Conflicts Over Land and Threats to Customary Tenure in Africa Today
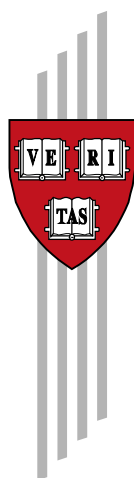
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CONFLICTS OVER LAND AND THREATS TO CUSTOMARY TENURE IN AFRICA
TODAY

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Abstract

Issues swirling around land across Africa have never been so central to key social and political-economic dynamics as they are at the present time. The first part of the paper briefly reviews the construction of customary tenure and the historical phases of administrative interventions into land tenure, and considers their heritage in contemporary situations. The second part reviews the increasing competition and conflict centered on land; the increase in various types of land transfers that are implicated in the pervasive social conflict focused on land; and the associated rise in social inequality and contestation over belonging and citizenship. The third and final part discusses 'land grabs', the most recent surge of international interest in African land, and external and internal threats to 'customary' rights in land. The overall conclusion is that while relations around land have long been central to political economy, culture and society across the continent, their greater salience in intensifying struggles among actors within and from outside Africa has significance for the disposition of authority, property and citizenship.

INTRODUCTION

Issues swirling around land across Africa have never been so central to key social and political-economic dynamics as they are at the present time. Since the beginning of colonial overrule through to today, land and its control have been subjects of intense interest to governments, policy-makers, ordinary people in Africa, and researchers. Over the past couple of decades competition over land appears to have increased as has its documentation; such competition is caught up in local and national politics, including the resurgence of 'traditional' or 'customary' authority in many countries; another wave of land policy 'reform' is in process while at the same time there is a surge in appropriation of formally customary, common or state land; and the most recent threat is a foreign-driven but national state-facilitated land alienation or 'land grab'. This paper seeks to situate these most recent phenomena - land reforms, appropriation and alienation of land, and increasing threats to customary rights - in past and present processes centered on conceptual and material struggles over what constitutes property, legitimate authority, and rightful belonging.

The first part of the paper briefly reviews the construction of customary tenure and the historical phases of administrative interventions into land tenure, and considers their heritage in contemporary situations. The second part reviews the fast-growing literature on increasing competition and conflict centered on land that are driven by conflicts over legitimate claims to both landed resources *per se* and authority at all levels of society; the increase in various types of land transfers that are implicated in the pervasive social conflict focused on land; and the associated rise in social inequality and contestation over belonging and citizenship. The third and final part discusses the most recent surge of international interest in African land, and both external and internal threats to embattled and constantly reconfigured 'customary' rights in land. The overall conclusion is that while relations around land have long been central to political economy, culture and society across the continent, their greater salience in intensifying struggles among actors within and from outside Africa has significance for the disposition of authority, property and citizenship.

POLITICAL INTERVENTIONS IN LAND: CUSTOMARY TENURE AND LAND 'REFORMS'

Colonial overrule fundamentally reshaped social relations around land, conceptions of property, links between land and authority and between place and identity, with effects that continue to reverberate today. Martin Chanock concluded that "the models of customary law of land tenure were, to a significant extent, instruments of colonial land policies. … produced in the circumstances of initial dispossession and confinement, and served both the colonial governments as a justification for these, and African communities as an apparent defence against further land loss" (1991a: 62). The British Administrators saw rights to land (and other benefits) for Africans as deriving from political authority rather than inhering in persons of various sorts. They cast chiefs in the role of "trustees for the community", along with limited rights of administration and allocation.

At first, colonial officials and missionaries, premising a universal "natural evolution" from 'communal' holdings "leading up to individual ownership … traced in every civilization" (Lugard 1922 in Chanock 1991b: 69), considered the African landholding systems backward and in need of change. But soon, the imperative of law and order in the form of indirect rule through chiefs entailed pulling back from privatization. Already in the early 1920s, legal judgments by

the British Privy Council ruled that "individual ownership of land is quite foreign to native ideas. Land belongs to the community, the village and the family, never to the individual" (Chanock 1991a: 65). The tension between the conviction that modern progress demanded full property rights for producers and the need to maintain political control, albeit 'on a shoestring' as Sara Berry (1993) nicely put it, continued throughout the colonial period. A property regime that allowed individuals to separate themselves from the 'tribe' was seen as a threat to the authority of chiefs: individualization would "disturb social relations" (Hailey 1938), "disrupt the native polity" (Meek 1946 in Lund 2008: 27), and expose 'natives' to speculation (Lentz 2010: 65). Even in the mid 1940s, when some agricultural officers, trying to accelerate economic development, sought to introduce some form of title to 'progressive' farmers, Meek (1968:10) pointed out, "The grant, therefore, to individuals of absolute rights to ownership would tend to disrupt the native polity, and so, too, would the indiscriminate sale of private lands by chiefs. The control of alienation of land has been in consequence one of the main planks of the British system of 'Indirect Rule'".

The research literature suggests that the administrative imposition of customary tenure with its denial of full ownership rights to land-holders had several key effects. One was to halt the development of a land market by ignoring or denying evidence of past transfers (in various forms, including sales), and by declaring that land was inalienable 'according to tradition'. Another, by placing land management under the institution of chieftaincy (though ultimately under the colonial state), intensified competition among the various incumbents of 'traditional' leadership roles and centered that competition on land. The emphasis in pre-colonial leadership was much more on authority over, and responsibility for, people rather than authority over territory. The imposition of colonial rule, itself based on ideas of territorial sovereignty, and the consequent fixing of territorial boundaries over which the traditional authorities were made 'trustees', greatly reinforced the link between political authority and authority over land.[1] The formation of customary law shifted authority over land upwards, from family heads, lineage elders, and town chiefs to 'paramount' or 'territorial' chiefs.[2] Hierarchy was either created or reinforced, exacerbating competition among various types of leaders or 'chiefs'. Territorial fixing of political and land-based authority also emphasized the link between rights in land and group membership, with groups or 'communities' cast as 'tribal' and ethnic by colonial and succeeding governments. Still, some colonial officials clearly saw the implications for social and political relations of setting up chiefs as land 'trustees'. Christian Lund (2008: 44) quotes an Assistant Commissioner of Lands in Ghana who, in the mid 1950s, feared that the colonial process of vesting authority over land in the chieftaincy would foster "tribalisation", a prediction that has been borne out in many conflicts today among 'traditional' leaders and between them and people under their authority.

