

Shinichi Takeuchi *Editor*

African Land Reform Under Economic Liberalisation

States, Chiefs, and Rural Communities

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Shinichi Takeuchi
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Preface

Since the 1990s, African countries have actively implemented land reforms. Of these, customary land tenure has been the central target. Consequently, laws and institutions related to land have been significantly transformed across the continent. In the same period, Africa saw drastic changes in land holdings, massive land transfers, and rising tensions over land. The pace and degree of the changes, the size of transfers, and the intensity of the tensions have been quite remarkable. Institutional reforms have been advocated for strengthening users' land rights. Why were African farmers deprived of a huge swathe of land in the age of land reform? How do we understand the relationship between the land reforms and the marked rural changes? These were questions we had at the beginning of this research project.

Obviously, the land reforms and the dramatic changes over African lands cannot be connected with a simple causal relationship. Land tenure reforms were not adopted independently from other policy measures. Rather, they have been designed and implemented as a part of broader policies, particularly aiming at economic liberalisation and good governance. This has considerably influenced rural change. In addition, the reasons for institutional reforms vary. Besides the official discourse being strongly influenced by neo-liberal thoughts, such reforms have often been undertaken by governments for consolidating power. The question of why these reforms were implemented has naturally led us to examine the various motivations of both African states and donors.

Moreover, while rural changes in Africa have been undoubtedly drastic, they have never been uniform. Policy measures implemented under the recent land tenure reforms were relatively similar. This is because their basic objective was strengthening users' rights. However, the changes experienced by African rural communities during the same period differed significantly. This variance is not only due to environmental factors, including climate, vegetation, and population density, but also socio-political factors. In particular, the role of the state and traditional leaders in promoting rural change deserves careful investigation because their power, capabilities, and mutual relationship, which vary considerably across countries and regions, have decisively influenced the change. The questions about rural change led us to analysis state–society relations in Africa.

This book attempts to reflect the essence of rural changes in Africa through the recent reforms in customary land tenure. Although land reforms may not be the root cause of rural changes, they have been one of the most significant policy interventions made by African governments in collaboration with international donors. Analysis of the land reforms, particularly their motivations, contexts, and outcomes, will shed light on the roles of and interactions among the most important stakeholders: the state, traditional leaders, and rural communities.

This book is the result of a research project funded by the JSPS Grants-in-Aid for Scientific Research, titled ‘Resource management and political power in rural Africa’ (18H03439) and ‘Rural resource management and the state in Africa: A comparative analysis of Ghana and Rwanda’ (19KK0031). The chapters are based on papers presented and discussed at various events, including seminars at the University of Pretoria in South Africa (September 2018), and the Protestant Institute of Arts and Social Sciences in Rwanda (February 2020), jointly organised with the African Studies Centre at the Tokyo University of Foreign Studies. I thank all participants for their constructive comments. Earlier versions of some chapters were also presented at the African Studies Association’s 60th (Chicago, November 2017) and 61st (Atlanta, December 2018) Annual Meetings, and the International Conference ‘Africa-Asia “A New Axis of Knowledge” Second Edition’ held at the University of Dar es Salaam (September 2018). I am deeply grateful to Scott Straus, Sara Berry, Catherine Boone, and Beth Rabinowitz for their valuable comments and advice on the earlier versions of some chapters.

Fuchu, Japan
May 2021

Shinichi Takeuchi

Contents

Introduction: Drastic Rural Changes in the Age of Land Reform	1
Shinichi Takeuchi	
Land Administration, Chiefs, and Governance in Ghana	21
Kojo S. Amanor	
‘We Owned the Land Before the State Was Established’: The State, Traditional Authorities, and Land Policy in Africa	41
Horman Chitonge	
Renewed Patronage and Strengthened Authority of Chiefs Under the Scarcity of Customary Land in Zambia	65
Shuichi Oyama	
Land Tenure Reform in Three Former Settler Colonies in Southern Africa	87
Chizuko Sato	
Politics of Land Resource Management in Mozambique	111
Akiyo Aminaka	
Land Law Reform and Complex State-Building Process in Rwanda	137
Shinichi Takeuchi and Jean Marara	
Post-cold War Ethiopian Land Policy and State Power in Land Commercialisation	153
Teshome Emana Soboka	
Traversing State, Agribusinesses, and Farmers’ Land Discourse in Kenyan Commercial Intensive Agriculture	181
Peter Narh	
Index	199

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Abbreviations

AGRA	Alliance for a Green Revolution in Africa
AILAA	Agricultural Investment Land Administration Agency (Ethiopia)
ANC	African National Congress (South Africa)
BSAC	British South African Company
CIKOD	Centre for Indigenous Knowledge for Organisational Development (Ghana)
CIP	Crop Intensification Programme (Rwanda)
CLaRA	Communal Land Rights Act (South Africa)
CLS	Customary Land Secretariat (Ghana)
CONTRALESA	Congress of Traditional Leaders of South Africa
CPP	Convention People's Party (Ghana)
DAC	Development Assistance Committee
DFID	Department for International Development
DR Congo	Democratic Republic of the Congo
DUAT	Direito de uso e aproveitamento (land usufruct)
ELAP	Ethiopia Land Administration Program
ELTAP	Ethiopia Strengthening Land Tenure and Administration Program
EPRDF	Ethiopian People's Revolutionary Democratic Front
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
Frelimo	Frente de Libertação de Moçambique (Mozambican Liberation Front)
FTLRP	Fast Track Land Reform Programme
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GMA	Game Management Areas (Zambia)
GOPDC	Ghana Oil Palm Development Corporation
GTP	Ethiopia's Growth and Transformation Plan
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
ha	Hectare
IESE	Instituto de Estudos Sociais e Económicos (Mozambique)
IFIs	International Financial Institutions

IFP	Inkatha Freedom Party (South Africa)
IIED	International Institute for Environment and Development
KALRO	Kenya Agriculture and Livestock Research Organisation
LAND	Ethiopia Land Administration to Nurture Development
LBDC	Land Bank and Development Corporation (Ethiopia)
LEGEND	Land: Enhancing Governance for Economic Development (Ethiopia)
LIFT	Land Investment for Transformation (Ethiopia)
MDC	Movement for Democratic Change (Zimbabwe)
MITADER	Ministério da Terra, Ambiente e Desenvolvimento Rural (Mozambique)
MMD	Movement for Multiparty Democracy (Zambia)
MRND	Mouvement républicain national pour le développement (Rwanda)
NDC	National Democratic Congress (Ghana)
NGOs	Non-Governmental Organisations
NLC	National Liberation Council (Ghana)
NLM	National Liberation Movement (Ghana)
NPK	Nitrogen (N), Phosphorus (P) and Potassium (K)
PA	Peasant Association
PARMEHUTU	Parti du mouvement de l'émancipation Hutu (Rwanda)
PEDSA	Strategic Plan for the Development of the Agricultural Sector (Mozambique)
PF	Patriotic Front (Zambia)
PNDC	Provisional National Defence Council (Ghana)
PP	Progress Party (Ghana)
PRAI	Principles for Responsible Agricultural Investment
PROAGRI	Programa de Desenvolvimento da Agricultura (Mozambique)
Renamo	Resistência Nacional de Moçambique (Mozambican National Resistance)
RNRA	Rwanda Natural Resource Authority
RPF	Rwandan Patriotic Front
SMC	Supreme Military Command (Ghana)
SWAPO	South West Africa People's Organisation (Namibia)
TAZARA	Tanzania–Zambia Railway
TLGFA	Traditional Leadership and Governance Framework Act (South Africa)
UGCC	United Gold Coast Convention (Ghana)
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
USAID	United States Agency for International Development
VIDCOs	Village Development Committees (Zimbabwe)
WADCOS	Ward Development Committees (Zimbabwe)
ZANU-PF	Zimbabwe African National Union—Patriotic Front
ZAWA	Zambia Wildlife Authorities

List of Figures

Politics of Land Resource Management in Mozambique

Fig. 1	Agricultural investment as a part of total investment in Mozambique 2005–2019	116
Fig. 2	Structure of administration and routes of appointment or election in 2020	119
Fig. 3	Vote share by party in the National Assembly elections (%)	121
Fig. 4	Map of Monapo District	126

Land Law Reform and Complex State-Building Process in Rwanda

Fig. 1	Production of targeted food crops in Rwanda	143
--------	---------------------------------------------------	-----

Traversing State, Agribusinesses, and Farmers' Land Discourse in Kenyan Commercial Intensive Agriculture

Fig. 1	Map of Kenya showing location of Chemelil Sugar Company Ltd.	186
--------	-------------------------------------------------------------------	-----

List of Tables

Introduction: Drastic Rural Changes in the Age of Land Reform	
Table 1	Evolution of population density in Africa 5
Table 2	Land deals for agriculture in selected African countries since 2000 6
Table 3	Land deals for forestry in selected African countries since 2000 7
 ‘We Owned the Land Before the State Was Established’: The State, Traditional Authorities, and Land Policy in Africa	
Table 1	Categories of land in Zambia (2015) 50
Table 2	Land resources in Zambia (2015) 51
 Renewed Patronage and Strengthened Authority of Chiefs Under the Scarcity of Customary Land in Zambia	
Table 1	Land distributed by Chief L in November 2016 75
 Land Tenure Reform in Three Former Settler Colonies in Southern Africa	
Table 1	Forms of land tenure in certain southern African countries 89
 Politics of Land Resource Management in Mozambique	
Table 1	Results of general elections at the national, province, and district levels 1994–2019 (%) 124

Post-cold War Ethiopian Land Policy and State Power in Land Commercialisation

Table 1	Total land transferred from regions to Federal Land Bank for investment	163
Table 2	Large-scale agricultural investment products in GTP II (2016–2020)	164
Table 3	Agricultural sub-sector loans whose concentration exposure ranked 1–3	168
Table 4	Land registration in four regions	170

Introduction: Drastic Rural Changes in the Age of Land Reform



Shinichi Takeuchi

Abstract This introductory chapter presents the objectives and interests of the book as well as important topics that will be addressed in the following chapters. The main purpose of the book is to reflect upon the meanings of drastic African rural changes by analysing recent land reform. Whereas the stated objectives of land reform were relatively similar, that is, strengthening the land rights of users, the experiences of rural change in Africa in the same period have been quite diverse. In this context, this book conducts a comparative analysis, with in-depth case studies to seek reasons that have brought about different outcomes. From the second to fourth sections, we provide an overview of the characteristics of customary land tenure, the pressure over, and change in, African land, and backgrounds of recent land tenure reform. The fifth section considers what land reform has brought to African rural societies. It is evident that land reform has accelerated the commodification of African customary lands. In addition, the political implications of land reform will be examined. The case studies in this book will clarify some types of relationships between the state and traditional leaders, such as collusion, tension, and subjugation. It is likely that these relationships are closely related to macro-level political order and state–society relations, but further in-depth research is required to understand these issues.

Keywords Land reform · Rural change · State · Traditional leader · Customary land · Africa

1 Investigating Rural Change Through the Lens of Land Reform

Since the 1990s, sub-Saharan African countries¹ have been actively involved in land reform. While this includes various types, the most conspicuous has been reform in

¹ In this book, the term ‘Africa’ can be used interchangeably with sub-Saharan Africa, if there is no additional explanation.

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the institutions regarding land, namely land tenure reform. More than 40 sub-Saharan African countries revised or created new land-related laws or prepared land-related bills during this period. In addition, some countries, including Namibia, South Africa, and Zimbabwe, conducted redistributive land reforms (Martín et al. 2019). Generally, these reforms have been achieved with the assistance of Western donors.

In the same period, African rural society has seen dramatic changes that have had various aspects and far-reaching implications. The rapid and significant commercialisation of land has been one of the most conspicuous features of these changes, and the steep increase in large-scale land deals in Africa has attracted worldwide attention (Sassen 2013). In the past couple of decades, a gargantuan swathe of land has been put under deals for the purpose of exploiting commodities including food, biofuels, timber, and minerals. Another important change in the period is the integration of African rural society into the state. Despite popular images of the ‘uncaptured peasants’ (Hyden 1980), as well as the ‘limited power over distance’ (Herbst 2000), some African states have recently strengthened their control over rural society through various policies, particularly on decentralisation, agriculture, forestry, and land.

The age of land reform overlapped with the age of drastic rural changes. The relationship between these two factors warrants investigation. However, we should not fall into reductionism. Land reform does not explain everything. In many cases, the reform itself cannot be considered a major cause of change, but we believe that thinking about current African rural change through the lens of land reform will be relevant.

The first reason is the potential significance of the impacts of land reform. Land constitutes one of the most important pillars of African rural societies, and therefore, policy interventions over the land are likely to have some impact, while their extent will naturally vary. Land tenure reform since the 1990s has mainly endeavoured to transform the nature of customary land, which accounts for a vast majority of African rural area, and in fact, it is there that the most significant changes have been taking place. A detailed analysis of the impacts of the reform will, therefore, clarify the realities on the ground and shed light on the mechanism of recent rural changes.

The second reason is that focussing on land reform, particularly land tenure reform, will make comparisons among case studies effective and meaningful, because African land reforms since the 1990s have been conspicuous not only in terms of the number of countries that have undertaken them, but also in the similarity of their objectives (Martín et al. 2019). In fact, land tenure reforms in this period have attempted to clarify and strengthen the land rights of users. Despite the implementation of similar policies, the features of rural changes have varied considerably. For example, the size of land deals, the intensity of policy implementation, and the role of traditional leaders are extremely diverse from one country to another. Investigating the reasons for this variation will contribute significantly to the understanding of recent rural changes.

The aim of looking through the land reform lens is to examine why similar policies have produced different outcomes. The contributors to this book conduct in-depth analyses focussing on three main stakeholders, namely the state, traditional leaders,

and the community. When representing those who design and implement the reform, the state may refer to a government, its officials, or a ruling party. Traditional leaders have been closely interested parties in the reform. In many African countries, their status and prerogatives over land were officially recognised through the reform. The community is composed of people, such as farmers and herders, who are directly concerned with the reform. With a focus on the stakeholders, each chapter considers the motivations, context, and outcomes of land reform.

This introductory chapter begins with an examination of the nature of customary land, which has accounted for the largest part of African rural areas and has been an arena of drastic changes for a couple of decades. The third section reveals that customary land has recently been put under significant pressure due to rapid population increase and the strong demand for land leasing. The fourth section provides a background to land reform since the 1990s and offers reasons why many African countries simultaneously launched reforms in this period. The paper then explores the outcomes of land law reform, which have had strong socio-economic and political implications to date.

2 Customary Land Tenure in Africa

African countries are generally characterised by the importance of customary land, which accounts for an immense portion of its rural areas. Although there are no reliable data, the average percentage of land registered under private titles is considered to be less than 10% in Africa (Boone 2014, 23). With the exception of a limited number of countries, such as South Africa, in which the proportion of registered land has been exceptionally high,² customary land has generally prevailed in rural areas of African countries.

Who has what kind of rights in customary land varies, according to the historical process through which the user, namely the community, has been organised and has evolved. Families and their kin often have effective control over the land, but chiefs may claim allodial rights, and other social groups, including migrants and pastoralists, may also have the right to claim. Even in cases where the state is its official owner, the management of customary land is effectively handled by non-state actors, thus making the rights socially embedded. Consequently, multiple actors can claim their rights over customary land, and the rights of direct users are likely to be limited compared with the state-controlled land tenure system, such as freehold and leasehold. It can be occupied, cultivated, and inherited within families provided they are self-managed, but selling and purchasing the land is tightly restricted.

Customary land tenure should be distinguished from 'communal land tenure' or 'common ownership'. Customary land includes two different areas regarding the rights of an individual. In areas in which fixed persons continuously use and work,

² The proportion was 72% in South Africa, 44% in Namibia, and 41% (or 33%) in Zimbabwe (Boone 2014, 23).

the community recognises and respects their particular rights. For example, farmland is managed by individuals and families who have strong rights to it (Bruce 1988, 24). Conversely, there are commonages, such as forests and prairies. In these areas, community members have equal rights for gathering, hunting, and grazing. Often, outsiders in the community have benefitted from the commons. The coexistence between farmers and herders is a typical example. Although such a mutually beneficial relationship has been increasingly difficult to maintain, coexistence remains observable thus far (Bukari et al. 2018).

Customary land tenure should not be identified using a 'traditional' system. Although it may include elements of the precolonial land tenure system, it has been repeatedly reorganised and transformed since colonial times (Chanock 1991; Amanor 2010). When separating the territory for Africans and Europeans, the colonial authority stipulated that the former should be ruled by customary laws. In other words, the customary land was placed outside statute law in the colonies. Private property rights were denied there, and rights for the redistribution and disposition of lands were attributed only to specific actors, such as traditional leaders, whose powers were systematically reinforced by the colonial authorities. This bifurcated land tenure system persisted in post-colonial African states, in which rural areas were put under customary land tenure, although its nominal ownership was usually attributed to the state or the president.

The flexibility of customary land tenure has been considered a conspicuous feature. Despite a transformation in the colonial period, in which the roles and functions of traditional authorities were empowered and institutionalised, customary land tenure has had some leeway or negotiable areas so that community members could deal with difficulties in their lives (Berry 1993; Moore 1998). Importantly, customary tenure reflects hierarchical relationships existing both within social groups and between them (Bruce 1988), thereby constituting a multi-layered structure of various rights. The fact that many individuals have a say in its uses and transactions makes various rights related to customary land flexible, negotiable, and ambiguous. This is not to say that customary land tenure is always inclusive. Researchers have been increasingly aware that it may also work for the marginalisation and exclusion of vulnerable groups in the community (Amanor 2001; Peters 2002).

