanzania waiting for investors had driven policy from the 1990s, up to and including, the deliberations around the new land policy. In practice, the effort has required a need to wrestle land away from villages for investors and other purposes for which formalisation of private property rights has played an important role.

In 1995, the government passed a new National Land Policy. There were two competing efforts behind the new policy: a commission under the leadership of Professor Shivji and an internal committee under the Ministry of Lands. The Shivji commission toured the country taking widespread testimony from experts and local people managing to visit all but two districts. The public barely knew about the ministerial committee with little interaction or input with the general population. The Shivji report wanted to create two categories of land—village and national land. Village land was to be removed from executive control and vested in the village assemblies, but the government was pushing for centralisation in order to free up land for investment purposes (Sundet 2004).

After the completion of the Shivji commission report in November 1992, there was virtually no dissemination of the results. The report was not even distributed to the legislature and there was no response to the commission report for two years. The government quietly worked on a series of new drafts and held a workshop of all parties in January 1995 which largely reaffirmed the drafts from the ministerial committee. They rejected any attempt to take land away from presidential control and also rejected Shivji’s attempt to recognise customary rights through a village of elders dealing with disputes and the creation of titles for village purposes. Instead, they recommended individual titling with recognition beyond the village level (Sundet 2004). Arguably, from the government perspective, this still gave too much power to the villages over land issues. Since 1995, the government has generated multiple drafts of a new national land policy aimed at replacing the 1995 National Land Policy. The first or ‘zero’ draft dramatically reduced village control of land including the removal of the restriction on non-villagers to purchase village land and the elimination of differences between the certificates of rights of occupancy (cros) on general land vs. customary certificates of rights of occupancy (ccros) on village land. Subsequent drafts have more subtle changes in control (Stein et al. 2017).

In 1999, the government passed two new land acts, the Land Act and Village Land Act to codify the new national land policy. Land was categorised into general, reserved and village land. Reserved land consisted of land allocated for special purposes, including forest reserves, game parks, game reserves, land reserved for public utilities and highways. It was generally land set aside by other legislation. Village land was under the authority of
each village. General land was hence a residual category that was not reserved or village land. However, it also included unoccupied land and unused village land or ‘extra land’ that could be freed up for investment purposes from formalisation. This was clear from a speech by the Minister of Lands, Anna Tibajjuka who “explained that surveying village boundaries is the initial step towards acceptable land plans and to secure persons’ right of ownership opening avenues for loans and other financial transactions with the land asset serving for collateral…This exercise should also identify villages with extra land in which big plantations can be established, so that there would be a clear list that will be made available to investors…” (Guardian, March 15, 2013 quoted in Maganga et al. 2016, p.13).

Clear authority was given to the Minister of Land and the Commissioner of Lands to allocate occupancy rights with local land committees permitted only an advisory capacity. Foreign occupancy was allowed when approved for investment purposes.

The Village Land Act (1999) gave customary rights of occupancy in the village status equivalent to statutory rights (in general land). However, in practice they are encumbered by very different sets of obligations. For example, there are restrictions on the ability to transfer customary rights to non-villagers. Authority continues to be given to the President to reallocate land for public purpose into the reserved or general land category (for investment or other reasons). Villages must apply to the Commissioner of Lands for a certificate of village land demarcating the boundaries of the village. Despite recognising customary rights on an equal footing with statutory rights, the act created a new form of individual titling, Certificates of Customary Rights of Occupancy (CCROS). Rights become derivate if there is any further usage of the land including its sale and are subject to restrictions. Transactions below five acres only needed the approval of the village council, 5–30 acres the village assembly’s approval and above 30 acres needed approval of the assembly and the advice of the commissioner of lands. The government subsequently generated strategic plans for the implementation of the land laws in 2005 and 2013 (SPILL) which carefully laid out the steps for adjudication. Over the course of the next two decades, Certificate of Customary Rights of Occupancy become the focal point for hundreds of millions of dollars of donor-sponsored efforts to adjudicate individualised property rights in Tanzania.

The commitment to the privatisation of land was buttressed by other government measures. In 1996 and 1997, a new National Investment Promotion Policy and Tanzania Investment Act was adopted, aimed at removing conflicting laws and easing access for investors. The Tanzania Investment Act Number 26 of 1999 led to the replacement of the Investment Promotion Center by the Tanzania Investment Center and became a one-stop place to promote and facilitate investment. The Tanzania Investment Center was allocated the responsibility for identifying land for specific investors and for identifying potential land for investment that could be used to attract future investors. The liquidation of National Agricultural and Food Corporation led to the privatisation of large tracks of
land rather than the return of land to their original source, the nearby villages (Haki Ardhi 2009). This established a pattern largely in place today: once land has been taken from village control, it is rarely returned to the village.

As a result, the quantity of land under village control has fallen dramatically. The government continues to misrepresent the amount of land under village control as part of a false narrative that there is plenty of land available for villagers that should be willingly given up for other purposes.

For example, the 2018 draft of the new National Land Policy states:

“For purposes of land administration, land in Tanzania is divided into three broad categories namely General Land which is 2%, Village Land which is 70% and Reserved Land which including Forests and Wildlife Sanctuaries is 28%.”

The figures are likely two decades old. Bluwstein et al. (2018) document a multiplicity of sources of land alienation from villages from mining, animal, wetlands and forest conservation, investment and tourism. Drawing on a variety of documented sources and GIS measurements, they estimate reserved lands to be around 42% of the total land but as high as 51% of the total. The largest expansion has been in the category of reserved lands, completely at the expense of village land. Given the other sources of land alienation including the carving out of land from villages for refugee camps, the expansion of towns, the growth of mining and expansion of investment, there is little doubt today that village land is less than 50% of the total. Villagers everywhere feel under siege. Landlessness is high with no land available for youth, conflict is growing, and ownership of land is uneven, with millions owning tiny plots. Instead of addressing these and other pressing issues by returning to distributive land reform strategies, the focus has been on formalising individual titles.

**Fetishising the formal in Tanzania: toward institutional autism**

Owens et al. (2018) document how the international community in cooperation with key domestic players, created a fetish around the generation of Certificates of Customary Rights of Occupancy in Tanzania. As discussed, the focus on formalisation was originally to increase the productivity of land through the security of property rights. In the wake of the growing interest in poverty alleviation following the Sustainable Development Goals, there was a bold new focus on titling to reduce poverty. In 2005, the Commission on the Legal Empowerment of the Poor (CLEP) was organized drawing on the ideas of Hernando de Soto and the influence of an assembly of luminaries like Madeleine Albright, Bill Clinton, Lawrence Summers, and President Benjamin Mkapa of Tanzania along with former Presidents of Mexico, Ireland and Brazil. The Commission sought to alleviate poverty by legally recognising property rights for those in an ‘extralegal’ status to gain the benefits from the formal economy.
Shortly after, de Soto was invited to serve as consultant on a titling project financed by the Norwegians undertaken by the newly formed MKURABITA (Program to Formalise the Assets of the Poor of Tanzania and Strengthen the Rule of Law) which was housed in the President's Office rather than the Ministry of Lands. The main argument underlying the importance of titling in MKURABITA was the belief that the poor would have Certificates of Customary Rights of Occupancy to access loans. Our research team had multiple meetings with senior members of the MKURABITA team from 2010 and reported our findings that holders of Certificates were not getting access to credit. However, we learned in villages that MKURABITA continued to promise credit access to the participants.

This was a position they continued to take in spite of the overwhelming evidence that Certificates of Customary Rights of Occupancy were not generating loans. MKURABITA continued to undertake titling from government funds after the Norwegians decided not to renew their support. Their approach was to train local villages to use GPSs in at least two pilot villages and to provide equipment (computers and printers) to district land officers so they could pursue titling in other villages with the fees collected from distributing CCROS to villagers. Through May 2015, they had operated in 52 districts in Tanzania and had titled 208 villages. 105,000 parcels of land were surveyed but only 65,000 documents issued (MKURABITA 2015). Though at a lower cost than other approaches, we learned from interviews in villages and district land offices that the error rate was high. In addition, many villagers did not collect their Certificates of Customary Rights of Occupancy from village offices either due to the fees, because they learned they could not get loans with them, or due to fear that they might be taxed once there was a record of ownership. The effort was only one of dozens of donors and NGOs financing of titling for a plethora of reasons using different methodologies between 2002 and 2019.

In 2002-05 the EU sponsored the earliest pilot programme aimed at generating individual titles in the coffee growing district of Mbozi. It used aerial photos and GIS devices. The cost per Certificate was prohibitive. While the majority of village boundaries were surveyed only 2200 Certificates were generated at a cost of $1633 per Certificate. Five years later, the World Bank initiated another pilot project in Babati (Manyara) and Bariadi (Simiyu region) as part of a private sector competitiveness project. In addition to the shift in rationale, the project used an extremely costly satellite imagery to set boundaries, which were then entered into a GIS system. While nearly 14,000 Certificates of Customary Rights of Occupancy were issued, the cost was still an extremely high $538 per Certificate (Owens et al. 2018).

Other high profile donor driven projects included titling to augment private investment. In 2011, at the World Economic Forum in Davos, Switzerland, Tanzania launched a partnership involving donors and large multinational agro-processing companies. The Southern Agricultural Growth Corridor of Tanzania (SAGCOT) aimed at raising US$2.1 billion in private sector investment over the next 20 years in a large area stretching west
from Dar es Salaam through Morogoro, Iringa and Mbeya to Sumbawanga. To attract investors, the government has stated its intent to transfer a significant portion of village land to the general land category with arguments that abundant land in Tanzania is freely available and unoccupied. Identifying land available for transfer to the general land category is an important element of the stated motivation for formalising village land.

Following the initiation of SAGCOT, President Obama established private investment in agriculture as part of the New Alliance for Food Security and Nutrition at the G8 meeting in 2012 and claimed its greatest impediment was the lack of the security of land tenure. At the 2013 G8 get together, titling was again emphasised but this time as a mechanism to combat corruption and opaque land deals that undermine productive investments. Six partnerships for improving land tenure were generated including one between Tanzania and the UK, Denmark and Sweden (Maganga et al. 2016).

The $15.2 million Land Tenure Support Program (started in 2015) with roughly $8 million allocated to a pilot titling project in two districts in Morogoro (which became three after one divided). However, due to disagreements on the value of individual titling, driven in part by the research in this paper, Certificates of Customary Rights of Occupancy were not generated until 2017. The final report indicated that roughly 183,000 Certificates were delivered to villages and claimed a cost of $10 per Certificate. However, they excluded fixed costs like purchasing an expensive satellite map and software systems together with overhead expenses. Including these fixed expenses raises the actual cost to at least $60 per Certificate. The project introduced yet another approach: The Mobile Application to Secure Tenure (MAST) software and Quantum GIS with Postgres database and TRUST (Technical Register Under Social Tenure) (URT 2019).

The approach used by the Land Tenure Support Program was developed in yet another titling project being undertaken by USAID in Iringa and Mbeya which aimed at village-focused land formalisation in the SAGCOT region. The approach was first developed in three villages in Iringa between February 2015 and May 2016 but has now expanded to 40 villages through 2019 (Msigwa et al. 2018). The USAID “Feed the Future Tanzania Land Tenure Assistance” $6 million project to title focuses on a similar rationale as the G8 effort:

“While Tanzania’s legal framework provides clear land tenure protections for men and women alike, village-level land tenure is frequently not secure and is often susceptible to outside interests. The land in many villages is typically not mapped, demarcated according to use, or registered—and there is significant disparity in how investors access land in Tanzania. Each of these factors combine to represent a significant and binding constraint to economic growth and investment, provide a climate for disputes, and disenfranchise vulnerable groups” (USAID, 2019).
These activities were part of a patchwork of dozens of efforts at titling. According to Haki Ardhi, there are 62 registered NGOs working on land issues. Many focus on female empowerment, poverty reduction, enhancement of livelihood security, protecting pastoralists, and environmental and wildlife conservation. They have converged on titling as the catch all treatment. Many have weak research capacities and have done little to study the real impact of their projects. They have jumped on the bandwagon perhaps due to the simplicity of their position which appeals to donors in mass campaigns or because it has become a priority project in international donor circles. Sometimes the rationale shifts but the titling projects continue (Owens et al. 2018).

Consider the NGO Irish Concern. They launched a project ‘Rights to Food and Land’ in 2005 that included a component subsidising the generation of Certificates of Customary Rights of Occupancy for 20 households in 32 villages in Iringa. In their view the lack of title “limits the people’s ability to expand the area under cultivation due to uncertainties of land ownership and inability to use the land as collateral to access loans from credit facilities” (Concern 2005). In 2012, it launched a project in Kigoma to provide land titles to female-headed households in 40 villages as part of a programme on ‘Women’s Social and Economic Empowerment’. Around the same time, it pursued a ‘Land Use’ program in Kagera region that assisted with the procurement of Certificates for some 1800 households (Owens et al. 2018). We asked the Tanzania Director of Concern in October 2014 about the shifting rationale. He responded:

“Focus is not on whether people who get Certificates of Customary Rights of Occupancy are able to access credit or not. Most important is security of land; added value of avoiding/minimizing conflict intra-village and/or intra-household. Anyone with security of land will feel empowered and a greater sense of self-esteem. This is more important than access to credit”.

The interview took place in Dar es Salaam. On my way to Tanzania, in October 2014, I stopped in Dublin to present the findings of our research to Concern headquarters. They promised to both record my lectures and to link via satellite to their affiliates worldwide. In the end they claimed that neither the recording equipment nor the satellite feed worked so that my presentation which was critical of the impact of titling was only given to a handful of people.

Owens et al. (2018), based on the documents they were able to secure, estimate that $158 million was spent between 2004-16 on titling at an average of $559 per title. In contrast the government planned to spend only $1.30 per person in their 2018/19 budget for agriculture. Expenditures on titling are about to expand dramatically, in view of the $150 million World Bank project to scale up titling in Tanzania which was announced in 2019 (Kandoya 2019).
What has been the impact of all this effort? Has it met the multitude of intended promises such as securing women's rights, access to credit, stopping land grabbing, raising the income of the poor, securing pastoral rights to land, reducing conflict, allowing small holders to launch new businesses, raising investment levels, making people feel more secure etc?

**Household survey results in Tanzania**

To date, our ten year project has examined many of these propositions by surveying over 2000 households in 40 villages located in four regions and returning to 377 of the same households in three of the regions around five years later. We have also undertaken hundreds of semi-structured interviews with key informants, some from study villages (elders, elites, landless, women, pastoralists) and beyond (bankers, government officials, World Bank and donor representatives, NGO staff) from 2008–2018.

Our research to date shows little evidence in support of these promises. In summary, Stein et al. (2016) using a logit regression model, finds no evidence of Certificates of Customary Rights of Occupancy holders obtaining loans. The biggest predictors of loans were savings accounts, income, and high value crops like coffee and rice. We are still examining issues of insecurity, conflict, and the impact of Certificates in villages across our full sample. However, our earlier testing using logistic regressions found no statistical relationship between holding Certificates and improved security. The vast majority of people surveyed were not worried their land would be taken away. Conflict seemed to be higher in villages undertaking titling.

Our analysis of the impact of Certificates of Customary Rights of Occupancy on income looks at the entire sample. We find that those holding a Certificate have a slightly higher log income compared to those without. However, the majority of Certificates in our survey were in villages producing highly valued crops like coffee and rice, making it difficult to determine the causation. A better approach is to look at the impact of holding Certificates on the same households. We tested the impact of a Certificates of Customary Rights of Occupancy on households over time by comparing the log of the median ratio of the incomes of three groups those without a Certificate in both time periods, with those that received one between the time periods and those who had a Certificate in both surveying periods. The ratios were 1.17, 1.32, and .8. Hence those holding Certificates the longest had a fall in income. It should be noted that the sample size is still small, and the differences are not statistically significant, but the results are disturbing for the proponents of titling.

The issue of titling and gender is also somewhat disturbing. Askew and Odgaard (2019) point out that the economic theory underlying property right formalisation is abstracted from the familial, socio-cultural and economic relations which affect the access of women to titling. There is strong evidence that titling leads to the exclusion of the rights of women. The World Bank reported only 3.4 per cent of Certificates of Customary Rights of Occupancy issued in Babati, and 5.8% in Bariadi were given to both men and
women. In the districts of Chamwino and Kongwa in Dodoma where we undertook our household surveys, the results were similar with 2% and 14% respectively (Askew and Odgaard 2019). The figures for the recently completed Land Tenure Support Programme project in Morogoro were only slightly higher at 16.7% (URT 2019). In all cases, the vast majority of the titles are in the name of men alone.

The results are not surprising. The process of formalisation confronts multiple legal regimes. Customary law gives a clan the right to pass on its land to its descendants. Village law allows elected village land to administer land and statutory law confers the right of holders to title deeds and associated occupancy rights. The majority of the country’s ethnic groups are patrilineal hence land gets passed on to sons and even daughters but not wives. As one person we interviewed stated:

“If my wife were to be included on the title, and if I were to die before her’, one man gently explained to us, ‘and if my wife were to remarry, as would be her right, how could my uncles and brothers accept a man from another clan coming to live on our clan land? They would not accept it.” (quoted in Askew and Odgaard 2019, p. 76).

This came out in many other interviews in villages that undertook titling including one we visited in Chamwino, Dodoma in 2016. We asked a person why he did not include his wife on the Certificate. He indicated he was worried that if he divorced his wife, the land would go to her family and not his children.

**Land ownership and landlessness in Tanzania: returning to land reform as redistribution**

In the rush to titling in Tanzania, analysis of the social structure of countryside has been absent. Our data provide a deeply disturbing picture of land ownership that is remarkably uneven for a country that was once socialist. There are signs of landlessness everywhere and no land set aside for the next generation in any villages we visited. Many farms are small and will not be very viable as they are broken up in the next generation.

Landlessness in our first wave sample of over 2000 households is currently at 11.7% with a regional average range of 7.2% in the villages of Kigoma to 16% in Dodoma. Only two villages surveyed had no landless people in our household samples. One village in Mbarali had a landless level of 29%. If you include people with less than one acre, the number rises to 20% with the total for Mbeya/Songwe at 24%.

This is clearly a generational issue. The landless rate was 39% in households headed by someone under 21 years and 19% for those between 21 and 35. The overall gini ratio for land owned from all sources was .61 (some villagers owned land in other villages). The ginis in three of four of our regions was above .6. Our survey indicated that there was a robust rental market and a growing number of villagers obliged to work on larger parcels of land around their villages. As one would expect the income divide for people hiring
labour was stark; 80% of those in the upper 10% income group hire labour on their land compared with 13% for the lower 10%. 17% of households rely on casual labour for some income. The viability of farm sizes is contingent on a number of factors, but the median size of farms was between 3 and 4.5 acres in half of eight districts we surveyed.

From an institutional perspective, there is a prima facie case for returning to conceptions of land reform outlined early in the paper. Land accessibility and a host of related issues are having a large impact on poverty in Tanzania. In 2018 dollars, the median per capita income in our survey (imputed from total farm production and other income sources) was $.17 in Dodoma, $.13 in Kigoma, $37 in Mbeya/Songwe and $.53 in Mbeya. We can get a rough sense of the depth of poverty for many people. The wholesale price of maize in June 2018 was around Shs. 600/kg in various parts of the country. There are roughly 3500 calories in a kilo of maize. Active men, women and children need between 2000-3000 calories per day ignoring the rather poor nature of this as a source of protein (maize lacks key amino acids like lysine and tryptophan). Individuals reaching the median income in 14 villages in our sample of 40 villages could not even afford the minimum diet of 2500 calories (costing $.18).

We ran a series of regressions on income including the impact of land. The elasticity of income to land was between .24 and .57 depending on the village. Not surprisingly, access to credit, inputs and high value crops like rice and coffee were all significant. However, the number of people getting access to credit or inputs was very tiny. Only 8.8% of households had access to any credit. Most were small loans coming from family or microcredit institutions. A mere 1% of households reported bank loans. One of the biggest complaints was marketing and the terrible prices farmers were getting from middlemen who in some cases charged half the wholesale value. The problem was ubiquitous with some districts reporting as high as 86% of all households forced to sell to middlemen.

All of this points to the need to return to institutional economic visions of land reform. Neoliberalism in Tanzania has altered the landscape of power exacerbating income inequality. The gini coefficient was above .6 in all seven of the eight districts in our sample. The eighth was only marginally below that at .59. Ten villages had ginis above .65. Only three were below .4. Those with access to credit, transportation, good roads, storage, improved inputs, marketing, irrigation, electricity, and extension have done well accumulating land, income and other forms of wealth. Others have suffered as the state, ostensibly in the name of neoliberalism, has retracted its responsibility to its citizens to provide a viable institutional framework that would support the majority of its rural population including the redistribution of land.

Our surveys asked households to rank their priorities for government support. Titling had the lowest mean ranking compared with water, roads, education and health care. Perhaps it is time to listen to the voices of the rural population and consider the opportunities foregone from the hundreds of millions spent on formalising property rights.
Conclusions
The paper began with tracing the early post-war history and literature underlying visions of land reform as a mechanism to improve equality and reduce poverty. Land reform was aimed at altering the institutional framework of agricultural production that underpinned rural livelihoods. Institutionalist economics understood that land transactions were distributive mechanisms driven by and embedded in the shifting power relationships driving transactions. Neoliberalism in Tanzania and elsewhere altered the landscape of power and the working rules affecting transactions at the expense of poor farmers and pastoralists.

The paper critically assessed the convergence of theory underlying the broader vision of land reform. Those operating within a neoclassical economic framework provided the weakest base for understanding the need for the redistribution of land to the poor that left them susceptible to a stronger set of propositions that would shift the emphasis toward a focus on reform as the formalisation of private property rights. The shift of the World Bank and other donors toward titling was a natural outcome of its growing domination by neoclassical economics and its convergence with donor priorities and international capital. A similar shift in the domination of neoclassical economics in universities and government agencies on the continent of Africa has provided shared ideologies and constructs that have empowered these policies.

The final section of the paper examined the history of national land policy in Tanzania including the shift toward individual property right titling. A large number of donors and NGOs have converged on this policy for a variety of different reasons. Our research shows little evidence in support of these propositions and a disturbing picture of growing landlessness, high levels of poverty and rising inequality. When considering alternative paths forward, the paper has suggested that one vision is to draw on earlier insights into land reform as a complex institutional construct.

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Women using hoes in a crop field in Kilosa, Tanzania.
Photo: Mitchell Maher/IFPRI
Rethinking land reform in Africa: new ideas, opportunities and challenges.
A review of property transfer taxes in Africa
Riël Franzsen

"Valid property rights are necessary to support investment, productivity and economic growth. Evidence from economies around the world suggests that property owners with registered titles are more likely to invest. They also have a better chance of getting credit when using their property as collateral. Likewise, having reliable, up-to-date information in cadasters and land registries is essential for governments to assess and collect property taxes correctly" (World Bank 2019b).

Introduction
Much has been published in recent years on property taxation in developing countries generally (Bird & Slack 2002; Bahl, Martinez-Vazquez & Youngman 2008; Bahl 2009; Bahl & Wallace 2010; Norregaard 2013; Slack & Bird 2015; Bahl & Bird 2018) and in respect of Africa more specifically (Franzsen & Olima 2003; Fjeldstad & Heggstad 2012; Franzsen & McCluskey 2017a). In some instances, the interest or renewed interest in property taxation relates to fiscal decentralisation initiatives, revenue mobilisation programmes or urbanisation.

Defined broadly, ‘property taxes’ include recurrent taxes on property, property transfer taxes, stamp duties, financial transaction taxes, as well as death and gift taxes. The International Monetary Fund (IMF) uses this broad definition for reporting national country statistics (IMF 2014). ‘Property related tax’ refers to any tax on the transfer, ownership or occupation of property (Franzsen & McCluskey 2017b). ‘Property transfer taxes’ refer to taxes on the acquisition or alienation of property, and include stamp duties, transfer taxes, capital gains taxes, gift taxes, as well as death and inheritance taxes. The terms ‘recurrent property tax’ refers to a tax on the ownership or occupation of property where the term ‘property’ may include immovable property (i.e. real property), movable property (i.e. personal property) and incorporeal property. However, in practice, ‘property tax’ and ‘recurrent property tax’ often refer more narrowly to a tax on the ownership or occupation of immovable property (i.e. land and/or buildings) only (Franzsen & McCluskey 2017b) and ‘property transfer tax’ refers to a tax on the transfer of immovable property only. For the purposes of this paper, ‘recurrent property tax’ and ‘property transfer tax’ refer to taxes on immovable property and immovable property transactions respectively i.e. are defined in the narrow sense.
Africa is urbanising faster than any other continent (UN-Habitat 2004). This rapid growth in the urban population will generate a significant increase in the demand for housing, social services and infrastructure that will support business development and ensure competitiveness in international markets (McCluskey, Franzsen & Bahl 2017b). Ingram, Liu and Brandt (2013) estimate that annual new infrastructure needs in developing countries will require about 5 percent of GDP over the next 20 years. By contrast, the level of total central and local government revenue in sub-Saharan Africa is only about 13 percent of GDP (IMF 2019). Revenue mobilisation should therefore be a priority. More tax revenues for African cities should lead to economic growth and increased public investment in infrastructure that, in turn, will drive up property values (McCluskey, Franzsen & Bahl 2017b). A value-based recurrent property tax is a logical choice.

All African countries except Burkina Faso and the Seychelles levy a recurrent property tax. Enforcing and maintaining a recurrent property tax system is neither an easy nor a static task (McCluskey, Franzsen & Bahl 2017a). It is especially difficult in the dynamic environments prevailing in developing countries where there may be a plethora of property-related taxes, fees and charges. Most African countries use a value-based system and in most countries using this system, it is under severe pressure from policy challenges and administrative weaknesses (McCluskey, Franzsen & Bahl 2017b). Almost all of the countries in Africa also levy one or more property transfer taxes – as is evident from Appendix 3. These taxes are generally assessed on sales prices or values declared by buyers and sellers. The prices and values declared in respect of property transactions constitute an important data set for the valuers who prepare valuation rolls for purposes of the recurrent property tax. High property transfer taxes seem to be one of the many reasons why value-based property tax systems in Africa are floundering.