After political independence, little changed. As Chanock wryly points out, "The usefulness of the … customary law of land tenure [in preventing full ownership rights over land] was not lost on the rulers of the postcolonial states. … A customary veil has been drawn over national confiscation of rights, and increasing scarcity and the inequality of existing holdings disguised by the assertion of fictive rights for all. [Also, as in the colonial era] state control of land was … considered to be fundamental … [to the needs of] development" (1991b: 80). Thus, not only did the colonial construction of customary law and tenure make Africans "effectively rightless

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[1] Cf. Iliffe 1987.

[2] Although, as the works discussed in this paper indicate, this never completely erased authority and competition over authority at the most local levels such as village and lineage.

against the state" (p.60), but this has continued. "Legal rights in land [are] central to the nature of the modern African polity, and the role of, and 'rule of' law in African states. … [T]hese important economic, and ultimately political, rights remain subordinate to an administrative regime, which offers landholders no rights against the state" (p.82). This conclusion is of great relevance in the most recent threats to current land-users, as described in the final part of the paper.

Many of the newly independent African countries, with the support of the World Bank and other international aid agencies, introduced new land policies during the 1960s and 1970s. These were premised on the notion conventional since colonial times that customary forms of landholding did not provide the 'security' of land rights considered essential for agricultural investment, and that the solution lay in programs of registration and titling to produce proprietary rights. A very large body of research[3] has shown that most of these programs did not lead to the expected increase in agricultural investment and productivity, or to small land-holdings being accepted as collateral by major creditors. They frequently exacerbated conflicts by ignoring overlapping and multiple rights and uses of land, and led to or reinforced patterns of unequal access to land based on gender, age, ethnicity, and other social differences, and often encouraged speculation in land by outsiders. Research showed that customary tenure was not an obstacle to agricultural commercialization, as evidenced in the successful production of cocoa, cotton and other "cash" crops by small farmers on customary land, and that the major problems were not the form of land tenure rights but broader social and political-economic conditions at local, regional, and international levels. Neither did customary systems exclude individual rights or various types of transfer of rights to land, such as tenancy in the cocoa areas of West Africa and elsewhere, and other types of transfers including rentals and sales. As we shall see below, however, this conclusion from the research of the 1960s and '70s is no longer sufficient. Over the past three decades, research "indicates that customary tenure acts neither as an obstacle to investment … nor as an inalienable safety net for the poor" (Woodhouse 2003: 1717).

A hiatus in policy interventions into land tenure during the 1980s and early 1990s seems due to three reasons. First, the research arms of key donor agencies such as the World Bank and DFID appeared to accept the research on the adaptability of customary tenure (Bruce and Mighot-Adholla 1994, Deininger 1998). Nevertheless, the later resurgence of land policies with the same underlying premise of the need for registration and titling suggests that the agency researchers did not convince the operations department to change direction (cf. James 2001, Quan 2000, Whitehead and Tsikata 2003). Second, there was a shift in aid from projects to the overall approaches of structural adjustment and market liberalization, based on neoliberal theory that sought policy reforms through the market rather than the state.[4] A third factor was the entry of environmental concerns into development policy and the displacement of agriculture as a focus of policy.

Despite this hiatus, there were definite consequences for land across Africa. The severe retrenchment demanded under structural adjustment sent many people 'back to the land' for food and income, so putting even more pressure on rural land resources. Community-based projects put certain rules in place about use of land, trees, water and so on, thus affecting the modes of landholding and use. And the overall disillusion and disappointments of the environmental turn

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[3] Among others see Attwood 1990; Bruce & Mighot-Adholla 1994; Davison 1988; Haugerud 1989; Okoth-Ogendo 1976; Pala 1980; Shipton 1988, 1994.

[4] However, as Lilley points out "neoliberalism … turned out to be a very different beast [from its] ideology". Rather than "getting the state out of the market", states tend to "facilitate the market in countless ways" (2012: 8).

of policy among donors, as well as concern about food supply helped return attention to land reform and agriculture.

Moreover, neoliberal and neo-institutional approaches to policy and economic development gave a privileged position to 'property rights', adding to the continuing assumptions about the need for land titling. Also influential has been Hernando de Soto's book, ''The Mystery of Capital", which argues that capitalism can work to the advantage of the poor by formalizing their rights to land and other property such as houses, so converting what is ''dead capital" to generative capital. This old idea clad in new language has galvanized renewed efforts at land reform. Yet any reflection on the well documented failure of titling programs in several world regions to make poor people's 'property' attractive to lending banks would show how misleading is this easy optimism (cf. von Benda-Beckmann 2003, Kingwill et al., 2006, Mitchell 2005, Musembi 2007, Verdery and Humphrey 2004).