3 Pressure on, and Changes in, the African Land

The chapters of this book will demonstrate in detail that recent years have seen dramatic rural changes, with increasing pressure on customary land in Africa. One of the most basic and visible factors is population increase. The population density exceeded 100 persons per km² in only four small countries in 1961, but that number of countries grew to 15 in 2018 (Table 1). Africa's population density has been increasing so rapidly that it can no longer be characterised as a land-abundant and labour-scarce continent. Despite the marked tendency of urbanisation, 60% of

Table 1 Evolution of population density in Africa

Population density	1961	2018
More than 300 persons/km ²	Mauritius (335)	Burundi (435), Comoros (447), Mauritius (623), Rwanda (499)
200–299 persons/km ²		Gambia, Nigeria, Sao Tome and Principe, Seychelles, Uganda
100–199 persons/km ²	Burundi, Comoros, Rwanda	Benin, Cabo Verde, Ghana, Malawi, Sierra Leone, Togo

Source World Bank, *World development indicators*

the population in sub-Saharan Africa currently lives in rural areas,³ indicating that African rural areas have generally seen intense land pressure.⁴ Despite the general tendency of rapid population increase, it should be noted that African population densities are not evenly spread due to historical, environmental, and agro-ecological factors. The sparsely populated areas have been targeted for the recent expansion of investments, as mentioned by the World Bank (2009).

The growing demand for farmland is another important pressure on customary land. The economic liberalisation policies implemented since the 1980s and the subsequent hyperglobalisation and economic boom in African natural resources, minerals, and agricultural commodities have greatly accelerated this trend. African countries have attracted enormous direct investments in the agricultural, mining, and forestry sectors since the 2000s. This culminated in the 2008 world food crisis as foreign and national capitals competed in acquiring African lands. The magnitude of land deals in recent Africa has been enormous. As Land Matrix data⁵ indicate (Tables 2 and 3), land deals for agriculture, as well as timber production, have been immense in some countries, occupying considerable portions in comparison with arable land and forest land, respectively. When considering that the Land Matrix has only begun to collect data since the year 2000, this indicates that land in rural Africa has been subjected to land deals with surprising speed for these two decades.

The Land Matrix data also show the diversity of land deals. While land deals have generally increased in Africa, their size and nature vary significantly from one country to another. The impact of the land deals will be potentially immense in Sierra Leone and Madagascar when considering their proportion of arable land⁶ (Table 2). The high number of land deals in Ethiopia, Senegal, and Mozambique for agricultural land (Table 2), as well as DR Congo for forest land (Table 3), indicates that these governments have been eager to attract investments. Significant land deals have been made

³ In 2018, the rural population in sub-Saharan Africa accounted for 59.8% of the total population (data from the *World Development Indicators*). Although its decreasing tendency has been clear because it was 81.9% in 1970, the proportion of the rural population remains significant in Africa compared with other regions in the world.

⁴ Average rate of rural population increases per year in sub-Saharan Africa between 1960 and 2019 was 2.08% (*World Development Indicators*).

⁵ Retrieved from Land Matrix Data (<https://landmatrix.org/data/>) on 14 March 2021.

⁶ Their real impacts are yet to be seen, because only a part of the contracted land has been operational.

Table 2 Land deals for agriculture in selected African countries since 2000

Country	Transnational		Domestic		Total			Arable land in 2015 (b) (1000 ha)	(a)/(b) (%)
	Number of deals	Size (ha)	Number of deals	Size (ha)	Number of deals	Size (ha) (a)			
Angola	10	87,802	15	93,278	25	181,080	4900	4	
Cameroon	7	245,635	4	52,400	11	298,035	6200	5	
DR Congo	9	271,603	1	10,000	10	281,603	12,500	2	
Ethiopia	62	832,474	96	438,280	158	1,270,754	15,721	8	
Ghana	37	266,432	3	6,033	40	272,465	4700	6	
Madagascar	13	578,322	2	15,658	15	593,980	3000	20	
Mozambique	63	343,495	4	30,545	67	374,040	5650	7	
Nigeria	18	200,907	40	493,754	58	694,661	34,000	2	
Senegal	21	230,728	72	134,783	93	365,511	3200	11	
Sierra Leone	14	474,112	2	35,641	16	509,753	1584	32	
South Sudan	4	211,511	4	11,130	8	222,641	19,823	4	
Sudan	20	457,239	3	51,023	23	508,262			
Tanzania	22	119,707	19	131,511	41	251,218	13,500	2	
Zambia	31	234,821	5	72,659	36	307,480	3800	8	

Source Land Matrix data (retrieved on 14 March 2021), FAOSTAT

Note 1 Sub-Saharan African countries with at least 10 agricultural land deals were picked up in the table

Note 2 South Sudan, though the number of its land deal was only eighth, was included to sum up with Sudan, as the size of arable land was only available for former Sudan

Table 3 Land deals for forestry in selected African countries since 2000

Country	Translational		Domestic		Total			(c)/(d) (%)
	Number of deals	Size (ha)	Number of deals	Size (ha)	Number of deals	Size (ha) (c)	Forest land in 2015 (d) (1000 ha)	
Cameroon	10	741,749	10	677,464	20	1,419,213	20,620	7
Central African Republic	5	1,338,838	0	0	5	1,338,838	22,453	6
DR Congo	41	9,777,515	13	1,923,170	54	11,700,685	131,662	9
Gabon	2	696,851	1	300,000	3	996,851	23,590	4
Liberia	5	134,296	15	541,329	20	675,625	7768.74	9
Mozambique	5	495,965	0	0	5	495,965	37,940	1

Source Land matrix data (retrieved on 14 March 2021), FAOSTAT

Note Sub-Saharan African countries with at least three forest land deals were picked up in the table

by domestic actors in countries such as Ethiopia, Nigeria, and Senegal, illustrating that the government and domestic private companies have actively engaged in agricultural investment. The Land Matrix data only include land deals larger than 200 ha, and considering that the average land deal size of domestic actors tends to be smaller than that of transnational actors, it is likely that domestic actors have conducted innumerable smaller land deals, as shown in Chapter 4 ‘[Renewed Patronage and Strengthened Authority of Chiefs Under the Scarcity of Customary Land in Zambia](#)’.

It is clear that an important portion of African land has been leased to foreign and national capitals in a short period of time, thereby depriving rural communities of their customary land. The expansion of foreign investment in farmland has been sanctioned by governments and justified in terms of the marginality or underutilisation of the land. This has usually targeted lands that were used by rural communities, where ownership rights were weak, including commonages, grazing lands, forests, and lands used by migrants and the most marginalised members of communities (Deininger and Byerlee 2011; Peters 2013). In other words, they were areas that had been considered ‘unowned, vacant, idle, and available’ (Alden-Wily 2011, 736).

With the adoption of neo-liberal policies, African governments have competed with each other to attract foreign direct investment (FDI). Although many governments have introduced new land policies and laws that purport to increase the recognition of customary land ownership, this has recognised land as a marketable commodity, paving the way for investors to gain market access to customary land at the expense of rural users and leading to increased speculation in land at the international and national levels. The reduced availability of customary land has seriously affected the lives of rural African people. It is evident that the marked increase in land conflicts in recent times is linked to increasing pressures on customary lands resulting from population increase and investments (Takeuchi 2021).

4 Backgrounds to Land Reform

Two types of land reforms have recently been conducted in Africa. The first type is redistributive land reform conducted in countries such as South Africa, Namibia, and Zimbabwe. The principal objective of this reform is to redress the significant inequality in land holdings due to historical legacies. The central debate in this type of land reform has been, therefore, the transfer and redistribution of land owned by white farmers. The second type of land reform is the revision or creation of land-related laws and institutions without the redistribution of land.⁷ The main target of

⁷ The two types are not mutually exclusive. While Ethiopia has actively carried out reform over land management since the 2000s, it pushed through land redistribution following the revolution in 1974. Rwanda also made a radical redistribution of land in favour of Tutsi returnees before the implementation of the land tenure reform in the 2000s (Chapter 7 ‘[Land Law Reform and Complex State-Building Process in Rwanda](#)’). Along with land reform for redistribution, Namibia, South Africa, and Zimbabwe undertook land tenure reform in their communal lands (Chapter 5 ‘[Land Tenure Reform in Three Former Settler Colonies in Southern Africa](#)’).

this reform has been similar, and by focussing on customary land, it has endeavoured to transform its management to clarify and strengthen the rights of users and facilitate the delivery of land titles. This type of land reform has prevailed since the 1990s. Its proliferation is surprising because more than 40 African countries have revised or newly created land-related laws or have attempted to do so (Martín et al. 2019).

Why have African countries simultaneously begun to revise the management of customary land? Manji (2006) emphasised the influence of neo-liberal thoughts behind land tenure reform in this period. Following the end of the Cold War, neo-liberal ideology became dominant among donors, according considerable influence over their aid policy in general, and the policy for land and property in particular. It has been argued that, together with the strong popularity of de Soto (2000), the idea that providing the land with private property rights should promote economic development was widely accepted among policymakers.

Although the neo-liberal ideology has been undeniably influential, the story seems to have not been so straightforward. First, many scholars were sceptical of de Soto's optimistic view as well as land tenure reforms, which gave them a feeling of *déjà vu*. Arguments stressing the necessity of private land rights for the growth of agricultural production had already arisen in the colonial period, and a number of settlement programmes were implemented for this purpose in colonies, including British East Africa (Kenya) and the Belgian Congo.⁸ Regarding the settlement programme inherited by independent Kenya, the World Bank, which has consistently advocated for the introduction of private land rights, gave it high praise in its report (World Bank 1975, 71). However, scholars were bitterly critical of its outcomes (Coldham 1978, 1979; Shipton 1988; Haugerud 1989). Consequently, the negative outcomes of programmes transforming customary tenure into 'modernised' tenure strengthened 'a conviction that the glosses of customary and communal tenure have caused more trouble than not' (Peters 2002, 51). There was a broad consensus among scholars in the 1980s that customary land tenure worked efficiently and effectively with market-oriented agriculture and met the needs of small-scale farmers in Africa. Even the World Bank scholars recognised the merits of flexible land use in customary tenure and stated that 'as long as there is effective governance, communal tenure systems can constitute a low-cost way of providing tenure security' (Deininger and Binswanger 2001, 419).

To explain the proliferation of land tenure reforms in Africa since the 1990s, two factors should be considered. The first factor clearly recognised that customary land tenure faced daunting problems (Bruce 1988). Whereas state-led land reform has had serious drawbacks (Sikor and Müller 2009), challenges in, and threats to, customary land tenure, including expanding inequalities, social exclusions, and excessive concentration of land, have been increasingly clear (Peters 2013). Importantly, policy debates on African agriculture in the 1990s tended to centre on its low

⁸ In Kenya, the British colonial government launched the so-called Swynnerton Plan in 1954, promoting private properties for African farmers. The policy providing private land rights for farmers was inherited by the independent Kenyan government. The Belgian Congo has implemented a similar policy called 'paysannat' since the 1930s (Staner 1955; Bonneuil 2000). By providing a parcel of land, the policy aim was to foster small farmers with modern techniques, but this was abandoned after independence.

productivity following the serious economic crisis of the 1980s (Peters 2002, 51). In this context, it was widely argued that customary land provided only ambiguous rights for users, thereby reducing incentives for farmers to invest in their lands and, therefore, resulting in low agricultural productivity (Feder and Noronha 1987). Although this logic promoting private property was not new, it was enthusiastically accepted in this period by donors as well as African policymakers.

The second factor was that changes in development strategy had a significant influence. Following the introduction of the Structural Adjustment Policy (World Bank 1981), small farmers were the focus in the strategy for development in Africa. The basic premise of this argument was ‘the desirability of owner-operated family farms’ (Deininger and Binswanger 2001, 407). However, the focus began to change in the 2000s as the African economy expanded. In the context of ‘Africa rising’, the governments became significantly more interested in attracting FDIs to boost economic growth and promote rural development. As a result, African countries have generally adopted both policies for formalising/legalising customary land rights (Ubink, 2009) and for promoting FDI at the same time. For example, Ethiopia, which had taken a pro-poor agricultural policy in the 1990s, radically shifted its policy agenda in the 2000s in order to promote market economies and attract FDI (Lefort 2012).

This policy change was also introduced and embraced by donors, who have consistently hoped to increase their investments and encourage African countries to establish adequate laws and institutions for this purpose. The popularity of de Soto (2000) should be understood in this context. Such design and intention were reinforced by the global food crisis in 2007–08 (World Bank 2009) and culminated in the New Alliance for Food Security and Nutrition launched in 2012.⁹ Land tenure reform had aimed at strengthening the rights of users, but it was investors, and not small farmers, who saw the land rights secured.

Mainstream economists have recommended the formalisation of customary land rights with a low-cost method as a desirable policy option.¹⁰ In particular, the World Bank has been eager to advocate for technical innovation in low-cost land registration (Deininger et al. 2010; Shen and Sun 2012). However, land registration will neither automatically activate investment nor guarantee agricultural development. Its effects vary considerably and depend heavily on politics and governance, which is the very reason why experts in Africa have taken a cautious stance on this issue (Peters 2002; Sjaastad and Cousins 2009). Although some World Bank researchers have been clearly aware of the close relationship between the effects of land registration and governance (Deininger and Feder 2009), it is highly questionable to what extent this understanding has been shared with policymakers in general.

⁹ The New Alliance is a policy framework adopted at the G8 summit under the US presidency and has been repeatedly criticised of its prioritising private companies over small farmers.

¹⁰ Compared with the ‘land to tiller’ policies (tenancy reform) and the market-assisted land redistribution reforms, Holden et al. recommended the low-cost land registration and certification programme because it successfully enhanced investment, land productivity, and land rental activity (Holden et al. 2013, 16).

Although land tenure reform has been donor-driven, it does not mean that donors have unilaterally imposed it upon African governments. Some of them have been clearly conscious of its importance and have taken the opportunity to utilise external resources to strengthen the states' abilities to control lands and rural communities. The formal objective of the recent land tenure reform is to establish a unitary system for land management. Given that land is an important resource for political mobilisation, the state has naturally strong motivations to pursue reform to strengthen its control. Our case studies show that countries such as Mozambique and Rwanda had clear objectives for power consolidation in introducing land tenure reform (Chapters 'Politics of Land Resource Management in Mozambique' and 'Land Law Reform and Complex State-Building Process in Rwanda').

5 What the Land Tenure Reforms Have Produced

5.1 *Commodification of Customary Land*

What have land reforms undertaken since the 1990s given rise to in Africa? How are they related to the drastic rural changes during the same period? One of the most broadly recognised outcomes is the accelerated commodification of customary land and its vast transfer from rural communities. Following the detailed examination of African land reforms, Martín et al. (2019) concluded that the recent land reform facilitated land privatisation in exchange for customary lands. According to Alden-Wily (2014), land reform started in the 1990s with the aim of simultaneously protecting the rights of users in customary land and improving investors' accessibility. Although the reform had a vision of community-driven and pro-poor development, it was replaced by a development strategy through large-scale commercial agriculture during the land rush in the 2000s.

In the second section, we saw how the expansion of land deals in Africa was rapid and immense. Undoubtedly, this is one of the most conspicuous aspects of the recent rural changes. It is obvious that land tenure reform has promoted transactions in the market by facilitating the issue of land titles. Among our case studies, Chapter 6 'Politics of Land Resource Management in Mozambique', which deals with the Mozambican case, indicates this the most clearly. Despite the renowned reputation of land law respecting customary rights, the country has seen a vast swathe of land transfer for foreign private companies. The chapter illustrates how the government has intentionally utilised laws and institutions to invite FDIs.

As discussed above, foreign companies have not been the only sources of the rising demand for land. National actors also matter. The recent land law reform has not only facilitated governmental actions for the delivery of land titles but has also had significant influence on local actors by inspiring various initiatives. This point is clearly described in Chapter 4 'Renewed Patronage and Strengthened Authority of Chiefs Under the Scarcity of Customary Land in Zambia', which indicates a

case observed in north-eastern Zambia. Against the backdrop of the empowerment stipulated by the 1995 Land Act, chiefs issued their own land titles and sold them to outsiders. For city dwellers, including retired employees, the customary land in rural areas is a valuable asset that functions as social security. This has sharpened the sense of crisis among local residents who have increasingly experienced land scarcity. This chapter echoes previous literature that stresses the recent development of enclosures in Africa (Woodhouse 2003).

5.2 Political Implications of Land Reform

When dealing with the fundamental means of production, land reform has strong implications for politics. The political significance, effects, and implications of land law reform in Africa have been addressed in a number of studies (Boone 2014, 2018a, b; Takeuchi 2014; Lavigne-Delville and Moalic 2019). Martín et al. (2019, 603) regarded the recent land law reforms in Africa as ‘a return to former colonial policies’, because they have revived the role of traditional authorities. The idea of rolling back the state has been widely shared among Development Assistance Committee (DAC) donors and recipient countries since the 1990s, and therefore, traditional leaders have been empowered by the process of land tenure reform. However, rural changes during this period have been varied and complex.