A proper land titling or deeds registration system is important for a well-developed property market and a well-functioning property tax. The registration of titles or deeds should be comprehensive, efficient and transparent (Franzsen & McCluskey 2017b; World Bank 2019b). The absence of a legal cadastre and comprehensive property title or deeds registries do not preclude the imposition of a property tax – as is evident in Africa. However, poor tax policies may perpetuate informality and immature property markets. High property transfer taxes, as an additional cost to immovable property transactions, may reduce prices as well as the volume of transactions, thereby undermining the development of formal property markets (Bahl & Bird 2018). They may act as disincentives to migrate from informal to formal and more transparent property markets.

Property tax (broadly defined to include both recurrent and transfer taxes) generates between 2 and 3 percent of gross domestic product (GDP) for Organisation for Economic Co-operation and Development (OECD) countries but only between 0.3 and 0.6 percent of GDP for developing and transition countries (Bahl & Martinez-Vazquez 2008; Norregaard 2013; Bahl & Bird 2018). In Africa taking 2012 as base year for most countries, McCluskey,
Franzsen & Bahl (2017b) found an average of only 0.38 percent for those countries for which the IMF had data. IMF data from 2008 to 2017 for a selected number of countries across Africa confirm an average of below 0.3 percent – see Appendix 1. Despite misgivings over the extremely scant comparative data available, these data suggest that ‘property taxes’ have tremendous potential for mobilising more revenue (McCluskey, Franzsen & Bahl 2017a). In some African countries (e.g. Mauritius, Morocco and São Tomé & Príncipe) the larger share of revenue from ‘property taxes’ is actually generated through property transfer taxes, not the recurrent tax.

This paper focuses on property transfer taxes, given their prominence and potential importance in many African countries, their direct or indirect impact on the tax base assessment and administration of the recurrent property tax and their impact on titling or deeds registration processes.

Nature and scope of property transfers taxes

Many countries levy a recurrent property tax as well as one or more taxes on the sales price of immovable property transfers. The recurrent tax and transfer tax are often administered at different levels of government as the former is often a local tax and the latter a national or state/provincial tax.

The tax on property transfers take various forms, namely –

- a stamp duty, i.e. a revenue stamp affixed to the contract (e.g., deed of sale) and/or title or deeds documentation (e.g. Australia, Canada, The Gambia, India, Kenya, Pakistan and the United Kingdom);
- a property transfer tax on the underlying legal obligation effecting the transfer of the property (e.g. Belgium, Botswana, the Netherlands, Namibia, South Africa and Zambia);
- both a stamp duty and a transfer tax (e.g. Eswatini, Jamaica, Lesotho and Thailand);
- a capital gains tax (e.g. India, Pakistan and South Africa).

Legal liability for payment of the tax on property transfers may rest with the buyer (e.g., Kenya, Namibia, South Africa), the seller (e.g. Serbia and Zambia), or both (e.g. Dominica, Saint Lucia and Thailand). In practice, the buyer often bears the tax burden irrespective whether the law saddles the seller with the legal liability.

An attractive feature of property transfer taxes is the ease with which they can be collected. The title or deed registration system efficiently and cost-effectively functions as an audit mechanism to ensure compliance (Eyraud 2015). A tax receipt or exemption notice must be provided by the relevant collection agency before the transfer is legally completed (Bahl & Bird 2018). Although a central government tax in many countries (e.g. Belgium, Kenya, the Netherlands and South Africa), it could easily be a shared tax base between different levels of government (e.g. France and Thailand), a state/provincial tax (Australia,
Canada, Germany and India), or local tax (e.g. Ethiopia (Addis Ababa) and Poland). In many developing countries (e.g. Pakistan) property transfer taxes generate significant revenues (Wallace 2018). This is also the case in the European Union where the revenue from transfer taxes in 2015 exceeded the revenue from recurrent taxes in nine of the 28 member states (Brzeski, Románová & Franzsen 2019).

Property transfer taxes in Africa are usually central government taxes (e.g., Kenya, Lesotho, South Africa and Zambia), although examples of local taxes are found in Ethiopia, The Gambia and Sudan (McCluskey, Franzsen & Bahl 2017b). An interesting feature in a number of countries is the significantly higher tax rates that apply when non-nationals acquire property, for example, in Equatorial Guinea and the Seychelles (in respect of all taxable property), and Botswana (in respect of agricultural land only).

**Advantages**

Despite high statutory costs, efficiency costs, and concerns about equity and transparency, there are several reasons why real estate transfer taxes have found their way into tax systems in developing (and developed) countries, and why they remain popular (McCluskey, Franzsen & Bahl 2017b; Wallace 2018). These include:

- Transfer taxes are easy tax ‘handles’ because most buyers and sellers desire a legal record of ownership and therefore will voluntarily comply (Eyraud 2015; McCluskey, Franzsen & Bahl 2017b; Wallace 2018).

- The cost of collection can be low when it can be done by a third party such as attorneys or notaries who then remit the tax collected to the appropriate ministry or revenue authority (McCluskey, Franzsen & Bahl 2017b; Wallace 2018). However, as Bahl and Bird (2018: 262) point out, the apparent low administration cost can be deceptive. If self-declared values were checked for accuracy on a large scale, administration costs would increase significantly.

- Growth in property value make these taxes potentially important sources of revenue. In more than a few countries (e.g. Hungary, Mauritius, Morocco, São Tomé & Príncipe and Thailand), the property transfer tax generates much more revenue than the annual property tax (McCluskey, Franzsen & Bahl 2017b). Low and middle income countries may find it difficult to give up a tax with a yield in excess of 0.5 percent of GDP. Zambia is a case in point. In 2014, the transfer tax rate was increased from 5 to 10 percent and reduced again to 5 percent in 2016. The revenue impact was significant. Property taxes as a percentage of GDP increased from 1.15 percent in 2014 to 2.43 percent in 2015 (see Appendix 1).

- Where property ownership is concentrated in the higher income classes, and if turnover is greater for higher income properties, the distribution of tax burdens for a property transfer tax will be progressive (Bahl & Bird 2018; Wallace 2018). To the extent the tax is capitalised into land values, it likely is borne by all owners of land. Since land ownership is concentrated in the higher income brackets, the distribution of the tax burden will be...
• Property transfer tax may reach that part of the taxable capacity (property wealth) not captured by most income taxes and value added taxes (McCluskey, Franzsen & Bahl 2017b; Bahl & Bird 2018; Wallace 2018).

• The relatively few transfers (i.e. taxable transactions) in a year could be managed by the tax administration (Wallace 2018).

**Disadvantages**

There also are disadvantages to the property transfer tax (Bahl 2004; 2009; Alm, Annez & Modi 2004; Wallace 2007; Norregaard 2013; McCluskey, Franzsen & Bahl 2017b; Bahl & Bird 2018). These include:

• The cost of properly administering a property transfer tax may be very high in low and middle income countries, because taxpayers determine the tax base through declarations of the sales price or market value (Bahl 2009; McCluskey, Franzsen & Bahl 2017b). In an environment where tax morale is low, which is often the case in low and middle income countries, systems reliant on self-declaration of sales prices or market values require significant monitoring and auditing capacity and skills. To properly audit the declared prices or values require ‘a backup valuation system’ that will revalue and enforce penalties for under-declaration where appropriate (McCluskey, Franzsen & Bahl 2017b).

• Authorities do not routinely check declared values for accuracy. Therefore, under-declaration is commonplace – as evidenced by empirical studies in Indian states (Alm, Annez & Modi 2004 and Zambia (Kambobe 2018). The study by Alm, Annez and Modi (2004) found that under-declaration of sales prices tends to rise with the stamp duty rate. In Zambia, the doubling of the tax rate from 5 to 10 percent resulted in the under-declaration of sales prices by sellers. This is evident from the 198 percent increase in property transactions within the price range of ZMW 100,000 and ZMW 500,000 (i.e. about USD 7,800 and USD 39,000) and a decrease in transactions within the price range of ZMW 501,000 to ZMW 1,000,000 (USD 39,000 and USD 78,000) of 7 percent from 2013 to 2014 (Kambobe 2018).

Very high rates of transfer tax are an open invitation to under-declaration and a signal that monitoring will not be vigorous. In Zambia the revenue authority infrequently engages the Government Valuation Department (in the Ministry of Lands) to verify declared values. The number of sales transactions that required verification increased markedly after the rate increase in 2014 (Kambobe 2018). In Kenya the Ministry of Lands, Housing and Urban Development reportedly provides verification in most instances (McCluskey, Franzsen & Bahl 2017b). However, there is no centralised database of transactions to inform the ministry or the tax authority whether declared values constitute market value (McCluskey, Franzsen & Olima 2017).
• Theoretical and empirical studies indicate that high transaction costs have a negative effect on residential and job mobility and create lock-in effects in the housing market (Eyraud 2015). These taxes are generally economically inefficient (Bahl & Bird 2018; Wallace 2018). The empirical literature surveyed by Wallace (2018) points to important implications of property transfer taxes including turnover and price impacts leading to a loss in economic efficiency. Although these studies pertain to industrialised countries, the findings are likely to be applicable in developing countries as well.

• The relatively high level of transaction costs associated with transfer taxes may reduce the efficiency of the property market. This may be especially relevant for many African countries where property markets may still be immature or largely informal.

• If tax evasion and avoidance resulting from systemic undervaluation or declaration of property prices or values go undetected or unpunished, it is likely to encourage similar behaviour in respect of other taxes.

• In many countries, transfer taxes are national, non-recurrent taxes on property and therefore not necessarily tied to obvious local benefits. With significant underdeclarations of value, the progressivity of these taxes is questionable (Wallace 2018).

• There are often multiple levels and layers of property transfer taxes. This raises the overall effective tax rate on some transferred properties to very high levels and may amount to a substantial burden on the transfer of property. This may yield cascading taxes that further increase the risk of tax evasion and avoidance behaviour (Wallace 2018). There are also other non-tax transactional fees associated with property transfers, such as registration fees, notary fees and estate agent fees. In many cases, these third party fees will include value-added tax.

• Different levels of government may actually levy transfer taxes and recurrent property taxes, complicating the intergovernmental fiscal environment (Wallace 2018).

• Property transfer taxes impose a cost on property transactions thereby reducing the volume of formal transactions and slowing the development of the real estate market.

The administrative problems with transfer taxes are due to, among other things, a shortage of trained valuers and internal auditors within tax authorities. Because of the low probability of being detected, and because the property transfer tax is often levied at a high nominal rate, property owners have a significant incentive to understate taxable value. This leads to a revenue loss in respect of the transfer tax. More importantly, in jurisdictions where the recurrent property tax depends largely on property valuations as declared for transfer tax purposes, it also leads to a weakening of the accuracy of the database of the recurrent tax (Bahl 2004; Ruiz & Vallejo 2010; McCluskey & Franzsen 2013; McCluskey, Franzsen & Bahl 2017b; Bahl & Bird 2018). It forces the use of third-party data and subjective estimates of taxable values, and it all but rules out the possibility of implementing computer-assisted mass appraisal (Bahl & Bird 2018).
Mitigating under-declaration and informal transacting is possible. The transfer tax can be designed such that it will not undermine voluntary disclosure of the actual market price. For example, introducing a value-threshold exemption (e.g. Indonesia), or a tax rate of zero percent below a specified value threshold (e.g. South Africa), could be different methods of achieving this objective. A realistic value threshold, especially if coupled with a zero rate, would generally not discourage the transfer of low-value properties and should make it easier for first-time buyers to enter the formal property market.

**Property transfers and registration**

Globally, sub-Saharan Africa was the region with the most reforms relating to the transfer of property in the period from 2017 to 2018 (World Bank 2019b). In Angola, Burkina Faso, Djibouti, Kenya, Rwanda, Senegal and Togo property registration processes and practices were streamlined (World Bank 2019b). These changes will likely increase transparency, increase trust, and ultimately lead to the reduction of informality in property markets and increased title security. These positive developments may lessen the incentive for the under-declaration of sales prices. Tables 1 and 2 provide overviews of property registration and property transfer taxes in the ten ‘best’ and the ten ‘worst’ African countries (World Bank 2019b). Appendix 5 provides an overview of all 54 African countries.

<table>
<thead>
<tr>
<th>Country</th>
<th>Procedures (number)</th>
<th>Time (days)</th>
<th>Cost as % of property value</th>
<th>Property transfer tax(es) %</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rwanda</td>
<td>3</td>
<td>7</td>
<td>0.1</td>
<td>0</td>
<td>A fixed fee of RWF20,000</td>
</tr>
<tr>
<td>Mauritius</td>
<td>5</td>
<td>17</td>
<td>0.6</td>
<td>0</td>
<td>Abolished transfer tax on non-citizens</td>
</tr>
<tr>
<td>Seychelles</td>
<td>4</td>
<td>33</td>
<td>7.0</td>
<td>4</td>
<td>Additional tax on non-citizens</td>
</tr>
<tr>
<td>Morocco</td>
<td>6</td>
<td>20.5</td>
<td>6.4</td>
<td>Up to 7.0</td>
<td>Plus a fixed fee</td>
</tr>
<tr>
<td>Cabo Verde</td>
<td>6</td>
<td>22</td>
<td>2.3</td>
<td>5.5</td>
<td></td>
</tr>
<tr>
<td>Botswana</td>
<td>4</td>
<td>27</td>
<td>5.1</td>
<td>5.0</td>
<td>30% tax on non-citizens for agricultural land</td>
</tr>
<tr>
<td>Malawi</td>
<td>6</td>
<td>47</td>
<td>1.6</td>
<td>1.5</td>
<td></td>
</tr>
<tr>
<td>Tunisia</td>
<td>4</td>
<td>39</td>
<td>6.1</td>
<td>6.0</td>
<td></td>
</tr>
<tr>
<td>Sudan</td>
<td>6</td>
<td>11</td>
<td>2.6</td>
<td>2.0</td>
<td></td>
</tr>
<tr>
<td>Burundi</td>
<td>5</td>
<td>23</td>
<td>3.1</td>
<td>3.0</td>
<td></td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>5</strong></td>
<td><strong>25</strong></td>
<td><strong>3.5</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Sources: World Bank 2019 Ease of Doing Business; Franzsen & McCluskey 2017a.*

*Note: The 2.3% cost of property value for Cabo Verde does not correlate with the 5.5% for the taxes.*

Even a cursory review of the countries in Tables 1 and 2 indicates that – on average – the better performing countries have fewer procedures and complete registration in less time, resulting in improved efficiency and transparency. More striking, however, is the average cost per property value of the registration processes. In the best performing countries, the cost is well below 10 percent.
Table 2: Property registration – ten worst performing African countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Procedures (number)</th>
<th>Time (days)</th>
<th>Cost as % of property value</th>
<th>Property transfer tax(es) %</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>São Tomé and Príncipe</td>
<td>8</td>
<td>52</td>
<td>10.2</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Namibia</td>
<td>8</td>
<td>44</td>
<td>13.8</td>
<td>8.0 to 12.0</td>
<td></td>
</tr>
<tr>
<td>Cameroon</td>
<td>6</td>
<td>81</td>
<td>18.7</td>
<td>5.0 to 15.0</td>
<td></td>
</tr>
<tr>
<td>Congo, Rep.</td>
<td>6</td>
<td>55</td>
<td>13.9</td>
<td>15.7</td>
<td></td>
</tr>
<tr>
<td>Gabon</td>
<td>6</td>
<td>102</td>
<td>11.5</td>
<td>6.0</td>
<td></td>
</tr>
<tr>
<td>South Sudan</td>
<td>7</td>
<td>48</td>
<td>14.6</td>
<td>no data</td>
<td>Plus a fixed fee (mamum ERN340)</td>
</tr>
<tr>
<td>Eritrea</td>
<td>11</td>
<td>78</td>
<td>9.0</td>
<td>4.0</td>
<td>LRD100 fixed fee</td>
</tr>
<tr>
<td>Liberia</td>
<td>10</td>
<td>44</td>
<td>13.8</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Nigeria</td>
<td>12</td>
<td>92</td>
<td>11.3</td>
<td>0.75</td>
<td></td>
</tr>
<tr>
<td>Libya</td>
<td>no procedure</td>
<td>5 to 10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td>8.2</td>
<td>66.2</td>
<td>13.0</td>
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</tbody>
</table>


Not surprisingly, the four countries where costs exceed 5 percent of property value are countries with property transfer taxes of 4 percent and higher. The costs pertaining to registration in the ten worst performing countries exceed 10 percent – except for Eritrea where it is 9 percent.

As elsewhere in the world (e.g. Bangladesh, India, Jamaica and the Netherlands), many African countries (e.g. Angola, Burkina Faso, Cabo Verde, Chad, Congo, Guinea-Bissau, Madagascar, Mali, Senegal and Togo) have reduced the tax rates of their property transfer taxes since 2008 (World Bank 2019b). In 2018, Mauritius abolished its transfer tax and registration duty. In many instances, countries have also reduced other transfer-related fees, for example Algeria, Benin, Burkina Faso and Niger (World Bank 2019b).

Only a few African countries (e.g. Congo, Gabon, Morocco, Namibia, Tanzania and Zambia) have increased the rates of their property transfer taxes and property registration fees since 2008 (World Bank 2019b). In Zambia, the tax rate increased from 5 to 10 percent in 2014, but in 2016 was decreased to 5 percent. In both the Congo and Gabon these increases were followed by decreases in the tax rate (World Bank 2019b). Although South Africa (where progressive tax rates apply) increased the maximum rate from 11 percent to 13 percent in 2016, this was partly offset by also increasing the zero-rate value threshold significantly (McCluskey, Franzsen & Bahl 2017b).

**Possible tax reform options in African countries’ land sector**

Accurate sales data are important for a well-functioning value-based recurrent tax. Given the negative features of property transfer taxes levied at high rates, theory suggests that tax rates should be reduced significantly (McCluskey, Franzsen & Bahl 2017b). The global
trend to reduce property transfer tax rates is therefore welcome. If the underlying goal is to tax the increment in property values at the time of a transfer, a capital gains tax seems a more appropriate option (Bahl 2004; Wallace 2007; Norregaard 2013; Bahl & Bird 2018). McCluskey, Franzsen & Bahl (2017a), Bahl and Bird (2018) and Wallace (2018) suggest three possible reform options:

**Abolish the property transfer tax and make up the revenue loss with increased levels of the annual property tax.** This option is also advocated by Norregaard (2013). At most, a user charge or fee could be retained for the maintenance of the titling or deeds register. This option will require close cooperation and coordination where the transfer tax and recurrent tax are levied at different levels of government than is generally the case. It may even require a transfer of human resources from national revenue authorities to local authorities.

**Retain the property transfer tax, but significantly lower tax rates where these are high, and aggressively audit declared values for transactions.** To do proper auditing or monitoring will require upskilling and potentially expanding the valuation staff at the local government level and imposing significant penalties for under declaration. Requiring certified valuations on high-value properties at the expense of buyers or sellers may also improve accuracy – at a cost. There are, however, constraints on this option, especially if the transfer tax is levied nationally and the recurrent tax locally. Cooperation and coordination between officials at different levels of government will be required – as also indicated in respect of the previous option. In practice, this is often exceedingly difficult.

**Replace the property transfer tax with a capital gains tax (CGT) on the sale of immovable property.** As Wallace (2018) points out, a major drawback of a Capital Gains Tax is administration, especially establishing the base values, and developing a method for indexing for inflationary increases and adjusting the base cost for allowable improvements to the property. However, these administrative requirements are likely as challenging as the present requirement of establishing the ‘market value’ for every property transaction (McCluskey, Franzsen & Bahl 2017a). With a property transfer tax system there is an incentive for both buyer and seller to under-declare the prices/values of the transfer (McCluskey, Franzsen & Bahl 2017b). With a Capital Gains Tax, at least the buyer has an interest in declaring the true market value, as under-declaration will increase the property’s base cost when sold. This self-checking feature should lead to a more accurate self-declaration of sales prices, improving the database for recurrent property tax valuation (Bahl & Wallace 2010). A drawback of a Capital Gains Tax is administration, especially establishing the basis for the tax, developing a method for indexing for inflationary increases and adjusting for qualifying investments in real property. This option merits further research, especially in African countries (e.g. Egypt, Equatorial Guinea, The Gambia, Madagascar, Morocco, South Africa, Tunisia and Zimbabwe) where a Capital Gains Tax is already in place.

Globally there is evidence that high taxes on land and building transactions discourage transactions, encourage under-declaration of property values and, probably
most damaging in the long term, these taxes undermine the formalization of land markets and the legalisation of land registration or titling. This is especially detrimental to value-based recurrent property tax systems and the application of computer-assisted mass valuation techniques (McCluskey, Franzsen & Bahl 2107a; Bahl & Bird 2018).

Although tax rates may have been decreasing in many countries in the last ten years, just as in Africa, it remains an easy tax handle with significant revenue potential to cover budget shortfalls – as clearly illustrated by the Zambian example (Kambobe 2018). In the short to medium term, African countries are likely to retain a tax on property transfers. Bahl and Bird (2018) propose a gradual approach in terms of which tax rates decrease over time and more emphasis placed on the quality of sales data in support of the administration of the recurrent tax.

A holistic, well-coordinated reform strategy will include:

- a comprehensive audit of all the property-related taxes and user fees related to the acquisition of property and the registration of real rights in the deeds or title office;
- consolidation of the different property transfer taxes into a single, transparent tax;
- gradual decreases of the tax rate of the property transfer tax (as revenue from the recurrent tax increases); and
- a comprehensive review of recurrent property tax policy, law and administration.

Such a strategy will also require a review of and amendments to intergovernmental fiscal transfer laws where different property transfer taxes exist at different levels of government. It may even call for a review of laws and practices relating to land management and registration to avoid conflicting policies and interests.

**Conclusion**

In conclusion, the property transfer tax is by no means the only ‘tax policy villain’ standing in the way of a better-administered recurrent property tax in Africa. For example, the devolution of the tax on rental income from immovable property to local government may also constitute a disincentive to make better use of the recurrent property tax.
References


Rethinking land reform in Africa: new ideas, opportunities and challenges.