Over time, the growth in agricultural production of cash crops, population growth and mobility within and between countries, increased demand for food production and for arable, grazing and residential land, and the appropriation of land for forest reserves, game parks, as well as for mining, dams, infrastructure projects and so on, have all served to increase the value of land. Since the 1970s, these processes, along with severe economic decline, stress caused by structural adjustment and market liberalization programs in a sharply unequal world trade regime, and a shift to party-political regimes across the continent, have resulted in land becoming a fulcrum of competition. This is revealed in conflict, sometimes violent, about legitimate authority over land among 'traditional' leaders, government at multiple levels, and land-users; in the rise of multiple forms of land transfers (rentals, leasing, sales); and in a parallel rise in defensive stances against alienating land to 'strangers'. These land conflicts constitute "sites of debate over the social meaning of property and the place of the past in contemporary struggles over governance and the distribution of resources" (Berry 2002: 640). They also "reveal processes of exclusion, deepening social divisions, and class formation" (Peters 2004: 269), and, as emphasized by Boone (2007), are deeply implicated in the shaping of nation and citizenship across Africa.

Since the late 1990s and into the new millennium there has been a new round of land reform policies put in place, though not all yet implemented, in African countries. As a recent paper put it, "land policy is back on the agendas of international development institutions and many nation-states" (Borras and Franco 2010:1). Various and contradictory rationales have been put forward by the makers and shapers of the new land policies: land policy as a 'pro-poor' tool, the call for more transparent and accountable forms of land administration or 'governance', the need to boost agricultural production and productivity, and, most recently, concerns about the rise of global food prices. Also at play are efforts by state representatives and sub-state authorities to exert greater authority over land which both respond to and exacerbate social conflict focusing on land. A major paradox is that while some of the new land policies purport to provide (yet again) greater 'security' of rights for the millions living on and off 'customary' land, at the very same time, documentation is mounting of appropriation by governments and other agents of land that has been treated as 'customary' by generations of users.

COMPETITION AND CONFLICT OVER LAND AT MULTIPLE LEVELS

While still a continent with much lower population densities than most others, Africa has moved from being "a continent of land abundance in the first half of the twentieth century to one of increasing land scarcity at its end" (Berry 2002: 639). The land 'frontier' so important in

expanding production of crops like cocoa in several West African countries has closed, and in the more densely populated regions in countries of Eastern and Southern Africa the average size of landholdings on customary land has drastically dropped, with consequent increase in landless and 'squatter' groups.

Shortage of land has been remarked on for decades in certain heavily populated parts of the continent such as Rwanda, Malawi, and parts of Nigeria, Kenya and Tanzania (Downs and Reyna 1988, Moore 1991, Richards 1983, Shipton and Goheen 1992). Competition over land in Africa is not new but it has become pervasive, is associated with deepening social differentiation among land-users, and has increasing salience in national and international affairs as well as in localized arenas. Conflict centered on land has increased in incidence and severity as land values rise, patterns of land acquisition become more commercialized, land becomes more concentrated, and disputes and litigation over competing rights proliferate (Berry 2002:638).[5]

As noted above, land privatization programs that set out to register and title land often proved far more problematic than their stated goals. In particular, they tended to reinforce the rights of "senior rights-holders" at the cost of "subordinate" rights held by (most) women, and junior men (Shipton and Goheen 1992: 316; cf. Gray and Kevane 1998; Whitehead and Tsikata 2003). Similarly, government programs of decentralization that entail the demarcation of new or amended district (and other) boundaries have tended to create or resurrect rivalries among 'traditional' authorities (Lund 2008; Lentz 2010), and to enable such authorities to capture the benefits of decentralized forms of management (Carney and Farrington, 1998; Ribot, 2000; Woodhouse, Bernstein, and Hulme, 2000). These, along with state demarcation of forest and other reserves or conservation areas, have also created conditions for exaggerating ethnic, indigenous, or similar forms of identity that can be used for prioritizing some claims over land at the cost of others (Schroeder 1999).

Today, studies across the continent document the widespread contestation around land within and between regional and ethnic groups, within and between descent groups or lineages, and between generations and genders as land has become more valuable, more difficult to attain and keep, and more subject to transfers by those able to exert the necessary authority (Amanor 2001, Boone and Duku 2012, Hill 1963 for Ghana; Berry 1993 for Kenya; André and Platteau 1998, and Blarel 1994 for Rwanda; for Côte d'Ivoire see Colin and Ayouz 2006, Hecht 1985; also see for other countries Ensminger 1997, and Feder and Noronha 1987).

Among the contenders for authority over land are the state as a public entity, different sections of national and sub-national government offices, and representatives of the state acting in their own private interests. Just as the colonial administrations sought to control land by claiming ultimate authority over all land while demarcating areas labelled state or crown, native or customary, so post-colonial African governments have used legislative, administrative and other means to exert authority over territory and the people living thereon. For example, the Land Acts passed in 1965 and 1967 by the new post-colonial government of Malawi gave "the Minister responsible for land under the Land Act 1965 … unfettered powers to dispose of customary land" whenever "the Minister responsible for land matters deems it expedient for better agricultural development" (Kishindo nd: 6, 9). This inevitably set up tension between the ruling government and the many 'traditional authorities' (chiefs and lineage elders) over the legitimate right and scope of authority over the allocation, use and regulation of land. And, too, over the millions of rural land users who mostly considered themselves holders of land rights

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[5] Cf. Amanor 1999, Bassett 1993, Dzingirai 2003, Gulbrandsen 1987, Juul and Lund 2002, Peters 2004, among many others.

under customary law. The play of politics involved the ruling regimes seeking to keep such traditional authorities on their sides through various means, public and private.