Variations in rural changes have been partially attributed to the motivations and interests of stakeholders. Consider the example of donors who have been key stakeholders in land law reform. The donors pursued two different and sometimes contradictory, objectives during this period. Firstly, they requested that the African states release land ownership and that land management be decentralised. The state should retreat from socio-economic activities and be replaced by the market. Therefore, donors assisted and funded land tenure reform, often in parallel with the decentralisation policy line of thought. Conversely, donors have also wanted African states to be competent and efficient in preventing internal conflict, controlling ‘terrorist’ activities, and facilitating economic management. State building has been considered key to this objective, and significant assistance has been provided to strengthen the capability of the state (OECD 2008a). Such considerations have been increasingly necessary for donors because they have regarded state fragility as one of the core problems of Africa (OECD, 2008b). The attitudes of donors towards democratisation and decentralisation have been ambiguous since the 2000s because of these contrasting interests.

Similar to donors, African stakeholders have had diverse motivations for, and interests in, land tenure reform. Naturally, traditional authorities have keen interests in strengthening their power over land. Although the arguments of donors for decentralising land management have been expedient for them, whether or to what extent traditional leaders benefit from the reform has been heavily dependent on their relationships with the state. In Ghana, for example, traditional chiefs have strong and institutionalised power and have built close links with official political systems,

including the bureaucracy and political parties. Because of the strong political power of the chiefs, state officials are generally reluctant to engage in land-related issues and act against the benefit of chiefs (Ubink 2007). In such circumstances, when characterised by collusion between chiefs and state officials, land tenure reform would not bring about meaningful changes in the land management system (Amanor 2009). Chapter 2 ‘[Land Administration, Chiefs, and Governance in Ghana](#)’ elucidates how the relationship between the Ghanaian state and chiefs has been forged because of long-term interactions since the colonial period.

The relationship between the state and traditional leaders can be strained. In Zambia, traditional chiefs demonstrated their strong opposition to the proposed new land policy in 2018, claiming that it would undermine their roles on the land (Chapter 3 ‘[We Owned the Land Before the State was Established’: The State, Traditional Authorities, and Land Policy in Africa](#)’). Although the roles of Zambian traditional authorities are clearly mentioned in the 1995 Land Act,¹¹ and they have actually maintained their significant role in land management in rural areas, the chiefs have been quite suspicious of land law reform. This is understandable because land law reform is inherently an attempt to formulate law and order officially prioritising the state over other political forces. The demonstration staged by the chiefs clearly illustrates the tension between traditional authorities and the state.

The relationship between the state and traditional leaders reflects their power relationships that have been forged in a long history. In the case of Ghana and Zambia, where traditional leaders hold relatively strong power, the relationship has been characterised by collusion and tension. In other countries, however, the state has had overwhelming power and subjugated traditional leaders, or even monopolised the political space, thereby utilising land policies as a tool for power consolidation.

Mozambique is a representative case, whereby the state has subjugated and manipulated traditional leaders. In the country, the rural community has been fundamentally reorganised in parallel with land tenure reform. The reorganisation was pursued by the ruling party (Frente de Libertação de Moçambique: Frelimo) to strengthen its control over rural areas. Chapter 6 ‘[Politics of Land Resource Management in Mozambique](#)’ demonstrates that the ruling party, considering control over rural areas as critical for political dominance as well as resource management, has actively conducted institutional changes for this purpose. In this context, land law has been implemented in line with Frelimo’s objective of strengthening its local power base. The dominance of the state over traditional leaders has also been illustrated in Zimbabwe’s fast-track resettlement. When examining debates on the role of traditional leaders in the land redistribution process, Alexander (2018, 151) concluded that they were ‘influential only insofar as they subordinated themselves to the ZANU-PF’s partisan project’ on resettlement farms (Chapter 5 ‘[Land Tenure Reform in Three Former Settler Colonies in Southern Africa](#)’).

In some countries, the state has monopolised the political space. A representative case is Rwanda. The chiefs, who were ethnically identified as Tutsi in the

¹¹ Republic of Zambia, The Land Act. See for example, Part II, 3. (4)(b)(d) and 8. (2)(3).

colonial period, were expelled during the ‘social revolution’ just before independence. Although the second generation of the expelled group took power following the civil war in the 1990s, they have never attempted to restore traditional chieftaincy. In contrast, the former rebel ruling party, the Rwandan Patriotic Front (RPF), has repeated radical intervention in the land for power consolidation. Land tenure reform has been part of this project (Chapter 7 ‘[Land Law Reform and Complex State-Building Process in Rwanda](#)’).

The Ethiopian highland may be a similar case, whereby a dominant ruling party utilised land law reform to consolidate the existing political order. In the country, the land registration programme was accelerated after the election in 2005, which was marked by the rise of the opposition party. The objective of hastily providing land certificates in this period has been interpreted as to ‘win back the support of the rural population and to undermine the chance of the opposition’ (Dessalegn 2009, 68). It is well known that the Ethiopian People’s Revolutionary Democratic Front (EPRDF) regime undertook land tenure reform at the same time as decentralisation and included a number of community participatory initiatives. Nevertheless, the provision of land certificates was utilised as an effective tool for the ruling party to mobilise popular support. In a similar vein, researchers, including Chinigò (2015) and Mekonnen (2018) evaluated that the EPRDF has attempted, through land registration, to consolidate its power base in rural areas and expand its capabilities to control land.

When examining the variation in the relationship between the state and traditional leaders, some interesting questions for further research were discovered. First, the nature of the relationship requires a very detailed investigation in connection with the type of macro-level political order. Ghana and Zambia, where traditional leaders markedly influence the state, have had relatively high scores on democracy because both countries have experienced regime changes through elections. In contrast, in our case studies, the position of traditional leaders is negligible or subjugated to the state, with the authoritarian and one-party dominant rule. This tendency is particularly pronounced for the countries in which the ruling party was once engaged in the civil war (Ethiopia, Mozambique, Rwanda). How can the relationship between the power of a chief and macro-level political order (democracy/authoritarian rule) be consistently understood? Understandably, traditional leaders tend to be influential over national-level political actors when the latter needs to attract the former in consideration of its rural electorate. The variation among African countries should be explained by taking the historical trajectory of each case into consideration. Systematic comparative studies will be invaluable for obtaining convincing answers to this question.

Another question concerns the tendency of the state to strengthen control over rural areas. As discussed above, our study revealed that in some African countries, the ruling parties have utilised land-related policies for their power consolidation. This makes us revisit the conventional understanding of the state of Africa. Despite the cliché of the African weak state (Hyden 1980; Jackson and Rosberg 1982; Herbst 2000), it is widely accepted that a number of African governments have recently

consolidated political power with an authoritarian drive.¹² In our case studies, the abovementioned three countries (Ethiopia, Mozambique, and Rwanda) clearly fall into this category. Are they examples of state building in the age of land reform? It seems too early to answer this question. Although our study shows that policy interventions in land have been effective and efficient tools for political mobilisation, this does not mean that state building has been successfully advanced in these countries. As the current situation in Ethiopia shows, top-down power consolidation with an authoritarian style can be fragile.

Land governance is deeply connected to political order. Good land governance contributes to long-term political stability because it functions as a built-in system for the stabilisation of macro-level political order. When land governance is perceived as legitimate from the eyes of ordinary land users, the ruler can benefit from the products of land users, who will, in turn, benefit from improved service from the ruler. The objective of land reform is to construct this virtuous circle, but, unfortunately, it is highly questionable if the land reform in Africa since the 1990s has created this.

6 Structure of This Book

This book includes eight case studies that analyse the context of recent land reform and rural change. Dealing with the Ghanaian case, Amanor (Chapter 2 ‘[Land Administration, Chiefs, and Governance in Ghana](#)’) elucidates the ‘*longue durée*’ of the relationship between the state and the traditional leaders. Ghana is well known as a country whose chiefs have strongly influenced politics. Tracing back to the precolonial period, the author reveals how chiefs have relied on land for the consolidation and maintenance of their power, and describes the evolution of their relationships with the state. Due to the collusion between state officials and traditional leaders, recent land reforms have resulted in upholding the privileges of chiefs and have fallen short of protecting the rights of small farmers.

Chitonge (Chapter 3 ‘[We Owned the Land Before the State was Established](#)’: [The State, Traditional Authorities, and Land Policy in Africa](#)’) explains the complexity of the relationship between the state and traditional authorities regarding customary land administration. Claiming their legitimate rights over land allocation, the traditional leader has become a competitor and/or a collaborator of land management with the government, thus making their relationship ambiguous, sometimes strained, and sometimes colluded. The latter part of the chapter analyses the Zambian traditional leaders’ protest of proposed land reforms and confirms their strong legitimacy and power, given not only by cultural and ethnic allegiance, but also by politicians’ consideration for ensuring the rural electorate.

¹² Based on various indexes of political dimensions including political rights and civil liberties, state of democracy, and governance, Harbeson (2013) demonstrated the increasing tendency of authoritarianism in Africa since the mid-2000s.

Based on long-term fieldwork, Oyama (Chapter 4 ‘[Renewed Patronage and Strengthened Authority of Chiefs Under the Scarcity of Customary Land in Zambia](#)’) explains what new land law has brought about in rural Zambia. Following the enactment of the 1995 Land Act that strengthened the power of traditional leaders over land, the chiefs began to issue original land titles called ‘Land Allocation Form’. The forms differ from title deeds issued by the Ministry of Land but are considered completely effective at the local level. Many outsiders, including wealthy city dwellers and retirees, have obtained them by building a patronage network with the chief and, therefore, fostering a sense of land scarcity among villagers and urging them to acquire the same forms. This has further accelerated the sense of land scarcity. The chapter clearly shows the local dynamism of enclosure that was triggered by the new land law.

Sato (Chapter 5 ‘[Land Tenure Reform in Three Former Settler Colonies in Southern Africa](#)’) also examines the role, function, and legitimacy of traditional leaders through a comparison of the land tenure reform for three former settler colonies in Southern Africa (Zimbabwe, Namibia, and South Africa). Although land restitution has attracted attention from the outside world, land tenure reform in the former native reserves (communal areas) has been considered critical and caused heated debates in each country. While all reforms have been centred on traditional leaders in rural land administration, the author problematises the excessive focus on them and recommends broadening the perspective for the improvement of people living in the communal area.

Aminaka (Chapter 6 ‘[Politics of Land Resource Management in Mozambique](#)’) presents a clear picture of the Mozambican rural transformation during the economic boom. The reform has been implemented with other institutional changes, promoting FDI, as well as strengthening political control of the ruling party (Frelimo) over rural areas. Traditional leaders were officially recognised through the reform, but they also reorganised the community to ensure Frelimo’s political influence. Land reform has been a part of Frelimo’s project for the establishment and reinforcement of its power over rural areas in the interests of resource management and political mobilisation.

The picture is similar in Rwanda, as described by Takeuchi and Marara (Chapter 7 ‘[Land Law Reform and Complex State-Building Process in Rwanda](#)’). Following the military victory of the civil war in 1994, the RPF established and strengthened its control over the country. Policy interventions over land have been a key component of the RPF-led state-building process. By tracing policy interventions in rural areas in the post-civil war Rwanda, the chapter shows how the government has asserted its control over rural areas and revisits the meaning of land tenure reform. Moreover, the authors show the difficulty of institutionalising the modern land management system, including land registration. As a result, the state-building process in the country will never be straightforward.

The commercialisation of land has been one of the most conspicuous aspects of recent rural changes in Africa. Focussing on this point, Teshome (Chapter 8 ‘[Post-Cold War Ethiopian Land Policy and State Power in Land Commercialisation](#)’) illustrates that major schemes for the promotion of land commercialisation were organised in land policy pursued under the government led by the EPRDF, and the roles of the

main donor for the implementation of the policy. This shows that the government and donors deliberately promoted land commercialisation in close collaboration.

Narh (Chapter 9 ‘[Traversing State, Agribusinesses, and Farmers’ Land Discourse in Kenyan Commercial Intensive Agriculture](#)’) examines the effects of the Kenyan land tenure reform and casts doubt on the simple assumption that strengthening users’ rights will improve agricultural productivity. As a result of the policy providing land title carried out since the 1950s, Kenyan farmers have been generally provided with strong individual rights over their properties. Based on his fieldwork in the sugarcane growing communities in western Kenya, the author argues that the farmers have lost control of their lands. Their initiatives for devising productive methods have been suffocated because of the heavy dependence of farmers on the sugarcane company in terms of inputs and infrastructure, as well as knowledge, for production. The chapter indicates that the provision of individual property rights will not guarantee high agricultural productivity.

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Land Administration, Chiefs, and Governance in Ghana



Kojo S. Amanor

Abstract This chapter examines the role of chiefs in the administration of land in Ghana within a historical framework dating back to the pre-colonial period. It examines the relationship between the dynamic of internal political factors and of international pressures for governance reforms. It argues that while present land governance reforms fit into the framework of market liberal governance reforms advocated by international financial institutions and the USA, the origins of the present role of chiefs in land administration date back to the political coalitions that came to dominance following the overthrow of Nkrumah in 1966. Although these appeal to notions of community, they are also based on a coalition of national elites with traditional authorities, which enables rural resources to be appropriated for capital accumulation with the connivance of chiefs who give legal authority to these transactions, through the customary notion that they are the owners of the land. The chiefs are closely connected with national elites, and many prominent politicians originate from chiefly families. It is argued that current reforms strengthen the process of private acquisition of land rather than the user rights of smallholders and their ability to resist expropriation.

Keywords Land administration · Customary land · Traditional authority · Community development · Ghana

1 Introduction

Recent governance reforms in Ghana strengthen the role of traditional rulers in land management and local development. While there is a trend towards strengthening customary African land tenure systems within the context of recent governance reforms, in Ghana, this is a product of a much longer history than the introduction of liberal market reforms. Chiefs played an important role in local administration

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under colonial rule. This resulted in much local resentment and fuelled the anti-colonial independence movement. However, following independence an initial hesitant attempt to curb chiefly power and instigate more popular democratic systems of local governance, the Ghanaian state reverted to strengthening the role of chiefs in local development and land administration from the 1970s onwards. This chapter examines the various factors that have shaped this resurgence of chiefs and the political alliances that lie behind the promotion of chieftaincy in modern administration. This partly lies in the strength of states and the power of their rulers in the pre-colonial Gold Coast, but also in the close ties that emerged between chiefly families and mercantile trading families, which has come to define the characteristics of the national elite. The desire of the state to strengthen private property rights and agricultural commercialisation has also resulted in the promotion of chiefly institutions in land markets. Chiefs are important in the emergence of private property since they are recognised as custodians of the land, who have rights to sell land and to issue land documents.

This chapter traces these developments historically, charting the evolution of the political alliances that shape contemporary land policies. The next section examines contemporary discourses about chiefs in governance and land administration. This is followed by an investigation of the emergence of land commodification and commercial agriculture in the early nineteenth century and within the colonial period. The fourth section focuses on reforms of chiefly administration during the early independence period and the resurgence of chiefs after the overthrow of Nkrumah. This also examines the role of chiefs during the 1970s in attempts to promote privatised (but national) commercial agricultural development. The final section examines the strengthening of chiefs in the context of market liberal reforms and manifestations of this in both the forest and land sectors, arguing that these have been heavily influenced by pressures to promote capital accumulation and commercialisation rather than the goals of addressing inequality and community participation.

2 Discourses About Chiefs and Land Administration in Ghana

Contemporary Ghanaian policy frameworks accord a prominent place to chiefs in governance and community development (Ray 1996; Bofo-Arthur 2003; Schramm 2004; Abotchie et al. 2006; Bob-Milliar 2009; Taabazuing et al. 2012; Owusu-Mensah 2013; Neusiri 2014). The importance of chiefs is articulated within the 1992 National Constitution, which recognises chiefs as the legal custodians of land and natural resources, with rights to transact and gain specified shares of royalties from market sales of these resources.

Chieftaincy has been important in state governance since the colonial period when chiefs were incorporated into local administration, given powers over land administration and allowed to create local byelaws. But during the late colonial

period and early independence period, there was significant social disquiet with the position of chiefs, and popular social demands to curtail the despotic power chiefs had gained under British indirect rule. This resulted in chiefs becoming the focus of protests against colonial oppression (Simensen 1975; Rathbone 1993; Asiamah 2000). In the post-war period, the Nkrumah-led Convention People's Party (CPP) took up popular protests against chiefs. As Amamoo (1958, 99) commented:

Many people were beginning by the end of 1950 to associate the chiefs with British rule. The situation was worsened by the rather too close friendship between some of the chiefs and the British officers, by a statement from Nkrumah to the effect that reactionary and other chiefs who refused to move with the people would be destooled, and by spasmodic waves of 'destoolment' of chiefs which swept the country between the period 1949 to 1952. The chiefs, therefore, felt their position was at stake, and their institutions in danger of being abolished.

Following independence, the CPP attempted to curb the powers of chiefs and create a more democratic process of elected local government. But the CPP government had a somewhat ambivalent and pragmatic position towards chiefs, cultivating the support of chiefs who were favourably disposed to its political programme, while curbing the powers of particular chiefs that were sympathetic to the main opposition party. Thus, the early attempts to control the revenues of chiefs from lands were targeted against specific chiefs who were supporting the main opposition party, before being later extended to all chiefs. Rather than abolish customary privileges, the government vested these in the state to manage on behalf of chiefs (Amanor 1999; Rathbone 2000). As a result of this, no comprehensive rural social reform programme was initiated, including land reform, although piecemeal legislation was introduced to control what were considered to be excesses, such as transmuting rents collected by chiefs from migrant farmers on sharecrop arrangements into a monetary rent.