The farm manager inspecting the solar-powered irrigation system on the family-owned fruit and vegetable farm, near Lilongwe, Malawi. Photo: Melissa Cooperman/IFPRI

Rethinking land reform in Africa: new ideas, opportunities and challenges.
Appendix 1: property taxes as percentage of GDP in selected African countries

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</tr>
</thead>
<tbody>
<tr>
<td><strong>Southern Africa</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Botswana</td>
<td>0.03</td>
<td>0.04</td>
<td>0.04</td>
<td>0.06</td>
<td>0.05</td>
<td>0.04</td>
<td>0.04</td>
<td>0.03</td>
<td>0.03</td>
<td>0.04</td>
<td></td>
</tr>
<tr>
<td>Mozambique</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0.00</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>Namibia</td>
<td>0.24</td>
<td>0.29</td>
<td>0.17</td>
<td>0.26</td>
<td></td>
<td></td>
<td></td>
<td></td>
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Source: IMF World Revenue Longitudinal Data (2019)
### Appendix 2: total taxes as percentage of GDP in selected African countries

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Source: IMF World Revenue Longitudinal Data (2019)
### Appendix 3: Property transfer taxes in African countries

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<td>Guinea-Bissau</td>
<td>Transfer tax ('sisa')</td>
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<td></td>
<td>Stamp duty</td>
<td>(XOF2,000 per page + 0.5% of half of property value) + (XOF2,000 for the stamps to register new ownership)</td>
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</table>
### Appendix 3: (continued) Property transfer taxes in African countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Tax or Duty</th>
<th>Tax Rate (% or fee)</th>
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<tbody>
<tr>
<td>Kenya</td>
<td>Stamp duty</td>
<td>2% (rural property) and 4% (urban property)</td>
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<tr>
<td>Lesotho</td>
<td>Transfer duty</td>
<td>3% and 4% - sliding scale</td>
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<td>Stamp duty</td>
<td>1% and 3% - sliding scale</td>
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<td>Stamp duty</td>
<td>LRD100 fixed fee</td>
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<tr>
<td>Libya</td>
<td>Stamp duty</td>
<td>5%, 8% and 10%</td>
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<tr>
<td>Madagascar</td>
<td>Transfer tax</td>
<td>6% when registering the contract of sale</td>
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<tr>
<td></td>
<td>Recording fee</td>
<td>2% when recording the transfer at the Registry</td>
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<tr>
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</tr>
<tr>
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<td>Ranges from 0.25% – 15%</td>
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<td>Registration duty</td>
<td>0.1% to 12%</td>
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<tr>
<td></td>
<td>Land transfer tax</td>
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<tr>
<td>Morocco</td>
<td>Registration fee</td>
<td>1.5% to 6% Registration Duty and 1% Real Estate Tax at time of acquisition</td>
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<tr>
<td></td>
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<td>MAD20 per page, 5 pages sale contract x 6 copies (signing and notarizing sale contract) + 1% of property value (inscription of the registered deed on the land registers)</td>
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<td></td>
<td>Stamp duty</td>
<td>0.2%</td>
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<tr>
<td>Namibia</td>
<td>Transfer duty</td>
<td>Individuals: 0%, 1%, 5% and 8% sliding scale. Juristic Person: 12%</td>
</tr>
<tr>
<td></td>
<td>Stamp duty</td>
<td>Individuals:((Purchase Price – NAD600,000 ÷ 1,000) x 10) x 12</td>
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<td>3% in semi-autonomous Somaliland</td>
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<td>Sliding scale: 0%, 3%, 5%, 8%, 11%, 13%</td>
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</tr>
<tr>
<td>Togo</td>
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<td>6%</td>
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<td></td>
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<td>A fixed amount of XOF1,000 per page on, e.g., a contract of sale</td>
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<td>0.5%, 1%</td>
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<td>0.05%, 0.25%, 0.4%, 1%, 2%</td>
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Source: Updated from Franzsen & McCluskey (2017a).
Appendix 4: 2019 ranking of African countries – registration of property

<table>
<thead>
<tr>
<th>Economy</th>
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<th>Africa ranking</th>
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### Appendix 4: (continued) 2019 ranking of African countries – registration of property

<table>
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<th>Economy</th>
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<th>Africa ranking</th>
<th>Procedures number</th>
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<th>Cost (% of property value)</th>
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<th>Cost as % of property value</th>
<th>Property transfer tax(es) %</th>
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<td>30% tax on non-citizens for agricultural land</td>
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<tr>
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<td>8</td>
<td>43</td>
<td>5.2</td>
<td>2.2</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Chad</td>
<td>6</td>
<td>44</td>
<td>8.1</td>
<td>10.0</td>
<td>Plus a fixed fee</td>
</tr>
<tr>
<td>31</td>
<td>Guinea</td>
<td>6</td>
<td>44</td>
<td>7.8</td>
<td>5.0</td>
<td>Plus stamp duty from 0.25 to 1.0%</td>
</tr>
<tr>
<td>32</td>
<td>Mali</td>
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<td>11.1</td>
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<td>Plus fixed fees</td>
</tr>
<tr>
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<tr>
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<td>8</td>
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<td>5.2</td>
<td>1.0</td>
<td></td>
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</tr>
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<td>37</td>
<td>Somalia</td>
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<td>188</td>
<td>1.6</td>
<td>3.0</td>
<td>Only for Somaliland</td>
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<td>38</td>
<td>Congo, Dem. Rep.</td>
<td>8</td>
<td>38</td>
<td>10.3</td>
<td>5.0 to 10.0</td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Madagascar</td>
<td>6</td>
<td>100</td>
<td>9.1</td>
<td>6.0 + 2.0</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>Equatorial Guinea</td>
<td>6</td>
<td>23</td>
<td>12.5</td>
<td>1.0 to 9.0</td>
<td>Higher tax rates for non-citizens</td>
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### Appendix 5: (continued) Africa 2019 – registration of property and property transfer taxes

<table>
<thead>
<tr>
<th>Africa ranking</th>
<th>Country</th>
<th>Procedures (number)</th>
<th>Time (days)</th>
<th>Cost as % of property value</th>
<th>Property transfer tax(es) %</th>
<th>Comment</th>
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<tr>
<td>41</td>
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<td>10</td>
<td>55</td>
<td>7.1</td>
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<td>Sierra Leone</td>
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<td>56</td>
<td>10.7</td>
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<tr>
<td>43</td>
<td>Angola</td>
<td>6</td>
<td>190</td>
<td>2.8</td>
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<td>Central African Republic</td>
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<tr>
<td>45</td>
<td>São Tomé and Príncipe</td>
<td>8</td>
<td>52</td>
<td>10.2</td>
<td>8.0</td>
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<tr>
<td>46</td>
<td>Namibia</td>
<td>8</td>
<td>44</td>
<td>13.8</td>
<td>8.0 to 12.0</td>
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<td>5</td>
<td>81</td>
<td>18.7</td>
<td>5.0 to 15.0</td>
<td></td>
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<td>Congo, Rep.</td>
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<td>55</td>
<td>13.9</td>
<td>15.7</td>
<td></td>
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<tr>
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<td>Gabon</td>
<td>6</td>
<td>102</td>
<td>11.5</td>
<td>6.0</td>
<td></td>
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<tr>
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<td>South Sudan</td>
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<td>14.6</td>
<td></td>
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<td>51</td>
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<td>13.8</td>
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<td>Plus a fixed fee</td>
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<td>53</td>
<td>Nigeria</td>
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<td>91.7</td>
<td>11.3</td>
<td>0.75</td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Libya</td>
<td>No practice</td>
<td>No practice</td>
<td>No practice</td>
<td>5 to 10</td>
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</table>

Law in African land reform: contested areas

Robert Home

Introduction
A nation state possesses two essentials: sovereignty over its territory and over its citizens. Such sovereignty implies both duties and responsibilities, such as the legal regulatory frameworks over social relations in land, and human rights guaranteed in law. Land reform has acquired increasing importance on the global development agenda. The African Land Policy Centre (ALPC), a joint programme by the African Union Commission (AUC), the African Development Bank (AfDB) and United Nations Economic Commission for Africa (UNECA), has over the past decade worked towards implementation of the AU Declaration on Land in Africa (2009). The ALPC has published several significant reports to further thinking on the critical role of land reform, including Guidelines on Land Policy (AUC 2012), supported by the World Bank, FAO, UN-Habitat and other international agencies.

This paper approaches the issues of land law reform from the perspective of a land management specialist with professional and academic experience in law, planning and surveying, particularly focusing upon urban aspects. The paper reviews the complexities of land law and land reform in Africa, including the growth of urban governance as a policy area. It then explores ways forward in the context of three of the Sustainable Development Goals, specifically SDGS 11, 16 and 17.

The challenge of land law
Land reform is a complex process requiring changes in legal regulatory frameworks with often highly technical components. When a new tribunal service was proposed for England and Wales some twenty years ago, the senior judiciary illustrated this intricacy by responding that ‘the exceedingly complex network of tribunals in [land, housing and property] is a source of confusion to the trained lawyer, let alone the layman.’

Land reform is not only a difficult legal challenge but also highly political, especially when it attempts to redress historic inequalities in land ownership. In Africa the so-called ‘land question’ usually refers to problems of land access for the majority of the African population. This majority was excluded historically by the colonial experience, and since independence also by new elites and foreign investors. Of the 55 nations that now comprise the African Union, extreme inequalities in land ownership exist, in such countries as South Africa, Zimbabwe, Kenya and Algeria and they are resistant to reform. Legacies of
colonial rule in the form of systems of control and exclusion continue to allow powerful vested interests to maintain highly asymmetric land ownerships. Elites may prefer an environment of insecure land rights, titling programmes for the poor move slowly, and corruption in the allocation of land has been observed to advantage those with political connections (Boone 2014; Goodfellow 2017; Onoma 2010).

Much African land policy work has been concerned with food security and agriculture and has therefore concentrated on rural areas (FAO 2012), and UNECA has encouraged private sector investments in agriculture with a more business-friendly environment. In recent years, however, policymakers have also focussed upon urban areas, with the New Urban Agenda unanimously agreed at the Habitat III Conference in 2016 (UNA 2017). The state has strengthened responsibility for managing the conversion of land to urban use, to promote confidence in investment, economic performance and wealth creation. Enforceable laws support such sustainable urban development, establishing regulations that protect public spaces, development rights, building and planning codes and standards for street and plot layouts (Habitat 2019). Over-arching reform of urban laws and regulations, and better city planning and management, provide favourable conditions for land policy.

Land policy cannot be effective without well-enforced legal regulatory frameworks. The various UN and AU declarations, charters and principles about land are ‘soft’ rather than ‘hard’ law, and lack statutory force, hence the shift in emphasis in SDG 16 on the rule of law through national constitutions, justiciable and enforceable by court processes. The ALPC implements the AU Declaration on Land, which ensures equitable access and special focus on landless and vulnerable groups such as displaced persons, women and youth. Despite paper guarantees of women’s property rights in African constitutions, customary land tenure has been guilty of discriminating against women and children by entrenching patriarchal privilege. While the number and proportion of female-headed households has grown, property settlements often disinherit and impoverish women, for example after divorce or the death of a spouse and consider them as only ‘secondary’ holders of property rights (Onyango 2010).

The right to development (RTD), recognized in the 1986 UN Declaration is included in the mandate of several UN institutions and the constitutions of several African states. It has been described as a composite or collective right, but its legitimacy, justiciability and coherence are still hotly debated (Ngang & others 2018). While ‘development’ is defined broadly, land remains the basic foundation for any physical act of development, including basic housing. British planning law, transferred to many former African colonies, defines ‘development’ in more physical terms than the right to development: ‘building, engineering and other operations in, on, over or under land, or the making of any material change in the use of any building or other land’. The right thus inevitably depends upon how land is secured, used and managed.
Article 22 of the African Charter on Human and Peoples’ Rights (ACHPR) was the first international human rights instrument to recognise the right to development as a discrete right, committing AU member states to take ‘joint and separate action in co-operation’. The UN Declaration on Land made the nation state ‘duty bearer’, its Article 8 stating that:

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.
2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

As human rights law continues to develop from individual to collective or composite formulations, new rights emerge, such as rights of indigenous peoples, rights to housing, and the right to the city. The right to the city, added to Brazil’s federal law in 2001, has been described as one of the most precious yet most neglected of our human rights (SDI 2018). It argues for a transformational access to urban life, with individuals free to access urban resources and to reconstruct our cities and their inhabitants’ access to critical issues such as welfare, public spaces, and mobile technology.

Approaches to land reform vary widely, and the AU’s Constitutive Act acknowledges the sovereignty and sovereign equality of member states, which retain the autonomy to decide their own land laws and policies. The Land Policy Guidelines were careful to clarify that they are neither a binding normative framework, nor a draft land policy for states to adopt, nor instructions to countries. In this context, the document is remarkable for its prescriptive language such as ‘The overwhelming presence of the state in land matters must change’ (section 2.1 in AUC 2011). However, recommendations by the African Commission defer to state sovereignty, and states have effectively ignored some recent judgments of the African Court of Human and Political Rights (ACHPR).

A further issue is the disconnect between ‘hard’ or statute laws and ‘soft’ law declarations, and of both from the realities of people’s experience ‘on the ground’. The concept of legal centralism might be that law should be administered uniformly by a single set of state institutions, but the African reality, in part a consequence of its colonial experience, is legal pluralism. For most of its people the state is either irrelevant or an interference rather than a help in their daily lives. The continent contains several hundred local languages and variations in local land practices, and a few official languages of former colonial origin continue to dominate in the courts. Integrating multiple informal land rights into one unified system under state control – converting oral into written, informal into formal, local into national – is not cheap, nor is it guaranteed to be benign, neutral, or free from exploitation.
Rethinking land reform in Africa: new ideas, opportunities and challenges.

The situation has become even more complicated since the advent of the UN Declaration on Rights of Indigenous Peoples (1987). Uncertainty over the use of the term in Africa continues, despite an AU working party in 2005. Some African countries adjudicate such land cases in their own courts (for instance Botswana, Uganda and South Africa), and the AU judicial system in the form of the ACHPR has become involved, upholding the Endorois and Ogiek indigenous peoples’ land claims against their government (Home & Kabata 2018).

**Land tenure**

The AU Land Declaration recognised the diversity and complexity of the systems under which land and related resources are held, managed and used. Three basic land tenure types can be identified: communal, state and private.

1. **Communal tenure**, also called tribal, customary, indigenous, aboriginal, native or chthonic (Glenn 2014).

   The so-called ‘colonial masters’ asserted an evolutionary theory of land rights, under which customary or communal tenure was regarded as a vestige of the past, bound for extinction in an inevitable process to progress: ‘towards a greater concentration of rights in the individual and a corresponding loss of control by the community as a whole’ (Platteau 1996). Yet in Africa, where an estimated two-thirds of its usable land area is communal, representing the highest proportion in the world, a distinctive African culture of land has been identified, characterised by a Nigerian chief in evidence to a colonial land committee in 1917: ‘land belongs to a vast family of which many are dead, few are living and countless are yet unborn’ (quoted in Home 2013). Land thus was not only a means of production or something to possess, but an intrinsic part of Africans’ social, economic, political and spiritual being. Customary land can be seen as a defence against the penetrative forces of globalisation and capitalism, preserving local community values, fulfilling an important welfare function, and serving as a reservoir of cheap, un-serviced resource in peri-urban areas. The deliberate withholding of land from state land-titling processes may help preserve family and community cohesion and continuity, and land can be a vital component for retaining cultural identity. As individualised land tenure is increasingly questioned for its negative impact upon the excluded poor, communal land tenure is gaining greater legal protection. The AU Guidelines advocate conferring equal legal status to both customary and ‘modern’ property rights, but inevitably they are often in competition.

2. **State or public land.**

Largely introduced by the European colonial partitioning of Africa after the Berlin Treaty of 1885, imported land laws and regulations defined the respective realms of colonisers and the colonised. Land considered by the coloniser as vacant under the terra nullius
principle could be claimed for itself (in British colonies designated as ‘crown land’ without asking Africans’ consent), and might then be transferred through grant, sale or lease to white settlers and private or public bodies (such as mines and railways), overriding pre-existing African land rights. Lugard’s British dual mandate policy introduced separate racial development which was most famously articulated in apartheid South Africa. This strategy saw towns as European creations, where land was owned by the state and subdivided for leasing out – but rarely to Africans. Outside the towns and white settler lands ‘native reserves’ or ‘tribal trust lands’ were demarcated, where customary tenure was maintained under a policy of tribal reserves. Created in South Africa, these rapidly spread to Eastern and Central Africa, and more widely across the British empire, strongly influencing the current land regime in Nigeria under the Land Use Act. Africans occupying their ancestral lands could be designated as squatters and evicted in favour of incoming white settlers. Colonial administrations’ land ordinances also allowed tribal land to be taken (or ‘set aside’) without compensation if required by the state for some public purpose such as mining or township creation.

The state’s right to expropriate land (variously called eminent domain or compulsory purchase) is enshrined in human rights law and allowed under Article 14 of the African Charter ‘in the interest of the public need or in the general interest of the community and in accordance with the provisions of appropriate laws’. Safeguards requiring due process, and either financial compensation or alternative land provision, are often poorly followed, and forced evictions are frequent, especially of informal settlements in urban areas (Habitat 2007). The Pinheiro Principles on people displaced by wars, political upheaval and natural disasters assert their right to housing, property restitution, and compensation where it is ‘factually impossible to restore, as determined by an independent, impartial tribunal’ (Pinheiro 2007; Habitat 2009). The Southern African Development Tribunal in the Mike Campbell case might have criticised the Zimbabwean government for denying access to the courts and engaging in racial discrimination against white farmers whose lands had been confiscated, but its position was ignored.

African states have in recent years overridden communal or customary land rights by allowing what has been called ‘land grabbing’ and a second ‘scramble for Africa’: large-scale land based investments (LSLBI). The Pan-African Parliament in 2014 resolved to form an Africa Coalition Against Land Grabs, but African states have facilitated LSLBI, often using a colonial legal provision to ‘set aside’ customary land according to their interpretation of the ‘public interest’. Land for bio-fuel, agriculture and forestry have been granted to sovereign wealth and private equity funds among others, amounting to an estimated six million hectares in Africa between 2000 and 2012, largely ignoring the needs of Africa’s own peoples for land and livelihoods. Better governance arrangements for LSLBI have been advocated, to include compliance with national strategies for agricultural development protecting small farmers, independent assessment of costs and benefits,
respect for the human rights of communities, and fair and timely compensation (UNECA 2014). Perhaps fortunately for local communities, many land deals failed to be realised, as foreign investors were subsequently deterred by high transaction costs, difficulties in doing business, and volatile institutional arrangements.

3. Private property.
This is considered as the highest form of right under the evolutionary theory, and under civil law systems is governed by private law separate from public law. The African Charter and the constitutions of post-independence African states guaranteed private property rights, to the benefit of white settlers and African elites (Allen 2000). More recently the Peruvian economist Hernando de Soto achieved global status by arguing that a framework of secure, transparent and enforceable property rights was the key to poverty reduction and economic growth (De Soto 2000; Home & Lim 2004). The International Commission for the Legal Empowerment of the Poor, associated with de Soto, made ‘secure and accessible property rights’ one of its four ‘pillars’ of legally-based empowerment of the poor, allowing them to achieve a sense of identity, dignity, and belonging (Banik 2008). The World Bank supports large-scale land titling, yet less than 15 per cent of African land is titled, leaving most households without any form of land documentation, and individualised land tenure is increasingly seen as having negative consequences for the poor.

Rapid population growth in Africa has resulted in many living in informal settlements that are illegal in the eyes of the state. The temporary structures of such settlements reflect not only their occupiers’ poverty and limited access to building materials, but also the ever-present threat of demolition and eviction. Official disapproval and harassment of the poor, often demonized as squatters and slum-dwellers requiring removal, has deep roots in the colonial experience, and has only moderated in recent years as slum-dwellers exert pressure on their elected politicians. Post-colonial states often pay only lip service to a more equitable ‘pro-poor’ distribution of land ownership, prepared to override such aspirations when its interests demand (Mamdani 1996). Forced evictions of people from land happen frequently in Africa, as they do globally (Habitat 2012; 2017), and preliminary indicators of global tenure insecurity suggest that about one-fifth of those surveyed (especially tenants) feared losing their homes in the next five years (GLTN 2011; Land Alliance 2016).

Ways forward
The seventeen Sustainable Development Goals (SDGs), which replaced the Millennium Development Goals in the 2030 Agenda for Sustainable Development, deal with land indirectly through the three SDGs most relevant to land policy: 11 (inclusive, safe, resilient and sustainable cities), 16 (Peace, justice and strong institutions), and 17 (‘Multi-stakeholder partnerships to mobilize and share knowledge’).
1. **SDG 11** (‘Inclusive, safe, resilient and sustainable cities’).

The objective to achieve SDG11 might be expressed as progressive regularisation of unauthorised and informal settlements through changes in participatory legal frameworks, policies and standards. This would need to be executed in a way that is innovative, pro-poor, affordable and scalable.

Some effective approaches already exist:

UN-Habitat through its GLTN and Urban Legislation Unit has been promoting innovative urban planning tools (Habitat 2012), such as land readjustment and the social domain tenure model. Land readjustment, originally used to consolidate rural farm holdings but transferred to urban situations, is a method of pooling land ownerships to enable planned urban extensions and densification. Already applied in many countries largely outside Africa (Home 2008; JICA 2017), it creates opportunities to plan and finance better physical infrastructure, public space and amenities.

Participatory and Inclusive Land Readjustment or PILaR, promoted by GLTN (Habitat 2016a), expands on the land readjustment model by adding more inclusive negotiation processes so that the costs and benefits can be better shared among landowners and other stakeholders such as renters and informal occupiers. PILaR potentially offers an intermediate and less confrontational approach than the alternative of compulsory expropriation. The Social Tenure Domain Model is a pro-poor and flexible land information system that recognises a range of community or social tenures and parties. One application is participatory mapping, sometimes called ‘counter-mapping’ or ‘cadastral politics’, taking account of local oral history and traditions. Participatory mapping can allow local communities to participate in land governance, and record uses of land by groups previously unrecognised by state institutions, enabling them to assert their occupancy claims (Panek 2015).

2. **SDG 16** (‘Peace, justice and strong institutions’).

Disputes within (and between) African states often concern land, exacerbated by climate change and environmental issues (Wehrmann 2008; UN 2019). Such disputes are notorious for creating complex and lengthy legal proceedings (Derman & others 2007; Evers & others 2005) and alternative approaches fall within the scope of SDG11.

Dispute resolution tribunals represent hybrid forms of judicial administration complementing the main court system, or ‘transplanted forms of bureaucracy’, usually held near the location where the dispute arises, and may be quicker and cheaper than the courts, and address factual rather than legal issues. They come in many forms, and deal with such matters as compensation claims, planning and enforcement appeals, boundary disputes, leasehold valuation, and landlord/tenant issues. Post-apartheid South Africa created new land claims courts to redistribute and restore lands taken under racially discriminatory
laws to help those prejudiced by the old regime: the urban and rural poor, farm workers, labour tenants and emergent farmers. Countries’ law-making systems are diverse, their urban challenges particular and their political contexts varied, making a strictly procedural manual inappropriate, and urban legal change a slow, complicated process.

SDG16 also supports growing the ‘civic space’ needed to achieve better access to land and justice. For most of the poor, the state is either irrelevant or interferes with their life, declaring their occupation of land illegal, and only refraining from harassing them because of its inertia and inefficiency. There is little confidence in the independence of the judiciary, and a disconnect exists between the justice system and local communities, especially when the language used in court may be unfamiliar. Local customary legal arrangements typically offer a solution, serving a homogeneous social group, drawing on oral traditions and are supported by communal sanctions, and concentrate on protecting shared values and communal harmony rather than individual rights. Communities may not be aware of their wider or constitutional rights and lack the ability to interact with investors or establish written agreements.

A significant challenge is that land administration capacity in post-colonial Africa is often inadequate, increasing rather than reducing tenure insecurity and disputes over land, and seeming remote and irrelevant to the everyday lives of the poor. The poor could be better protected from arbitrary eviction through progressive legislation and better adherence to due process and appropriate compensation. The importance of due process was stressed by the Pinheiro Principles in supporting a right to housing and property restitution, ‘as determined by an independent, impartial tribunal’.

3. SDG 17 (‘Multi-stakeholder partnerships to mobilize and share knowledge’). This SDG supports public, public-private and civil society partnerships, and the production, management and transfer of new knowledge. Reforms to achieve better access to land for the poor require new legal thinking and co-operation between professionals concerned with land and the built environment.

Under neo-liberal open markets, secure private property title is a basis for finance and capital raising, which requires professional surveyors to delimit the land, valuers to appraise it, and planners to organise development and physical standards. But all have professional associations of surveyors, planners and land economists, although the physical size of the continent is a constraint on bringing people together. Within Africa regional platforms can facilitate sharing of experience and best practices, and education of the public and community groups about their land rights through networking and knowledge exchange. The experience of other countries with land reform can be drawn upon through comparative studies, and there is much opportunity for empirical research, for instance on local dispute resolution processes. Academic and professional networks and journals can both create and share relevant knowledge and experience.
NELGA (Network of Excellence for Land Governance in Africa) specifically supports land policy development, involving African academic institutions and civil society, private sector, land sector practitioners, and decision-makers. Other academic networks exist on RTD law and AU law. Recently founded journals with a specific African focus deal with land policy and geospatial sciences, real estate and planning research, and sustainable development law. The ALPN organises short courses and workshops, recently in Kenya, on guidelines to prevent and address land and conflict, in Ghana on political economy of land governance, and in Malawi on LSLBI.

The New Urban Agenda refers to ‘meaningful participation in decision-making, planning and follow-up processes for all’ (paragraph 41). Weak state institutions and pressures for states to shrink have created opportunities to expand the role for civil society (SDI 2018), and community-based organisations are developing new styles of land rights advocacy and dispute resolution. The concept of free, prior and informed consent for communities affected by development, with transparent and inclusive contracts, represents a shift towards enabling modern international human rights. Communities’ advocates in court proceedings are often coalitions of human rights organisations, but African governments have often challenged them on legal grounds about admissibility, locus standi, and exhaustion of local remedies, and have accused them of being ‘busy bodies’ or ‘meddlesome interlopers’. Unfortunately, retaliatory action by governments has led to recent petitions to the ACommHPR about a ‘shrinking of the civic society space’ in many African countries.

Conclusions
In the last decade knowledge about innovative approaches to land governance has grown rapidly, but so have the numbers of poor people in African countries putting pressure on land and environmental resources, both rural and urban. They increasingly demand land reform and redistribution, which has become a highly political (some would say toxic) issue in several countries. Since the AU Declaration on Land was passed in 2009 its emphasis upon common agricultural policy frameworks has shifted towards matters of urban governance in response to the New Urban Agenda.

The soft law policy agenda continues to evolve and depends upon the role of AU member states as ‘duty bearers’. However, there is a limit to what the AUC/ADB/UNECA coalition can achieve without action by individual states. Only the state can undertake legislative and regulatory reform to improve access to land for their growing populations and the vulnerable and disadvantaged groups mentioned in the AU Land Declaration. Much of the policy tools for positive change are known and available, but the critical step remaining is political and professional commitment, and broader public involvement.
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Maps and mapping practices in Côte d’Ivoire’s rural land reform

Thomas J. Bassett

1. Introduction
Mapping is a central component of Côte d’Ivoire’s 1998 rural land law requiring individuals seeking land titles to present a map showing the location of the parcel in question, conforming to specific cartographic norms. With less than 1% of the national land area formally registered, land registration is a time-consuming and expensive process. Donors and land authorities have long argued that using geospatial technology reduces the time and expense of mapping since map making is an objective and neutral process that simply “officialises existing land rights” (World Bank interview 1992). But the mapping practices deployed in the land registration process are both social and technical. I argue that rather than representing existing land rights, village boundary and land parcel maps are shaped by the law itself: that is, maps define the territory rather than simply represent it.

The social dimensions of mapping include the capacity of rural populations to read maps. Individuals must be able to interpret the symbols and words to engage with the spatial representation. Low literacy rates in rural Côte d’Ivoire mean that most people are unable to recognise and interpret maps, a skill set which is learned and deployed every time a map is unfolded (Kitchen and Dodge 2007; Pickles 2004). The land reform literature is silent on the prescriptive nature of land right mapping and the uneven development of a map-reading culture. If the immediate problem of Ivorian land reform is to clarify prevailing land rights, then these silences and inequalities must be addressed.

2. Maps and the 1998 rural land law
Map making is integral to two key components of the Côte d’Ivoire rural land law – village boundary delimitation and parcel mapping. Village-boundary maps, specifically the location of geodetic monuments defining the limits of a community’s lands, facilitate the drawing of parcel maps by providing surveyors with geographical reference points. Both map types are produced during a multi-stage consultative and bureaucratic process structured by law.