The shift to multi-party regimes during the 1990s has tended to intensify both the tensions and the need for competing parties to court the traditional authorities. As before the wave of democratization, means include the disposition of state resources in various development projects (schools, roads, and so on) to particular constituencies, as well as private prizes such as new vehicles for incumbent chiefs. In turn, the salience of localized identities, whether regional or ethnic or linguistic, has been intensified as parties vie for the support of the traditional authorities in bringing in the vote. Unsurprisingly, authority over land is central to such competition. One reason for the delay in the new land policy formulated in Malawi to be passed into law is the resistance of senior chiefs to the original policy's intention of reducing their authority over land (Peters and Kambewa 2007, Peters 2010). As Catherine Boone points out, there are fundamental constitutional stakes at play in the way in which states seek to regulate and 'reform' land tenure, thereby affecting questions of citizenship rights (2007).

But the role of traditional authorities is highly variable across and even within countries. Current debates in South Africa raise questions about the land policy process and associated legislation allotting authority over land to traditional authorities when so many of the latter were implicated in apartheid politics. Various groups reject the requirement that they be part of such 'traditional communities' and under the authority of 'traditional' leaders when the past multiple dislocations and resettlements of the apartheid years severed any such relationship (Claassens and Cousins 2008; Mnisi Weeks, forthcoming). In Malawi, there are serious reservations about the role of traditional authorities in light of the fact that lobbying by senior chiefs has resulted in chiefs being made the chairmen of the new land allocation committees, a reversal of the original intent of the policy to make chiefs merely *ex officio* members. On the other hand, chiefs, perhaps more of those at the lower levels of village, can act as respected spokespersons and protectors of the 'customary' rights of landholders in their jurisdiction. A very recent case of land appropriation discussed in the next section reveals this, in that the village chief tried to prevent the appropriation though was overruled by senior chiefs and members of government. In short, while chieftainship is at the center of major debates involving authority over land and people, chiefs may, at times, be despots in Mamdani's (1996) sense or, at other times, protectors against despots.[6]

While competitive struggles over land have been documented for some time, recent insight into the dynamics of how land relations are changing comes from the growing information on land transfers and the formation of 'land markets' in Africa.[7] The use of land contracts such as share-cropping and rentals and even exchanges called ''sales'' have been documented since at least the early 1930s, in the cocoa-growing areas of Ghana and Ivory Coast (Berry 1975; Gyasi 1994; Hill 1963), and for various periods in the densely populated zone of Northern Nigeria, parts of Kenya and other places (Allott 1969; Bruce 1988; Besteman 1999; Cohen 1980; Lawry 1993; White 1963).[8] Such contracts and transfers appear to be on the rise across the continent, often involving traditional leaders and politically powerful elites (Ng'ong'ola 1996: 411). Large majorities of persons rent land in Benin (Edja, 2001), Ghana (Amanor and Diderutuah, 2001), Ivory Coast (Colin and Ayouz, 2006), pervasive rentals and sales occur in Tanzania despite an

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[6] Cf. O'Laughlin 2000: 20 for the actions of some *regulos* (traditional leaders) in Mozambique.
[7] See the recent collection in Africa 2010, 80(1). These transfers were not mentioned in an earlier, significant review of land issues (Shipton and Goheen 1992).
[8] See Amanor 2010 for even earlier sales of land – from the late 19th century in what was The Gold Coast (Ghana).

official statement that ''here in Tanzania we don't sell land'' (Daley 2005; cf. Peters and Kambewa 2007 for Malawi), and land sales appear in many other places, especially near towns and cities (Ubink 2008).

Despite the recorded increases of transfers as rentals, leases and 'sales' over the past few decades, there remains scepticism about the degree to which these constitute classical markets (Colin and Woodhouse 2010). This is because most of the transfers remain defined by, or are 'embedded' in, social relations (Chauveau and Colin 2010). Payments for many rentals are often described in terms of 'thanks', 'gifts', or 'loans'. As noted above, the transfers that some actors and observers see as 'sales' are often described only partially, either avoiding defining the exact terms of the transfer or in terms of someone giving 'thanks' or 'tribute' to an authority figure (such as a lineage elder, chief). Moreover, studies reveal that many such 'sales' are highly conditioned and often redeemable, even after many years. Studies in Côte d'Ivoire document disagreements between givers and receivers of land, escalating into conflict, over whether a past transfer constituted a loan, a rental, or an 'outright sale' (Chauveau 2006, Colin and Ayouz 2006). Similar findings come from Malawi (Peters and Kambewa 2007). Some authors use terms like 'vernacular' markets (Chimhowu and Woodhouse 2006, 2010), or 'embedded' transfers (Chauveau and Colin 2010), while Sara Berry (forthcoming) draws on recent research in the former Soviet countries for the term 'recombinant property' to describe ambiguous combinations of private and public ownership.

Another sign of partial commoditization is an increase in what some call 'informal formalisation' (Benjaminsen and Lund 2003). These 'informal' documents and other means of recording land transfers (called '*petits papiers*' in francophone areas) depart from the oral methods prevalent among customary systems, and represent more definite signs of boundaries and exclusion. Lavigne-Delville (2003) cites cases from several francophone countries (Ivory Coast, Burkina Faso, Benin, Rwanda and the Comoros) where farmers are using signed documents or 'contracts' to record land transactions, particularly those that involve the transfer of lineage or other communally-held land for money.

Mathieu et al. see the rising value of land in the cotton areas of Burkina Faso reflected in a "social demand for more individualised, precise and formalised land ownership rights" that generates the trend towards written records. But, they conclude, because "[t]he process of commoditisation and formalisation of land rights appears to be totally embedded in social relationships . . . [t]he changes in land transactions are . . . slow, quite dependent on local circumstances, contradictory, exclusionary (i.e., there are winners and losers in the new transactions), complex and ambiguous" (2003:126; cf. Chauveau and Colin 2010 on Côte d'Ivoire).