Following the overthrow of Nkrumah by a US-backed coup d'état in 1966, the powers of chiefs began to expand both in local government and control over natural resources and land. During the 1970s, chiefs began to be cultivated in national development and to play an important role in the expropriation of land for the 'national interest' and in the name of development. During the 1990s, when good governance reforms were implemented, chiefs were already playing a prominent role in land administration and rural governance. Hence, chiefs were easily inserted into the agenda of building good governance, civil society, and community participation in development. International development discourse about good governance has facilitated the expanding role of chiefs in rural development, since this was seen to contribute to the neo-liberal agenda of rolling back the state. The good governance discourse downplays the strong historical linkages between state and chiefs from the colonial times in the expropriation of land to support foreign investment, state enterprises, and the promotion of commercial agriculture. Chiefs are represented as an essential part of civil society, representing the interests of the community against the state of commercial farmers and the expropriation of land to facilitate these developments. However, chiefs played an important role in colonial rule and in the commodification of land in this period. The next section examines development

within land markets and land administration within the nineteenth century and the colonial period.

3 Modernisation and the Commodification of Land in the Nineteenth Century and Colonial Gold Coast

By the early nineteenth century, a process of modernisation became established on the Gold Coast. Oil palm, wild rubber, and kola exports, alongside gold, became major features of economic life, integrating the Gold Coast into the world economy. An indigenous merchant class and intelligentsia prospered. The various indigenous states along the coast and its hinterland allied with Britain, Holland, and Denmark to support the development of a free trade protectorate and modernisation in the early nineteenth century (Kimble 1963) and sought to free themselves from Asante overrule. In the forest hinterland, the Asante Empire also became subject to modernising reforms and tensions arising from the emergence of a merchant class who felt their accumulation of wealth was being hindered by taxes imposed by the rulers of Asante (Wilks 1993). By the late nineteenth century, there was increasing dissension within the Asante Empire; provinces in the south broke away to become part of the Gold Coast free trade protectorate, and northern provinces rebelled against the extraction of tribute (Wilks 1975).

In the early nineteenth century, land sales began to emerge in the oil palm producing districts in the south (Amanor 2010). By the late nineteenth century, cocoa replaced oil palm as the major export crop, and cocoa farmers began migrating deep into the forest interior, purchasing large tracts of land (Hill 1963). In the late nineteenth century, there was also a gold boom that resulted in a spate of land sales for mining. This ultimately led to the British imperial invasion of Asante, which arose in the context of British intelligence fears that Asante was about to sign an economic treaty with France for exploitation of gold (Wilks 1975).

With the invasion of Asante, Britain attempted to transform the southern protectorate into an imperial British colony and to place the administration of land under the British Crown. This met with considerable resistance from the Gold Coast elites and chiefs organised under the Gold Coast Aborigines Protection Society (Kimble 1963). But British capitalist investment in Africa proved to be disappointing, and the structure of colonialism transformed from one of constructive imperialism, based on opening up the interior for investment and conquering African polities, to indirect rule (Cowen and Shenton 1996). Indirect rule was based on a highly conservative administrative structure, which sought to prop up the privileges of traditional rulers, so long as these were integrated with the colonial objectives of promoting export crop production, tax revenues, and the creation of migrant wage labour (Phillips 1989). Indirect rule was justified in terms of protecting the social fabric of society from the disintegrating forces of the market, and consolidating the power of chiefs under colonial governance was a central objective.

On the Gold Coast, land in the south was placed under the administration of paramount chiefs. However, in the northern territories, where many societies had no central political authorities, land came under the colonial administration. In the north, the objective was to attempt to create paramount chiefdoms as in the south, and within non-centralised states, chiefs were often created and appointed by the colonial administration (Grischow 2006). The north was integrated into the colonial economy as a supplier of labour to the south, and attempts were made to thwart its development and capital accumulation (Konings 1986).

In the south, the alliance with chiefs served to marginalise the Gold Coast merchant bourgeoisie, who had large economic interests in land transactions with foreign capital, interests that had been threatened by the colonial attempt to control land (Grischow 2006). By placing land under chiefs, the colonial administration enacted a land policy based on a notion of customary privilege, in which chiefs were designated as the custodians of land. As the custodians, they held allodial rights to land, and this gave them the sole right within the community to engage in land sales and to transact concessions with foreign capital. The rights held by their subjects were user rights. This framework ultimately derived from a dogmatic framework of what constituted communal land tenure within the British Empire emanating from the Privy Council in London, rather than from the actual lived experience of African societies (Cowen and Shenton 1994). This was, however, based on a muddled framework, since the allodial rights of chiefs were defined as ownership rights bestowing the holder the right to sell the land, thus placing customary and communal tenure rights within the ambit of a highly developed market economy. It ignored the social hierarchies that had defined relationships between nobilities and peasants in African pre-colonial state formations, which included various forms of slavery, extraction of tributes, fealty, and sharecropping arrangements, which went well beyond chiefs acting as custodians of community interests. Many of these relations continued to exist under colonial rule and be exploited by colonial administrations to enforce the extraction of cheap labour and the enforcement of export crop production (Grace 1975; Phillips 1989; Lovejoy and Hogendorn 1993). The framework of customary land tenure also ignored the historical development in the Gold Coast; its integration into the world economy as a producer of export crops before colonial rule; and the social flux and transformations that had emerged from this, including migrations of farmers investing in agriculture, land, and hired labour (Hill 1963).

The Akyem Abuakwa traditional state provides a good example of the contradictions that were evident in the framework of indirect rule. Its paramount chief (*Okyenhene*) shared a close relationship with the colonial administration, which bestowed a British knighthood upon him. The Akyem Abuakwa state emerged in the eighteenth century when they defeated the Akwamu rulers of the area. But the Abuakwa were barely able to consolidate power before the Asante defeated them. The consolidation of the control of the *Okyenhene* over Akyem Abuakwa only occurred under colonial rule. The *Okyenhene* used his close ties with the colonial administration to refashion political institutions within Akyem and to shift the control of customary land from the various town chiefs to the paramount authority (Rathbone 1993).

During the early twentieth century, Akyem Abuakwa was the leading cocoa production area in the Gold Coast. Initially, the main cultivators of cocoa were migrant capitalist cocoa farmers from the south-east who invested in the purchase of large tracts of land within Akyem (Hill 1963). The development of cocoa production in Akyem and the attempts of the *Okyenhene* to control economic development and land resulted in considerable social unrest. This led to an attempt by Akyem citizens to overthrow him, which was only averted by the colonial authority sending troops to defend the *Okyenhene* (Simensen 1975; Rathbone 1993; Addo-Fenning 1997).

The development of cocoa resulted in profound social transformations. Large areas of land were sold to enterprising migrant cocoa farmers. Large cocoa farmers hired migrant labour. Many poorer migrant farmers acquired lands on sharecropping contracts from chiefs and large landowners. The cocoa sector was characterised by complex patterns of social differentiation, which was not reflected in the governance structure of indirect rule. Many towns significantly expanded during the colonial period with large migrant populations that were not represented within the structures of indirect rule, which was rooted in notions of preserving tradition and customary institutions (Rathbone 1996; Amanor 2001). The notion of a timeless traditional society was at variance with the complex and chaotic history of the Gold Coast in the nineteenth century and the economic development that had occurred prior to the imposition of colonial rule. It did not account for the fluidity, mobility, accumulation of capital, and class divisions that accompanied the creation of an economy based on export crops.

The depression of the 1930s and the war economy led to widespread social unrest in the Gold Coast, which flared up in the 1948 boycott of European imports, demonstrations led by ex-servicemen from the Second World War, demanding pensions, and riots as the colonial administration suppressed demonstrations with violence (Bob-Milliar 2014). This led to the development of radical nationalist movements demanding independence. The Watson Commission of Enquiry into these disturbances found a deep dissatisfaction among Gold Coast citizens with chiefs and their autocratic rule (Amanor 2001). The growing sentiments for independence, recognition by the colonial authority of the woeful inadequacies of indirect rule, and the need to cultivate a professional-based elite paved the way for the transition to independence, which began in the 1950s with local government reforms that introduced locally elected councils in which chiefs could only now nominate one third of the members (Crook 1986).

4 Land and Chiefs in the Early Independence Period

4.1 *Reforming Chieftly Institutions in the Early Independence Period*

Two main parties contested elections in the transition to independence. The United Gold Coast Convention Party (UGCC) was formed around a coalition of the Gold Coast elite, intelligentsia, and prominent chiefs. The more radical Convention Peoples Party (CPP), led by Kwame Nkrumah, was based on a broad popular coalition, of workers, farmers, traders, and aspiring businesspeople who had been frustrated by colonial rule. The CPP was more successful in rallying the populace and won the elections. The opposition subsequently reorganised around the National Liberation Movement (NLM), founded by Baffour Akoto, the chief spokesperson (*okyeame*, usually rendered as linguist) of the Asantehene, and was led by the intellectuals J. B. Danquah, a brother to the *Okyenhene*, and Dr. Kofi Busia from the Wenchi royal family. The political programme of the NLM opposed centralisation and advocated the continuing role of traditional authorities in national governance (Amamoo 1958; Rathbone 1968; Allman 1993; Asamoah 2014).

Once elected to power, the main development objectives of the CPP were to promote industrialisation, diversify the economy away from cocoa, and increase food production through a policy of modernising agricultural production. These agricultural policies were justified by the large volume of import of food and vegetable oils that had grown in the late colonial period. Agricultural modernisation focused on promoting mechanisation, state farms, and farmer cooperatives, while leaving the cocoa economy within the forest zone intact. Revenues gained from the export of cocoa were used to promote state agricultural modernisation and import substitution industrialisation. As a consequence of this, there was little attempt to reform and modernise production relations within the cocoa sector of the southern forests. The main focus was on opening up a new frontier of agricultural modernisation in the savanna area of the north and in transition zone of Brong Ahafo. These were areas that had been neglected by the colonial authority since they were located beyond the main export crop zones (Konings 1986). They had low population densities and large areas of unoccupied land that could be brought into production without expropriating large numbers of peasant farmers.

Although the anti-colonial movement had been hostile to chiefs, this became tempered once the CPP gained power. There was no attempt to introduce a programme of radical land reform. The main land tenure reforms were concerned with transforming sharecropping arrangements between chiefs and migrant farmers into monetary rents, and assigning oversight control over the collection of land revenues to the state. Early policy interventions focused on controlling the revenues of chiefs aligned with the NLM opposition, who were perceived to be hostile to the CPP. Thus, in 1958, the Ashanti Stool Lands Act and Akim Abuakwa (Stool Revenue) Act were introduced to place the collection of stool revenues under the state, with the intention of preventing these being used to fund the NLM. In 1960, the Stool Lands Act extended

these arrangements to all customary stool lands (Amanor 1999). The main thrust of land policy was to use the claims of chiefly control over natural resources to facilitate greater state control over these resources and the expansion of an eminent domain—the right of the state to alienate land in the national interest for national development.

This was most evident in the timber sector, which had gone through a major process of expansion in the post-war period; newly available timber trucks on the Gold Coast enabled timber to be transported from the forest interior by road. The expansion of cocoa farming into the Western Region during the 1950s provided new potential windfalls of timber in newly cleared forest areas. The rich pickings that could be gained from the sale of timber encouraged the chiefs in the Western Region to sell off large tracts of land to migrant farmers, while claiming rights to the timber resources on the land (Amanor 1999, 2005). This was in contrast to the situation in the Eastern Region and Ashanti, where farmers had established rights to the timber on their farmland, which they transacted with wood sawyers. In 1959, the government enacted a Timber Lands Protection Act that prevented farmers from clearing forestlands they had acquired until licensed timber corporations had felled all the timber. This new legislative framework for timber was only applied to new frontier areas in which cocoa farms were being established in the Western Region and not to the established farming areas in the Eastern Region and Ashanti, where farmers continued to transact and fell timber trees they had preserved on their farms until the 1990s (Amanor 1999). These changes in tree tenure arrangement facilitated the expansion of timber extraction by the corporate sector, at the expense of the informal sector, while enabling chiefs to gain access to the royalties for timber. The new economic interests in timber that chiefs acquired served to erode the rights of farmers to timber. This transformation of timber ownership was buttressed by the 1962 Timber Concession Act, which vested the customary rights of chiefs in the state to manage on their behalf, while no previous legislation had defined these customary rights of chiefs in timber.

The overall thrust of land tenure relations under the CPP administration did not radically reform existing tenure or challenge the claims of chiefs on land. Rather, the state used the privileges of traditional authorities to strengthen its access to and control over resources by claiming eminent domain and a right to manage the natural resources of traditional authorities on behalf of the chiefs.

4.2 The Rise of Commercial Farmers in the 1970s and Its Impact on Land Relations

In 1966, the CPP was overthrown by a military coup supported by the US. Elections organised in 1968 brought the Busia-led Progress Party (PP) to power, based on the alliance between business people and dominant chiefs that had characterised the NLM. After the 1966 coup, the role of traditional authorities in local government was

once again strengthened, and chiefs were given the power to appoint one third of local government representatives (Ayee 1994; Taabazuing et al. 2012). Chiefs also experienced fewer fetters over their control of land and gained greater freedoms to extract revenues from land. Restrictions on chiefs imposing sharecropping arrangements on migrant tenants were lifted.

The PP continued to focus on promoting agricultural modernisation within the northern and transitional zones, but with a much greater accent on promoting private commercial farms rather than state farms. The farmer cooperatives were disbanded. However, the PP government was short-lived, and its failure to deal with a mounting economic crisis resulted in another coup d'état, which brought the Acheampong-led National Liberation Council (NLC) and Supreme Military Command (SMC) to power from 1971 until 1979. The main agrarian focus of the NLC continued to promote a class of agrarian entrepreneurs in northern Ghana, which were firmly rooted in the state bureaucracy and military, who sought to expand their personal investments into the agricultural sector (Konings 1986).

Throughout the independence period, close family ties became consolidated between leading businesspeople, top bureaucrats, and chiefs. The royal families often selected chiefs from among their most successful sons who were businesspeople and professionals in their own right. Successful businesspeople, professionals, and intellectuals often sought chieftaincy titles to show off their success in life, but also to gain control over land and other valuable resources. This has often led to a narrowing of chiefly lineages, with those lineage branches that were not economically successful fading away (Arhin 2001). By the 1970s, the alliance between state, elites, and chiefs became more evident within the agricultural sector, as the state and chiefs conspired to alienate land in the 'national interest' to aspiring commercial farmers (Konings 1986). This was particularly evident in northern Ghana, where the state encouraged investments by southern elites in rice farming and provided aspiring commercial farmers with soft loans and subsidised inputs and machinery. The chiefs readily provided commercial farmers with access to large areas of land. In the north, several chiefs took advantage of their control over land to actively engage in commercial farming. Konings (1986) provides very clear examples of chiefs that straddled the worlds of traditional landowner and commercial farmer. For instance, the paramount chief of Navrongo had trained in Russia as a soil scientist. In addition to his chiefly functions, he cultivated between 800 and 1000 acres of land and had acquired seven tractors and two combine harvesters with loans from Ghana Commercial Bank (Konings 1986).

The important role that chiefs played in opening up commercial agriculture in northern Ghana and in collaborating in the appropriation of land for commercial farmers from the south gave them increasing visibility in policy and created the conditions for the 'return' of land to the chiefs in 1979, ending the colonial legacy that had created two distinct land regimes in Ghana, in which land was vested in the state on behalf of traditional rulers and communities in the north, and in the chiefs in the south. While this ended the inconsistencies between land policy in the north and south, this was to open up conflicts within the north between different polities about who really owned the land, given that in many areas chiefs had been a creation of the colonial government. This led to conflicts between chiefs and earth priests disputing

ownership of the land (Lund 2008), but also violent ethnic conflicts over which people controlled the land (Tsikata and Seini 2004). The most serious of these conflicts was between the Konkomba, Nanumba, and Dagomba people, which erupted in the 1990s into armed conflicts around customary services performed by Konkomba to their overlords and the attempts of the Konkomba to fashion for themselves a newly created chieftaincy (Brukum 2006; Kachim 2020).

By the mid-1970s, the commercial rice-farming sector entered into crisis. As a result of failing yields, rice farmers were plagued by debt and were unable to repay their loans, which resulted in a banking crisis in Ghana. As a result, by the mid-1970s, the military government transformed its agricultural policy away from a focus on supporting commercial farmers, towards government sponsored outgrower or contract farming schemes with smallholder farmers, a mode of agricultural development that was been widely promoted by the World Bank (Konings 1986; Daddieh 1994). Several irrigation and oil palm projects were instigated that involved outgrower type arrangements with smallholders, in which the farmers received help with farming and infrastructure services, but were contractually obliged to provide their yield to government parastatal marketing corporations. These outgrower schemes required acquisition of large areas of land by the state and displaced many smallholders. Chiefs often became important in identifying suitable areas to expropriate and played an important role in the logistics of transferring land ownership. The chiefs were lured by promises of payment of compensation for the alienation of the land and royalties to expropriate the land. Farmers were usually compensated only for the crops on the land, since the notion of the allodial rights of chiefs was used to deny them actual compensation for the land they had acquired. But this often led to resistance within communities, refusal to be removed from the land, and legal contestations, which significantly slowed down the process of transferral of landownership and establishment of commercial operations. For instance, the Ghana Oil Palm Development Corporation (GOPDC) acquired 9000 ha of land, which was originally cultivated by 7000 farmers. After the acquisition, some of the farming communities affected by dispossession petitioned the Lands Department, while other farming communities refused to allow GOPDC officials to enter their land. Other farmers who were effectively dispossessed took to squatting in other parts of the GOPDC land. As a result of these actions, GOPDC was only able to use about 3000 ha of the lands they had acquired (Amanor 1999).