Village boundary mapping
Law defines land registration, mapping, and titling. Clear procedures are specified for delineating the boundaries of village lands or terroir. The meaning of terroir has evolved from referring to a socio-natural landscape such as a terraced upland or a savanna park-land that lacked specific boundaries to a territory managed by a community and whose
boundaries are clearly delimited in the context of ‘development’ programs. The terroirs targeted for delimitation by the Plan Foncier Rural (PFR) and the Projet National de Gestion des Terroirs et d’Équipement Rural (PNGTER) are representative of the latter, territorial-based notion (Bassett, Blanc-Pamard, and Boutrais 2007). In much of this paper, terroir is translated as ‘village lands’ whose boundaries are subject to demarcation by surveying and mapping.

From selecting lists of villages to be delimited to the construction and validation of boundary maps, the application decree details the diverse documents that must be completed, approved and filed at different stages. It is a complicated, time consuming, and costly procedure (Varlet 2014; World Bank 2015).

Once a village is selected for boundary delimitation, the process of defining its limits is led by an investigative team headed by an investigating commissioner appointed by the Department of Agriculture. The team is comprised of at least four representatives of the village being mapped and four representatives from each contiguous village. Each community must provide at least two representatives of the village chief and two members of the Village Land Management Committee (Comité Villageois du Gestion Foncière Rurale) to participate in this initial phase of village land delimitation (RCI 2013). Before staking out the boundaries, the commissioner conducts an enquiry into the history of the village in the presence of the entire investigation team. The team must sign a form indicating their recognition of the authority of the village over the area to be delimited before proceeding to the staking out stage. The application decree requires that each segment of the village boundary be staked out by the commissioner and team members with 100 metres between stakes.

If the investigative team delineates the village boundary, a 1.5 to 2-metre path along the limits must be cleared. Then a certified topographic surveyor walks the boundary with the team to confirm the limits and an agreement is signed by the surveyor and each member of the investigative committee. Within fifteen days the surveyor must place cement boundary markers at regular intervals along the boundary no more than 300 metres apart. The surveyor and his assistants draw each boundary and note the coordinates of each marker using a Geographical Positioning System device.

The topographic survey team creates a territory map by entering the data for each boundary marker into a software program producing a provisional map at a scale between 1:10,000 and 1:50,000. One half of the sheet shows the village in the form of a necklace with boundary marker IDs as its beads (Figure 1). The other contains columns of geographical coordinates for every boundary marker or what has been termed the ‘perimap’ (Wood and Fells 2008).

Figure 1. Village lands boundary map showing the locations of boundary markers (center) and their geographical coordinates (right).
To encourage agreement, the law prescribes a community public hearing at which the results of the work and the provisional boundary map are presented. Registers at the village and the Sub-prefecture are opened for 30 days for comment. If everyone agrees, the commissioner writes a report signed by the presidents of all of the Village Land Management Committees. If a neighbouring village committee contests a boundary, the local Sub-Prefect and Prefect become involved to mediate the dispute. A definitive map is then constructed based on more precise field measurements.

This second map uses more precise GPS units. The team travels to the boundary to recalculate the geographical location of each boundary marker, this time with reference to first order geodetic points (Figure 2). The new coordinates must have a less than one-metre level of accuracy in contrast to the 2–3-metre accuracy obtained by the topographic brigade.

The definitive map and the village public hearing report are displayed at the Sub-prefecture validation meeting (Figure 3). If the village delimitation is approved, the documents have additional validation steps at the Prefecture and the cadaster’s office.

The World Bank estimates that it takes between six to twelve months to delimit a village territory. It estimates the average cost of village delimitation to be $7,000. In a country of 10,000 villages, it would cost around $70 million to map all village boundaries (WB 2015, p.38). The Bank believes that this is a reasonable public investment, especially if it leads to a decline in land conflicts.

**Parcel-level mapping**

The process of constructing parcel-level maps follows a similarly tortuous path. There are over 20 steps to obtain a land certificate and another dozen to obtain a land title (Varlet 2014, p.32–36).

Like the process of village delimitation, parcel delimitation is initiated by an investigative team headed by a commissioner. The team is comprised of members of the village council, the village land management committee, the land claimant, and individuals who control contiguous land parcels. The commissioner conducts a historical enquiry into the claimant’s authority over the parcel in the presence of the investigative team. As in the village delimitation process, the team must agree on the limits of the proposed parcel. If there is no opposition, the land claimant stakes out the parcel boundary and clears a path around it. Next, a certified surveyor is employed to place boundary markers around the limits of the parcel and to draw a map showing the parcel in relation to neighbouring
land parcels. This mapping work is performed in the presence of the investigative team.

The parcel plan must conform to standards set out in the application decree. It must be at the scale of 1:10,000 or larger, be linked to the Ivorian geodetic grid and show at least two geographical reference points, be oriented to true north, and have at least a one-metre accuracy. The standards do not prescribe a particular surveying method as long as the surveyor is certified and fulfils the aforementioned map format requirements.

Once the map is made, a public hearing reviews the results of the investigation. A subsequent public comment period lasts three months when the claimant’s application can be supported or opposed. The period also requires the applicant to publish a notice in prescribed newspapers. This published notice must be posted during the three-month public comment period in public places and in neighbouring communities.

If there is no opposition, the dossier is forwarded to the Sub-prefecture where the application is reviewed. If approved, it is checked by the Ministry of Agriculture which requires that applicants employ surveyors to double check the position and coordinates of parcel boundary markers (Varlet 2014, p.36). If confirmed, the dossier is forwarded to the Ministry’s Rural Land Tenure and Rural Cadaster Authority in Abidjan. It checks the application’s conformity to the law and then transmits it for a land title to be issued.

This process illustrates how maps and map making are fundamental features of Côte d’Ivoire’s 1998 Rural Land Law. They are produced to solve socio-spatial problems, in this case transforming indigenous rural land rights systems into a state-recognised private property regime. The transformation of undefined boundaries into geodetically-referenced territories marked by concrete monuments suggests that boundary and parcel maps are the outcome of scientific and technical practices. But the descriptions of the contexts of boundary and parcel map-making suggest that maps are more than this. Both map types are shown to “emerge...through contingent, relational, context-embedded practices to solve relational problems” (Kitchen and Dodge 2007, p.342). That is, maps are not simply representations of a reality that the surveyor is dutifully recording. The mapping of village boundaries and land parcels is an iterative process of consultation, negotiation, delinea-tion, and validation shaped both by the law and by such practices brought to bear on examining the information’s accuracy. The next section investigates the origins of these mapping practices in the context of a series of government and aid-donor funded projects aimed at developing a rapid and low-cost method of delimiting village lands (terroir) in Côte d’Ivoire.

3. A genealogy of village boundary mapping practices in Côte d’Ivoire
Since the late 1980s the Côte d’Ivoire government and aid donors have funded a series of land delimitation programmes with a view towards developing a national land registration system. These programmes have typically taken the form of pilot projects designed to test certain methods for mapping the boundaries of village territories and the land rights of individuals over specific parcels. Table 1 lists the most important programmes.
Table 1. Land delimitation programmes in Côte d’Ivoire, 1989–present

<table>
<thead>
<tr>
<th>Program</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural Land Plan (Plan Foncier Rural [PFR])</td>
<td>1989–1997</td>
</tr>
<tr>
<td>Rural Land Management and Community Infrastructure Project (PNGTER)</td>
<td>1997–2010</td>
</tr>
<tr>
<td>The Village Lands Delimitation Pilot Operation (PNGTER)</td>
<td>2000–2001</td>
</tr>
<tr>
<td>National Land Tenure Security Program (PNSFR)</td>
<td>2007–2012</td>
</tr>
<tr>
<td>Support Project for the Revival of the Agricultural Sector (PARFACI)</td>
<td>2013–</td>
</tr>
</tbody>
</table>

These programmes have tested different technologies with the goal of identifying the quickest and most cost-efficient way to map the country’s estimated 10,000 villages and 20 million hectares. A major metric for measuring the success of these programmes has been the number of villages delimited and hectares mapped in the different pilot project zones.

**3.1 Rural Land Plan (Le Plan Foncier Rural)**

The Rural Land Plan began in 1989 with funding from the World Bank and France. Its objectives were: (1) to clarify the land rights of rural populations in order to reduce land conflicts and promote investments in agriculture and environmental conservation and (2) to develop an economical land tenure system that would facilitate land use planning, land administration, and natural resource management (World Bank 1989). A novel feature was its bottom-up approach to recording the land rights of rural populations in a “neutral” manner and “without modifying them” (World Bank 1989, p.6). The plan attempted this by combining land tenure surveys with parcel level mapping. The Plan Foncier reports highlighted the challenges in recording the diversity and origins of land rights and their spatial extent. These difficulties led to focusing on the land rights of farmers and delimiting croplands to the neglect of other legitimate land users and land use patterns. Rather than “officializing existing land tenure arrangements,” (World Bank Interview 1992), the Plan Foncier ended up creating a new land rights system that was primarily driven by the goals of project administrators.

The Plan Foncier took the form of regional pilot programmes that took place in five zones (Abengourou, Béoumi, Daloa, Korhogo, Soubré) which were distinguished by contrasting land rights systems, land conflicts, and geographical conditions. Conflicts over land ownership between immigrant farmers and authochthonous groups in the forest region zone of Soubré and Daloa were important criteria for their inclusion in the project. Land conflicts between farmers and herders in the savanna region led to the
selection of the Niofouin Sub-prefecture in the Korhogo region.

The major steps included (1) a public announcement and explanation of the goals in each village; (2) a demographic survey to determine the population size of a community, the number of farmers, where they farmed, and their specific land rights; (3) a land tenure questionnaire linking ‘land owners’ to parcels outlined on enlarged aerial photographs; (4) an agricultural survey noting the soil, relief, vegetation and type of crops grown on each parcel; (5) the construction of village (terroir) boundary and land parcel maps; (6) a six-month long publicity period during which opposition to land claims could be registered and addressed by a village land management committee organised by the Plan; and (7) the creation of a land tenure register that recorded the land ownership. When agreed by all parties, the land register information and map were deposited in the office of the local Sub-prefecture and at the regional office of the Ministry of Agriculture.

The map-making component was a multi-stage process. Survey teams used enlarged aerial photographs at the scale of 1:10,000 called photoplans to identify the location and ownership of individual land parcels (World Bank 1989, Annex 1). In the presence of land claimants and contiguous parcel holders, farmers’ fields were drawn on the photos. They also used GPS devices to record the coordinates of the field’s location which were used when photoplans were converted to maps.

The team did not place boundary markers along the limits of a land parcel. If someone contested boundaries or an individual’s land ownership claims and the dispute was unresolved, the topographer did not record that parcel, which lead to the appearance of blank spaces on some village land maps.

Teams used the same méthode contradictoire to trace the boundaries of lands that they used to demarcate land parcels. In the presence of land authorities of adjacent villages, Plan Foncier teams tried to determine a village’s limits. If successful, the team drew them on the photoplan. They did not mark these limits with boundary markers. In many cases, a section of a village boundary line was contested by a neighbouring village. In such cases and following Plan protocol, the terroir limits were not drawn.

Figure 4 shows the photoplan for village lands in the Karakoro region. The image shows irregularly shaped individual land parcels and fallow fields, the latter symbolised by the letter J. The crop type and ID number of the field owner is recorded within the boundaries of the land parcel.

Figure 5 shows the map of the terroir of Noufré, constructed...
by cartographers based on its photoplan. The map was printed on heavy duty tracing paper for its archival durability and submitted with the land register to the Guiembé prefecture at the end of the project. The Land Parcel Registry of the Rural Land Plan contained information from the various surveys, notably village and neighborhood names, village and lineage land authorities, farmers with use rights to these lands and their ID numbers and the terroir map showing ID numbers on specific land parcels. In its publicity and project documents, the Plan declared that farmers whose land use rights were recorded in the Parcel Registry would be able to obtain a provisional land title that recognised their rights. Eventually, and at their own expense, these individuals could purportedly obtain an official land title. In fact, the parcellaire register was never completed and the issuance of ‘extraits parcellaires’ to individuals was suspended (RCI 1996a, 61, p.190).

Plan Foncier personnel and project documents presented the cartographic component of the programme as an objective and neutral exercise (World Bank 1989; RCI 1994). Interviews with personnel, reviews of the project literature, and examination of the maps reveal a more complex process and outcome. For example, the claim that the terroir maps simply represent existing land rights is undermined by the narrow focus on farmers. Both the land tenure and agricultural surveys are farmer oriented. The land rights and land use patterns of other resource users such as mobile pastoralists were not investigated. This bias towards farmers over other legitimate land rights holders led Plan Foncier cartographers to produce a particular type of map that highlights cropland in the form of fields and fallow lands. As already noted, this bias towards farmers and cropland was driven by the ultimate goal of creating a land registry and cadastral map that links individuals with privately held land parcels for the purpose of taxation, conflict resolution, and conservation and development.

The surveys and maps also greatly simplify the diversity of rights held by farmers. In the land tenure survey in which the Plan Foncier team asks farmers to articulate their rights to a specific land parcel, just two categories are possible: land owner (*titulaire foncier ou gestionnaire des terres*) and land user (*exploitant*). Subsequent questions ask the land user to explain the origins of their rights, specifically how and from whom they obtained them. This “census of land rights” section of the survey produced a diversity of relationships that defied the two-fold classification of land owner and land user. But these intermediate land rights categories were not transcribed onto the map (RCI 2006, 58, p.178-79). Symbols do exist for three types of *gestionnaire des terres* (lineage, village, individual) but the nature and strength of land users’ rights are not represented. Only the demographic number of the *exploitant* is noted on the map.

Similarly, the mapmakers’ delimitation of village boundaries is at best a negotiated outcome. It derives from highly circumscribed conditions in which Plan Foncier teams recruited representatives of contiguous villages to create boundaries where no clear ones previously existed. Boundaries emerged on the map as the result of the Plan Foncier’s
determination to show that each village had a discretely held territory that could be mapped. In fact, not all settlements have a territory over which they can claim customary control. This is the case with immigrant communities who have been allocated land upon which to settle and farm but who do not possess the right to transfer that land to others or even to plant trees on it. There were many instances in both the northern and southern pilot zones where land lenders and borrowers expressed anxiety over the land delimitation activities of Plan Foncier teams because they feared losing their rights to land (RCI 1991; RCI 2006). In other cases, individuals and communities viewed the Plan’s terroir mapping as an opportunity to assert control over land that historically belonged to another village.

A third complication concerns the use of Plan Foncier maps by rural populations. The Plan deposited a terroir map in each village that it successfully surveyed. According to project documentation and interviews with personnel, the terroir maps would help to reduce land conflicts and would be useful for land use planning. Such statements make heroic assumptions about the existence of a map culture among rural populations. Map reading skills require a basic literacy level, some experience in map interpretation, and repeated use of maps. The high levels of illiteracy in rural Côte d’Ivoire suggest that maps and map use were rare in the areas where the Plan worked. The Plan Foncier could have helped to fill this gap but the project did not include training programmes on map reading. The most it did was to explain the symbols in map legends to members of village land management committees. (Author interview with Plan Foncier personnel, 1992). That is, for the majority of the rural population, the map did not exist (Pickles 2004; Kitchen and Dodge 2007). The maps were viewed as large pieces of paper marked with lines, numbers, and oddly shaped figures.

If the Plan Foncier’s maps were illegible to ordinary farmers then to whom did they speak? There is evidence that some landholders recognised parcel maps as representations of their fields that could be used to obtain an official land title. Some Plan offices facilitated this practice by offering land parcel certificates (Attestation de Limite) to PFR verified landowners (RCI 1996, Annex 8). Plan personnel considered village land management committees as their audience and at least one member of these committees had to be literate. The Plan Foncier ultimately viewed its maps as experiments in boundary mapping. The audience was comprised primarily of government administrators, politicians, and aid donors who viewed this work as important to reducing land conflicts and creating economic investment opportunities by reducing uncertainty over land ownership.

In summary, the Plan Foncier sought to develop an efficient and low-cost method for delimiting village boundaries and individual land parcels for the purposes of land titling and registration. It billed its activities as clarifying customary land rights through a process that it described as “formalizing custom” (Interview, Plan Foncier 1992). It experimented with cutting edge, low-cost geo-spatial technologies to demonstrate that
Côte d’Ivoire’s rural areas could be quickly and inexpensively surveyed. Progress was measured by noting the number of hectares surveyed annually by the Plan’s teams. The results of its activities were mixed. External evaluators considered its mapping technologies to be sound but noted that the emphasis on “yield” compromised the quality of the land tenure information collected (RCI 1996a). The maps were more prescriptive than descriptive. They simplified complex land use and land rights systems by focusing on farmers (Bassett 1995) and often depicted village boundaries where they previously did not exist. In this sense the Plan’s maps created new land rights systems and territories rather than portraying “neutral facts” (RCI 1996a, p.191). Finally, although pitched as serving the interests of peace and land use planning, there is no evidence that land disputes have declined in surveyed areas or that maps have been systematically used for planning.

Over its 1990–1996 pilot phase period, Plan Foncier teams reportedly mapped more than 27,000 parcels in 360 villages in five zones. The project surveyed nearly a half-million hectares of rural land and “clarified the land tenure rights” of some 270,000 persons (IDA 1997). According to the World Bank, the Plan achieved its work at an average cost of 3600 FCFA/ha. These economic results encouraged aid donors to extend the Plan Foncier nationally. In 1997 it was integrated into Côte d’Ivoire government’s Rural Land Management and Infrastructure Development Project (Projet National de Gestion des Terroirs et d’Equipement Rural [PNGTER]). During the transition between its Pilot Phase and its integration, the PFR completed additional surveying work with funding from the Caisse Française pour le Développement (CFD) (see RCI 1996b, p.8–9 and Plan Foncier Rural Etat de Couverture, 1990–2002).

3.2 The Rural Land Management and Community Infrastructure Project (Projet National de Gestion des Terroirs et d’Equipement Rural [PNGTER]).

The PNGTER was funded by the World Bank with additional support from the French Development Agency and the Ivorian government. The project was originally conceived to last for six years (1998-2004) but an armed rebellion (2002–2010) and the suspension of the project on two occasions (due to non-payment of previous debts to the World Bank) led to the extension of the project until 2010. The 13-year project had the “dubious distinction” as being one of the Bank’s longest development projects (World Bank 2011, p.11).

The PNGTER had three interrelated components: rural land use planning (gestion de terroir), building land tenure security (sécurisation foncière), and infrastructure development (équipement rural). The goal of the land tenure security component was to maintain and extend the Rural Land Plan. Maintenance referred to the updating and archiving of Plan Foncier Rural land tenure studies and maps as parcel holders and sizes changed. It also verified that Foncier documents complied with the government’s requirements for land registration and titling.

One of PNGTER’s objectives was to extend the geographical area of the Plan Foncier’s
activities to the national level. This goal was to be facilitated by the deployment of new geospatial technologies for delimiting village boundaries and land parcels. Project documents stated that these new mapping methods would accelerate the process of land tenure clarification and at the same time conform to the requirements of cadastral mapping. The project also created land management committees at the Sub-prefecture (CGFR) and village (CVGFR) levels to validate the land parcel and boundary delimitation processes (RCI 1998). These new institutions and mapping practices became formalised with the passage of the 1998 Rural Land Law and its application decrees. Law 98-750’s requirement that all rural land had to be registered within ten years or else become part of the public domain added a certain urgency to these activities. The government’s decision to make village boundary delimitation a public infrastructure project led PNGTER and aid-donors to focus their activities on developing new methods to demarcate village lands (terroirs). The French-funded Opération Pilote de Délimitation de Terroirs Villageois introduced a number of mapping practices that would soon become standard operating procedures (Decree No. 2013-296).

### 3.2.1 Opération Pilote de Délimitation de Terroirs Villageois (2000–2001)

The AFD-funded project aimed to test the technical and financial feasibility of a village boundary delimitation method that could be used to delineate more than 10,000 villages and at the same time conform to the land registration requirements of application decree (99-59413, 1999).

The mapping innovations of the Opération Pilote included using (1) high resolution SPOT Panochromatic satellite georeferenced images at the scale of 1:25,000 called spatio-cartes on which village boundaries could be traced in the field; (2) the use of differential GPS units to allow surveyors to link boundary markers to the Ivorian geodetic grid which was established with reference to the WGS84 global geodetic grid; (3) planting boundary markers along village boundaries; and (4) the construction of maps that conformed to the technical specifications set by the Cadastral Department.

The project’s goal was to delimit 171 terroirs using the new methods starting by selecting one hundred terroirs already delimited and which were in the public hearing period of the process. The project ended after six months without successfully delimiting any new village territories. However, the new methods were sufficiently promising that aid donors and the Ivorian government decided to further invest into the delimitation of village territories. During the second phase of the World Bank-funded project, the government decided to invest in a test operation with the goal of delimiting 280 villages – 150 in the southern half of the country, 130 in the north. However, the September 2002 rebellion forced CCT to focus its activities in the government-controlled south. Between 2004 and 2006 the project managed to successfully demarcate and map 108 villages (RCI 2006, 16). During the PNGTER’s third and final phase (2008-2010), CCT teams surveyed an additional 60
villages, bringing the total number of successfully demarcated and mapped villages to 168.

By 2015 just 171 villages out of 10,000 villages had been successfully delimited. And just 900 land certificates out of an estimated 1 million rural parcels had been delivered (World Bank 2015, p.31). The extraordinarily slow progress of the PNGTER and subsequent land registration programmes (Programme National de Sécurisation du Foncier Rural [PNSFR 2007-2012]; Projet d'Appui à la Relance des Filières Agricoles de Côte d'Ivoire [PARFACI]) in creating a map-based land cadaster has been largely attributed to the highly bureaucratic and costly land titling process (Varlet 2014; World Bank 2015). Côte d'Ivoire's land registration program is one of the most expensive in Africa (World Bank 2015). Expense is just one factor. Another is widespread contestation over village boundaries even in areas where the Plan Foncier operated. For example, just five out of the 24 terroirs mapped during the Plan's phase in the Niofoin Sub-prefecture were successfully remapped using the new boundary delimitation methods (personal communication, Direction Régional du Ministre de l'Agriculture, 2018). In the next section I focus on mapping practices as an additional explanation for this poor performance.

4. Reforming mapping practices

It may be a surprise that mapping practices may partially explain the slow progress in the delimitation of village boundaries in Côte d'Ivoire. Project evaluation reports have repeatedly given positive evaluations to terroir mapping (RCI 1994; RCI 1995; RCI 2006; Varlet 2014; World Bank 2015). This positive assessment can be explained by mapping practices being reduced to technical questions. Mapping is portrayed as a scientific process in which new technologies are deployed to provide greater accuracy and lower costs per hectare surveyed. The transition from the Plan Foncier’s use of aerial photographs (photoplans) to PNGTER’s reliance on satellite images (spatiocartes) is one example of this emphasis on best scientific practices. A second example is the use of more advanced GPS technologies which allow greater accuracy in determining boundary marker locations. The ability of surveyors to link rural land boundaries to national and global geodetic grids is another example in which mapping is evaluated in terms of its scientific merits. But the social dimensions, particularly map reading skills, are absent in project documents and evaluations. There is no discussion of the capacity of rural communities to engage with maps. Yet project evaluations and interviews with surveyors repeatedly point to the anxiety of populations regarding village boundary mapping (RCI 1991; RCI 2006).

The lack of this important discussion and the absence of map literacy programming in mapping projects raises questions about the relevance of current practices to the implementation of the 1998 land law. As one survey of land cadaster systems demonstrates, mapping is not essential to building a land registration system. For example, maps are not key to the United Kingdom’s cadastral system. Even where they are integral, they are commonly not updated and thus not reliable indicators of ownership (Kain and Baignet 1992).
The World Bank’s current support program to Côte d’Ivoire recommends informal written agreements as documentation to obtain land certificates without turning them into individual titles (World Bank 2015). Figure 6 shows an innovative informal land tenure registry used in Katiali in northern Côte d’Ivoire that recognises immigrant rights to farmland. The user’s ID card is photocopied and his signature acknowledges that he recognises the authority of Katiali over his farmland. If government land agencies recognise such documents as sufficient to obtain a land certificate, will it also accept an alternative map of these lands? Will a simple sketch map suffice and if so, what mapping skills are necessary for villagers to make such maps?

An innovative feature of the World Bank’s ‘4-in-1 systematic land registration process’ is the use of “local para-surveyors and archivists using modern technology” (World Bank 2015, p.55). Important questions that require immediate attention include: What and who will be included in the para-survey training programmes? What will be the training goals? What set of mapping practices will emerge that allow for community learning and participation in mapping? The project also strengthens the country’s mapping infrastructure enabling more accurate and economical surveying (World Bank 2015, p.19). How will this reinforcement of geo-spatial technologies intersect with participatory village-boundary mapping techniques? What role will surveyors play in Village Land Tenure Committees and the proposed web-based Land Information System?

The answers to these questions depend on the goals of state mapmaking. If the objective is to create a property tax system, then more precise property maps will be required. If the goal is political stability and rural development, then informal land registers and maps might suffice. The point is that these spatial representations will remain “coloured ink on the page” in the absence of map readers who possess “knowledge of what constitutes a map… [and] how a map works.” (Kitchen and Dodge 2007, p.335). Inequalities in the ability to engage with maps means that some people are better positioned than others to make maps work in their interests.

**Conclusion**

This paper highlights the importance of maps to how Côte d’Ivoire’s 1998 rural land law is implemented. It traces the history of the mapping practices used for the delimitation of village boundaries and land parcels. It argues that the prescriptive nature and uneven development of these practices, particularly map literacy, helps to explain the slow
progress in village mapping. The paper reveals that the aid donors and map surveyors have overemphasised the technical dimensions of map-making to the neglect of these social dimensions. More serious attention must be given to mapping practices so that rural populations can wield these potential tools for securing their land rights and eventually for development planning.