Nevertheless, the move towards "a strategy of . . . piling up papers to safeguard acquired rights" (Mathieu et al. 2003: 95) seems an attempt to "certify that they [the transactions] have indeed taken place" (Lavigne-Delville 2003:103), indicating a desire to provide more than oral evidence of a transaction. Similarly, Christian Lund (1999) points out that, in Niger, such papers are witnessing "the existence of a right." Such written records are now being documented for countries in other parts of Africa. Nicholas Sitko describes a "clandestine land market" in southern Zambia where sales are "disguised" as gifts, the results of inheritance or "more commonly, clearing the land of trees" (2010: 48). Written 'contracts' describe the land in question and the transactors in brief terms, and they are signed by representatives of the village committee, but, like some of the West African cases, they "never mention the terms of the

transaction itself, including the price and the mechanisms by which the land changed hands" (51).

As suggested by the adjectives 'ambiguous' and 'contradictory' applied to the types of transfers described for many places, the outcomes of these processes are not predetermined. In some circumstances, they might allow "space for negotiation over competing claims to property and power" and thus constitute "a sign that the conversation continues" among differently placed people (Berry 2002: 663, 655). In other circumstances, however, the outcome can be much more exclusionary for some categories of persons, as much of the cited research documents. Some researchers posit a distinct change taking place, a kind of threshold beyond which social inequality sharply increases. Claude Raynaut, for example, concluded that, even by the 1980s, "no reserve of land remains" in Niger, as it had been used up through "deliberate strategies of land concentration … by purchase … also by the manipulation of social relations … A new chapter in the history of peasant societies in Niger is beginning to be written" (1988: 237–8). On the other hand, the continued embedding of land rights in variable webs of 'custom' and 'traditional' social relations and the consequent blocking of complete commoditization of land (as a 'market') appear to be useful to both some of those controlling access to land, as well as some of those striving to attain or maintain their rights to land. For the former, the ability to use land allocation to buttress contested authority and legitimacy is a draw, while for the latter, the chance of calling on some degree of kinship or origin or other bases of belonging provides hope for a possible channel to acquire land.

One clearly significant channel of social inequality in access to land and associated authority over land is through a narrowing in the definition of belonging. Social conflict over land produces stricter definitions of those with legitimate claims to resources, that is, group boundaries become more exclusively defined (Kuba and Lentz 2006). This has been described for Northern Ivory Coast (Bassett, 1993), Botswana (Gulbrandsen, 1987; Peters, 1994), Malawi (Kambewa, 2006; Kishindo, 2004; Peters, 1997), Ethiopia (Lastarria-Cornhiel, 1995), Zimbabwe (Moore, 1993, 2005), Kenya (Glazier 1985, Moore 1991), and Ghana (Amanor, 1999; Ubink, 2008). People come to be labeled 'stranger', 'immigrant', and 'squatter' as contrasted with local or original inhabitants (Nyambara 2001, Worby, 2001), first-comers (Lentz 2006), and autochthons (Chauveau 2006, Colin et al 2007), the latter with prior, legitimated authority over land, the former with subordinate rights and little to no authority over land. This is leading to or exacerbating litigiousness, violence, and social divisions often reflected in witchcraft accusations (Hammar, 2001; Nyambara, 2001; Van Donge, 1999).

The land conflicts turning on differential claims of belonging are particularly well documented for the case of Côte d'Ivoire (for example, Chauveau, 2006, Colin et al. 2007). The relationship between incoming migrant farmers and those now called autochthons has taken shape through the *tutorat* institution, a relationship of patronage in which migrants received rights to land in return for 'thanks' given in the form of agricultural produce, or other small contributions. Over time, with increasing commodification, the traditional 'thanks' has taken a monetary form. Disputes between autochthons and migrants rooted in disputes over the precise content of land rights and duties transferred to migrants through a *tutorat* relationship were kept under control during the colonial and early post-colonial years. During the past decades, conflict has resurfaced as autochthons contest past land transfers in order either to receive a land rent or even to reclaim the land. In this process, young local men who can no longer find jobs in towns and cannot get access to land on their own account play a leading role (cf. Kouamé 2010). Very similar dynamics are described for Burkina Faso by Mathieu et al. (2003) and for Ghana by

Amanor (2001, 2010) and Boone & Duku (2012). Despite the shift to monetary payments, the situation, according to Chauveau and Colin (2010), does not represent a full commoditization of land access because the social obligations owed by a migrant (or his heirs) have not vanished.

A recent paper on Sierra Leone by K. Peters and Richards (2011) take this point further. Any 'stranger' coming to an area in Sierra Leone seeking land has to become a "client of a big man" from one of the land-owning lineages in return for a range of support including providing labor at peak periods, material contributions to the patron's family events, and political loyalty during elections. This highly "unspecific nature of the duty of support" gives great "flexibility" to the relationship but one that "lies mainly on one side … and it is to the disadvantage of incoming strangers" (2011:378-9). This inequality, in turn, is situated within the "long-term, entrenched agrarian tensions" developing in precolonial and colonial eras in which land and attendant resources have been controlled by elders, former slave-owning lineages, and land-owner lineages to the disadvantage of, respectively, juniors, former slaves, and non-land-owning lineages (some of whom are descended from slaves). The control over land has enabled control over the labor of these subordinate categories (as workers, warriors, miners, or soldiers, depending on historical period) up to the present. They convincingly argue that the civil war (1991-2002) may be seen as based in long-term agrarian inequality, "exacerbated by chiefly rule" (2011: 377). In another paper comparing Côte d'Ivoire and Sierra Leone, Chauveau and Richards (2008) emphasize that not all conflicts (from localized fights to civil war) take the form of indigenous/autochthon versus stranger/immigrant since some historically shaped structures of inequality between elders and juniors have fed into conflicts based on class – as tragically shown in Sierra Leone. The more general, analytical point made in both these papers (though present in many of those cited elsewhere in this paper) is the need to recognize the "agrarian roots" of the conflicts and violence one sees in many places in Africa.