During the late 1970s, the economic crisis in Ghana intensified, leading to a coup d'état of junior officers under the leadership of Jerry Rawlings in 1979, who sought to rid Ghana of corruption before returning the country to elections. In a chaotic period, elections were followed by another coup d'état, which brought Rawlings back to power as leader of the Provisional National Defence Council (PNDC) at the end of 1981. Although the PNDC government initially articulated a radical anti-imperialist ideology, by 1983, it had entered into negotiations with the International Monetary Fund (IMF) and implemented a structural adjustment programme, before reintroducing parliamentary democracy. The PNDC transformed itself into the National Democratic Congress (NDC) and won the first two elections.

The adoption of structural adjustment effectively ended government experiments in agribusiness and support for a class of commercial farmers, as IMF conditionalities called for the privatisation of the state agricultural sector and removal of agricultural subsidies. Agricultural corporations such as GOPDC became privatised and acquired by multinational agribusiness corporations.

5 Governance Reforms, Civil Society, Traditional Authorities, and Land Markets

5.1 Liberal Reforms, Civil Society, and Strengthening of Traditional Authorities

Aside from curbing state investments in production, the structural adjustment measures sought to promote civil society participation in economic development to displace state social welfare provisioning, particularly in sectors that were not attractive to private investors. Civil society interventions in the economy had expanded prior to structural adjustment, as the state increasingly became bankrupt during the mid-1970s and unable to support development initiatives. This was reflected in the rapid rise of hometown associations, which collected funds for infrastructure development within the areas from which urban migrants originated. Since these were based on ethnically defined localities administratively associated with particular traditional authorities, these civil associations tended to seek recognition from the chiefs. This further reinforced the political significance of chieftaincy in local development. Many of the non-governmental organisations (NGOs) that became established during this period also formed close relations with chiefs and sought the patronage of traditional authorities to mobilise communities for development initiatives (Hagberg 2004; Kendi and Guri 2007). NGOs such as the Centre for Indigenous Knowledge for Organisational Development (CIKOD) developed a specific mandate to work through chiefs to facilitate development (Kendie and Guri 2007).

International financial institutions (IFIs) have also provided significant funding for chiefs to launch development initiatives. The World Bank has entered into a development partnership with the *Asantehene* (the king of Ashanti) and provided support to several projects initiated by this traditional authority from the 1990s. These projects include an educational fund, a health programme, and the Golden Development Holding Company, which seeks to promote economic development in Asante (Boafo-Arthur 2003). In the Juaben area of Asante, the *Juabenhene* (Juaben paramount chief) has also played a leading role in promoting development initiatives. In the early 1970s, he initiated a Five-Year Development Plan and summoned his subjects to contribute communal labour for the construction of public toilets and drains. During the economic crisis of the early 1980s, the *Juabenhene* recruited members of the business and professional elite in Ghana to contribute towards the development of Juaben and invested in palm oil processing and rural banking. The

Juabenhene established a large oil palm plantation on Juaben land during the 1970s and acquired a divested state oil palm mill in the 1980s. He established an oil palm outgrower scheme among his subjects, with funding from the World Bank (Berry 2013).

While IFIs and donors have promoted traditional authorities as part of civil society initiatives of rolling back the state, the Ghanaian state has played an important role in giving traditional authorities a greater role in the administration of land and natural resources and working with international development and financial agencies to initiate projects and institutional reforms to achieve these ends. This can clearly be seen in both the forest laws and policy and the creation of customary land secretariats (CLS) enacted in the 1990s and early 2000s, which are examined below.

5.2 Forestry Governance and Collaborative Forest Management

The liberal market reforms introduced in Ghana in the 1990s sought to dismantle the economy of import substitution manufacturing and encourage export-oriented production of primary commodities. Timber was identified as one of the most promising sectors, and donors made large loans available for private sector development of logging companies. The government actively promoted the development of sawmills to foster value-added processing. Before liberalisation, the export timber sector had collapsed during the 1970s. The domestic market was supplied by informal sector sawyers, who were usually based in rural areas and rural towns. With the wide availability of chainsaws, these sawyers used chainsaws to fell and process lumber. They purchased the trees from farmers on whose land the timber trees were found. The chainsaw operators also organised into an association that was affiliated to the Trade Union Congress and represented its members to the Forestry Department with which it worked out arrangements for formally acquiring recognised rights in timber—although many chainsaw operators remained outside the association. The expansion of sawmills rapidly led to a larger processing capacity than existing timber stocks in forest reserves. To ease pressure on the forest reserves, the Forestry Department sought to secure timber for concessionaires in on-farm areas, which were largely exploited by chainsaw operators. To contain the chainsaw timber, the Forestry Department sought to criminalise their activities and undermine the rights of farmers to sell timber on their farms. This was partially achieved by strengthening the role of chiefs in natural resource management and by securing rights for timber by chiefs at the expense of farmers. The rights of chiefs to timber royalties were firmly implanted within the 1992 constitution, which specified that 20% of royalties accrued to paramount chiefs and 25% to the town chiefs under whose lands the timber lay. Significantly, there was no mention of any rights of farmers to natural resources. The 1994 Forest Policy removed the management of off-reserve timber resources from district councils to the Forest Service, declaring timber to be a strategic natural

resource that should not be decentralised. This in effect closed down the circuits through which chainsaw operators were able to gain permits for the felling of trees on farms from district authorities (Amanor 2005; Hansen et al. 2009; Marfo et al. 2012).

After gaining control over off-reserve trees, the Forestry Service introduced a national ban on the use of chainsaws to process timber, criminalising the activities of farmers in hiring chainsaw operators to process timber on their farm and chainsaw operators to fell trees and convert them into lumber. This in effect monopolised farm timber as a resource for timber concessionaires, who now had rights to encroach into farms and fell timber. While the 1994 Forest Policy claimed to be based on participatory community forest management, it focused on promoting the privileged rights of chiefs to natural resources rather than the rights of farmers. It drew upon the framework of the 1962 Concession Ordinance, which vested timber trees within the Office of the President on behalf of the chiefs and the Timber Land Protection Ordinance of 1958, which was used to promote salvage felling in forest areas acquired by cocoa farmers in the Western Region, before they began farming. However, in reality, timber trees found on farms were never vested in chiefs—the timber claimed by chiefs in the new frontier areas of the Western Region was located in uncultivated forests before they were converted into cocoa farms. In the majority of the high forest zone, on-farm timber was exploited by the farmers who had preserved and tended them on their farms. These arrangements were described by Foggie¹ and Piaseckie (1962, 238):

The small pitsawyer gang which buy a single tree saw it and sell the produce. For the latter, no capital except axes and saws and the picks and shovels to dig the pit may be required, as the tree may occasionally be obtained on a share basis, one third of the planks produced going to the owner and two thirds to the sawing gang.

By the mid-1990s, about 80% of timber exports originated from timber extracted from farmlands. This massive exploitation of the timber resources in farming areas by timber companies led to the rapid depletion of timber trees in farming areas. As the main timber species became scarce, the timber sector began to exploit sub-optimal species, including *Ceiba pentandra*, which was frequently preserved by farmers since they were considered to have a beneficial effect on the fertility of soils.

Although the new forest policy was articulated as promoting community participation in the management and conservation of timber, these arrangements focused on chiefs as custodians of the community. An alliance was built between timber companies, the state, and traditional authorities to secure cheap timber resources for the export trade, in which chiefs gained rents through royalties. This in effect enabled timber to be sold on farmlands without any payment to farmers beyond compensation for the damage to farms created by the felling of timber trees.

¹ Alistair Foggie was at the time of writing this article Conservator of Forests in Ghana.

5.3 *Land Administration Reforms and Customary Land Secretariats*

As private commercial estates and agribusiness expanded, the constraints of alienating land through eminent domain became increasingly evident, as reflected in community resistance and the slow pace of registering these lands. This became even more acute as privatisation was introduced and foreign capital began to acquire land. The decline of large commercial agricultural estates also resulted in transfers of land and disputed claims over ownership, which pointed to the inadequacies in the framework for land administration. The growing demand for land from the 1970s required a more efficient framework for managing land and for encouraging and guiding the formation of land markets.

The existing institutional structure for land management did not facilitate the emergence of regulated land markets. Commercial land acquisition was a tedious process, marked by numerous negotiations of contested ownership and user rights. By the late 1980s, there were over 16,000 unresolved land cases within the courts. The institutional structure for land management was poorly developed; land administration was highly centralised with a lack of a regional presence. There were only three land titling registers in Accra, Tema, and Kumasi (Kassanga and Kotey 2001).

In the late 1980s, the government sought to address these deficiencies. It enacted the Land Title Registration Act, which prescribed compulsory registration of land as a way of encouraging the development of more comprehensive land titling and information systems. While it was hoped that the recognition of title and threat of loss of rights to land through failure to register land would promote a comprehensive land titling scheme, this failed to materialise. Twenty years after the enactment of the Land Title Registration Act, fewer than 112,000 applications had been received, and fewer than 17,000 titles had been issued (Dowuona-Hammond 2003).

During the early 1990s, the government developed a new approach based on decentralising land administration and involving traditional authorities in the administration of land. This has been implemented through the World Bank sponsored Land Administration Project (LAP), initiated in 2003. A central element in LAP has been the setting up of Customary Land Secretariats (CLS). The CLS are embedded in the offices of traditional authorities. The main functions of the CLS are to maintain accurate and up-to-date land records, provide information to the public about ownership rights within the traditional area, maintain records of all fees and charges associated with land grants, and liaise with district councils and public sector land agencies to harmonise information and planning. The rights registered by individual CLS are recorded in a public national database. LAP and government agencies provide technical backstopping and training to build the capacities of these CLS to manage information transparently, rather than intervene directly in the administration of land (Ubink and Quan 2008). The CLS were originally set up on a pilot basis. By 2018, there were 88 CLS in existence, which had assigned 70,000 leases and registered the rights of 36,178 beneficiaries (World Bank 2018). The CLS are established by tender, in which chiefly offices submit a proposal for funding and approval, which is

evaluated on the basis of the capacity of the chiefly authority to manage land and the demand for land registration among the citizens of the area. This in effect results in CLS emerging in areas where there are significant transactions in land and needs to document these transactions rather than in response to stabilising and strengthening the land rights of the rural poor.

In many urban areas, traditional authorities maintain services of surveyors who draw up maps and site plots for lands that are sold. These site plans are signed by the traditional authorities and are recognised as legally valid documents by the state land services, which can be used for purposes of formal land registration and titling. During the 1990s, several traditional authorities in Kumasi, Kyebi, and Gbawe in Accra had established institutions and clearly defined modalities for land transactions in their areas (Kasanga and Kotey 2001; Ubink and Quan 2008). However, these developments were largely concerned with ensuring the confidence of buyers in land transactions and not the rights of poor farmers. These land transactions involve the transfers of significant amounts of money, and the recipients of the land documents are usually the wealthier classes of society.

The land rights that are established in these transactions are ambiguous, since they are couched in terms of trusteeship and land grants. The transactions are also defined by the state as leaseholds of up to 90 years rather than the acquisition of freehold. Rural land sales for agricultural land are also subject to considerable reinterpretation of rights (Ubink and Quan 2008). Boni (2005) shows how in the Western Region land rights acquired by migrant farmers have been transformed over time as the demand for land increases. Initially, migrant farmers were provided with gifts of land. As demand for land increased among migrants, land sales emerged. As land became increasingly scarce, land sales were converted into payments to hold land under sharecropping contracts. The new terms of tenure that were enacted were made to apply retrospectively to the earlier acquisitions of land by migrants.

These inventions of tenure arrangements do not only apply to migrants attempting to acquire land, but also to locals who may find their land expropriated. Ubink (2008) records that in peri-urban areas of Kumasi, chiefs formulated new regulations in customary tenure, which stated that when residential areas expanded into farming areas, the land reverted back to the chief. This in effect enabled chiefs to appropriate the land of farmers and sell it at high prices as residential property. In northern Ghana, Yaro (2012) argues that the flexibility of customary land tenure has enabled traditional authorities to reinterpret customary laws to fit modern conditions. In the process, these traditional authorities have used the opportunity to enrich themselves by dispossessing peasant farmers of their lands and selling them to wealthy land investors and commercial farmers. They have found support from within state institutions that have the mandate to promote stable individual property rights, commercial markets in land, and cost recovery in state agencies from land revenues.

Rather than forming a stable system of protecting user rights in land, the strengthening of customary land tenure has upheld the privileges of chiefs in selling land and gaining revenues from sales. This serves to legitimise the appropriation of land and its conversion into individual property rights that can be registered. It establishes the rights of chiefs to own, appropriate user rights, and sell land and, in the process,

confers individual property rights on those who purchase the land. Thus, the central role of chiefs lies not in protecting the user land rights of community members from encroachment by the market, but in creating the basis for individual property rights and land markets, by providing land purchasers with lease documents that can be registered for land titles.

6 Conclusion

Contemporary land reform in Africa has emerged within the context of good governance reforms. These ostensibly seek to create more efficient land markets and address equity issues by decentralising land administration to the community level and to customary institutions (Toulmin and Quan 2000). Nevertheless, in Ghana, the movement towards strengthening the role of customary authorities in land management has a much longer history than the introduction of governance reforms in the 1990s. It emerged in synergy with the attempts of the state to promote a class of commercial farmers, rooted in the political elite, urban bureaucracy, and merchant classes in the 1970s. Following the hesitant attempts of the Nkrumah regime to reform chiefly governance of land as part of a much-needed programme of social transformation following colonial rule, there was a distinct movement back to consolidating the control of chiefs over land, and this facilitated the access of commercial farmers to land, which they gained through the interventions of chiefs—several of whom also developed personal interests in commercial agriculture. This became intensified after the introduction of governance reforms in the 1990s. But the increasing decentralisation of land administration to chiefs has not resulted in a more inclusive development that protects the rights of small farmers. These developments have rather strengthened the alliance between the Ghanaian state, traditional rulers, national investors, and foreign capital, which emerged in the 1970s around the promotion of commercial rice farming in Ghana and agribusiness. In this alliance, the role of chiefs is to facilitate the commodification of land and the secure transfer of land to investors. Chiefs have critical economic interests in this process in land revenues that only materialise through the market transactions of local resources. The outcomes of this process result in a scramble for land within rural farming areas, speculation in land, and the increasing allocation of land to foreign investors and national commercial and medium-scale farmers, echoing the earlier development of commercial farming in the 1970s, which has been dismissed by protagonists for liberal market reform as reflecting urban *bias* (Lipton 1977; Bates 1981). These reforms have led to an expansion of the land market, but have failed to protect the access of the rural poor to land.

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‘We Owned the Land Before the State Was Established’: The State, Traditional Authorities, and Land Policy in Africa



Horman Chitonge

Abstract This chapter looks at the land policy reform challenges in Africa, focusing on the struggle between the state and traditional leaders over the control of customary land. The governance of customary land is one of the most contentious land issues in Africa. As many African governments seek to reform land policies in order to respond to the challenges of population growth and urbanisation leading to the increasing demand for land, the proposed reforms are often challenged by traditional leaders who see the reforms as a ploy to undermine their authority over customary land. It is argued in this chapter that, while the state sometimes attempts to co-opt traditional leaders into cooperating with it, this alliance often does not hold for long, especially when traditional leaders sense that their interests are being undermined by proposed land policy reforms. Drawing from the Zambian experience, the chapter shows that although the state, as a sovereign entity, has the authority over all land under its territory, the situation is complicated by the fact that traditional leaders also assert authority over customary land. This situation sometimes leads to contestations that often frustrate the formulation and implementation of land policy reforms.

Keywords Customary land · Traditional authorities · State · Land policy reform · Contestation · Zambia

1 Introduction

This chapter looks at land policy reforms in Africa, focusing on the interplay between the state and traditional leaders regarding customary land administration and management. This is important because the largest part of land in Africa is still under customary tenure and land policy reforms are now highlighting the need to address

[Note on the chapter title] Chiefs and other traditional leaders argue that the people they govern owned the land before the colonial government established the state. Their claim to land is based on ancestral lineage, which precedes the establishment of the state.

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customary land governance and administration arrangements. Land policy reforms have featured strongly in many African governments since the early 1990s, supported by two related policy agendas introduced during the 1980s as part of the broader strategy aimed at restructuring African economies to promote sustained growth. The first policy reform agenda focused on promoting the greater role of markets in the allocation of resources including land. With specific reference to land, there is a strong belief among international development agencies that customary land tenure, because of its alleged ambiguous (undefined) property rights, has failed to provide security of tenure, which is believed to be a precondition for markets in land to emerge (Feder and Nishio, 1999; Platteau, 2000; Deininger and Feder, 2009). In order to promoting the emergence of land markets to stimulate efficient use of the land, the World Bank and international donors advocated for privatising and titling of customary land (Deininger and Binswanger 1999).