The World Bank proposes to modify Côte d’Ivoire’s existing land registration process by encouraging the newly created Rural Land Tenure Agency (AFOR) to recognise alternative documentation like the informal written agreements established between land lenders and borrowers. The Bank also appears to be endorsing alternative mapping practices in which a new group of map makers participate in boundary mapping. Given the lack of map literacy in Côte d’Ivoire’s rural communities, it is important that the Bank and AFOR experiment with participatory mapping and introduce map reading skills in its land law initiatives (World Bank 2015). There is an abundant literature on participatory mapping, including counter-mapping, that policy makers should consider in thinking about alternative mapping practices (Hodgson and Schroeder 2002; Lefebvre, Bonnet and Boyer 2017; Nietschmann 1995; Peluso 1995; Robert and Duvail 2016; and Wainwright and Bryan 2009).

Maps are only meaningful when their users engage with them. If they are to play a central role in the implementation of Côte d’Ivoire’s land law then land authorities and donors must consider how current and future mapping practices affect the outcome of their land reform programmes.

References


Rethinking land reform in Africa: new ideas, opportunities and challenges.
Negotiating land rights to redress land wrongs: women in Africa’s land reforms

Uchendu Eugene Chigbu

1. Introduction

Centuries of Arabisation and Europeanisation of Africa—followed by decades of post-independence Americanisation—has led to the balkanisation of land uses. It has also resulted in the disruption and disorientation of land tenure systems in Africa. Remedial or restitutive actions that began in the post-independence history of the continent have focused on conceptualising and implementing land reforms. These reforms combine legal and social efforts to raise the share of the land and property rights of disadvantaged groups. Most countries (re)structured processes to (re)align their land tenure systems to face the emerging land challenges from the mid-twentieth-century to the twenty-first-century world. Insecure land rights are a major part of those challenges. Land rights are “socially or legally recognised entitlements to access, use and control areas of land and related natural resources” while property rights include “the recognized interests in land or property vested in an individual or group” which “can apply separately to land or development on it” (UN-Habitat 2008, p.5).

Over the past fifty years, African countries have initiated and implemented various land reforms at different times, at unprecedented rates and on varying ideological differences, attitudes, opinions, and preferences. Accompanying all of these situations (at least at the policy and intellectual levels) is the contestation on whether these reforms should serve as suitable instruments for engendering equity and equality in land ownership. These debates have remained within Africa to date. However, there seems to be some consensus that these reforms, however conceived or implemented, should promote and secure land and property rights for all. This manifests in the way national governments embrace land reform as either an instrument for land redistribution and remediation or as a prerequisite for socio-economic development going forward. It is not surprising that many of these governments embark on reforms on the assumption that “greater equity and enhanced efficiency and productivity” in land access will “flow directly from such a process” (Werner 1999, p.314; Cousins 2018).

While these reforms are usually instituted to widen the margins of land and property rights of citizens, some of them have also brought or extended land wrongs. Land or property wrongs refers to the socially or legally motivated disentitlements or deprivations to access, use and control of land and related natural resources. Improvement in land and property rights occurs when land reforms lead to the protection of citizens’ basic rights
to own, use and exercise proprietary interests in land. Emergence of land wrongs is when land reforms endanger the security of tenure of citizens.

Achieving sustainable development will not be realistic in Africa without women’s empowerment. “Women's empowerment is not feasible without equality of the sexes. This makes gender parity a precondition for Africa’s development” (Chigbu 2016, p.37). In the context of land rights and land wrongs, the protection (and expansion) of women’s rights to access and use of land securely (as a morally justified, and legally and socially acceptable norm) remains problematic in Africa. Women still face “systematic disadvantage in land rights because of laws, customs and norms that either exclude them from tenure or ownership or make their rights contingent on the relationship with a male relative or spouse” (United Nations Women 2015, p.111). Perhaps many of the past and ongoing reforms have either failed or are simply slow in bridging the “enormous divide between land access for men and women”, and the insecurity of tenure that affect all citizens, but especially women (Chigbu 2019a, p39).

Three questions arising from these situations are: (1) How have land reforms addressed women’s land rights in theory? (2) How have the reforms impacted on women in practice? (3) How can women’s land rights be improved through future land reform? Exploring these questions may lead to ideas for improving women’s land rights situations in Africa. A starting point for investigation is the review of explorative literature outlining the concept of land (and property) rights and wrongs in the context of land reforms in Africa.

2. Theorising land (and property) rights to unpack Africa’s quantum of land rights and land wrongs

There is a wealth of property rights research allowing an understanding of the land rights situation in Africa (Coase 1960; Demsetz 1967; Eggertsson 1990; North 1990; Barzel 1997; UN-Habitat 2008). A general characteristic of land tenure or property systems in Africa is that “the systems exclude women (implicitly and explicitly)” (Chigbu 2019b, p.126). This situation means that there are at least five important criteria of land (and property rights): they include institutionalism, universality, exclusivity, transferability, and continuum of rights – which do not function in a balanced way in Africa. Universality implies that all scarce resources are owned by someone. Exclusivity entails that land and property rights are exclusive rights. Transferability suggests that land resources (and the rights embedded in them) can be (re)allocated from person to person (or groups) and from low to high yield uses. Institutionalism denotes that land/property rights are a set of rules, values and norms that guide the holding, use and exercise of rights on land (North 1990). Continuum of rights connotes that the enjoyment of rights embedded in land and natural resources are not static, but rather evolves over time and under various circumstances or conditions (UN-Habitat 2008). Authors that provide further important criteria of land and property rights include Libecap (1989), Ostrom (2005) and Eggertsson (2009).
To understand the state of land and property rights in Africa, a starting point will be to know that “the 6000 years of hegemony against women’s access to land and property — a period of “non-recognition of women’s land rights during ancient history” (Chigbu 2019b, p.128) — has not entirely come to an end. Attention to gender differences allows for a better understanding of land rights (and land wrong) issues that have led to inequality in ownerships between men and women in the continent. As in other parts of the world, every parcel of land in Africa is made up of properties (manifesting in the form of ownerships, rights, interests, responsibilities and privileges embedded on land). Within the context of African land tenure systems, these properties constitute ‘boxes’ of land rights and land wrongs which land reforms are meant to address (Figure 1).

Figure 1: A visualization of land (as property) containing various land rights and land wrongs.

To understand the state of land and property rights (and wrongs) in Africa, land ownership can be visualised as a ‘box’ of rights and wrongs in which the state and citizen exercise in their various social and legal boundaries or jurisdictions. One inference from the content of the box is that land issues embody rights and responsibilities of both the state and citizens. Another inference is that enhancement of land rights would most likely empower citizens while land wrongs would most likely disempower citizens. The visualisation also
clearly shows what any responsible land reform should strive to do—that is, to right the wrongs embedded in (or emanating from) land tenure systems. A responsible land reform is any reform that responds to the needs of all, without marginalising specific groups of the citizenry (de Vries and Chigbu 2017). Such a reform requires “a constellation of structural dimensions of institutions and instrumental choices, addressing different practical tools” that allow turning land wrongs into land rights (Lee et al. 2019, p.25).

The African Gender and Development Indexes show that women’s exposure to land ownership and use tilts more towards them suffering land wrongs than enjoying land rights (Economic Commission for Africa 2004; 2011). The Indexes indicate that women’s access to land on the average, is less than half of that enjoyed by men (Chigbu 2019b). This means that of all the land rights and land wrongs contained in Africa’s quantum of land matters, women suffer most from the consequences of state land wrongs. They also suffer from the land wrongs that emerge from the patriarchal societies in which they live. Women therefore benefit least from the bulk of citizens’ land rights and contribute least to citizens’ land wrongs.

The weak land rights women have—or alternatively, the strong land wrongs women suffer—reflect the statutory and cultural (including religious) contexts in which various land tenure systems operate in Africa. On the cultural side, under the customary tenure systems which are mostly operational in Africa, patriarchal practices “define gender power within households, communities and institutions, limiting women’s socio-economic opportunities and act as barriers to women” in the exercise of land rights” (Maduekwe 2018, p.2). On the statutory side, there appears to be a strong willingness to make laws and a stronger unwillingness to enforce those laws to improve women’s land tenure situations. As Harrisberg (2019) observed “this is not a crisis around lack of laws, it is a crisis around lack of enforcement in enacting laws.” The analysis of African land experts provides a background for understanding land reforms in Africa. As there is no data available on this issue, this study uses informed opinions of African experts about land reforms in the continent to make a situation assessment.

3. Methodology: expert evidence of women in land reforms in six African countries

It has never been possible to present reliable assessments of the impact that land reforms have had on the livelihoods of women. No baseline data exists against which such impact could be measured (Werner 1999) because the “land debate is clouded by misrepresentation and lack of data” (Cousins 2018). Moreover, the situation is complicated by the fact that women are not a homogenous group, and Africa is heterogenous (Chigbu et al. 2019a). Hence, a lack of data concerning land reform impacts on women in African states makes it impossible to produce practical recommendations on women’s land rights (de Villiers 2003). Given the lack of data on issues such as women’s livelihood, employment, physical, and social development, expert qualitative evidence has been adopted as the methodological...
strategy to gain data for the enquiry in this study. Van Maanen (1988) developed the use of impressionist narratives as an effective way of presenting results from fieldworks or impact experiences (Cooper et al. 1998; Frels & Onwuegbuzie 2012).

This study uses documentary evidence (from academic and policy documents or grey literature) and expert impressions as its source of data. These were collected using questionnaires to which experts responded in writing. As a result, expert impressionist narratives were analysed for understanding how women's land rights have been addressed in selected land reform in Africa and provide a path towards improvement. The experts whose impressions were sought for this research were selected based on their informed involvements in African land reform studies and policy-making from six countries. Concerning how land reforms have impacted women in specific aspects of land tenure, the selected experts \( n=183 \) were asked to rate women's tenure situations based on an explicit Likert scale of 1 to 2 (where 1 = yes and 2 = no). The Likert centred on gaining expert impressions of women using specific indicators \( n=10 \) of land rights derived from a list of citizens land rights shown in Figure 1. Where participants scored more yes (than no) impressions on individual indicators, it was assumed to reflect a positive impression, and vice versa. The outcome of the Likert impression measurement was used to create a matrix of impact scenarios about how land reforms have impacted on women in practice in the six countries.

The six countries investigated were Ethiopia, Ghana, Kenya, Namibia, Nigeria and Rwanda. These countries were selected as having embarked upon land reform previously or where reform was currently underway. They also have more literature-based data available to enable the triangulation of expert impressions through cross-verification and validation with the literature.

4. How land reforms have addressed women’s land rights in theory in the six countries. Land reform in the six countries comprise laws established to transform the landscape of land tenure, equitable land distribution and improved socio-economic development. This legislation, in all cases, is supported by programmes and projects designed to support implementation. In theory all of these reforms address women’s land rights issues either directly or indirectly (Figure 2). They are considered directly addressing women’s rights where they explicitly provide provisions for promoting women's land rights or indirectly where there is no explicit statement relating to women’s land rights.

In the six countries, land reforms are derived from executional instruments such as land laws, inheritance laws and national constitutions (among many other instruments). In Ethiopia the 1975 land reform did not address women's land rights directly but was seen as progressive for women with regard to securing their independent right to land. It provided for the public ownership of rural land, distribution of land to the tiller, prohibitions on transfer of use right by sale or otherwise. It addressed inequality which
was previously inherent in the feudal system by providing access to land to the farming population. The 1995 land reform: Article 35 of the constitution reiterates the principles of women’s rights to equal access to economic opportunities including land. It also calls for affirmative action to provide preferential treatment for women to enable them to compete and participate on the basis of equality with men in political, social and economic life.


In Nigeria (from 1978), land reform is based on the provisions of the Land Use Act of 1979 and the country’s 1999 Constitution which also recognises the 1979 Act as a supreme land law of Nigeria. The Act changed the structure of the property rights system from a mixed private property rights system into a national collectivist framework. The land reform is silent on the specific rights of women but based on the constitution and other subsidiary Laws, it sought to ensure equal opportunity in land matters, including the inheritance of ancestral land.
In Ghana (from 1999), two major reform instruments exist in addition to constitutional rights. They are the 1999 National Land Policy and Land Administration Project (2003-2016). In the 1999 land policy, explicit references to women's land rights were absent, and so did not include issues related to women's land rights. However, the Land Administration Project recognises that to increase women's ownership (as well as access to land) gender-related activities should be integrated into the process of land reform. A draft land bill is under debate in Ghana with the hope that it will further serve as a tool for addressing land wrongs.

In Namibia (from 1995), land reform has three components – the redistributive reform, tenure reform and affirmative action. The Agricultural Commercial Land Reform Act of 1995, the National Resettlement Policy 2001 (being revised for 2018 – 2027) and the National Land Policy 1998 are the key pieces of legislation laying the foundation for reform. The Redistributive Reform provides for resettlement of previously disadvantaged Namibians including women. The Tenure Reform recognises women's individual land rights within the family and marriage through joint registration of rights that were previously vested in men only.

In Rwanda (from 2004), land reform is driven by the National Land Policy and other executional instruments. The National Land Policy abolished the traditional system of land tenure, shifting it entirely into public tenure and the statutory system, distinguishing public and private land through emphyteutic lease by establishing a long lease land tenure system. The Land Tenure Regularisation programme regularised all land plots in the country and the Land Law 2005 provides access to land for all including women. These reforming instruments explicitly promote equality of women and men in the ownership and use of land. They also promote gender equality of descendants to inherit family properties. A draft land policy is currently being prepared to help improve current land wrongs that are limiting national development in Rwanda.

5. Six country land rights scenarios: how land reforms have impacted on women in practice
In theory, it can be inferred that land reforms in the six countries promote women's land rights directly or indirectly. Namibia and Rwanda have land reforms that directly promote women's land rights while the others follow an indirect approach to addressing women's land issues. The broader question is how these reforms have impacted women's land tenure in practice which this paper explores (Figure 3).

Land tenure systems in these countries are similar with the exception of Nigeria and Rwanda where Islamic religious tenure partially exists (Nigeria) and customary tenure is fully abolished (Rwanda). These aside, private, public and informal tenures exist in the six countries. In Rwanda and Namibia, women tend to enjoy the rights to own, use, buy and sell land, make land-based decisions, give or receive land gifts, rent or lease, register and
The right to inherit from husbands and fathers is fully implemented in Rwanda. However, in Namibia (and all other countries, except Rwanda) it is partially implemented because in some cases women could inherit a deceased husband’s properties but are not able to inherit from their fathers, and vice versa. In all other countries (except Rwanda and Namibia) women enjoy the partial rights to own, use, buy and sell land, make land-based decisions, give or receive land gifts, and register and co-register. In all countries, women enjoy the right to rent or lease with minimal socio-political disruptions. A lack of socio-political respect for the enjoyment of rights by women is the most widespread land wrong women suffer in all the countries. Even where they either enjoy full or partial land rights, these rights are rarely respected as a result of the socio-political system. Socio-political disrespect or obstructions to women’s land rights can manifest in various forms. Within social systems (such as under customary tenures), women are expected to mandatorily consult men as part of the land acquisition and transaction process. On the part of the political systems, there are sometimes restrictions on the use of land for crop production by women farmers, as well as requirements for proof of marital status during land registration.

**Figure 3: The current land tenure systems and scenarios of women’s land rights in six countries**

Co-register. The right to inherit from husbands and fathers is fully implemented in Rwanda. However, in Namibia (and all other countries, except Rwanda) it is partially implemented because in some cases women could inherit a deceased husband’s properties but are not able to inherit from their fathers, and vice versa. In all other countries (except Rwanda and Namibia) women enjoy the partial rights to own, use, buy and sell land, make land-based decisions, give or receive land gifts, and register and co-register. In all countries, women enjoy the right to rent or lease with minimal socio-political disruptions. A lack of socio-political respect for the enjoyment of rights by women is the most widespread land wrong women suffer in all the countries. Even where they either enjoy full or partial land rights, these rights are rarely respected as a result of the socio-political system. Socio-political disrespect or obstructions to women’s land rights can manifest in various forms. Within social systems (such as under customary tenures), women are expected to mandatorily consult men as part of the land acquisition and transaction process. On the part of the political systems, there are sometimes restrictions on the use of land for crop production by women farmers, as well as requirements for proof of marital status during land registration.

5.1 Connecting the past to the present to shape the future.

To negotiate women’s land rights through land reforms and begin to address the land wrongs they suffer today, it is important to understand the context in which women operate. Many forces have played a part in the several land wrongs African women suffer. Those responsible for perpetrating land wrongs against women include foreign colonial administrations and local patriarchal tenure arrangements. Women have not always been denied the right to land ownership. Adichie (2018) found that women of the Igbo ethnic group (in Nigeria) owned property until the British Colonial Government’s Native Authority declared that women could not own or inherit land in that part of Nigeria. This decision was influenced by a 19th century European tradition in which a citizen was understood as a property-owning man (Adichie 2018). Consequently, land registration, since its inception in colonial Nigeria, could only be done in the name of men. Adichie suggests this behaviour of the British colonialists was not surprising because,

“British Women did not own properties. British women were in fact property themselves and were supposed to be at home protected and not seen as autonomous beings who could make decisions about their lives. Igbo women, on the other hand, were traders and they could own properties, this was understandably alarming to many of the British and I think it explains many of the changes that followed in Igbo land.”

Colonial Africa, just as shown in Nigeria, generally followed the same laws as its mother countries. In many colonialisit countries of Europe (especially England), husbands controlled women’s property; while in others, women only had limited property rights. Hence this colonial land wrong was imported into some African colonies (Lewis 2019). This study is not in any way implying that men and women were equal in precolonial times in Africa but intends to show that the power dynamics between men and women were more diverse (at least in some ethnic nationalities) and that women had more access to power than today. From a local perspective especially in the postcolonial era, the “Invocation of culture as a silencing tool” has been used to perpetrate land wrongs on women (Adichie 2018). This is mainly due to the fear of equality in land rights (a fear firmly imbued in patriarchal societies in Africa). An understanding of the history and historicity of the emergence of land rights and land wrongs is crucial for negotiating women’s land rights prior to redressing the land wrongs they face.

5.2 Negotiating women’s land rights to redress land wrongs

The gender gap in property rights is so wide in Africa that the mere enactment of existing land policies will not close it. Land policies are necessary to provide an
institutional foundation for action. Although most policies in Africa provide for universal land rights, their operationalisation has mostly failed to improve women’s security over land. This is a general land wrong that needs correcting. Women responsive—or gender balanced—policies are needed to underpin actions towards gender equity and equality on land. To redress those land wrongs. This study argues the following measures are necessary:

- Ensuring that land reforms and supporting legislation are gender inclusive: a starting point for ensuring that land policies respond to women’s needs is to ensure that land law and policy development includes women and respect their land rights. Policies and laws can be made gender or women responsive by working with gender disaggregated data and embracing gender analyses in decision-making during implementation.
- Developing capacities for addressing women’s challenges in land matters: education (including technical and legal assistance for women) is necessary to enable wider promotion of their land rights under the law and customs of their societies. It is important to train women land surveyors, property rights lawyers, sociologists, anthropologists, land managers and administrators (among other actors in land rights).
- Designing communication to raise women’s awareness of land issues: Outreach programmes and projects are necessary to make women aware of their rights and the opportunities they have to address the land wrongs they face. It is critical to create platforms for women’s engagement with stakeholders on women’s land rights enabling dialogues which could lead to useful solutions.

These measures are important to acknowledge that land rights favour men. They are also based on the premise that shifting from the prevailing patriarchal power to gender equality is mandatory for securing women’s land rights. All of these are necessary to ensure that the transformative power of secure land rights lift women out of male dependency and poverty.

7. Conclusion and further recommendations
As with every piece of research, this study has limitations. Its scope is limited to only 6 of 54 countries in Africa. However, this reduced sample has not prevented it from achieving its overall objectives. This study has demonstrated that land rights and land wrongs are prevailing issues that women grapple with in Africa. It exposed the land wrongs suffered by women in their quest to gain secure access to land rights. It has argued that the right to own and enjoy property freely should be a universal issue—regardless of age or sex—to improve the land wrongs in Africa. Going forward, it is important to note that the type of land reforms that can redress these land wrongs are those that embrace inter-gender and intra-gender equity.

“Due to the increasing competition and pressure of the growing population to meet their basic needs for food, energy and shelter on limited land resources, land has become a
contested asset, scarce in nature and containing many competitive interests” (Ntihinyurwa et al. 2019, p.566). That is why land reform remains relevant in Africa. To address the land wrongs women face, it is important that all sectors of African society play a harmonised role to support women’s land rights, implying that a common goal of promoting secure land access to land for women is shared. Men operating within the patriarchal spaces of land tenure have to abandon a pervasive fear of equality which sometimes exists in such space. This is possible by embracing equality as a matter of principle and daily practice. It also calls for a cultural repositioning to improve the outcomes of land reforms for women. “Repositioning of culture is not only an issue of denouncing (diffusing) cultural practices, it can involve retention, assimilation and innovation of cultural practices to suit new community visions for women’s development” (Chigbu 2015, p.348-349). It will also “ensure that small interventions lead to significant behavioural changes that strengthen development actions” (Chigbu 2015, p.348).

On the part of African governments, there is a need to ensure that existing and future land reforms are committed towards the right side of the continuum of land tenure and rights. This way, women and the rest of society will benefit. Ensuring that everyone is protected to enjoy land ownership or use rights is above all a human right. In this way, women and other marginalised groups can enjoy land rights without suffering land wrongs. Land reforms are legal and socio-political instruments that can enable this form of equity and equality. Until governments apply land reforms responsibly to protect the rights of women and all of society, land wrongs will remain barriers to development of citizens and countries all over the world, but especially in Africa.

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Land reform, peacebuilding and the ‘indigenous’ question in Africa: the promise and perils of Free, Prior and Informed Consent

Matthew I. Mitchell

**Introduction**

In recent decades, land reforms throughout the African continent have been complex, controversial and conflictual (Boone 2007; Peters 2009; Alden Wily 2011; Joireman 2011; Collins and Mitchell 2018). Though widely varied in terms of its economic objectives, land reform is fundamentally political. Writing about the political dynamics surrounding land tenure reform in Africa, Boone (2007, p.558) summarizes: “to reform the rules of land tenure is to redefine relationships between and within communities, and between communities and the state.” Given the continued dependence on land for many Africans’ livelihoods (cf. Martin et al. 2019), there can be high political stakes involved in redefining both the rules and relationships regarding land rights.

In light of the increased number and severity of conflicts over land (cf. Berry 2002; Autesserre 2010; Straus 2012; Boone 2014; Klaus and Mitchell 2015), there is need to consider the relationship between land reform and peacebuilding in Africa. A cursory analysis of recent conflicts reveals a number of countries that have struggled to deal with land reform in their peacebuilding agendas (e.g. Unruh 2009; Autesserre 2010; Van Leeuwen 2010; Mitchell 2014; Unruh and Williams 2013; Kandel 2016). Albertus and Kaplan (2012, p.199) for their part, underscore an important dimension of the link between land reform and peace: “Given the importance of the rural sector in many modernizing or underdeveloped states where rebellion occurs, land reform has long been cited as a potential remedy for unrest.” However, a growing body of literature identifies various ways in which land reform can undermine peace processes (Unruh 2009), fuel both socialist revolutions (Sikor and Müller 2009) and violent rebellions (Albertus and Kaplan 2012) and generate heated debates around citizenship and belonging (Boone 2007). In short, while land reform can provide a remedy for unrest, it can also divide and polarise communities within and against the state.

While the work on the land reform-peacebuilding nexus is already limited, existing literature tends to examine this relationship in the context of countries at war (e.g. Albertus and Kaplan 2012; Unruh and Williams 2013; Keels and Mason 2019). This paper breaks from this pathway by examining the promise and potential perils of an emerging concept related to land governance and land reform: the right to ‘free, prior and informed consent’ (FPIC). Free, prior and informed consent refers to the idea that indigenous peoples have the right to consent before developments can occur on lands that they claim
as their own. Critical to this idea is that consent must be given freely (i.e. not coerced), the community must be informed, and consent must be granted prior to the beginning of any development.

Although the right to FPIC has gained considerable traction in informing policies related to land reform and indigenous land rights in settler-colonial societies (Doyle 2014), there are serious concerns regarding its applicability in the African context (Roesch 2016; Mitchell and Yuzdepski 2019). This largely relates to the unresolved debate concerning who is indigenous in Africa. As many studies have shown, indigeneity can generate thorny questions around the economic, political and social rights of various groups (Geschiere 2009; Bøås and Dunn 2013). This raises the central question: could legally embedding the right to FPIC in land-related laws and policies serve as a foundation for building peace or create a level of further discontent that already plagues many countries in Africa?

While the paper inevitably raises more questions than it can possibly answer, it offers an original analysis on the link between land reform, peacebuilding and indigenous politics in Africa. This serves to highlight the concerns related to implementing FPIC in Africa. Moreover, it expands upon the earlier work by identifying strategies for harnessing the potential of FPIC to be a peace-generating principle in future land reforms.

The paper provides a brief overview of the link between land reform and peacebuilding in Africa and beyond, then discusses the ‘indigenous’ question as it relates to the issue of land rights. The paper explores the concept of FPIC and summarises the state of its implementation in Africa, examining the promise and perils of FPIC in future land reform initiatives, and providing some basic recommendations for peacefully navigating the right to FPIC.

**Land reform and peacebuilding in Africa**

There is a vast literature on the contentious politics around land governance, land reform and property rights in Africa (e.g. Berry 2002; Peters 2009; Alden Wily 2011; Joireman 2011; Boone 2014; Collins and Mitchell 2018). A recurring theme exists across this literature: that land rights and land reform are deeply contested in the contemporary African political landscape. To quote Boone (2007, p.558): “Current debates over land tenure force fundamental questions of constitutional order to the centre of the political stage: in many African countries, these debates are taking shape as referenda on the nature of citizenship, political authority, and the future – indeed, the possibility – of the liberal nation-state.” Given the politically sensitive nature of these debates, land reform initiatives can help to consolidate peace in divided societies or, conversely, act as a spoiler.