Current conclusions from research, then, are that: competition and conflict over land and over the authority to control (use, allocate and transfer) land are pervasive; they occur between groups differentiated on the bases of origin, region, and ethnicity; they divide kin-based groups (lineage, descent group) and resident groups (villages, wards); and they set generations and genders against each other. At its most serious, such division goes to the heart of families, "commodifying the user rights" to which members had once been entitled without payment (Amanor 2010). It also penetrates the heart of the nation. Making claims of greater indigeneity than others carries with it a danger of civil conflict that, in some places, is taking the form of questioning the citizenship of classes of competing claimants (Colin et al 2007:55; cf. Geschiere 2009). As pointed out by Catherine Boone (forthcoming), land conflicts and attempts to control them represent "front-line battles over the meaning of nationhood, and over the scope and limits of the market economy". Also, as authors cited above remind us, land conflicts reflect, replay and exacerbate deeply-laid patterns of social inequality.

THE NEWEST THREAT - ACQUISITION OF LAND BY WEALTHY FOREIGNERS AND INFLUENTIAL NATIONALS

Over the past few years, governments and corporations have been acquiring large tracts of land in generally poor or 'less developed' countries, especially in sub-Saharan Africa, intended for the production of food crops for re-export and crops for biofuels (World Bank 2010). The sudden increase in land acquisition followed the price spike of 2007-8 but while commodity prices have since fallen, the demand for land has remained extremely high (Deininger 2011: 218). This reflects "the speculative dimension" or the perception among

international investors that new markets in land and water are "a promising way to secure assets" (De Schutter 2011: 252-3). These trends have generated a great deal of debate about the implications of such acquisitions on the 'giving' countries – are these examples of 'land investment' – if so, for whom? Are they examples of 'land grabbing' – if so, from whom? As a recent paper argues, it is essential to recognize that 'property relations' are at the heart of the current rush for land in Africa (Borras and Franco 2012).

Large areas of land are being acquired in most cases as concessions or leases of variable time periods, rather than sales, by countries such as China, India, South Korea, Saudi Arabia and other Gulf States. Such countries are concerned about rising global food prices and a growing dependence for food supplies on a volatile global market, as well as about dwindling oil supplies and a search for alternative sources of energy in biofuels (Borras and Franco 2010, 2012; Palmer 2010). In addition, private investors, some from Europe and the US, are involved in many land deals, often seeking alternatives to volatile international financial markets (Hall 2011:2; cf. McMichael 2010, von Braun 2007). "Sub-Saharan Africa is the site of the most speculative major land deals" though other countries are also targeted in South and Central America, the former USSR, and Southeast Asia (Borras et al. 2011: 209).[9] The preference for Africa is closely related to the "weak recognition of land rights at the country level", meaning that existing land-users can be displaced more easily and the 'price' of land charged to investors is very low. Despite the focus on foreign investors, data on "a limited number of countries" suggests that "domestic investors were more important than foreign ones" according to one writer (Deininger 2011: 218). The slowly accumulating information points to the danger for the millions of small-scale farmers living on 'customary' land, and the importance of not allowing the focus on 'foreign' agents to obscure the role of nationals in the current wave of land acquisition.

Because the information on land purchases and leasing is difficult to obtain, figures for the amount of land being alienated remain scarce and various. A report released in 2008 by the non-governmental organization GRAIN was perhaps the first to declare a global trend in land grabbing linked to promotion of biofuels and food for export, while in 2009, a report by IFPRI stated that 15-20 million ha of farmland in developing countries, mostly in Africa, had been sold or leased to foreign entities since 2006 (Borras and Franco 2012: 37). The World Bank (2010) reported that 45 million hectares were under negotiation during 2009 alone, 70% of it in Africa. One organization, Global Land Project, estimated that in 27 African countries being screened, there were almost 200 land deals covering between 51 and 63 million hectares (Palmer 2010: 7). The potential number may be bigger if one takes seriously the offers of some African government officials. Thus, the Mozambican Minister of Energy is quoted as stating in 2009 that "36 million hectares of arable land could be used for biofuels without threatening food production, while another 41 million hectares of marginal land would be suitable for raising jatropha [a plant used for biofuels]", while the Zambian Minister for Agriculture said, "[W]e have well over 30 million ha of land that is begging to be utilized".[10] Countries where there have been deals for extensive acquisition of land are Sudan, Ethiopia, Kenya, Tanzania, Mozambique and Ghana, but other countries including Mali and Madagascar are also targets.

These newer acquisitions of land in African countries for food and biofuel crops for re-export to the investors' countries must also be considered alongside the increased acquisitions of land concessions for mining and timber. In Angola, people have been "forcefully dispossessed to

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[9] For example, Cambodia has put more than 1.3 million hectares into concessions (Palmer 2010: 4, citing the director of Forestry Administration of Cambodia).

[10] Cited from IPS News and Reuters by Palmer (2010: 5). For yet other estimates, see Alden Wily (2010: 3).

make way for [silver, gold and copper] mining … oil and natural gas exploitation" (Hall 2011:7). Other countries with mining projects that raise questions about land rights, as well as problems ranging from inadequate compensation for displaced groups to seriously negative environmental effects, and the use of violence by elites and others include Zimbabwe (gold and diamonds – see Moore and Mawowa 2010), Zambia (copper), South Africa (platinum), Malawi (uranium), and Tanzania (gold). Extensive timber exploitation is also on the rise in Mozambique, DRC, and forested land in Kilwa, Tanzania has been cleared for biofuel plantations (Hall 2011).