The other policy reform agenda, closely related to the first, was the good governance programme, which was believed to be vital to the successful implementation of the structural adjustment programmes (SAPs) in Africa. Although the good governance agenda was only added later in the mid-1990s after a decade of implementing SAPs, it became a crucial component of policy reforms in Africa as donors realised that it would be difficult for markets to play a major role in society without capable and strong administrative institutions and capabilities. The experience of implementing SAPs during the 1980s made it clear that weak public institutional capacity and poor governance practices negatively impacted on the implementation and outcomes of the recommended reforms (see World Bank 2005).

In the case of land, it was observed that good land governance together with effective public institutions were central to securing land tenure rights and promoting the growth of land markets, investment, and productivity (IMF 1997; World Bank 1992; Deininger and Binswanger 1999; Deininger and Feder 2009). The good governance agenda was framed around promoting the principles of participation and transparency in the administration and governance of land as part of the drive to strengthen democratic governance principles (Amanor 2008). Most African governments embraced and started to implement these policy reforms, primarily to access the much-needed aid from international donors (Chimhowu 2019). A quick look at the land policy reforms in Africa reveals that majority of countries embarked on reforming national land policies and legislation during the 1990s following the advice of multilateral institutions and bilateral donors (Alden-Wily 2003). Donors and other multilateral institutions have remained the major drivers and sponsors of land policy reforms in most African countries even today (GIZ 2018), and their influence on land reforms remains significant.

The land policy reforms that started three decades ago have been on going, though in the later years, the framework and guidelines for reform have been provided and promoted by the African Union (AU/AfDB/ECA 2010). While the donors have been pushing for a pro-market land reform agenda since the 1990s, the implementation of the proposed reforms on the ground has faced many challenges including the contestation of the reforms by traditional leaders and other stakeholders. In pushing for these reforms, the donors and other international agencies assume that since the

state is the sovereign entity entitled to formulate and implementing policy within its territory, if given the incentive (in the form of aid) it would implement the reforms. But the situation on the ground is quite complicated especially when it comes to the sensitive issue of customary land where the state encounters strong push back from those with vested interests. In mainstream theory of the state, the state is ascribed the sovereign right to formulate and implement policy within its boundaries, but when it comes to the issue of land in Africa, it seems that there are competing legitimacies as the case study presented in this chapter highlights.

The chapter looks at land policy reforms in Africa, focusing on the competing legitimacies between the state and traditional leaders over the governance and administration of customary land in particular. While sometimes the state seeks to create alliances with traditional leaders when it comes to the administration of customary land (Amanor 2008), there are cases when the state's interests and views are at variance with those of traditional leaders, leading to contestation. It is argued in this chapter that as the demand for land increases in many African countries due to several factors, including rising population, urbanisation, economic growth, and environmental dynamics, the contest for the control of customary land between the state and traditional authorities should be expected to intensify. This contest, as the case here shows, is not merely a matter of civil society challenging policy reforms; it, in a fundamental way, involves challenging the legitimacy of the state's claim over customary land. The key question is, on what basis do traditional authorities challenge the state's claim over customary land? To get some insight on this question, one has to delve deep into the politics of customary land in Africa.

The chapter presents a case study from Zambia where the process of approving the new land policy has been dominated by strong opposition from traditional leaders, who accuse the state of trying to sideline them. While the state, assisted by the African Union as well as other donor agencies including USAID, World Bank, UN Habitat (AU 2017), argues that the purpose of the reforms is to promote transparency and accountability in the way land is administered, traditional leaders on the other hand have argued that the proposed policy reforms not only undermine their role but endanger their existence. The tension that the proposed land policy reforms in Zambia has engendered became visible in early 2018 when traditional leaders stormed out of the stakeholder meeting meant to validate the Draft Land Policy. Such confrontations are not peculiar to Zambia; they have been reported in many African countries at various times when reforms to existing land policy are perceived to threaten traditional leaders' control over land (Berry 2017; Werner 2018). The state has often accused traditional leaders of being corrupt and lacking transparency in the way customary land is administered, citing the sale of land by some chiefs as evidence (Deininger and Feder 2009, 240; Ministry of Lands 2013).

The chapter is organised in six sections. The next section provides an overview of the politics of land in Africa, drawing from the current debates. This is followed by a brief overview of the land governance arrangements in Zambia. Section 3 provides a brief background to land resources in Zambia, including different categories of land, and how they are administered. Section 4 looks at the proposed land policy reforms in Zambia, presenting the argument of the state for supporting the reforms and the

traditional leaders for rejecting sections of the proposed reforms. This is followed by a discussion of the apparent tension between the state and traditional authorities over the control and administration of customary land. The last section concludes the chapter.

2 The Politics of Land in Africa

Land in Africa, as in many parts of the world, is a critical resource. Consequently, control over land confers power and influence to those who exercise this function. This is one of the reasons why control over land administration has always been a contested terrain. Boni (2008) in his study of land dynamics in Akan region in Ghana shows that the contest over customary land is not just between the state and the traditional leaders; the authority over land of the latter is also challenged by local people. However, the two main contenders over customary land are traditional leaders and the state. Traditional leaders' authority over customary land is often derived from social, cultural, and historical ties to land, with some leaders tracing their claim to land to pre-colonial times, relying on what has been called the 'deeds of the ancestors' (Berry 2008). On the other hand, the modern African state's claim over land is rooted in the formal rules, including the constitution and international law, that accords territorial sovereignty to incumbent states. Thus, when traditional authorities are laying claim to or contesting new rules, policies, and structures over customary land administration, they appeal to the social practice and cultural norms through which land has been governed and shared in the past (Okoth-Ogendo 1989). Therefore, customary land in Africa is an arena where different types of claims converge, drawing from different sources to legitimise the claims.

While the state has the backing of formal law and politically validated processes, traditional leaders have the backing of cultural beliefs, traditional values, lineage narratives, and customary norms. In many rural communities in Africa, traditional leaders' control over land is believed to be stronger and more popular than the state's claim (Herbst 2000; Brown et al. 2016). This is evident in the fact that many rural residents still believe that customary land belongs to the ethnic groups, and that the chiefs and the village heads are the custodians of the land, wielding the power not only to allocate, but also to interpret and adjust traditional practices and norms around land (Blocher 2006). Boni (2008) has, however, contested this view, arguing that the different claims over customary land are validated not by tradition but by what he calls the 'interest driven politics', such that the state can lay claim to customary land when such a move furthers its interest. Traditional leaders do the same.

In the past, the state did not intrude much into the governance of customary land, with most states granting a large margin of discretion to traditional authorities to govern and administer customary land (Bruce 1982; Shipton and Goheen 1992; Lund 1998). But in recent years, as the demand for land grows, we are seeing an increasing trend among many African states seeking to reform customary land practices and governance structures to allegedly ensure transparency, accountability, and good

governance in the management and administration of customary land. On the other hand, traditional leaders perceive these reforms as a threat not only to their power base, but their existence, given that the institution of traditional leaders derive its power and authority from the control over land (Lund 2006; Kabilika 2010). Land being a key resource, it is therefore not surprising that land policy reforms draw public attention in many countries, often leading to contestations (Lund 2006; Moyo 2008). As Nuesiri (2014, 7) observes, the

Struggles for control over and access to nature and natural resources; struggles over land, forests, pastures and fisheries are struggles for survival, self-determination, and meaning. Natural resources are central to rural lives and livelihoods; they provide the material resources for survival, security and freedom.

While the governance and administration of state land are largely clarified and less contested, the administration of customary land is increasingly contested, especially when the state attempts to usurp the authority and control of traditional leaders.

2.1 Chiefs, the State, and Customary Land in Africa

Issues around administration of customary land have been widely discussed in the literature on land and the state in Africa. The large body of literature on this topic supports the view that traditional authorities in their different forms tend to exercise control and authority over customary land even in cases where the state has attempted to usurp their powers (Van Binsbergen 1987; Shipton and Goheen 1992; Herbst 2000; Peters 2004; Boni 2008; Nuesiri 2014; Lund and Boone 2015; Chitonge 2015). However, there have been some analysts who have argued that, in some cases, the state has tactically chosen to forge alliances with traditional authorities in order to exercise control over the rural population (Amanor 2008). In cases where the state forges alliances with traditional leaders, it has been argued that post-colonial African states use traditional leaders in the same way as the colonial governments did through the principle of indirect rule (Bassett 1993; Mamdani 1996; Ntsebeza 2006). Baldwin (2011), in contrast to Herbst's (2000) argument that traditional leaders have amassed power because the state has no capacity to govern Africa's hinterland, argues that politicians deliberately choose to empower traditional authorities based on their political calculations. Boone (2017) has however shown that the state's relation with traditional authorities has been complicated partly by the introduction of multiparty politics and democratisation, which has created spaces where traditional authorities have become major political players due to their influence on the rural population.

While it is clear in this debate that traditional authorities have in recent years reasserted themselves (Amanor 2008; Nuesiri 2014) and are exercising increasingly growing influence in rural Africa, there has been little discussion in terms of what the source of this influence and power is. The dominant literature on the topic explains the power of traditional leaders over land in terms of the weak administrative capacity of the African states, characterised by the inability to project authority and control

to far-flung areas (Herbst 2000). But this explanation would be true if there were no local government structures in rural areas. As things stand, local government structures exist in most rural areas in Africa, parallel with traditional authorities, and the central state can (and does) exercise control through these local structures. Yet, traditional leaders have not only remained popular; they are influential and trusted (Brown et al. 2016; Werner 2018).

When it comes to customary land, traditional authorities have often appealed to what I call ‘soft power’, which allows them to deploy history and culture as a power resource. For instance, traditional authorities in Zambia have argued that the proposed policy is seeking to undermine their role in land administration when in fact their ancestors owned the land even before the state was established. The legitimacy of traditional leaders is asserted not because of the vacuum left by a weak state, but by appealing to ‘the deeds of the ancestors’ as it were. As stakes in customary land rises, traditional authorities have resorted to what Boni (2006) has referred to as the ‘ancestralisation of property’ as the basis for asserting their legitimacy and control over land. In other words, they are using historical precedent and cultural history as the ground for asserting their authority over land (Berry 2008). I argue in this chapter that while the state bases its authority on the principle of sovereignty, which is a constitutionally guaranteed right, traditional authorities use a different route to assert their claim over land, and this leads to a clash because the two contending parties are using different power bases to assert the legitimacy of their claims.

2.2 *Riding on the Democratic Wave*

However, the power base for traditional authorities has been enhanced, since the *third wave of democratisation* in the early 1990s, characterised by the introduction of democratic principles, especially multiparty (competitive) politics, which forces politicians to consider the impact of their actions on electoral votes when engaging with traditional leaders. I would argue that by taking a conciliatory approach to engaging with traditional leaders, politicians are not just seeking to be ‘nice’ to nor colluding with traditional leaders; they do this to advance their own interests. Similarly, the state–traditional leader engagement is not just a matter of the state ceding power to traditional leaders to administer customary land in order to secure the rural vote (Baldwin 2011). African states have sometimes challenged the ancestral rights in land claimed by traditional leaders, using modern law and policy to delegitimise traditional authorities, in order to assert state control (Lund 2006). It would therefore seem that the relationship between the state and traditional leaders when it comes to land rests on a delicately constructed equilibrium. Changes to this finely tuned balance of power in Africa should therefore be expected to be conflict prone, as different actors seek to defend and sometimes expand their control over land (Boni 2008; Lund and Boones 2015).

The state formulates policies in various areas such as education, health, trade, investment, industrial, environment, and housing. Although all these policies may be

contested, the level of contestation is heightened when it comes to land (Berry 2017). This is why the process of land policy formulation and approval takes a long time; some countries that started the process three decades ago are yet to finalise the policy (Alden Wily 2011). Land policy reform in Zambia discussed below is one example of a protracted process that has spanned over three decades, and the final policy has not been approved yet. In the case of land policy, this is not unusual given that the reforms ultimately lead to the reconfiguration of power and, as such, it is expected to be contested. To locate the contest over customary land in its broader context, there is need to analyse the complex state–traditional authorities' relations. What makes this relationship complex is that it is not fixed (cooperation or conflictual); at times, the state adopts a partnership approach (Amanor and Ubink 2008), while at other times, the state adopts a 'gentle subversive' posture, seeking to usurp the powers of traditional leaders in more subtle ways (Lund 2006). The broader context to all this is land governance.

3 Land Governance in Africa

Land governance can be understood in simple terms as the rules and policies that regulate the exercise of power and control over land. What is entailed in land governance is not so much the day-to-day activities of allocating and controlling the usage of land; it is about the rules that regulate the practices and institutional arrangements around land allocation, access, transfer, rental, and use. In this sense, land governance involves general rules and arrangements (institutions), formal or informal, through which the control or authority over land is mediated. Essentially, land governance is about how power relations around land are configured between the different land actors, at different levels. It is important to emphasise here that the structures and rules that guide and regulate the activities of land administrators are not cast in stones; they are negotiated and contested by the different actors who often stake their claims to reconfigure the power relations around land. Lund (1998, 2) has rightly described the dynamics around land governance in Africa when he observes that the structures and rules through which land is governed are 'not enduring absolutes, but rather outcomes of negotiations, contestation, compromise and deal making'—characterised by the condition he refers to as 'open moment'. This (open moment) occurs 'when the social rules and structures are suddenly challenged and the prerogatives and legitimacy of politico-legal institutions cease to be taken for granted' (ibid.). For example, in the case of Zambia, the prerogative of traditional leaders over customary land is challenged by the state's decision to create statutory bodies to administer customary land. On the other hand, traditional authorities' rejection of this policy indicates that the state's power over customary land should not be assumed to be a given.¹

¹ It is important to make a distinction between land governance and land administration, noting that the latter is a part of the former. Land governance, as noted earlier, provides the framework

Many African countries have outlined policies and legal frameworks to provide guidance around the exercise of power over land and the institutions involved in the day-to-day administration of land resources (Bruce 2014). In addition to the general legal and policy framework, there are also specific rules and guidelines that regulate the exercise of power over specific types of land. For example, there are different rules and pieces of legislation regarding the use of land under game reserves or nature conservation parks. These rules (both formal and informal) provide guidance on who has the power to make certain decisions and carry out administrative functions. As such, land governance everywhere is not just about land, it is fundamentally about the exercise of power over land—the politics of land (Lund and Boone 2015). Since the governance of land is about the exercise of power over land, it constitutes the core of land politics.

3.1 *Land and Statehood*

The fact that traditional leaders contest for the control of customary land has sometimes been interpreted as evidence of the weakness of states in Africa (Jackson and Rosberg 1982; Jackson 1990). For instance, it has been argued that traditional leaders are able to assert their authority over customary land primarily because African states are unable to project their authority over the entire territory, especially the far-flung rural areas, thereby creating a vacuum that is filled by traditional leaders (Herbst 2000). It has thus been argued (*ibid.* 172) that traditional leaders,

are often competitors to the centralised African state and are viewed as such by national leaders. The loyalties that citizens have towards these leaders, often expressed in a complex network of ethnic relations, is a significant challenge to African countries still having great difficulty ... in creating a national ethos.

Some analysts interpret the dominance of traditional leaders in rural areas as an indication of the inability of African states to exercise a monopoly of power over their territories, the failure to centralise power and hegemony (Jackson and Rosberg 1982).

For those who support this view, the existence of traditional leaders is understood as a competing power base in the conventional theory of the state and nation-building. This is clearly articulated in Tilly's (1985) notion of state formation as a process of conquering and subjugating competing entities in a specified territory. Drawing mainly from the European experience, the idea that the state should have no rivals in its territory is captured in the aphorism, 'war makes states' (Tilly 1985, 170), emphasising the view that states are made by conquering and subduing all the competing

through which land is administered. Land administration on the other hand relates to the day-to-day management of issues related to allocation, validation of ownership, application of the rules, resolution of disputes, keeping of records or any form of evidence, etc. In other words, land governance is a broader concept, which provides the rules and structures to regulate institutions and the decision-making mechanisms concerning the administration of land.

entities in a territory to establish a 'monopoly of power'. In this understanding of statehood, the presence of anything that appears to rival the state is assumed to be a clear sign that the formation of the state is incomplete. In the case of Africa, the traditional leaders' claim over customary land, for instance, can then be perceived as a form of competition with the state. According to this view, a properly formed state should have no competing claims; it should have the monopoly of power within its territory. But this is a simplistic understanding of the state, particularly in Africa today.

The process of state formation today is much more complex than merely subjugating weaker or competing entities in the territory through the monopoly of violence. In modern democracies, violence is not a legitimating apparatus; legitimacy is built through various ways, including the electoral process, dialogue, and persuasion. The use of violence to silence opposition is seen as a sign of weakness and a huge democratic deficit. In fact, many African states tried using the 'monopoly of violence' strategy as a tool for creating political legitimacy through one-party states and in some cases military rule, prior to the introduction of competitive politics during the early 1990s (Young 2004). The repressive nature of most African governments during the 1980s came close to the ideal of not tolerating competing power bases, but these states had little legitimacy, and their statehood was widely questioned (Stark 1986).

The control over customary land that most traditional leaders in Africa assert is unlikely to be resolved by a show of force by the state, primarily because traditional leaders are not basing their claim on 'hard power'; they are contesting based on their ability to muster 'soft power'—the appeal to cultural beliefs, traditions, ethnic solidarity, and historical precedent as noted above. This is not an issue that can be resolved through the state asserting its monopoly of violence. In reality, while African states can indeed use 'hard power' to silence traditional leaders, most of them have not adopted this strategy; they have sought to engage the contesting parties, adopting a conciliatory stance, as the case presented below shows.