Though often used in post-conflict contexts, the concept of ‘peacebuilding’ can usefully be applied more widely. Popularised by former UN Secretary-General Boutros Boutros-Ghali in the 1992 report, *An Agenda for Peace*, the term peacebuilding can be defined as “comprehensive efforts to identify support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people” (Manning 2003, p.28).
Considering the scale and scope of land conflict in Africa, land reform could be a critical tool in the arsenal of peacebuilders. If executed appropriately, such reforms could serve to promote and protect property rights, which could contribute to both resolving and preventing outbreaks of land conflict. FPIC proposes to change radically the way in which various stakeholders engage with indigenous peoples’ rights over land. Though usually framed as a human rights issue, FPIC could essentially also be framed as a peacebuilding initiative.

Yet despite the optimism surrounding FPIC, many recent land reforms throughout Africa have failed to generate peace. Reforms have often “been used in partisan, starkly redistributive, and sometimes politically explosive ways” and ultimately have “been as much an amplifier of social conflict as a solution to it” (Boone 2018, p.190). Could the principle of FPIC also be used to amplify social conflict or is there reason to believe that by free, prior and informed consent, diverse stakeholder groups with competing interests over land might have an improved legal and political framework with which to navigate the minefield of land tenure reform? FPIC could even be seen as providing a novel approach for creating more peaceful land governance in Africa. However, many of these issues hinge on what it means to be indigenous in Africa and what bearing this has on the issue of land reform, peacebuilding and FPIC.

### The ‘Indigenous’ question in Africa

There is a great deal of disagreement surrounding the concept of ‘indigenous’ in Africa. This is revealed by the historical challenge of finding a universally accepted definition that can capture the diversity of groups identifying as indigenous in Africa (Hodgson 2009; Barume 2010; Baldwin and Morel 2011). The term ‘indigenous’ was historically applied throughout Africa to refer to all peoples within colonial territories “regardless of whether or not they had been born there or were newcomers” (Barume 2010, p.32). As one leading expert notes, “most Africans consider themselves to be indigenous peoples who have achieved decolonization and self-determination” (Barume 2010, p.32). This perspective is consistent with the view of many African governments, namely that every African can legitimately consider themselves to be indigenous to the continent (Roesch 2016).

While this interpretation appears to suggest an inclusive vision of what it means to be indigenous in Africa, in reality it also limits the ability to lay claim to ‘indigenous rights’, as outlined most comprehensively in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (United Nations 2007). This ‘big tent’ approach to conceptualising indigeneity undermines the pursuit of indigenous rights like FPIC since it effectively classifies nearly everyone as indigenous throughout the continent.

This explains why most indigenous rights activists and groups advocate for a much more nuanced understanding of what it means to be indigenous. As Gilbert (2011, p.251) argues, “the focus on ‘aboriginality’ in the sense of being ‘first’ is counter-productive and is contrary to the ‘modern analytical understanding’ which concentrates on marginalisation,
cultural difference and self-identification at the international level.” In other words, to be indigenous in Africa is largely a function of being historically marginalised, while sharing cultural attributes that differ from the majority of the population. Perhaps most important is the notion of self-identification, which takes the power from states and places it in the hands of communities to articulate their own political identities.

Despite the somewhat dismissive position of many African governments that ‘we are all indigenous,’ in recent decades the indigenous rights movement has gained traction throughout Africa (Hodgson 2009; Crawhall 2011). A growing number of African governments regard Africa as home to “many distinct groups across the continent that fit the existing definition [of Indigeneity]” (Baldwin and Morel 2011, p.135). Yet despite the increased awareness and public gestures towards recognising indigenous rights, there has simultaneously been a recent upsurge in exclusionary politics closely linked to the concept of indigeneity.

As many scholars report, there is growing anti-immigrant sentiment often couched in the language of ‘autochthony,’ a term which refers to those who have literally emerged from the soil (Geschiere 2009; Bøås and Dunn 2013). This concept has powerful implications regarding the rights of groups over land, as autochthony is often harnessed (sometimes violently) as a legitimising ideology to shore up claims to land vis-à-vis non-native groups (Jackson 2006; Mitchell 2012). Though there are notable differences to the related concept of indigeneity (cf. Gausset et al. 2011), the ideology of autochthony celebrates the connection between the autochthon and their ancestral land while disputing the rights of the non-indigenous. This troubling development raises a question about how the contentious politics around indigeneity might shape prospects of peacefully implementing FPIC.

**Free, prior and informed consent**

Central to any definition of ‘indigenous’ is the critical attachment of a specific people to a particular territory. Examining this relationship in the African context, a report by the African Commission for Human Peoples’ Rights (ACHPR) and the International Working Group for Indigenous Affairs (IWGIA) (2017, p.28) notes: “Indigenous populations/communities’ relationship with their lands and territories is profound; it constitutes a fundamental part of their identity and is deeply rooted in their culture and history, transcending the material to become a relationship that is spiritual and sacred in nature.” Given the importance of land to indigenous peoples, it is clear how the right to FPIC may be a groundbreaking development in the effort to promote and protect indigenous rights worldwide.

FPIC can be described as follows:

“firstly, ‘free’ should imply no coercion, intimidation or manipulation. Secondly, ‘prior’ should imply that consent must be sought sufficiently in advance of any authorisation or commencement of activities, and that the relevant agents should guarantee enough time
for the indigenous consultation/consensus processes to take place. Thirdly, ‘informed’ implies that indigenous peoples should receive satisfactory information in relation to certain key areas, including the nature, size, pace, reversibility and scope of the proposed project, the reasons for launching it, its duration, and a preliminary assessment of its economic, social, cultural and environmental impact… Finally, ‘consent’ should be intended as a process of which consultation and participation represent the central pillars” (Barelli 2012, p.2).

In short, the right to FPIC could dramatically change the power dynamic between indigenous peoples and stakeholders (e.g. governments, private industries) by raising the bar for what constitutes meaningful consultation.

While the right to FPIC is most publicly articulated in UNDRIP, the concept is also enshrined elsewhere. For example, the International Labour Organization Convention 169 states governments should “Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly” (International Labour Organization 1989).

Elsewhere, the World Bank’s policy on Indigenous peoples also “promotes a process of free, prior and informed consultation with the indigenous communities concerned” (Barelli 2012, p.8). Barelli (2012, p.6) adds that many bodies that are entrusted to monitor and implement international human rights treaties have also “gradually developed extensive interpretations of their generic provisions in order to protect, inter alia, the special cultural attachment of indigenous peoples to their lands.”

To what extent has FPIC gained traction throughout Africa? At the regional level, Greenspan (2014, p10) notes that organisations including the Economic Community of West African States (ECOWAS), the African Commission on Human and Peoples’ Rights (ACHPR), Pan-African Parliament, and Africa Mining Vision, “have all called on states to respect the FPIC of local communities that face potential impacts from mining, hydrocarbon development, or natural resource projects more broadly.” The ECOWAS Directive is arguably most significant as it legally requires that “Companies shall obtain free, prior, and informed consent of local communities before exploration begins and prior to each subsequent phase of mining and postmining operations” (Greenspan 2014, p.10). Meanwhile, the African Union Model Law for the Rights of Local Communities, Farmers and Breeders “stipulates that decisions concerning access to biological resources, traditional knowledge and technologies of local communities are invalid without their consent” (Roesch 2016, p.510).

Although there is a lack of national legislation recognising FPIC in Africa, a body of jurisprudence is developing. For example, ACHPR has addressed the participation rights of local communities in many cases, including the 2001 decision involving The Social and
Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, and the 2010 decision regarding the Endorois peoples’ rights in Kenya (i.e. Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya). Discussing the latter, Gilbert (2011, p.266) argues that “the Commission endorsed the view that the State has a duty not only to consult with the community, but also to obtain their Free, Prior, and Informed Consent (FPIC), according to their customs and traditions.” Finally, the African Court on Human and Peoples’ Rights rendered its first decision on indigenous rights in 2017 concerning the expulsion of the Ogiek from their ancestral lands in Kenya. The Court found that the eviction of the Ogiek amounted to several rights violations, and “that the Kenyan state had failed to ‘effectively consult’ with the Ogiek” (Roesch 2017).

Despite these developments, there is little evidence to suggest that FPIC has emerged as a universally accepted norm throughout Africa as a number of formidable challenges remain. Many leading African institutions continue to overlook FPIC in the development of land-related policies. For example, a 2010 report by the African Union, African Development Bank, and the Economic Commission for Africa fails to mention FPIC throughout the entire document, although it purported to serve “as a basis for commitment of African governments in land policy formulation and implementation and a foundation for popular participation in improved land governance” (AUC-ECA-AfDB Consortium 2010, p.xi). Another major report by the African Commission’s Working Group on Indigenous Populations/Communities identified a mountain of challenges regarding the implementation of FPIC (ACHPR and IWGIA 2017, p.49). As one recent study concludes, this “casts a large shadow of doubt on the value and feasibility of the principle of FPIC as a mechanism by which Africa’s Indigenous peoples might advance their current struggles and rights over land” (Mitchell and Yuzdepski 2019, p.13).

The promise and perils of FPIC and land reform in Africa

Fundamental concerns remain about the political risks of transplanting this legal norm into the African context. Concerns relate to the prospect of the ‘indigenous’ question being politicised in a context characterised by an upsurge of autochthony leading to societal division.

Advocates of FPIC – and indigenous rights more broadly – are careful to note that the spirit of the term ‘indigenous’ “is to be an instrument of true democratisation whereby the most marginalised peoples within a state can gain recognition and a voice” (ACHPR and IWGIA 2017, p.24). Yet this perspective fails to recognise the rationale for adopting the language and logic of autochthony, which is often employed by those suffering uncertainty about the future and as justification for autochthons’ perceptions of growing marginalisation in both the economic and political arenas (Dunn 2009; Geschiere 2009).

While embedding FPIC in future land reforms could undoubtedly help to address the
marginalisation of groups identifying as indigenous, it does little to alleviate the growing concerns of ‘non-indigenous’ groups’ rights to land. In the words of Fontana and Grugel (2016, p.256-257), “FPIC offers partial redress for profound, historical marginalisation; but in so doing it embeds a potentially powerful exclusionary ontology and runs the risk of violating the notion of equal national citizenship.” Given the slipperiness of the concept of autochthony (cf. Geschiere 2009) and the striking parallels with indigeneity, there is reason to believe that many autochthons might also demand the right to FPIC. If FPIC does gain traction in future land policy in Africa yet remains out of reach of those who fall short of being recognised as ‘real’ indigenous peoples, it could prove to be a source of great political conflict.

The conclusions of Albertus and Kaplan (2012) regarding the role of land reform as a counter-insurgency policy are worthy of consideration. Their work suggests land reforms can generate deep antagonisms between beneficiaries and non-beneficiaries, potentially provoking protests and even insurgencies when reforms target a limited number of individuals. They argue there is a ‘paradox of partial reform’ where reforms must be comprehensive to be successful (Albertus and Kaplan 2012, p.202-203). This provides critical insights as it suggests that the peace-generating potential of FPIC cannot be realised unless this right is also granted to non-indigenous groups across the continent.

This perspective echoes Roesch’s argument (2016, p.515): “In order to render FPIC workable in Africa, marginalised local communities need to be recognised as right holders. This could occur by either broadening the traditional understanding of indigenousness or by extending the scope of FPIC to non-indigenous groups.” There is already a precedent for extending the right of FPIC to non-indigenous peoples in Africa. ACHPR and IWGIA’s recent report (2017, p45) suggests that “non-indigenous, project-affected people have the right to consultation and negotiation in decision making processes in ways that are consistent with the principles underlying the right to FPIC.”

Despite apparent reluctance on the part of African governments to recognise and respect the right of FPIC to indigenous peoples, the implementation of land policy prioritising the rights and interests of local communities has merit. Extending FPIC to diverse communities could provide an important safeguard against the rise of the politics of autochthony and mitigate the outbreak of future rounds of land conflict. FPIC also provides a critical framework for groups to resist power and raise their agency as a community in the (often) exploitative extractive industry sector (cf. Manirakiza 2019). Wider application of the core principles of FPIC could therefore serve to both prevent future conflicts and empower the different groups that experience marginalisation and insecure rights over their land.

While extending FPIC has potential, it also requires a caveat. As one recent study concludes: “Land reform is not a panacea for all of Africa’s agrarian ills and struggles. A more realistic approach to land reform must acknowledge the limits of legislation alone as
a vehicle for economic, political and social change in rural Africa” (Collins and Mitchell 2018, p.128). The same caution must accompany expectations surrounding the promise of FPIC in a peacebuilding capacity. While some scholars have argued that implementing FPIC could represent a paradigm shift from the current model of the extractive industry sector in Africa (e.g. Manirakiza 2019, p.230), much more needs to be done to address the power imbalances that both ‘indigenous’ and ‘non-indigenous’ communities face towards both the state and corporate entities.

Policymakers, politicians and human rights activists alike must ultimately be conscious, cautious and caring in how they attempt to harness the potential of FPIC. Recent studies have demonstrated the extent to which the instrumentalisation of land grievances has the potential to escalate and to prompt devastating levels of political violence (Straus 2012; Klaus and Mitchell 2015). To avoid the perils that could accompany the reckless implementation of FPIC, it is crucial that human rights organisations, civil society and governments work together to educate all stakeholders about the promise and perils of FPIC. By promoting the right to FPIC of both the ‘indigenous’ and ‘non-indigenous’, African governments can help secure the buy-in and support of all communities potentially affected by natural resource developments. Such an approach could help to ensure that the reform of land tenure rules works to build peace rather than generate division.

**Conclusion**

This paper examines whether the right to FPIC in land-related laws and policies is likely to serve as a foundation for peacebuilding or as fuel for the identity politics that already plague the land sector across Africa. The main conclusion that emerges is that for FPIC to be a peace-generating principle in future land reforms in Africa, it must be applied beyond the narrower category of ‘indigenous’ peoples. In so doing, communities are more likely to avoid having to confront the deeply divisive questions around who is indigenous in the continent, and who is not.

Despite the bright promise of FPIC, there are formidable challenges ahead in attempting to institutionalise this potentially groundbreaking principle. Central among these is the need to convince governments to recognise and respect communities’ rights to a seat at the negotiating table. Given the recent human rights records of governments throughout Africa, it will be a hard-fought battle for communities to successfully hold their governments accountable. There is the additional challenge of ensuring that FPIC does not halt the development of the continent’s natural resource sector – a concern that is expressed in many settler-colonial societies where FPIC is gaining traction (Coates and Favel 2016).

One thing is certain: there is an urgent need for more research and debate on the potential for land reform to enable peacebuilding in Africa (and beyond). While there are no simple solutions to avoid the perils and embrace the promises of FPIC, this paper provides a modest contribution to considering the political implications of transplanting
this principle into the African context. As the global indigenous rights movement continues to develop in Africa, policymakers, politicians and civil rights organisations could consider these challenges as they prepare to wrestle with the thorny potential of FPIC.

References


Botswana: a case study on policy evolution and impacts on urban land housing markets

Sheila Khama

1. Introduction

1.1 Background

Formerly a British Protectorate known as Bechuanaland, Botswana is a land-locked country surrounded by three southern African neighbours: South Africa, Namibia and Zimbabwe. This semi-arid country’s population has grown from about 375,000 in 1966 to about 2.1 million in 2011, according to the last census, but remains sparsely populated at only 3.9 people per square kilometre. (World Population Prospects 2019). During the colonial period, the Bechuanaland economy was almost completely dependent on subsistence agriculture dominated by arable and cattle farming. Thanks to a few European commercial farmers during the early days of self-rule, beef exports were the leading revenue earner for the State. Although citizens owned large herds of cattle, livestock was largely for subsistence purposes and indicated social rank. These traditional farmers relied on communal grazing and customary land management systems to house families, grow crops and graze large beef herds. This made land central to Tswana customs and economic systems. The result was a strong and well-established grassroots system of land use rights and processes for allocating and adjudicating conflict based on the customs of the Tswana tribes.

Scholars acknowledge that while not flawless, the Government of Botswana’s design and management of the land tenure system has been successful where other jurisdictions have failed. (Adams, Kalabamu & White 2003). It is also recognised that traditional customs and norms have played a central part in the architecture of the country’s colonial and post-colonial land use rights policy and laws. Despite periodic policy reviews, the country’s policymakers have found little reason to depart from the fundamentals of customary land use practices (Schapera 1938). This is telling given that Botswana’s policies, laws and institutions for land tenure have been the subject of regular reviews, revisions and updates. The changes are particularly impactful with respect to land use rights for housing and subsistence agriculture, which themselves form the cornerstone of traditional land use rights.

Urban population growth, among other factors, has put tremendous pressure on policymakers to provide land for regional and urban planning to meet infrastructure and housing needs. It has also created an opportunity for property developers and financial institutions to capitalise on the growing housing market, especially in urban areas and adjacent villages (see tables 1–4 below). For instance, at independence it is commonly
reported that there were only two towns in the country but by 2005 the number of towns had grown tenfold to about 24 (Kalabamu 2000). Table 1 shows the household growth in four towns during the last two national population censuses. The census, conducted every 10 years, shows an average growth rate of 30% between 2001 and 2011. In keeping with global trends in urbanization, the growth is especially high in the main cities. Land policies that respond adequately to this growing need across the country have proved essential.

1.2 Objectives and scope of the report
This paper covers two aspects of Botswana’s land tenure policy. Firstly, it traces the evolution of policy and legal frameworks. Secondly it examines how well a system that is based on customary law has adjusted to modern land market dynamics while balancing economic development imperatives. The goal is to assess the degree to which Botswana has successfully translated customary traditions of land rights use into a modern dispensation necessary to govern a sovereign state. The report uses data on the growth of housing markets in urban Botswana to illustrate the impact of this transition. It indicates trends and provides statistics from three characteristics of modern housing markets: the growth in land available to individuals, the entry of large-scale urban housing developers into Botswana’s property market, and lastly trends with respect to mortgage loans from commercial banks. The paper uses the increase in the value of property finance by financial institutions to indicate the growth of urban land and housing markets. Availability of land for housing is one of the common goals of customary land use rights and modern land tenure policies.

2 Methodology
This report studies Botswana Government data and reflects third-party sources to provide analyses, observations and conclusions about the effectiveness of Botswana’s land tenure policy in meeting one of its primary objectives: to ensure that land is available to house its citizens. This paper provides a snapshot of Botswana’s land tenure history, guiding principles of customary and modern-day policy and legal parameters; traces key milestones in the history of Botswana’s land policies and laws; highlights changes in policy or legal provisions that contributed to this progressive and orderly transition; and lastly demonstrates the degree to which the changes are consistent with traditional customs and norms pertaining to land use rights. The main focus is on ways to build on the strong foundations of traditional norms and address the emergence of new policies to tackle governance requirements consistent with changing socio-economic environment and urban housing needs.

Table 1. Number of households in the four largest towns

<table>
<thead>
<tr>
<th>Town</th>
<th>2001</th>
<th>2011</th>
<th>% increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gaborone</td>
<td>58,476</td>
<td>74,957</td>
<td>22.0</td>
</tr>
<tr>
<td>Francistown</td>
<td>23,124</td>
<td>31,297</td>
<td>26.1</td>
</tr>
<tr>
<td>Lobatse</td>
<td>8,523</td>
<td>9,214</td>
<td>7.5</td>
</tr>
<tr>
<td>Selebi Phikwe</td>
<td>15,258</td>
<td>16,058</td>
<td>5.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>105,381</td>
<td>131,256</td>
<td>30%</td>
</tr>
</tbody>
</table>

Source: Statistics Botswana 2011
3 Findings

3.1 Colonial public administrative arrangements

Bechuanaland was an amalgamation of tribal territories led by traditional leaders belonging to a variety of ethnic groups. The Tribal Territories Act of 1933 defined the boundaries of the Tribal Territories mapped in Annex 1 with Crown Land and Freehold Land also represented (Schapera 1938). Though traditional leaders existed independently, in 1885 they voluntarily sought British protection against annexation by imperial expansionists, bringing the country under British Colonial rule. A feature of the administrative structures of the colonial era is of separation of powers between the colonial government and the traditional chiefs. The power of the chiefs was limited to their respective territories, enabling them to preside over the inhabitants resident in their respective territories. An important part of the chiefs’ power was to oversee the allocation of, and determination of land use rights granted to tribesmen.

For many of the 81 years of colonial rule, Botswana largely existed in the shadow of its larger, more economically developed but politically volatile neighbours. This was mainly because, in contrast to many territories under colonial rule in Africa, there was very little economic development undertaken by the British. The British saw few prospects for return on investment in the country with the result that at independence Botswana was one of the poorest countries in the world. While lack of investment was an economic disadvantage, it had the distinct advantage that there was also very little interference with traditional customs and institutions, including those pertaining to land tenure. This also severely limited the presence of white settlers, removing prospects for large land acquisition by European speculators. This is one of the main contrasts between Botswana and other British-controlled areas such as Zimbabwe, South Africa and Kenya. Heavy British presence in these countries necessitated security of tenure for European settlers and investors and naturally influenced the direction of land tenure policy.

One of the outcomes of these arrangements is that while most countries historically had their own traditional ways of administering, allocating and, if need be, adjudicating conflict over land rights through developing new colonial policies and laws relating to land, these countries have departed from core customary norms and principles. In many cases this change came about not just due to interference by colonial administrative powers for reasons of self-interest, but other changes stemming from post-colonial political ideologies. Unfortunately, these too were borrowed from alien geo-political sources. In recent times, departures from customary land tenure systems are a function of self-serving contemporary African political interests. Botswana has avoided these risks, having adopted liberal market principles, and a benign political climate for the first 50 years. Martin Adams asserts that ‘Botswana continues to adapt its land administration, based on customary rights and values to a rapidly urbanizing economy and an expanding
land market. Its approach is of interest because it is finding solutions to problems that continue to elude its neighbour’ (Adams 2003).

In countries that departed from tried and tested traditional norms where land was shared on equitable terms, the outcome has proved unfortunate and the impact negative. The introduction of systems inconsistent with cultural norms means they are unlikely to respond to people’s ways of life including the material needs of those affected. The introduction of new statutory systems in countries in which the level of education is low creates an unintended outcome: citizens lack the capacity to interrogate the new laws and are unable to make beneficial use of them. The inherently elitist nature of modern legal systems implies also a lack of inclusiveness, and they often disproportionately benefit those with the educational resource to understand them and the material resourcefulness to leverage them. This is the strongest argument for respecting tradition while modifying policy to align with the modern environment. It is a delicate balance that Botswana has so far achieved as the next section will demonstrate.

3.2 Overview of land tenure systems during the British colonial rule

Three main land tenure systems prevailed during the British colonial rule. Bechuanaland was demarcated into land based upon the original areas controlled by traditional chiefs and the colonial government. The result was a tripartite land tenure system: customary land use rights, freehold title and state-owned land. In percentage terms, the proportion of land administered under these three systems during the period between 1966 and 1998 is shown in Table 2 below.

<table>
<thead>
<tr>
<th>Year</th>
<th>Tribal land</th>
<th>%</th>
<th>State land</th>
<th>%</th>
<th>Freehold</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>278,535</td>
<td>48.8</td>
<td>270,761</td>
<td>47.4</td>
<td>21,356</td>
<td>3.7</td>
</tr>
<tr>
<td>1979</td>
<td>403,730</td>
<td>69.4</td>
<td>145,040</td>
<td>24.9</td>
<td>32,960</td>
<td>5.7</td>
</tr>
<tr>
<td>1998</td>
<td>411,349</td>
<td>70.9</td>
<td>144,588</td>
<td>24.9</td>
<td>24,572</td>
<td>4.2</td>
</tr>
</tbody>
</table>

Source: White 1999

3.2.1 Customary land rights

Customary land rights pre-date colonial rule and administration was based on traditional Tswana norms. A basic premise of the traditional land tenure system is that land cannot be owned individually but that it is held communally and administered by traditional leaders for the common good of the tribe. Powers to distribute and resolve land disputes were vested in the chief and his representatives, known as sub-chiefs: ‘Control over land and its resources is vested in the chiefs – Except for portions reserved for him on more or less the same basis as everyone else, none of the land is his’ (Adams 2003). Traditional
leaders performed the role of custodians of these rights but did not determine whether a member of a tribe could or have access to land. Access to land was considered a birth right.

While not granting ownership, the rights afforded grantees exclusive right of use. This right was recognised legally and enforceable through traditional courts. In addition, these rights were permanent and transferable to one's children. The rights were specific to the purposes for which they were granted and differentiated according to purpose of use. So, to all intents and purposes, the rights had all the benefits of ownership. The system stopped short of outright ownership because it recognized that land belonged to all and to give exclusive ownership to anyone would undermine this principle. Equally, to have granted the chiefs powers of discretion would have been to empower them to discriminate at will. Therefore the system denied the chief absolute powers reducing the chances of abuse of power. At independence in 1966, the total area of land occupied by tribes was about 50% of the entire land mass of the country. Table 2 shows the modest variation of percentages but also illustrates how the traditional aspect of the land tenure system has remained dominant.

Articles by Martin Adams, Fuastin Kalabamu and Richard White capture the categories of land rights that are embodied in both Botswana customary and modern law very well. Specifically, Adams (2000) summarizes: ‘Depending on the land tenure category (i.e. tribal, freehold or state), land rights may include one or more of the following:

A. **Rights to avail** to be allocated land by virtue of one’s membership of a tribe (now citizen);
B. **Rights to occupy** a home or a home state;
C. **Rights to use** land for crops, for grazing, to make permanent improvements, to be buried on one’s ancestral land;
D. **Rights to have access** for gathering fuel, poles, wild fruit, fetching grass etc. to hunt and exploit natural resources and to use land for business or commercial purposes;
E. **Rights of way** for various purposes including Servitudes for infrastructure;
F. **Rights to transact** give, mortgage, lease, rent and bequeath areas of exclusive use;
G. **Rights to exclude** others from the above list of rights, and, linked to the above call my
H. **Rights to enforcement** of legal and administrative provision in order to protect the rights of the holder;
I. **Rights to compensation** for compulsory acquisition by the land board all state.’