The main cause for alarm in the rush to acquire land in Africa is the fate of people who have been using that land, especially the implications for their livelihoods and their rights to property. Governments offering the option of leasing land to foreign governments or corporations do so in terms of benefits to 'the public interest' or for 'development'. But the potential for expropriation and displacement of many rural people is clear. Even the 2010 report by the World Bank on global interest in farm-land expressed scepticism about the 'consultations' being conducted between investors and local people since often approval had already been granted by national governments before any consultations took place. Research in Ghana, Mozambique, Tanzania, Ethiopia, Madagascar and Mali showed that if consultation did take place, it was dominated by a few elders or chiefs and provided little to no ability to shape key decisions (Vermeulen and Cotula 2010).

 In addition, the World Bank report noted that in Mozambique, "the total area over which land use titles given to investors overlapped areas previously delimited in the name of communities amounted to 1.4 million hectares in 418 cases, raising concerns about potential future conflicts" (2010:42). This echoes earlier reports from the 1990s on the same phenomenon of multiple allocations of 'customary' land by government officials. Gregory Myers, for example, quoted a representative of the Mozambican NGO, Kulima, as saying "large joint-venture enterprises were, with government complicity, taking land from smallholder farmers" (1994: 604-5).[11] Land that is described as 'marginal', 'unused' or 'under-utilized' leaves worrying space for discounting existing use and different categories of users. This is particularly so given that the World Bank estimates that there are between 445 million and 1.7 billion hectares worldwide of potentially 'suitable' lands assumed to be 'marginal', 'underutilized', 'empty' and 'available', most of which are classified as public lands (Deininger 2011). One strikingly blatant example of the danger is taken from a German Aid report by Alden Wily (2010: 4): "[A] Libyan investment in Mali … was based on a bilateral investment treaty between the two countries signed in June 2009, leasing 100,000 ha at no cost to Libya for up to 99 years. This land was declared 'free from any juridical constraints or individual or collective property that hinders the exploitation of the land', having been registered as the property of the Niger Basin Authority in the mid 20th century. At the same time it is customarily owned, occupied and used ….".

The response by agencies like the World Bank to emerging reports of displacement and dispossession of land users has been a 'Code of Conduct' to discipline big land deals and the 'Principles of Responsible Agricultural Investments' or 'RAI Principles' (World Bank 2010, Deininger 2011). Unfortunately, as with similar 'finger in the dike' attempts (such as programs under the 'social dimensions of adjustment' or the more recent 'corporate social responsibility') to moderate highly unequal transactions, these RAI Principles prove weak in the face of powerful economic and political interests. As one well documented example among many, Krijn Peters and Paul Richards (2011: 393) witnessed a 'community consultation' in Sierra Leone that

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[11] cf. West and Myers 1996, Tanner 2010; also Amanor 1999, 200 and Hardin 2002 for other countries.

was required for conceding land to a large internationally funded biofuel project. They found that the meeting was "skillfully managed by attentive chiefs. The facilitator's suggestion to break out interest groups of elders, women and young men for separate consultations was immediately opposed by the chiefs present, on the grounds that people would feel uncomfortable unless they met village-by-village in a circle of people they knew and trusted." In this way, the fundamental tensions and conflict over land they had found in the course of their fieldwork were never allowed to come into the open.[12]

A similarly large threat to long-established customary rights derives from the fact that most states claim ultimate ownership of land, even though in most African countries rural land has continued to be managed under various forms of 'customary' tenure. The many waves of land interventions and 'reforms' mentioned above have been one way of seeking to convert customary tenure into private. Past examples of periodic appropriation of customary land by the state (for resettlement schemes, reserves, conservation and so forth) seem, today, to be shifting into a more blatant appropriation by private individuals acting, however, in the name of the state and 'public interest'. A recent case from Malawi is instructive.

A newspaper report described how a former government minister had purchased 286 hectares of land in Chikwawa in the far south of the country.[13] Despite opposition by the local village chief (a woman) and some of the inhabitants displaced by the purchase, senior chiefs and the District Commissioner authorized the purchase. Some, but not all, of the displaced people received compensation though many apparently complained that the amount of K3500 (c. $23) each received was very low. The new owner intends to start a cattle ranch and is quoted as saying, "It is a very good development that will benefit the people", while the DC blamed some "disgruntled" people for disrupting the "transparent … process" of acquiring the land, and claimed that, "We must make sacrifices if we are to develop this country." Most significant and worrying is the statement made by the news reporter though unattributed to anyone interviewed that, "Malawi National Land Policy of 2002 states that under section 25 of the Land Act, original title in customary land was removed from chiefs and community owners and vested in the President in trust for all citizens of Malawi". This presumably refers back to the Land Act of 1965 that enables the Minister for land affairs to appropriate customary land if it is "expedient for better agricultural development". The context suggests this is for 'public' or 'national' development whereas in this case the obvious beneficiary is the private citizen - the former Minister. The 2002 Land Policy has not yet been passed into law, but this case and the justifying rationales are in direct contradiction of one of the original claims of the Policy to strengthen customary land rights.[14]

The implications for small farmers and rural populations of such cases of land appropriation by both foreigners and nationals are highly negative. Recent land transfers in Africa already reveal displacement and vulnerability of rural people in face of profitable deals brought to governments by foreign investors (Borras et al 2010). The fact that the land deals are all fairly new in Africa and that many of the acquired land areas are not yet in production means that the effects on access to land, food security and livelihood for rural people are not yet fully

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[12] This is not a new phenomenon - see Goldman (2001) for blatant cases from Laos involving the World Bank and international environmental agencies.