4 Land in Zambia

4.1 *Categories of Land*

Zambia has a total land mass of 752,614² km². Official figures from the Ministry of Lands suggest that of this, 94% is under customary tenure, with state land accounting for only 6% (GRZ 2006).³ While official figures show that the bulk of the land in Zambia is customary land, the size of land effectively controlled by traditional authorities is much smaller (Chitonge 2015; Honig and Mulenga 2015; Sitko et al.

² Different sources provide different figures on the size of the total land area for the county. Here, I will use the figure used in the Draft Land Policy (GRZ 2017, 2).

³ The 2017 Draft Land Policy has revised the proportion of state land to less than 10% (GRZ 2017, 3).

Table 1 Categories of land in Zambia (2015)

	Customary	Public	State	Total land mass
Size (million, ha)	31.2	36.7	7.5	75.3
Percent (%)	41.4	48.7	9.9	100

Source Author, based on data from Draft Land Policy (GRZ 2017). Note: the category under customary land excludes all other pieces of land in customary areas managed by statutory bodies (see Table 2 for details)

2015; Mulolwa 2016). However, it is clear that although the land controlled by traditional leaders has been shrinking over time, customary land still accounts for the large portion (over 40%) of land in Zambia, as Table 1 shows.

Table 1 provides an overview of the three broad land categories in hectares, while Table 2 provides the details of what constitutes state land and public land, including forest land, as of 2015. Although land in Zambia is broadly classified into two types of tenure (state and customary land), there are effectively three categories of land that are administered by different entities (Table 1).

The first category is *state land*. This is land largely under leasehold tenure. This category of land is administered and controlled by the Commissioner of Lands through the issuance of four types of leases to private individuals, companies, and trusts. The four leases are (1) Ten-year land record card, (2) a 14-year lease for unsurveyed land, (3) a 30-year occupancy licence (usually issued in housing improvement areas in peri-urban settlement), and (4) a 99-year renewable lease. Although the official documents show that state land is roughly around 10%, there are other estimates suggesting that state land accounts for about 16.5% of the total land mass (Honig and Mulenga, 2015).

The second broad category of land is *public land*. This category of land consists of various pieces of land reserved for specific use including nature conservation, forests reserves, game reserves, wetlands, mountain range, and head waters (GRZ 2017, 22). Land falling under this category is administered by statutory bodies such as the Zambia Wildlife Authorities (ZAWA). This category of land accounts for close to half of the total land mass (8% under national parks, 22% under game management areas, 9% under forest reserve areas, and 2% wetlands (GRZ 2017, 16). While the larger portion of what is categorised as public land fall in customary areas, they are effectively not under the control of customary leaders. Land under the category national forest and national parks, particularly, are tightly regulated by statutory state bodies.

The third category of land is *customary land*. This is the category of land controlled by traditional authorities. If we consider the statement in the New Draft Land Policy that public land includes all pieces of land in customary areas that are ‘not allocated exclusively to any group, individual or family’ (GRZ 2017, 22), it becomes obvious that traditional leaders control less than half of the land (see Table 2). If we take out local and national forests on customary land, the size of land controlled by customary authorities is about 40%. It is important to note that figures under state land in Tables 1

Table 2 Land resources in Zambia (2015)

Public land			State land			
	Hectares	Public as % of total land mass		Hectares	State land as % of total land mass	% of state land
National Parks	6,024,028	8	Crown land	3,647,748	4.8	55.0
GMA	16,566,077	22	Farm Blocks	531,500	0.7	8.0
Forest	6,777,031	9	Urban Land	1,400,000	1.9	21.1
Wetland	7,304,134	9.7	Settlement Schemes	300,000	0.4	4.5
<i>Total public land</i>	<i>36,671,269</i>	<i>48.7</i>	Resettlement Schemes	750,000	0.99	11.3
			<i>State land</i>	<i>6,629,248</i>	<i>8.8</i>	<i>100</i>
			Forest on State land	876,995	1.2	11.7
			<i>Total state land</i>	<i>7,506,243</i>	<i>9.9</i>	<i>100</i>
<i>Forest land</i>			<i>Customary land</i>			
	<i>Hectares</i>			<i>Hectares</i>	<i>% of total</i>	
Local forest in GMA	505,476		Local forest on Customary land	1,363,403	1.7	
Local forest on customary land	1,363,403		National forest on customary land	3,161,303	4.2	
Local forest on state land	359,218		Total	4,524,706	6.0	
National forest on GMA	2,087,524		<i>Remaining customary land</i>	<i>31,201,294</i>	<i>41.4</i>	
National forest on customary land	3,161,303					
National forest on state land	517,777					
<i>Total forest land</i>	<i>7,994,701</i>					

Source Author, based on (Honig and Mulenga 2015; Mulolwa 2016; GRZ 2017)

Note GMA = Game Management Areas. Forest land under public land includes all types of forest including those on customary and state lands

Table 2, provides a breakdown of the three categories of land presented in Table 1. From Table 2, it is clear that Public Land is made of four major subdivisions: National Parks, Game Management Areas (GMAs), forests, and wetlands. What is referred to as State Land is what during colonial rule was called Crown Land, plus the land acquired by the state for settlement, resettlement, farm blocks, and land in urban areas (towns and cities). Table 2 also breaks down Forest Land into different categories, including Forest Land in Customary as well as on State Land

and 2 do not include land that has been converted from customary to leasehold tenure by private individuals since the land conversion policy came into effect in 1995. Even if we take a conservative estimate that 8.6% of total land had been converted from customary land by 2012 (Sitko et al. 2015, 17), it is apparent that land effectively under the control of traditional leaders is much less than the 94% (GZR 2006) or 90% (GRZ 2006, 2017) cited in official documents.

4.2 *Land Governance in Zambia*

Zambia, like many other African countries, since the introduction of colonial rule, has had a dual land tenure system: customary and statutory land tenure (state land). In pre-colonial times, land was governed through the customary tenure system which varied according to the local cultural norms and practices. Although the practices around land varied from community to community, one of the common elements of the customary tenure system is that land was controlled and administered by traditional leaders. In the traditional system, while traditional leaders played a central role in land administration, they were not regarded as owners of the land—land belonged to the community as a collective (Bruce 1982; Mamdani 1996). Their primary responsibility was to ensure access to land for all members of the community (Mafeje 2003).

Although there have been significant changes to the rules and structures governing land in Zambia after independence, the dual system has continued, with what used to be ‘crown land’ now renamed state land, while what used to be reserve and trust lands⁴ collectively renamed customary land. Thus, traditional leaders have been administering customary land for a long time. Most African states have always recognised and accepted this fact, including the role of traditional leaders when it comes to customary land (Alden Wily, 2011). In Zambia, the two important pieces of legislation regarding land (the Constitution and the 1995 Lands Act) have both recognised customary tenure and the institution of traditional leaders. For example, section 165 of the Constitution asserts: ‘The institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply.’ Similarly, section 254 clearly recognises the existence of customary land, stating: ‘Land shall be delimited and classified as State land, customary land and such other classification, as prescribed.’

With specific reference to land administration, the Lands Act No 29 of 1995 (1995 Lands Act) also recognises both customary land and the administrative role of traditional leaders. Section 7(1) of the 1995 Lands Act stipulates that,

⁴ Reserve land was specifically meant for use of indigenous people. Trust land was a category of ‘unclassified land’ called silent land and was meant to be allocated to the anticipated large inflows of European migrants after the Second World War. When the anticipated influx of Europeans did not occur, silent land was released for use by indigenous people. Reserve and trust lands together constitute what is referred to as a customary land.

every piece of land in a customary area which immediately before the commencement of this Act was vested in or held by any person under customary tenure shall continue to be so held and recognised and any provision of this Act or any other law shall not be so construed as to infringe any customary right enjoyed by that person before the commencement of this Act.

Section 8(2) and (3) clearly allocates a central role to traditional leaders (chiefs) in the administration of customary land. These two sections make it clear that traditional leaders have a strong say in what happens to customary land (see Chap. 4). The recognition and role of traditional leaders when it comes to customary land is further reinforced in section 4, which states that: ‘the President shall not alienate any land situated in a district or an area where land is held under customary tenure... without consulting the Chief ... in the area in which the land to be alienated is situated.’ On the surface, this might appear as though the state is strengthening the role of traditional authorities in land administration. But when one reads this together with the policy allowing the conversion of customary land into leasehold, the ambiguity becomes evident. As argued later, the conversion of customary land into leasehold poses a threat, not just to the interests but also the existence of traditional leaders.

4.3 Land Policy Reforms in Zambia

The Draft Land Policy published by the Zambian government in 2017 is a more comprehensive update on the two earlier draft documents published in 2002 and 2006 (GRZ 2006). The 2017 draft covers a wide range of land-related issues including international boundaries, different types of land tenure, institutional and legal frameworks, and the valuation and taxation of land. The main aim of the policy reform, according to the state, is to create institutions and a land administration framework which can ‘improve on the allocation and management of land uses in the development of the country’ (GRZ 2017, 12). Other aims include the promotion of equitable access to land and related resources, strengthening tenure security for all, especially people living on customary land, enhancing sustainable management and productive use of land in a transparent manner. The Draft Land Policy document does acknowledge that the country has had no ‘coherent national land policy’ since independence, and that this has created several challenges when it comes to managing and administering land. Traditional leaders are not contending these aims and the broader framework; they participated in the deliberation of the national task team and made contributions.

A casual reading of the policy document gives the impression that the proposed reforms are tailored towards protecting the land rights of people on customary land. For example, the document argues that customary land tenure is not secure, and the purpose of this policy is to ensure that these rights are strongly protected. The document indeed strikes a customary-land friendly tone throughout, and one might even wonder why traditional leaders are rejecting a document that seeks to protect and strengthen the rights of people in their communities. The document goes further

to argue that the current situation perpetuates a tenure dualism that essentially is a continuation of the colonial land system where customary land was treated as an inferior form of landholding.

In order to justify the proposed reforms, the Draft Land Policy document identifies several weaknesses in the current way customary land is administered, including the lack of a land planning system, a situation which according to the draft policy has led to disorderly settlements. The other weaknesses mentioned are the informal nature of land rights under customary tenure, abuse of the powers by traditional leaders, failure to provide equal access to land for women and youth, poor land administration due to lack of a systematic information system for land ownership, and fragmented land administration institutions. The proposed policy reforms seek to recognise customary land just like statutory tenure, by creating what is referred to as 'customary estates', which will make it possible to issue titles 'held in perpetuity and freely transferable through mortgages, leases or sale according to market values and regulation' on customary land (ibid. 22). This, if implemented, would ultimately eliminate the necessity to convert customary land into statutory tenure as is currently the case.

What pushed traditional leaders to contest the proposed land policy reforms is the proposal to change the institutional set-up, particularly the creation of customary land boards, which will take over the administration of customary land. While the Draft Land Policy states that land administration responsibilities will be devolved and administrative tasks will be decentralised to the district and community level, it is the composition of the customary land boards that traditional leaders have found wanting. The main bone of contention is around the fact that, while the traditional leaders will be represented on the district and customary land boards, the allocation of land and the resolution of disputes will be handled by the land boards (ibid. 32). What this proposal entails is that traditional leaders will have effectively lost control over customary land. It is specifically this aspect of the proposed land policy reform that traditional leaders have vehemently rejected, as something that undermines their interest and powers.

4.4 Traditional Leaders' Response to the Proposed Land Policy Reforms

In contesting the proposed policy reforms, traditional leaders have argued that the new Draft Land Policy does not take their interest into account. They argue that the proposed changes do not even mention the word 'chiefs', which they interpret as a sign that traditional leaders have been excluded from the administration of customary land (Kapata 2018). In this case, the contest over land resources is not directly about issues of access to land; it is about the rules and structures that govern the day-to-day administration of customary land. Although the state, as a sovereign entity, has the ultimate responsibility over all land in Zambia, the exercise of its

powers over customary land has been indirectly challenged by traditional leaders. Here, it is important to note that what is being contested is not the territorial authority (sovereignty), but the rules that govern the exercise of power over customary land.

At the Draft Land Policy validation workshop held on 28 March 2018, the 22 representatives of the 288 chiefs in Zambia stormed out of the meeting, stating that they rejected the proposed land policy reforms. The chairperson of the House of Chiefs (which is a statutory body established to deal with matters related to traditional governance) argued that they decided to reject the proposed Draft Land Policy because 'there is no mention of Chiefs in the draft policy document, thereby implying that the institution of Chieftaincy was being abolished' (Kapata 2018, 2). It was also alleged that the concerns raised by traditional leaders in the earlier draft were not considered in the revised draft. Traditional leaders also contested the fact that only 22 out of 288 chiefs were invited to the validation meeting.

To defend their decision to reject the proposed land policy reforms, traditional leaders have argued that customary land belongs to them. They have argued that they defended the land against colonial invasion and will defend the land against anyone who attempts to take it away from them. One of the chiefs interviewed by the press stated that chiefs owned the land even before the state was established and vowed to keep the land for generations to come (Kanyanta 2014).

Traditional leaders have also opposed the policy of converting customary land into leasehold tenure; they have argued that it should be possible to give some form of certificate or title without converting the land to state land. This was articulated in a communique issued by a group of traditional leaders from different part of Zambia who bemoaned the loss of customary land and urged the Zambian government to recognise the documents being issued by traditional leaders on customary land. They noted that:

Once land is converted from customary tenure to leasehold the land does not revert to customary tenure at the expiry or cancellation of the lease. This means that there is a net loss of customary land without corresponding benefits to local communities. There is insecurity on customary tenure as some people are displaced from their land due to large scale land acquisitions without regard to their land rights. ... to ensure tenure security, some chiefs are issuing documents to ascertain user rights and ownership of pieces of land by families. However, such documents are not currently recognized by government. (ZLA 2008)

Interestingly, this is the proposal made in the draft policy to issue titles to people on customary land (GRZ 2017).

Not only that, traditional leaders have also contested the idea of vesting all land in Zambia, including customary land, in the president. They have argued that vesting customary land in the president has rendered traditional leaders' and local people's rights to customary land highly tenuous since the president has powers of eminent domain on customary land (Kanyanat 2014).⁵ Representatives of traditional leaders have recommended that the vestment of land in the president should be removed

⁵ The principle of eminent domain gives the state the power to expropriate private property, including land, if such a move can be shown to be in the public interest. It has not been widely invoked in Africa; it was widely invoked in the USA in the past.

from the Draft Land Policy and replaced with the classification of land into different categories as envisioned in section 254 of the Constitution (Kapata 2018). Traditional leaders have accused the state of disregarding the cultural rights of Zambians by disrespecting the customary practices around land in rural areas. They have argued that the main problem with land in Zambia is not that traditional leaders are not willing to release land for development, but the state has no capacity to administer land without the help of traditional leaders.

4.5 The State's Response

In responding to traditional leaders' walk out of the land policy validation meeting, the Minister of Lands immediately went on national television to assure the public that the new policy has no intention to abolish the institutions of traditional leaders and their responsibility to administer customary land. She argued that the proposed reforms are meant to strengthen the role of traditional leaders in land administration. Not surprisingly, the Minister did not use the 'monopoly of violence' approach or disregard the protesting traditional leaders. Instead, she adopted a conciliatory approach and tone, saying that the Ministry 'shall continue to seek opportunities to engage with the traditional leaders who are key stakeholders to the process. Clarification on the specific issues brought up by the traditional Leaders at the national validation meeting shall be communicated in writing through the office of the Clerk of the House of Chiefs' (Kapata 2018, 5).

5 Reforming Customary Land Administration

From the discussion above, it is apparent that the control of customary land is contested. Like in any other contest, the two sides to this contest present different views regarding the proposed land policy reforms. The state, for instance, has presented several arguments to justify its proposal to reform the administration of customary land in Zambia. While the state acknowledges that customary leaders have been instrumental in ensuring access to land in rural communities, it has argued that these land rights are insecure because they are not registered, although they are recognised in law and policy.

The state has also argued that some traditional leaders are abusing their powers over customary land and are alienating large pieces of land to foreign investors at the expense of local communities. The former Minister of Lands in a press statement argued:

while it is true that there are a number of chiefdoms that have been working closely with the Government in looking into the best interests of their subjects, and Government is grateful for that cooperation and support from these chiefdoms, it is equally true that there are certain

cases in which our people have been exploited by practices that are inconsistent with the law. (Minister of Lands 2013)

The state has acknowledged that, while not all traditional leaders are abusing their powers to administer customary land, there are some who are misusing their powers by selling customary land to foreigners and urban elites. To support his argument, the Minister went on to state:

my office is overwhelmed with cases of Zambians who are complaining of being displaced from their ancestral and family lands in preference for investors and the urban elite at the expense of vulnerable communities including women, youths and differently abled persons. This is against the pro-poor policy of the PF Government which seeks to promote the welfare of all vulnerable groups. (ibid.)

It is interesting here to note that, as a way of validating the legitimacy of the proposed reforms, the state is positioning itself as the protector of poor people in rural areas who are being exploited by the greedy traditional leaders. In doing this, the state is creating justifiable grounds for intervening in the administration of customary land. To support the state's decision to change the institutional arrangement around customary land administration, the Minister appeals not only to the fact that traditional leaders are exploiting the poor, but also to policy and the law. Circular No 1 of 1985, which states that traditional authorities are not allowed to alienate customary land in excess of 250 ha (GRZ 1985, 3), has been referenced (Minister of Lands 2013).