It is interesting to note that that six of the nine forms of land right described by Adams can be traced directly to customary land use tradition and practice.

### 3.2.2 Freehold land tenure system

An important feature of the British colonial administration was to limit the powers of traditional chiefs over Europeans settlers. Granting land rights to Europeans was the
preserve of colonial government representatives and included land access and land ownership. To make provision for the needs of a very small white population, the British government introduced the freehold land tenure system. The British set aside parcels of land and allocated it accordingly. The land was demarcated into farms and sold to Europeans for commercial farming, mainly cattle ranching. This option was not available to tribesmen whose land rights were preserved under customary land use systems. Tribal land was unavailable to Europeans. At independence in 1966 the total amount of land reserved for freehold was approximately 3.7% of the entire land mass. Although relatively small in area, freehold farm holdings around Botswana towns and cities have played an important part in opening land markets for housing, especially in the middle to high end market. Many were bought by developers and divided into large residential areas with over 13,000 residential housing plots (Ministry of Lands 2019). Officials of the Department of Surveys and Mapping caution that the number of registered plots changes as sub-divisions on the small farm holdings are made daily. Most of the plots have already been developed and would have accounted in part for the increase in households in the Botswana Population Census (2011).

3.2.3 State land tenure system
A final feature of Botswana’s colonial land tenure system is its crown lands. These areas of land were reserved primarily for nature conservation reserves and occupied much of the barren Kalahari Desert and the wetlands of the Okavango and Chobe regions amongst other areas. Administrative control over this land was vested in the colonial administration which managed approximately 47.4% of the total land area as crown lands in 1966.

An important development took place in 1961 at the initiative of the British colonial government, leading to the creation of what is now the Central Kalahari Game Reserve, claimed by Botswana Tourism as the second largest wildlife centre in the world today. The reserve is located in the heart of the country, predominantly made up of savanna grassland and intended specifically to create a nature sanctuary for game and to support the needs of the nomadic San peoples of Botswana. This was an important milestone in the country’s land tenure evolution because by creating a reserve for the San to live in to preserve their subsistence nomadic customs of gathering foods and hunting animals, the colonial government ensured that like the Tswana tribes, the San now had access to and use of land in accordance to their customs. This was 27 years after the Tribal Territories Act that afforded the tribes similar land resource rights.

3.3 Post-colonial land policy, land and laws – major milestones
Botswana obtained independence from Britain in 1966. The period from 1966 to date has been marked with major land policy milestones where each policy altered and often improved the land tenure system’s legal and institutional frameworks. Despite
improvements, these changes often surfaced additional loopholes during implementation, and will no doubt continue to warrant modification. The continuous need for amendment reflects the dynamic nature of the socio-cultural environment as well as national economic development imperatives. Presented in chronological order, highlights of the main milestones, key amendments, outcomes and implications follow.

3.3.1 Botswana’s National Constitution
The newly establishment Republic of the Botswana replaced the colonial administration as the supreme authority presiding over affairs of state, with the State President as the head of the executive branch. In land matters this meant that the Chiefs were no longer subordinate to the colonial authorities but to the new government through the relevant members of cabinet. As the Constitution established, a lower house called the House of Chiefs was formed whose purpose was to enable traditional leaders to address issues of relevance in their territories. The House of Chiefs became a vehicle for engaging with the executive branch, the national assembly and the minister responsible for oversight of tribal affairs. It was also responsible for advising the Minister and was not limited to customary land matters over which the chiefs had previously presided. It could be seen as the beginning of a progressive power shift that would ultimately affect the authority of the Chiefs over land matters in a very material way.

3.3.2 The Tribal Act of 1968
One of the main purposes of this new law was to create a new institution - the Land Board. The law provided that the ‘imposition of restrictions on the use of tribal land shall be vested in and performed by the Land Board in accordance with the provisions of this Act’ (Tribal Land Act 1968.) The newly created boards were constituted as corporate entities able to enter into agreements, adjudicate disputes, sue and be sued. This was a major departure from the custom in which an individual (the chief by birthright) had sole control of the process. The Act defined the responsibilities, duties, membership and composition of the board members and its main feature was to shift authority for land allocation from the chiefs to the land boards. The Main Land Boards were supported by Sub-Land Boards to enable adequate outreach into many remote areas of the country. A further purpose of the new structure was to ensure sufficient administrative capacity to manage applications for land allocation. Effectively, the authority of the Sub-Land Boards was the same as that of the Main Land Boards with the exception that the second-tier institution did not have the authority to approve requests from current land users to vary existing land use rights. It also did not have the authority to allocate land for industrial use. It was empowered to assess such applications but could only make recommendations to the Main Land Boards for a final decision on these matters. The Main Land Boards heard appeals from aggrieved parties and ultimately its members could confirm or
overturn decisions of the Sub-Land Boards.

The membership of both boards comprised several public officers selected from central and local government branches of government because of the expert nature of their functions with respect to land, such as the agriculture department. Traditional chiefs were ex-officio members of the Main Land Boards. Today there are a total of 12 Main Land Boards and 39 Sub-Land Boards to support them nationally (Molomo 2008).

The Act also introduced the requirement for evidence of grant where the rights were proposed for transfer to one's children. This was previously not required because under customary law, testimony by kinsmen and women was deemed adequate proof to enable the Chief to make a ruling. An additional feature of the Act was the provision of registration of certificates of right of use as in common-law grants. The significance of article is that for the first time in the tradition of the Tswana tribes the new Act introduced a limited element of private ownership for an asset that previously was held communally. One could say this marked the beginning of land markets in tribal territories.

Though conservative and modest, the move was innovative in that while laying the foundation for land markets, at the same time the act introduced some degree of balance of power through decentralised authority. Land Boards introduced a different form of public participation through public hearings: a modern-day version of traditional assemblies known as ‘kgotla’. In this sense both systems reduced chances of corruption. The new Act retained all rights that were previously granted to members of the various tribes and confirmed the authority and means of administering the new law. The status quo prevailed from 1968 and the system has become a major feature of the Botswana land administration system increasingly being integrated into the public psyche.

3.3.3 State Land Act of 1966

In 1966 as part of self-rule, land previously classified as crown land was transferred to the State and became an asset of the Republic. This was implemented through the State Land Act of 1966. Land previously under the custodianship of the colonial administration was placed under the care and administration of the newly created state which became the sole authority to determine the use and conditions for allocation of such land. The state co-opted regional administrative agencies in the rural and urban areas to administer matters relating to its land. This territory includes heritage sites, game reserves for nomadic people, tourism parks, investments and trade promotion agencies as well as urban and rural development planning.

Unlike tribal land, which was reserved exclusively for tribesmen, State land was made available to citizens and non-citizens alike. However, unlike customary law which only grants applicants rights of use, the State Land Act granted a leasehold. Land was allocated to citizens under a 99-year lease, and to non-citizens for a 50-year period. In time this would prove to be important because with urbanization, the need for land for
housing became a primary driver of land-based investments. This offered citizens and non-citizens an alternative for land acquisition increasing prospects to attract land-based private investments.

3.3.4 The creation of the Botswana Housing Corporation
To manage urban housing, the Government created a parastatal known as the Botswana Housing Corporation through an Act of Parliament in 1971. The Corporation's mandate included, ‘to provide for the housing, office and other building needs of the government and local authorities’ (Botswana Housing Corporation Act, 1971). This was a major development laying the foundation for urban housing development where the Corporation became the dominant property developer in the 1970s and 1980s leasing houses to citizens. Following demand from homeowners it moved from leasing to property sales as its core business, as when it was first established there were virtually no private developers in the housing market partly due to lack of serviced land. As at September 2019, the agency had sold 11,178 housing units in Gaborone alone. (Botswana Housing Corporation 2019).

3.3.5 Freehold land
There were no major changes to land ownership rights under the freehold system at Independence, but the right of the State to appropriate land for the common good remains embedded in the Constitution. Consequently, the State appropriated all land, including that owned under freehold land from title holders, to provide land for urban development and provision of public infrastructure when necessary.

3.4 Interim policy, legal and institutional reviews
The administration of land remained unchanged for the first one and a half decades of self-rule but evolving land needs and economic development plans as well as the limitations of existing administrative frameworks pointed to a need to revisit policy and the legal and institutional frameworks governing it. This section reviews some of the major changes.

3.4.1 Presidential Commission on land tenure – Government of Botswana, 1983
The appointment of a Commission to review land issues took place 15 years after the Tribal Land Act in1968. The country’s land tenure policy had adopted a cautious approach while reacting to specific needs. The Commission made three important recommendations:
A. Commercial and industrial leases on tribal land should be modified to allow for the registration of 50 year common-law grants;
B. Allowance be made for automatic right of inheritance so that approval by Land Boards would no longer be required if the transfer occurred between citizens, and that consent for the Land Board to transfer or sell land should not be unreasonably held; and
c. Common law leases for residential plots leased by citizens would remain unchanged at 99 years.

Subject to a plot being unmortgaged, provision was made for the conditions of use to revert to customary law at any time. Fixed-term state grants and certificates of rights were deemed to be the most suitable form of land tenure on state land in urban areas, a condition which prevails to this day. An important development with respect to land ownership and development was the commission's decision to enable owners to borrow and offer land as security based on certificates of rights. These new provisions boosted prospects for plot owners to secure mortgage loans and signalled two important changes in Botswana land use culture: a migration from the acquisition of land for subsistence to acquisition for investment purposes and an acceptance that the policy must also embrace the increasingly urban land use markets. To mitigate the risk of ‘fronting’, specific proposals were made to the Registry of Deeds Act in parallel to ensure that implementation was in line with the spirit of the new policy but otherwise the Tswana traditional norms of right of access to land prevailed.

3.4.2 The 1992 White Paper on Tribal Land (amended) Act of 1993

Botswana has not escaped the challenge of massive urban migration. The creation of the capital, Gaborone in 1966 was in part made possible by the State’s provision of land for urban development. At its creation Gaborone had 1000 inhabitants and was originally planned for a population of 20,000. However, by 1992, its numbers had reached 138,000 and the latest population census of 2011 recorded 250,000 inhabitants. This naturally put pressure on a small area of land and grew demand for housing and industrial development. Disproportionate levels of demand for supply of land and housing have inevitably attracted undesirable behaviour by those seeking to exploit the system. This prompted an official review to investigate administrative problems in tribal land adjoining the towns of Gaborone and Francistown. Despite clear processes and procedures, pressure from urban dwellers had led to irregularities in land allocation. In addition to addressing these immediate problems, the Commission proposed significant amendments to the Tribal Land Act which would transform important aspects of the land policy across the country but particularly in urban areas.

Most significantly, the Commission recommended the replacement of land use rights along tribal lines to a grant based on citizenship. This implied all citizens of Botswana would be entitled to secure tribal land anywhere in the country regardless of their tribe, whether they had become citizens by other means or were naturalised citizens and this included the San who had not previously benefited from the Tribal Land Act.

A second significant recommendation was to abolish the condition that consent be obtained from the Land Board where a citizen did not belong to the tribe overseeing
the application area. This change supported the principle of subordinating tribalism to nationhood but had the unintentional effect of unlocking the entire country for potential land-based investments and speculators previously confined to tribal areas. Indirectly, this change increasingly eroded the notion of tribe, which was so closely tied to land. The implications are far reaching for future generations and the politics of personal identity.

Thirdly, the Commission recommended that the law allow women and men to be allocated land as equals, which was a major departure from custom. Customary law permitted wives to be given land for a house by their husbands in accordance with the patriarchal notion that men are heads of households and family providers. By acquiring land to house a wife, men were therefore performing their duties to provide and discharge their paternal obligations. Through this recommendation the country took a major step towards addressing inequalities in terms of property rights between men and women regarding land access.

Finally, acquisition of tribal land for public use had never attracted compensation on the grounds that the user had right of use but not title. The report recommended that tribal land users be compensated on the same general terms as those of freehold and state land.

By introducing the above changes, the dispensation had multiple influences on land market development; it enabled citizens land based rights and property speculation in any part of the country. Parents who acquired tribal land for future use by their children added to speculative market behaviour. Clearly that was not the intent of the Commissioners, but the changes did present an opportunity, and the market responded accordingly. Speculators acquired land countrywide and mothballed real estate without further development. The outcome has been a greater burden of administration to curb abuse and a greater need for state resources to police those who take advantage of the more flexible conditions. While the scope of these changes was confined to land policy the impact and implications are more far reaching, potentially redefining the politics of national identity and culture of tribalism and illustrating the critical role land plays in both.

3.4.3 The Botswana Housing Corporation mandate and level of government support
The Corporation was established to ‘provide for the housing, office and other building needs of the government and local authorities;’ (Act of Parliament 1971) subsidised by the state.

3.4.4 National land policy review of 2000
Ten years after the 1992 review a further review took place. It concluded that the land tenure system relating to freehold, state and tribal land served the purpose for which it was originally created well and with a few amendments, it was left intact. The proposed changes sought to mitigate the risk of abuse and support the development of an orderly land market and improved governance through tighter controls. The focus of the review was on land administration and land management and specifically recommended:
a. The need to limit residential land grants to just one plot per applicant, and
b. Termination of the system by which middle and higher income earners could apply for state housing grants.

The second recommendation recognised that land markets had matured sufficiently for those with financial means to acquire land from the open market. Different public agencies monitored demand and supply, and the State's role was to project demand, plan and provide infrastructure for utilities to enable private developers to provide commercial housing. In return the State outsourced the supply burden especially in urban and surrounding areas. However, it continued to provide land in urban areas for low income groups.

Compensation for tribal land appropriated by the State had previously been discussed without resolution. This time however, the Commission recommended that compensation be extended to all forms of land including tribal land. In general, new and more flexible conditions of use were introduced in tribal areas with the provision that land users comply with existing regulations and by-laws.

### 3.4.5 Botswana land policy review 2015

The 2015 review followed only five years after the previous review. This is indicative of the fast pace of market change, the degree to which the policy environment was challenged, and the diversity of interests and issues that required resolution. The land policy’s goal was ‘to protect and promote land rights of all land holders and promote sustainable human settlements’ (Report of the Land Policy Review 2015). The review sought to improve land administration and management from system, environmental and economic perspectives and to protect the land for future generations based on prevailing land tenure principles. The policy states that measures would be emphasise access to housing without necessarily owning a plot of land. To address these basic land needs, the following applied:

a. Every Motswana (citizen) will be eligible for allocation of a residential plot in an area of their choice within the country;

b. One is deemed to have been allocated a plot if it is lawfully acquired and registered;

c. Low-income groups will be allocated land at subsidized prices;

d. Residential plots will be planned and surveyed before any allocations are made;

e. Government will facilitate access to housing by the public through allocation of land for multiple residential and high density development to the private sector for housing and delivery, and

f. Growth (population) points will be identified to reduce pressure from populous centres.

Other important issues not previously addressed but included in the 2015 policy vision included special purpose zones and provisions for widows, orphans, remote area dwellers, youth and other vulnerable groups. Future reviews will need to address evolving
conditions as well as those no doubt already leveraging loopholes and reducing the parity as the policy intended. In general, the policy changes are administrative rather than philosophical, focusing on planning and harmonisation of processes across the land-value chain.

3.4.6 Tribal Land Act of 2018

Fifty years after the first Tribal Land Act of 1968 the law was revised. The main purpose of the revision was ‘to instil market confidence through proper planning survey of land prior to any allocation’ (Tribal Land Act 2018). By modernising administrative processes and the rights and privileges granted to the land user, the effect was to motivate an important market dynamic. The market migrated from what began as a land use right afforded to tribesmen into a market-oriented commodity capable of attracting investment, giving a reasonable return on that investment while contributing meaningfully to the economic development of the local and national economy. In the revised Act, these aspirations would be achieved through strengthening security of tenure through certificates of rights and immediate registration of title.

This was an important change to the law. Prior to this amendment, citizens could not use a certificate of rights on tribal land to register title. In the past, the holder had to first register a common-law grant whereas following the law allocation of tribal land permits simultaneous registration of the right of use with the Registry of Deeds office. This streamlines the administration process, improves security of tenure and fast-tracks title registration. It brings land that can be mortgaged quickly onto the market and levels the playing field for citizens who might not have the means to navigate complex administrative process. Most importantly, because laws are vehicles for governing and addressing interests of citizens, release of tribal land into the ‘formal’ property markets narrows the gap between the law as a legal instrument and its practical impact on individuals and markets. This amendment overcomes a common limitation of legal instruments by resolving a problem seamlessly.

The aim of land acquisition for housing, securing mortgage loans and building shelter for citizens was hence more easily achievable. In keeping with tradition and the values embodied in customary law, the new policy reinstated the following fundamental principles of Botswana’s land tenure system enshrining the principle that, ‘shelter, housing is a basic need’. The government committed to ensuring that each family is housed, and it encourages home ownership (Tribal Land Act 2018). The Act and revisions are therefore consistent with those principles that were first recognised by Botswana’s traditional leaders before the advent of the colonial era.

Apart from interventions that were directly related to land tenure policies and laws, the 1990s and the millennium years proved a busy time for policymakers responsible for land matters. The interventions relating to land markets below indicate the increasingly complex
regulatory environment which only a quarter of a century earlier was adequately governed mainly through traditional customs, with few formal legal and policy instruments.

A. 1990 – The Government announced the cessation of Public Debt Service Fund loans to state enterprises, including the Botswana Housing Corporation. This meant the Corporation had to raise capital from the markets, further growing the open market housing providers sector.

B. 2003 – The Sectional Title Act provided for the legal management of dividing buildings into sections and the acquisition of separate ownership of sections coupled with joint ownership of common property; the transfer of ownership of sections; the registration of mortgage bonds and real rights in sections and the conferring and registration of rights in and the disposal of common property.

C. 2003 – Real Estate Professional Act regulated the real estate industry in Botswana.

D. 2004 – The Abolition of Marital Powers Act provided for the abolition of marital power, to amend the matrimonial property law of marriages, provided for the housing of married women and children and the guardianship of minor children.

E. 2010 – Presidential Directive Cab 20 (B) expanded the Botswana Housing Corporation’s mandate and transferred all Government housing implementation programmes to be managed by it.

F. 2012 – The Government’s Single Housing Authority expanded Botswana Housing Corporation’s mandate following Presidential Directive (E). The Corporation became responsible for the construction of turnkey housing agency projects and district housing providing affordable housing to low income groups. This further expanded the land market for housing beyond the urban settlements into rural areas and lower income brackets consistent with the Government’s goal of ensuring housing for all.

G. 2013 – The Land Tribunal was empowered to hear appeals from Land Boards regarding tribal land.

3.4.7 Institutional support
To facilitate policy implementation and regulatory compliance, the Government created several departments to coordinate and supervise aspects of policy and law relating to land and housing development. Of the many functions delivered by the nine departments in the Ministry of Land Management, Water and Sanitation Services, two of the most vital are land use planning and land servicing. These ensure availability of serviced land, an understanding of future demand, physical plans, public health and safety creating coherence and enabling property developers to plan for multiple purposes including housing. Land use planning is the responsibility of the Department of Town and Regional Planning whose mandate is described as ‘to provide spatial planning services in order to achieve sustainable land management’ (Ministry of Lands and Housing). In this context
development plans for towns and major villages are designed, approved and budgeted to encourage development. The Government’s accelerated land servicing provides infrastructure to enable land development. Public and private developers rely on the ability of these institutions to identify land spaces and provide utility infrastructure. It is this integration of policy and legal and institutional structures that has made possible the orderly implementation of Botswana’s land tenure and the growth of urban housing markets.

4 Observations
Against this backdrop the extent to which Botswana has used custom and tradition as the foundation for modern land tenure policies can be assessed as largely successful. The right to land for shelter and subsistence remains the foundation of the country’s land tenure policy. The right to provide land for citizens remains the primary guiding principle. What has changed is the authority for presiding over its allocation, the scope of entitlement to allocation, the elimination of rights based on tribal affiliation, the legal status of the user rights and processes relating to applications and registration of the rights. The authority of chiefs has almost completely been eliminated and replaced with that of central and regional governments.

4.1 The value of traditional norms in promoting good governance
Rather than assuming responsibility and delegating its authority to the Land Boards, Government has also continuously provided leadership by instituting periodic reviews of policy to manage the changing environment while respecting traditional norms. This was facilitated by the fact the traditional systems incorporated standards for good governance and therefore lend themselves to adaptation to modern institutional and democratic ideals. This becomes an important factor in evaluating the merits of Tswana land tenure traditions because traditional norms should not be upheld for the sake of tradition. In matters of public policy, good governance is a better yardstick for assessing their value.

According to the World Bank’s Worldwide Governance Indicators, ‘good governance’ is among others about voice (publics) and accountability (of leaders). (World Bank Governance Report 2006) ‘Accountability ensures that citizens, communities, civil society organizations and institutions effectively exercise oversight over the decisions and actions taken by officials with a view to guaranteeing that they meet their objectives and thus contribute to improving the well-being of all.’ (Stapenhurst and Mitchell O’Brien 2008). However, for effective accountability, transparency is critical. It has been defined as ‘being open in the clear disclosure of information, rules, processes and actions’ (Transparency International 2009).

In the context of Botswana’s customary norms, governance is implied in the authority of the Chief. Though chiefs ascend by birthright, they rule by the people’s will. Tswana language illustrates this proverbially: ‘A chief is a chief through the people’ (Kgosi ke kgosi
While entitled to occupy office by birth, chiefs only retain it by the office-bearer conducting himself in keeping with the responsibilities of the office; that is to serve the tribe and not nurture personal interests. In some cases, chiefs have been removed from office and sent into exile despite their blood line. Isaac Schapera writes, ‘Political life is so organized that effective government can only result from harmonious cooperation between him (the chief) and his people. Any attempt to act without them is not only regarded unconstitutional but will generally fail’ (Schapera, 1938).

The second cornerstone in Tswana custom creating good governance is public voice: the ability of the tribespeople to participate in deliberations, influence outcomes and have access to a grievance procedure to redress an issue. Once again these are fully detailed by Schapera who states ‘All matters of the public concern are dealt with finally before a general tribal assembly of men. In this circumstance cooperation is essential for successful government of the tribe and should any Chief act contrary to public opinion as here (the assembly) expressed the result would be a disaster. (Schapera 1938). A Tswana proverb reinforces this: ‘Everyone has the right to be heard even at the risk of offence’ (Mmua lebe, o bua la gagwe).

A final aspect of good governance is the principle of transparency, and Schapera describes the processes land allocation processes and the openness with which allocations and conflict were openly resolved.

Tswana customs regarding land use rights have been regularly tried and tested. With use and longevity comes a degree of collective understanding of processes and norms which serves to increase public participation as a foundation for informed consent. The fact that an average Motswana understands the tradition creates a good basis for debate and collective decisions on future amendments. The ability and willingness of policymakers to build upon this knowledge to promote consultation is critical for maintaining consensus, another foundation of Tswana cultural norms. This could be an important unifying factor as the country’s social fabric changes and introduces diverse interests on land matters.

### 4.2 Periodic policy and legal amendments

Regard for tradition is justifiable if the Government adapts traditions appropriately to reflect changing societal norms. In this case study, Botswana’s policymakers recognised the importance changing expectations of citizens and the macro-economic environment. In a series of policy reviews, presidential commissions and legal amendments since 1966, multiple adjustments have been made triggered internally by policymakers or by external factors including critics of the Government. Either way, the willingness of the authorities to respond has been commendable. Consequently, the Botswana government improved on traditional norms of land use in several very important ways including:

A. Replacing the authority of traditional chiefs with more inclusive Land Boards;
B. Enforcement of women’s rights of land ownership;
c. Provision of schemes catering for the housing needs of the poor;

d. Catering for land needs of the youth and people affected by HIV/AIDS;

e. Introducing direct registration of title in tribal lands;

f. Enabling access to the whole country for citizens to choose where to apply for tribal land;

g. Ending financial support for the state housing enterprise and expanding the private housing market;

h. Servicing land for development as a pre-condition for allocation, and

i. Instituting nation-wide spatial planning and physical development plans for all main settlements.

4.3 The impact of Botswana’s land development policies and laws on land markets for housing

These policy decisions have contributed to a growth in the demand and supply of land for housing. To illustrate this, Table 3 shows the area of land serviced and released for development (including housing) in Gaborone since 1966. (Department of Town and Regional Planning, Ministry of Lands, Water and Sanitation Services). Though the Government ended the sale of state land to middle and upper income groups every indication is that demand for land for will continue to grow.

The graphs, opposite page, show the growth in borrowing for property development by individuals and developers.

The early 2000s witnessed a proliferation of mid to high end property developers in urban centres in the country with Gaborone and neighbouring villages experiencing the highest growth. Many of the developments were made through the purchase by private individuals and the State of freehold farmlands adjoining the city which were approved for change of use. Other developments came through registration of common law grants over tribal lands bordering the city. For most individuals and property developers, these plots were easier to acquire, quicker to process and a more economically viable option than buying freehold at a premium within the city itself. These purchases resulted from the policy changes of the mid-1980s. Another major player in the Gaborone land market was the Catholic Church, which had benefitted from donations by a tribal chief who granted land to the Church subsequently converted into a long lease. The Catholic Mission entered into agreement with private developers who managed turnkey housing projects for sale to private homeowners and commercial developers. Table 4 presents statistics from the resulting housing developments.