[13] '400 villagers fight former Minister, T/A, DC over land', Deogratias Mmana, The Nation, July 16, 2010.

[14] The case also suggests that such appropriations may be one reason why the government is taking so long to pass the law policy into law – if passed, the proposed decentralization of authority over land to committees might provide an obstacle to such appropriations made by persons with political influence in the name of 'development' and 'public interest'. It remains to be seen what difference the new government (2012) makes in these matters.

known. But evidence so far, including that cited above, suggests serious danger for the millions of rural Africans. There have already been some political results of publicized land deals: the information that land was being given by the government of Madagascar to a company from South Korea brought the government down, while the rapidly rising food prices that have helped to generate the search for land by richer countries have produced riots in several African countries, including Mozambique in 2009-10.

A final point needing to be made about the current rush to acquire land is to do with the status of such land. While the World Bank sees much of Africa as a "vast under-utilized reserve" and thus ripe for agricultural and other investment, the real reason it is being targeted is, in the words of a CEO of an investment company, because "African farmland prices are the lowest in the world" and "it is really the last frontier".[15] But why are the land prices low? The answer surely is that 'customary' rights over the vast majority of African cultivable (and grazing and common) lands are being set aside by representatives of African states in the name of 'development' and 'the public interest' even though more often the beneficiaries are, or are likely to be, private individuals and groups with the clout to arrange these deals (cf. Alden Wily 2010). The new rush by foreigners to acquire land 'for investment' in African countries typified by outsiders as with 'weak' land rights is a further spur to displace people in the name of a spurious 'public interest'.

A recent assessment by a senior World Bank researcher of 'the challenges posed by the new wave of farmland investment" [that is, land acquisition] pointed to the "weak" recognition by states of customary land rights, poor or absent consultation and compensation, "low capacity to process and manage large-scale … and risky … land investments", and concluded that "land acquisition often deprived local people … of their rights without providing appropriate compensation" (Deininger 2011: 244). The promise of investment in land along with increased productivity for the mass of African rural people, then, is dependent on major changes in the ability and interest of African governments and their investor partners in recognizing existing land rights, and promoting collaborative decision-making, transparency and proper assessment of proposed projects. So far, scepticism and worry are far more apt than optimism. As De Schutter (2011) and Li (2011) strongly conclude – the potential benefits to large-scale land acquisition and production in Africa are much more likely to devolve to the investors, international and national, than to the millions of people currently using the land from which they derive (a part to much of) their livelihoods, and which acts as a base to their social identity as citizens.

CONCLUSION

The paper argues that now, perhaps more than at any other time since the first colonial occupation of Africa, struggles to control land are central to social, political and economic processes. Documentation of the many instances of competition, conflict and violence swirling around land, and of competing claims over land and its resources, needs to look for explanation not to intrinsic failure of African states or to cultural dispositions towards violence or greed but to careful unraveling of shifts and persistences in political economic and socio-cultural relations around land and labor, as demonstrated by the most insightful of analyses cited.

Despite a wealth of information about 'the land issue' across Africa, there is a paucity of the kind of detailed studies needed to explore the social dynamics producing the varying situations found today. Recent papers by K. Peters and Richards (2011) and by Chauveau and Richards (2008) are excellent examples of the kind of careful, detailed historical and

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[15] Palmer, citing a report in The Straits Times (2010: 5).

ethnographic analysis needed to reveal some of these social processes. Moreover, there is a growing consensus about the extreme importance of showing how various forms of social conflict across the continent have roots in agrarian conditions and change. Chauveau and Richards show how understanding the civil wars in Sierra Leone and Côte d'Ivoire depends on analysis of "the two different ways in which lineage society evolved during the colonial and post-colonial periods" in the two countries. Similarly, K. Peters and Richards show the role of "agrarian tensions" generated in the past and present outbreaks of violence in Sierra Leone, and they argue against an assumption that youth disaffection and violence "cannot spring from rural conditions, since African peasantries are not obviously exploited by a landlord class" (2011:393).[16] Here, they flag the danger of generalizing about 'Africa', since while there may not be a 'landlord class' of the sort known from Europe, India or China, the ways in which chiefs, 'big men' and other elite members govern may closely resemble the inequality associated with landlordism (cf. Amanor 2010).

Even as social inequality in access to and control of land (and more generally) appears to be intensifying, land relations continue to be 'embedded' in social relations in ways that appear to block a unilinear or simple commodification of land. The 'ambiguity' mentioned by so many authors, the search for a new vocabulary ('vernacular' markets or 'recombinant property') reflect the importance of careful documentation of social dynamics and variation, yet without losing sight of the influence of national and international processes on specific sets of local relations. As recently emphasized, central to past and contemporary agrarian conditions are "policies regulating property rights, investment in rural infrastructure, establishing sectoral change in productive activities, and so on" (Cramer and Richards 2011:280). The role of land policies, whether dubbed 'successful' or 'failed', continues to need analysis, as do current policies, formal and informal agreements, and practices related to facilitating foreign and national investments in, or grabs of, African lands.

In short, any attempt to understand 'the question of land' in contemporary Africa has to grapple even more than in the past with the dynamics of social transformation at multiple levels – global, regional, national, sub-national – that are reshaping not merely access to land itself but the very bases of authority, livelihood, ownership and citizenship. And in reverse, any attempt to understand the multiple transformations taking place on the continent has to include 'the question of land' as a central element.

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[16] They refer to Mkandawire 2002.

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