<table>
<thead>
<tr>
<th>Year</th>
<th>Area * (hectares)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>4378.06</td>
</tr>
<tr>
<td>1976</td>
<td>2120.95</td>
</tr>
<tr>
<td>1981</td>
<td>3221.84</td>
</tr>
<tr>
<td>1984</td>
<td>4024.56</td>
</tr>
<tr>
<td>1990</td>
<td>4068.21</td>
</tr>
<tr>
<td>2001</td>
<td>850.22</td>
</tr>
<tr>
<td>Total area</td>
<td>18,633.84</td>
</tr>
</tbody>
</table>

Table 3. State land for development* (including housing) in Gaborone since 1966
Rethinking land reform in Africa: new ideas, opportunities and challenges.

Graph 1. Value of personal mortgage loans from banks and the Botswana Building Society

Graph 2. Value of loans to property developers and estate agents

Graph 3. Comparison of the three sources of housing loan finance

Table 4. Number of residential plots by source land in Gaborone – August 2019*

<table>
<thead>
<tr>
<th>Type of tenure</th>
<th>Number of plots</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freehold/small farm holdings</td>
<td>43,697</td>
</tr>
<tr>
<td>Private development</td>
<td>17,724</td>
</tr>
<tr>
<td>Total</td>
<td>67,355</td>
</tr>
</tbody>
</table>

*Includes low-cost, mid-range and high-end market.
5 Conclusion
This paper set out to assess the degree to which Botswana has successfully translated customary traditions of land rights use into modern procedure. Botswana’s land tenure policy was traced through the evolution of its policy and legal frameworks and the adaption of a system based on customary law was examined to assess how well it adjusted to modern land-market dynamics, as well as economic development imperatives.

Land tenure policies like other development interventions have both long- and short-term impacts. In the life of a nation, fifty years is short. Therefore, the conclusions of this report are made in the knowledge that the long-term effects of Botswana’s policies on land may not yet be visible. In the short term, some impacts are evident. These relate to the achievement of the original policy objectives, the impacts of the traditional values of right of access to land on modern policy, and the increasing availability of serviced land for housing in rural and urban areas. Based on the frequency of reviews and presidential commissions and directives on land matters, the environment is increasingly complex. So rather than these changes putting matters to rest, calls for policy changes are likely to become more frequent. Maintaining some stability and protecting traditional principles, while opening up the markets in such an environment, is therefore likely to prove difficult. Indeed, depending upon traditional values for guiding principles might also prove insufficient in the long run. That situation begs a specific question: As the country’s socio-economic fabric changes, what should be the guiding principles of the country’s land tenure policy and laws? If traditional norms prove inadequate, what is the alternative?

Finally, there may be lessons for others in Botswana’s experience, just as there are lessons for Botswana in the experience of other countries: Where should Botswana look to support direct land policy for the next half a century? The country was blessed with a small population density and, managed well, sufficient land should yet be available to meet the basic needs of citizens for some time to come.

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Author's note:
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Participatory land governance in Africa: the key to raising productivity and promoting equitable and sustainable land use

Horman Chitonge

Introduction

As pressure on land resources in Africa increases, land governance has emerged as one of the focus areas for policy reforms. While land governance refers to a broad set of norms which regulate relations around land, emerging land governance trends in Africa increasingly highlight the need to find effective ways to manage customary land which is often perceived to be ‘informally’ regulated and administered. This focus on customary land is justified by the simple reason that the larger portion of land (seventy-five percent on average, see Willy 2011) in most African countries is under customary tenure.

Since land governance reforms seek to establish ‘new’ norms and mechanisms to regulate relations around land, the attempt by many African states to bring customary land into their national land governance systems has led to disputes as different actors respond to the prospect of consolidating or losing their control over land. This paper focuses on emerging land governance dynamics including the factors which have contributed to the rising interest in land governance in Africa. It argues that effective land governance is central to the prospect of increasing the productivity of land and promoting equitable access and sustainable use of land in Africa. The challenge for most African countries, in this regard, is to move beyond the dualistic approach to land governance and administration; to find innovative ways of integrating the different land governance systems.

Evidence from policy documents and scholarly literature points to the growing realisation among African governments that without an effective mechanism to regulate how land is administered and managed it will be difficult to realise the long-term goals of promoting economic growth, reducing poverty and improving the well-being of African people. Awareness of the need for effective land governance is particularly evident in the land policies and legal instruments developed by African countries over the last two decades. However, turning this growing awareness into action remains a major challenge. Implementing land policies has been confounded by the fact that, as many African governments seek to bring customary land under a unified land governance system, custodians of customary land are contesting this move as they have in many countries sought to retain the control and administration of customary land. How this tension is resolved depends on the effectiveness of land governance mechanisms put in place to navigate the delicate balance of interests and power. A participatory approach is more likely to yield better outcomes in terms of improving the effectiveness of land governance.
as well as the economic and social outcomes.

**The land debate in Africa**

The land debate in Africa is complex and heavily polarised. The fundamental issue is quite simple: how to use land to create viable and sustainable livelihoods for people, reduce poverty and inequality, and ultimately improve the living standards of all Africans, particularly those living in rural areas on customary land (AU/AFDB/ECA 2010). Various efforts made to improve land governance, management and administration point to the fundamental idea that land is a valuable resource that should contribute to economic growth and promote equitable and sustainable livelihoods for all. While few people would disagree with this view, the question of how to achieve this goal has generated diverse and often opposing views.

Many African governments cite the need to promote economic development and improve the well-being of people living in rural areas, especially those on customary land (Wily 2003) as a main driver for initiating land policy and institutional reforms. The Draft Land Policy in Malawi, for instance, seeks to put in place “a mechanism to promote optimum utilization of Malawi’s land resources for development” (ROM 2002, p.1.1.2). The Draft Land Policy in Swaziland describes its objective as to “improve productivity, income and living conditions and alleviate poverty” (GoS 2000, p.1.3.3). Similarly, in Uganda, the government has been attempting to amend the constitution to allow the state to acquire land from private owners to promote investment, economic growth and poverty reduction (Mugambwa 2015). The recent draft land policy in Zambia recognises land as “as a resource to foster development” with the state promoting the growth of investments through an active land market (GRZ 2017, p.3.1).

Most land policies in Africa view land as a national asset which should promote the social and economic development of the country, and therefore contribute to poverty reduction and sustainable land use (Wily 2003; AU/AFDB/ECA 2010). Most African governments take the view that land under customary tenure should be formalised to strengthen land rights and to provide an incentive to stimulate investments. For example, a policy briefing in Kenya, after acknowledging that productivity among private land owners (mainly those with title deeds) increased by more than 400 percent in 15 years, argues that:

…it was the introduction and almost universal acceptance of private, freehold tenure which made it worthwhile for landowners to make the necessary investments in land improvement and new agricultural technology, and which has been so spectacularly successful in the creation and accumulation of wealth in rural areas. In strictly economic terms, net returns to land are now up to four times greater on freehold land compared with unadjudicated land under customary tenure (Norton-Griffiths 2007, p.2).
The view that private ownership renders land more productive has been used as a basis for recommending the privatisation of customary land in Africa from the 1970s. This view was embraced by the World Bank (1975) in its rural development drive (Deininger and Binswanger 1999). The main argument advanced to support this view has been that formalisation of ownership (mainly titling or some form of land registration) takes “customary land rights out of the realm of the informal lineage or community land ownership, to make them fully legal, formal and individual; measuring precisely the boundaries of claims, recording claims in a formal, state-administered land record system…” (Attwood 1990, p.659). Analysts who support this view argue that the certainty and security of tenure that formalisation entails, provides an incentive for landholders to undertake long term investments such as the acquisition of modern farming equipment and technologies (Norton-Griffiths 2007; Deininger 2003; De Soto 2000; Dorner 1972; Johnson 1972; 2011).

However, while the World Bank supported this position for a long time, its view on formalisation has been evolving. From the late 1990s, the Bank’s position seems to have shifted to support the recognition and protection of land rights through existing local institutions (Deininger and Binswanger 1999; Cotula et al. 2009). This change of heart has been attributed to the fact that the World Bank appreciated that most African governments lack the capacity to implement a full-blown national cadastre system, which is what a titling programme entails (Platteau 1996). Thus, if African governments had the capacity and the capability to give ‘a title to every villager’, the Bank would still encourage titling and prefer individual land rights to customary land rights. Supporters of this view have argued that the prevalence of customary land in Africa accounts for its low productivity and slow economic structural transformation (Johnson 1972; 2011; Deininger 2003; GIZ 2018.)

But this perspective has been contested elsewhere by those who argue that formalisation only allows powerful members in rural communities to grab the land and in the process enrich themselves, leaving the poor poorer (Bassett 1993; Okotho-Ogendo 1993). Analysts who disagree with the formalisation approach to land tenure argue that there is no discernible correlation between the type of tenure and productivity, access to credit or investment (Migot-Adholla and Bruce 1994). Empirical evidence from studies conducted in different parts of the developing world is marshalled to show that titling does not automatically translate into higher productivity or investments; other intervening factors have a bigger impact. Most empirical studies suggests a weak or lack of correlation between land titling and growth of productivity or investment. For example, a study conducted in eight African countries during the 1990s concluded that there is no direct correlation between the type of tenure and productivity or investment (Migot-Adholla et al. 1994). Similarly Smith’s (2003) study in southern Zambia and Jacoby and Mintern’s (2007) study in Madagascar also found little or no evidence of the relationship between titling and
access to credit, investments, productivity and land management. The conclusion from the review of empirical studies suggest that while some studies elsewhere found strong correlation, in sub-Saharan Africa, most studies fail to find any significant relationship:

“Whereas … studies in Asia, Latin America and Caribbean make a clear and consistent case for land registration as an economic proposition, the picture emanating from various studies in Africa has been mixed. A comparative study of ten rain-fed agriculture regions in Ghana, Rwanda and Kenya, based on farm surveys conducted during 1987-1988 … have found that land registration did not have a clear impact on productivity, land improvements or credit access in these areas” (Feder and Nishio 1999, p.35).

A review of the Kenyan land titling and registration programme also came to a similar conclusion observing that,

“…whereas no evidence exists that agricultural production has increased by virtue of that programme, there are plenty of data to indicate that it [land titling and registration], in general, increased inequalities both structural and political-economic within the agrarian sector. Indeed it has led to the emergence of a relatively rich middle peasantry that enjoys much useful linkages with central bureaucracies” (Okotho-Ogendo 1993, p.269).

Although this debate has remained polarised, there is some emerging consensus that the empirical evidence that titling solves the problem of low productivity in Africa is rather weak. It has also been observed that “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” (Amanor 2012). Those critical of land titling argue that this exercise usually aggravates inequality in accessing land as those with resources rush to claim the best land in the community, leaving the majority of the poor on marginal lands or without land (Moyo 2008; Bassett 1993; Bruce 1993; Place and Hazel 1993; Shipton and Goheen 1992). It has thus been argued that the “notion that tenure reform is the panacea to Africa’s agrarian ills is an old idea that ignores critical social dynamics that strongly influence how productive resources are acquired, utilised, contested and immobilised” (Bassett 1993, p.4).

**Formalisation of land rights is not the panacea**

Drawing from the experience of the past five decades of land reform in Africa, it has become clear that improving productivity involves a complex set of issues which cannot be reduced to tenure reform alone. The strategy of focusing on formalisation of land has not yielded much in the past and may have contributed significantly to the persistent agrarian crisis on the continent. In response, some analysts are now calling for innovative land
governance as a crucial intervention that can contribute to improving productivity in the rural sector, raising income, reducing poverty and promoting equitable and sustainable use of land (Amanor 2012; Place 2009). This call is based on the realisation that there are many issues, other than the form of land holding, which need to be addressed if land is to fulfil its potential in Africa.

The complex challenges raised by land use in Africa are directly connected to issues of land governance, including tenure rights, effective institutions and leadership, mechanisms for promoting sustainable use and management of land, all of which create an environment in which productivity growth and security of livelihoods can be enhanced (Chauveau et al. 2006). As the African Union (AU) Land Policy Framework document observes, in order for land to play “its primary role in the development process and more practically in social reconstruction, poverty reduction, enhancing economic opportunities for women, strengthening governance, managing the environment, promoting conflict resolution and driving agriculture modernisation, African states have to provide the leadership to all the actors” (AU/AfDB/ECA 2010, p.13). Seen from this perspective, it is apparent that at the core of the low productivity of land in Africa is the broader issue of how land as a national resource is governed.

**Land Governance in Africa**

Policy makers and researchers have now reached a broad consensus that addressing important governance issues is a critical success factor in using land as a means of promoting social and economic development. This realisation has brought the issue of land governance to the fore (FAO 2007; AU/AfDB/ECA 2010; Amanor 2012; Wily 2011; GIZ 2018). A recent African Union report observes that land governance is key to “achieving Agenda 2063, particularly goals related to quality of life and well-being” (AU 2017). It has for instance been observed that:

“Weak governance leads to weak tenure systems, often depriving individuals and communities of essential rights and access to land and other natural assets and contributing to poor land and resource management practices, which further degrades the limited resource base” (USAID 2015)

It has become apparent that what was earlier seen as lack of clarity and uncertainty in customary land tenure systems is largely a symptom of poor land governance. Where land governance is effective, the widely acknowledged ambiguity around customary tenure rights can be clarified and strengthened (FAO 2012).

**Key elements of land governance**

Governance refers to the mechanism for providing regulatory, administrative and
leadership functions. Governance includes effective leadership creating a conducive environment for ordering collective public affairs (Chauveau et al. 2006). In the context of land governance in Africa, it is important to emphasise the complexity of land relations and the layers of social interactions around it, especially customary land. In this regards, land governance can be seen as a systematic approach to “land tenure relations and the social field that they define” (Chauveau et al. 2006, p.39). Broadly, land governance has three key components: i) rules/laws/principles, ii) institutions through which the rules, principles and laws are applied, and iii) the actual application of rules, laws and principles (administration, management and allocation of land) to guide day to day interactions. It is important to note that the rules or laws do not have to be formal; informal rules are also used to regulate how people interact (Wily 2003; 2011; FAO 2007).

Land tenure is therefore a central feature of land governance, and intricately intertwined with power relations especially when it comes to the authority to allocate land; the formulation, interpretation and application of rules/laws and principles (Chauveau et al. 2006). Land governance is therefore about establishing and reconfiguring relations and legitimacies around land. As Chitonge (2019, p.83) argued, “Fundamentally, land governance is about how power relations around land are configured between the different key land actors at different levels.”

**Rules/laws and principles**

In formal land tenure systems, laws and rules are clearly codified or stipulated in promulgated statutes, while the broad principles around land governance are usually outlined in land policy documents. Policy documents also embody principles and guidelines outlining institutional arrangements and the roles of actors involved at different levels. Where land governance features on the policy agenda, we see a move towards incorporating customary land governance principles into national land systems, referred in the literature as harmonisation approach (Amanor 2012). Although national land policies in many African countries already provide guidelines on how customary land is to be governed, traditional authorities preside over a separate (parallel) system based on the cultural practices of a particular community (Wily 2011). The existence of two or more land governance systems has sometimes led to disputes between the custodians of the local systems, especially when interpretation and application of the rules diverge (Chitonge 2019; Chauveau et al. 2006). The plurality of land governance systems makes the regulation of land relations in Africa complicated, and effective leadership is required to navigate the uneasy co-existence of these structures.

One of the enduring challenges of land governance in most African countries is the failure to transform land tenure grafted on the indigenous system during colonial rule. As it has been observed, “Casting off the yoke of imperialism did strangely little to alter land relations of new modern states and their populations. Either adopted colonial land
laws were barely modified (the case of The Gambia, Madagascar and Benin for example) or customary rights were further constrained” (Wily 2011, p.742).

**Land administration, management, and use**

The other central component of land governance is land administration, management and use: the application of rules, laws and principles (Chauveau et al. 2006). The ‘land arenas’ created by the application of rules, laws and principles constitute the active field of land governance (ibid). Land administration, management and the services which they generate create an environment for an orderly use of land. Land administration, the most prominent, deals with regulating the day to day activities around land, including land allocation, registration, transactions, and the resolution of land disputes. In Africa this involves actors at both national, local (district) and traditional (chiefdom) levels (Wily 2003).

**Decentralisation of land administration**

The administration of land in Africa takes two broad forms. One is the decentralised system (especially customary land) and the other is the centralised system, which is common in the case of statutory land tenure. From the 1990s most African countries started to decentralise land administration to lower governance structures such as local districts (e.g. district land boards), elected community bodies or committees, villages and regions (ibid). In countries where land administration has been decentralised, the national government formulates guiding principles which the lower spheres of government implement.

While decentralisation reforms have been hailed as the step in the right direction to promote effective land governance and service delivery in Africa (FAO 2012), concerns remain that decentralisation has been tokenistic, especially when it comes to the actual devolution of power from the state to local government and communities (Amanor 2012; Wily 2003). The intention of decentralising land administration may have been to promote direct participatory democracy by giving local communities the opportunity to participate in how land is administered, but the reality on the ground in most African countries shows little or no effective community participation, especially in the formulation of the rules (Wily 2011). Some analysts have observed that the lack of community involvement amounts to the failure of democracy. The AU Frame Work and Guidelines on Land Policy in Africa, for example, argues that,

> "The administration of land resources has an important bearing on the democratic process. Structures governing access, control and management of land are as much about the consolidation of democracy as they are about asset stewardship. Linked to this is the need to integrate land administration and management into systems of governance at all levels” (AU/AFDB/ECA 2010, p.14)."
The importance of a participatory land governance approach is that it creates channels where people can not only voice their concerns but shape the outcome of the process such as rules and principles. Although these participatory processes tend to be lengthy, they increase the chances that the outcomes will be owned by the community when they recognise their input in the processes. Ownership of the process and outcomes can increase compliance and cooperation, which in turn may enhance the realisation of key objectives.

**Land management**

Land management in Africa has largely focused on the management of protected areas through statutory institutions, established explicitly to protect particular land resources such as forest reserves, game areas, national parks or wet lands. Outside of these protected areas, few countries have programmes to promote efficient land and resource management. Given the need for sustainable development, the growing population and demand for land, this is an area of governance where most African countries need to provide effective leadership and support local communities.

**Land use**

Promoting productive land use is an area of governance which has been largely neglected. This is evident by productivity levels in Africa, which remain the lowest in the world today. It has been estimated that the average land in Africa only realises about 20 percent of its productive potential (see Deininger et al. 2014, p.79). Most governments have been preoccupied with issues of tenure security as if tenure is the magic bullet for solving the agrarian challenges on the continent (Bassett 1993). Persistent low productivity has driven observers to recommend that African governments take the challenge of making land more productive seriously, and this requires effective governance.

“African governments need to take appropriate measures to ensure that land plays its primary role in the development process and more particularly in social reconstruction, poverty reduction, enhancing economic opportunities for women, strengthening governance, managing the environment, promoting conflict resolution and driving agricultural modernisation” (AU/ AfDB/ ECA, 2010, p.13).

**The rise of land governance in Africa: an overview of contributing factors**

The growing emphasis on the centrality of land governance in Africa is a result of several converging factors. Before the current surge of interest in this area, there was little attention directed at mechanisms to regulate land relations (GIZ 2018; FAO 2007; Wily 2003). The priority was land tenure reforms as an isolated intervention far removed from governance. But it is now understood that security of tenure is also dependent on well-articulated and implemented land governance principles.
A recent survey conducted by the German development agency (GIZ) in 23 African countries reveals that most African countries (19) are mainstreaming land governance reforms (GIZ 2018). Although most land reforms have focused on decentralising land administration, the broader field of land governance is now being emphasised. This encompasses areas such as recognition of customary land rights, promoting transparency and accountability in the administration of land, addressing corruption, and the need to move beyond the dualistic approach to land governance (Amanor 2015). The driving force behind the rise of land governance on the African policy agenda is the emphasis, mostly by donor agencies and development partners, on the need to promote good governance in general. This has been a major part of the general reform agenda promoted by the donor community (World Bank 2005).

The good governance agenda
The revival of interest in land governance must be placed in the context of broader good governance reform agenda. In Africa, the background to these reforms is the Structural Adjustment Programmes (SAPs) implemented in many countries starting from the mid-1980s (see U/AFDB/eca 2010; Amanor 2012). After a decade of implementing SAPs, the World Bank realised that without promoting good governance, it would be difficult to create an environment where recommended policy reforms could be implemented effectively (World Bank 1992). Consequently, the World Bank outlined the role of governance in economic growth in its 1992 Governance and Development policy document, emphasising the importance of effective management of public resources, accountability and transparency (World Bank 1992). This was reinforced by the International Monetary Fund (IMF) which promoted the need for good governance to achieve macroeconomic stability and sustainable economic growth (IMF 1997). Donors and development partners in Africa adopted a similar stance.

It is therefore not mere coincidence that most of the land reform policies and legal frameworks in Africa were formulated or revised during the 1990s (Wily 2003; 2011). For donors and international development agencies, the emphasis on governance was in line with a liberalisation strategy which focused on strengthening land markets, widely perceived as central to addressing the agrarian crisis in Africa (Moyo 2008; Berry 1984). Many donors and development agencies have supported aspects of land governance reforms including the strengthening of capacity, role clarification, training of personnel and provision of technology. In the last decade there has been “an increasing interest and demand to mainstream land governance approaches into the cooperation framework with partner countries” (GIZ 2018, p.11). All these initiatives have stimulated interest in land governance issues among African governments.
Large scale land investments
The other factor that has stimulated interest in land governance in Africa is the rise in large scale land acquisitions, popularly known as 'Land Grabs', which dominated media stories from 2007 (GIZ 2018, Amanor 2015). There are three major ways in which these acquisitions have contributed. First, most of the land is customary land, representing almost 80% of the total land in Africa (Wily 2011, p.735). To facilitate these investments, most African governments have sought to bring customary land into state control which has in some cases resulted in open contestation with traditional authorities (Chitonge 2019; Amanor 2012). The second factor is the displacement of people in rural communities following the acquisition of large tracts of land by foreign and local investors which has exposed the lack of adequate governance structures (Wily 2011; GIZ 2018). The third is a gradual appreciation of land as a valuable resource, especially by the state. This has forced African governments to find ways to reduce tensions between contending stakeholders. As the value of land appreciates due to rising demand, African states seek control of customary land by claiming to introduce and promote effective governance of land resources. The tension around customary land which this contestation engenders is often articulated as a land governance issue.

Population growth and urbanisation
Another related factor contributing to the growing interest in land governance is the pressure exerted by a growing population. Although Africa is still viewed as a sparsely populated continent with 'empty' land (Deininger et al. 2014), the per capita availability of land has been declining steadily as the population rises. In several countries high population densities have emerged, and landlessness is slowly becoming a common phenomenon (see AU/AFDB/ECA 2010). This rising pressure on land resources is forcing most governments to consider use of this valuable resource. The pressure on land has been accentuated by the effects of climate change which is reducing the amount of land available for agriculture.

The rapid growth of urban centres has increased pressure on surrounding, usually customary, land. Clashes in Ethiopia in 2014 exemplify the issue where local residents protested against the planned expansion of Addis Ababa, leaving 150 people dead (Muindi 2018). Such incidents force authorities to find holistic ways of addressing the issues around land, and effective land governance is often seen as the over-arching solution.

Demand for increasing food production
Land governance has also been brought into the policy limelight by rising food prices, declining food production capacities in many countries and concerns over food security (Rutherford 2017). Measures to raise productivity in the small-scale agriculture sector are emphasising effective land governance as an instrument to improve the capacity to
produce food more sustainably (AU 2017). The focus now is on how to make land more productive to contribute to improving food security and inclusive growth.

**Recognition of customary land**
Implementing land governance systems has been hailed as the best way to promote transparency, accountability and equitable access on customary land. Several countries approached this issue by recognising customary tenure systems as a valid form of landholding. The majority of African countries have recognised customary tenure either formally through an explicit land policy or legally as the recognition of customary land is perceived as the first step to harmonise governance and address the sticky issue of tenure dualism or pluralism (Wily 2011). The emphasis put on the participation of communities in new land policies has forced many African states to engage with traditional authorities to find legitimate ways to deal with the tricky issues related to customary land governance. However, some observers argue that the current drive could make traditional land more available to private investors and may not in fact be intended to protect the rights of local people (ibid).

**Conclusion**
This paper has reviewed emerging trends around land governance in Africa, including the factors driving its growing importance in policy circles. The policy attention given to land governance is a direct outcome of several factors including population growth, increasing land investments, rapid urbanisation, a drive to improve land productivity and food security, as well as the challenges of climate change. All these factors converge to heighten the need for improved governance of land in Africa. While in the past policy focused mainly on strategies to improve security of tenure through formalisation and particularly titling of customary land, there is now an emerging consensus that broader issues around land governance in Africa are central to addressing many challenges, including the persisting challenge of low productivity in the subsistence and small-scale agriculture sector. Policy makers and scholars are now realising that improving land governance can address many of the long-term agrarian challenges in Africa.

Strategies to promote effective land governance are now being broadened to include the critical issues of strengthening the capacities needed to apply land laws and principles more effectively. As the demand for land grows, the need to institute measures through which this valuable resource can be regulated and managed effectively has become indispensable. African governments and international donors are now putting emphasis on ensuring that land governance principles provide the framework for effective administration, management and use of land at both national and local levels. The rising awareness around the need to provide effective systems to govern land is a step in the right direction and there are signs that the twin challenge of human and institutional
capacity is slowly being given the attention it deserves.

Effective land governance systems which recognise customary tenure as a valid form of landholding offer the most practical way of overcoming the challenges related to a dual tenure system. The prospect of providing effective land governance in Africa lies in how well the land administrative structures navigate the tension between statutory and customary land systems. The recent drive in many African countries to integrate land administration into the National Agriculture Investment Plans (NAIP) is evidence of the need for effective and agile land governance systems which can support more effective land use. It is in this context that effective land governance is increasingly seen as an indispensable component.

References


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Farming family standing in front of their home in Dodoma, Tanzania. Photo: Mitchell Maher/IFPRI
Rethinking land reform in Africa: new ideas, opportunities and challenges.
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