The allegations of flouting the existing laws provide strong grounds for proposing to review and reform the administration of customary land by traditional leaders. The proposed reforms are then expected to close the loopholes in the system so that traditional leaders do not have the chance to abuse their powers. In addition, the state has alleged that traditional authorities are not transparent and accountable in the way they administer customary land. To improve transparency and accountability, the state has proposed to transfer the responsibilities of land administration (including customary land) to statutory bodies at district and community level.

In this contest, we see the state asserting its powers over the governance of customary land by appealing to the law, which is the source of the state's legitimacy. The state is also appealing to its responsibility to promote the general welfare of the people and protect the poor from exploitation. Interestingly, the state has not openly deployed the sovereignty argument to defend its right to formulate and implement land reform. State officials understand that traditional leaders are not contesting the state's sovereign right over its territory. What traditional leaders have focused on is challenging the legitimacy of the state to take away their right to administer customary land. If traditional leaders were to claim autonomy over the land they control, this would be interpreted as challenging the sovereign right of the state. What is happening in the current context is that traditional leaders acknowledge the sovereign right of the state, but contest the proposal to remove the administration of customary land from them.

5.1 *Traditional Leaders' Power Base*

As may be evident by now, at the heart of this contest is the bid to control customary land. A quick glance at how the contest has played out suggests that traditional leaders are a force to be reckoned with such that the state decided not to deploy the 'monopoly of power' strategy to assert its authority and power. When traditional leaders walked out of the policy validation meeting, the state could have decided to go ahead and validate the policy without the traditional leaders; after all, other stakeholders, including donors, did not walk out. The state could have appealed to the mandate it received from the people of Zambia to govern the country including customary land, but it has not gone that route. This is where the concept of the state as an institution defined by the monopoly of power and violence falls short of providing useful insights into what the state is and its role in society.

As noted in the literature cited above, traditional leaders have demonstrated that they have power to push back the state to defend their interests. One may wonder where did traditional leaders get such powers when they have no army nor guns, they do not control the courts, nor do they have the mandate from the people of Zambia? Could it be that Baldwin (2011) is right in arguing that politicians have ceded the power to control and allocate land to traditional authorities in order to win the rural vote? Or is it that the state in this instance is worried about its capacity to administer land in remote areas (Herbst 2000)? How do we explain what is going on here?

The key to grasping the contest discussed above is to analyse the power base of traditional leaders. I would argue here that the power of traditional leaders in Africa derives from a complex mixture of traditional values and the principles of modern democracy. Their power is not simply derived from the 'ancestralisation of property' as Boni (2006) asserts, nor simply from the 'deeds of the ancestors' (Berry 2008) or the appeal to ethnic politics (Boone 2017). During the early days of independence, there was a widespread view that the post-colonial African states would wipe away the corrupted forms of traditional governance structures and replace them with centralised monolithic, bureaucratic institutions based on constitutional rule (Baldwin 2011; Nuesiri 2014). But, to the contrary, the importance and power of traditional leaders in Africa are actually being revived (ECA 2007; Nuesiri 2014).

In Zambia, it has been observed that, 'Anyone who has intensively and over an extended period of time participated in post-independence Zambian society, cannot help to be aware of the great importance still attached to chiefs'. Nor is this importance limited to rural districts 'outside the line of rail' (Van Binsbergen 1987, 140). Even in countries that have tried to ban or abolish traditional forms of governance, these leaders have continued to survive and command a lot of influence in national politics. We see this in the case presented above, where the state does not take a confrontational approach with chiefs when they protest and reject the Draft Land Policy.

In this regard, the real power of traditional leaders comes from the people's trust in this institution. In a study conducted in Zambia, local residents were asked whether they would prefer the state or the traditional leaders to administer customary land, and majority of the respondents indicated that they would prefer customary land to

be left in the hands of traditional leaders and this is the reason they gave: 'customary land is better because... even people without money are getting customary land, but if the land is under the state it means that everyone will have to buy land, and those without money will not have land' (LURLAP FGD 2014). Baldwin (2011), in a survey of more than 19 African countries, including Zambia, found that majority of the people believe that traditional leaders should have the primary responsibility to administer customary land. Brown et al. (2016) in their study in Botswana and Namibia report similar findings that local people trust their traditional leaders more than elected councillors or MPs. It seems that traditional leaders enjoy a lot of support from local communities when it comes to matters of customary land. This is despite reports that some of the traditional leaders are involved in the alienation of customary land, as mentioned above. In Zambia, there have been several stories, especially in the print media, reporting increasing number of traditional leaders involved in the selling of customary land and pocketing huge sums of money.

But still people trust these leaders, and many rural residents would like them to continue administering customary land. This trust from people has given traditional leaders a great deal of legitimacy even when as reported in the media, they are abusing their authority. In this way, traditional leaders muster a different kind of legitimacy from the state, and they use this to contest land policy and other reforms.

5.2 The State–traditional Leaders Relationship Over Land in Africa

The debate on the relationship between the state and traditional leaders in Africa tends to adopt a simplistic approach of attributing the powers of the traditional leaders to colonialism, culture, the weakness of African states, etc. The situation has become a bit more complex with traditional leaders now drawing from both the cultural resources as well as modern governance principles to legitimise their power base. While some analysts have argued that traditional leaders are undemocratic because they are not elected (Ntsebeza 2006), in the wake of the third wave of democratisation in Africa, traditional leaders are increasingly relying on democratic principles and values to bolster their power. Logan (2008), for instance, argues that to understand the seeming incompatibility between traditional leaders and democracy, one must turn to the structure and practice of democratic politics in Africa. If we look at the composition of the electorate in Africa, the majority of voters (on average 65%) are in rural areas where traditional leaders are not only popular but trusted (Brown et al. 2016). Thus, for politicians seeking to win elections in Africa, they cannot afford to antagonise traditional leaders. While Baldwin (2011) is right in arguing that politicians take into account the implications on the vote when engaging with traditional leaders, the action of politicians is not necessarily a matter of ceding power; there are subtle ways in which the state seeks to regain that power as Lund (2006) has observed.

On matters relating to land administration and governance, politicians across Africa engage with traditional leaders ambivalently, sometimes forging alliances with them while at other times threatening to discipline them (Herbst 2000; Amanor 2008; Baldwin 2011). This is why the contest over customary land administration in Zambia is not a straightforward case of the state needing to show its force majeure; instead, it seeks to negotiate a new power equilibrium, taking care not to completely alienate traditional leaders. In the Zambian case, the ambiguity in the way the state relates to traditional leaders is evident in both the Movement for Multiparty Democracy (MMD) and Patriotic Front (PF) governments. Under the MMD government, the state enacted the 1995 Lands Act, which seemingly recognised and strengthened the role of traditional leaders in the administration of customary land, while at the same time, the state allowed the conversion of customary land, which has the effect of undermining traditional leaders. Similarly, although many chiefs, under the PF government, have been elevated to the level of senior civil servants with substantial salaries, their role in the administration of customary land in the proposed policy reform is being weakened, as noted above. On the issue of land, both governments have sought to strengthen the power of the state while weakening that of traditional leaders. When traditional leaders realise this, they push back, relying on both democratic and cultural resources.

6 Conclusion

This chapter has examined the contestation around the control of customary land in Africa, drawing from the Zambian case study. The chapter has shown that the contending parties present different views around who should be involved in the administration of customary land. The state has argued that the current way customary land is administered lacks transparency, accountability, efficient planning, efficient use, and security of tenure, and that this makes customary land prone to abuse by traditional authorities. The state has used these concerns as justification for embarking on reforming customary land administration and structures, proposing to replace the current structures with statutory bodies, which are envisioned to be more transparent and accountable. Traditional leaders, on the other hand, have rejected the proposed reforms, arguing that the reforms are intended to abolish the institution of traditional leadership.

At the centre of this contestation, is the struggle to gain control of customary land, with both parties well aware that control over land confers power and influence. We see in this case that traditional leaders have power to push back the state when their interests are threatened. While it is puzzling that the state has adopted a conciliatory approach to try and persuade traditional leaders to accept the proposed reforms, it is not surprising that traditional leaders have challenged the proposed land policy reforms. They challenge policy reform drawing from a mixture of cultural power

and the trust of the people as well as from the dynamic nature of democratic politics. The influence demonstrated by traditional leader in the case of Zambia is not only a result of cultural and ethnic allegiance; it is also a result of politicians being cautious not to antagonise the rural electorate.

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Renewed Patronage and Strengthened Authority of Chiefs Under the Scarcity of Customary Land in Zambia



Shuichi Oyama

Abstract The Zambian government enacted the 1995 Lands Act with the aim of stimulating investment and agricultural productivity. This Act strengthened the role and power of traditional leaders, particularly chiefs, as it empowered them to allocate customary land to individuals and companies, including foreign investors. In the Bemba chiefdom of northern Zambia, a new chief issued new land rights and invalidated the land rights issued by the old chiefs. As a result, land owners with documents in the old formats were required to obtain new certification from the new chief. Concerned about the land within his territory, this chief also decided to invalidate the title deeds issued by the central government so that he could release the protected land to local people. Alongside their historical and cultural power, the chiefs strengthened their patronage over land distribution as well as their authority over the residents in their territories. With high demand for land, anxiety among local people due to land scarcity has created political power and authority for the chiefs.

Keywords Customary land · Development · Lands Act · Bemba · Traditional leaders · Chiefdom

1 Introduction

Across much of Africa, economic, demographic, and environmental changes are straining political and social rules governing land access and land use in rural areas (Gulliver 1961; von Blanckenburg 1993; Moyo 2007; Boone 2014). Land policy reform in Africa is a process played out between the state and traditional leaders regarding customary land administration and management (see Chap. 3). In Zambia, the enactment of the 1995 Lands Act clearly stipulated the need for land ownership rights to customary land to be in writing (ie, the acquisition of title deeds) for the first time. The Act stipulated that the acquisition of title deeds necessitated the approval of traditional leaders, such as chiefs and village headmen, regardless of whether the

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person seeking to acquire the land was a resident of the region or an outsider. The Lands Act therefore made it possible for affluent Zambians, foreign companies, and other wealthy actors to acquire title deeds and customary land from the Ministry of Lands, as long as they obtained the approval of traditional leaders. This in turn encouraged economic activity by companies and individuals on customary land and changed local perceptions of the economic value of land.

Ault and Rutman (1993) provided an overview of the changes in customary land tenure in east and southern Africa from the twentieth century onward. They found that when customary land was abundant and perceived to have little economic value, individuals used it free of charge through a system of customary land ownership without having to be aware of or abide by laws or the customs of various ethnic groups. Over time, customary land became rarer and the legal regimes of various countries came to recognise and emphasise individuals' rights to land use. This change from a system of customary land tenure to private ownership meant that chiefs' authority over customary land was sometimes lost or overlooked.

Chiefs were aware that privatisation of customary land reduced their authority over the land. This made them suspicious of the 1995 Lands Act and led them to voice their opposition, noting specifically the potentially negative impact on their own authority (Brown 2005). However, the Act actually strengthened chiefs' authority over the land by mandating their approval for the acquisition of title deeds and giving them the power to grant land rights and distribute land themselves.

In December 2012, Zambian President Michael Sata of the Patriotic Front party gave a speech that emphasised the chiefs' role in promoting the development of rural areas (Times of Zambia 2012a, b). According to his policy, traditional leaders are at the core of the regional development undertaken by the current Zambian government. While this has enhanced their autonomy over the land, the regional development promoted by chiefs and other traditional leaders has created some controversy. They often attempt to walk the line between providing for their community and opening their land up for investment. For example, in the densely populated areas of Kasama District in Northern Province, the chief of the Bemba chiefdom led a programme of compulsory land partitioning and distribution of 3 ha to each household in the region. He also provided 100 ha to foreign companies for the construction of oil refineries, power stations, and shopping malls (Zambia Daily Mail 2016). The chief welcomed calls for large-scale development projects and provided large land holdings for such projects.

In short, because chiefs need to approve the acquisition of title deeds, they hold some measure of authority over the promotion of economic development in the region (Oyama 2016). Kajoba (2004) asserted that by collaborating closely with chiefs, the Zambian government is able to recognise the land rights of both locals and foreign investors more fully, while also empowering chiefs to participate proactively in sustainable community development. In reality, it has proven difficult to reconcile the interests of the local subjects and outside investors. Granting foreign investors the right to their land puts local communities at risk of having their land taken from them, seeing their living standards reduced, and raises the risk of land-related conflict (Oyama 2016).

Given these changes in Zambian land policy, this chapter describes the granting of land rights by successive generations of chiefs in the territory of Chief L in the Bemba chiefdom of northern Zambia and examines the social confusion accompanying such grants. It then analyses how, in the event that a new chief is appointed, newly-appointed chiefs and land committees deal with the social confusion created over successive generations of chiefs. It also considers the autonomy of chiefs and local authorities with respect to land governance by examining the chiefs' creation of new land rights and their invalidation of title deeds issued by the Zambian state.

This chapter arose out of the author's continuous field research in the Bemba chiefdom since 1993. As such, it provides a well-grounded and detailed analysis of the complex relationships between the state and the traditional leaders of the Bemba chiefdom, which is ruled by a centralised, authoritarian-style chieftain system. It considers the impact of this system on rural development, the transformation of farming village communities, and the future of the local inhabitants. In summary, this chapter clarifies the effects of the 1995 Lands Act on farming village communities in Zambia, and considers how the Lands Act has strengthened the authority of traditional leaders over the land.

2 Land Tenure System in Zambia

As a result of the Lands Act of 1995, all land in Zambia is currently owned by the state. Some of this land is customary land, which is prescribed in accordance with the customs and norms of each ethnic group, and some is private land, which is prescribed by title deeds. This section will briefly examine changes in the land tenure system since Zambia's colonial period with reference to the existing literature (Roberts 1976; Mvunga 1980; Chanock 1998; Brown 2005; Oyama 2016).

In 1911, the colonial territories of North-eastern Rhodesia and North-western Rhodesia were merged to produce the territory of Northern Rhodesia. This territory contained the lands of the Bemba chiefdom (or Bembaland). Between 1899 and 1911, North-eastern Rhodesia was ruled by the British South African Company (BSAC). In 1911, an Order-in-Council recognised the British monarchy's right to the territory of Northern Rhodesia (Mvunga 1980). This happened again in 1924, when the territory was officially placed under the administration of a British-administered colonial government. The colonial government defined the land held by European settlers, commercial and residential land in urban areas, and land containing high-quality mining resources as Crown Land (Brown 2005). Another Order-in-Council in 1928 separated Crown Land from Native reserves, and established the latter as land for use by Africans who had been driven out of their former lands by European settlement (Mvunga 1980). The creation of this reserve system was meant to encourage European settlement in Northern Rhodesia.

However, settlement did not proceed as expected. For the colonial government to continue to govern the vast territories of Northern Rhodesia as Crown Land under its direct control, it needed to create several administrative organisations at a high

economic cost. To reduce administrative costs, in 1947 the colonial government converted the large majority of Crown Land, especially land that was poor in mining resources and fertility, to Trust land and introduced a system of indirect governance, which entrusted traditional leaders with political authority over Trust land. Rural African subjects were governed by chiefs and customs, and lived on spatially distinct communal land. In contrast, European settlers and urban dwelling citizens were governed by modern civil law and owned or rented private property (Mamdani 1996). Almost all of Bembaland was made into Trust land. In this way, the authority of the Bemba chiefs was strengthened by the colonial government.

Zambia declared its independence in 1964. However, the new Zambian state inherited the land administration framework that had been established during the colonial period (Mvunga 1980, 1982; Malambo 2013). The administration of Kenneth Kaunda, the first president of Zambia, converted land that had been Crown Land during the colonial period into state land to ensure that all of Zambia belonged to the state and Britain held no sovereignty over the land. Under the Kaunda regime, national territory was classified into three types of land: State land, Reserves, and Trust land. Although the term 'native' was removed from the official description of the Reserves, the chief of each ethnic group continued to hold authority over Reserves and Trust land.

After 1964, Reserves and Trust land were placed under the control of local assemblies, ie, the newly independent Zambian state stripped chiefs of their authority over their lands. However, the government did not abolish chiefs or village heads and they continued to hold influence as traditional leaders. The Zambian Constitution was amended in 1969. In these amendments, the government permitted the confiscation of undeveloped land, especially land that was not being used by absentee landlords. Later, the Lands Act of 1975 stipulated that 'all land in Zambia shall vest absolutely in the President and shall be held by him in perpetuity for and on behalf of the people of Zambia'. This Act did not recognise private land in the sense of permanent ownership of land, and cases of freehold tenure were converted into 100-year leaseholds.

In 1985, legislation was passed that restricted the distribution of Zambian land to foreigners, with the exception of investors and companies recognised by the presidential government. Thus, although the trading of customary land was legally possible prior to the 1995 Lands Act, the procedures for obtaining ownership of customary land were unclear. Private land owners often acquired customary land by applying for a title deed through the Ministry of Lands and, therefore, most private land owners were politicians, bureaucrats, members of the army, police, or other people who had connections with or within the Ministry of Lands.

The 1995 Lands Act was first enacted by the Movement for Multiparty Democracy (MMD) during Zambia's open elections in 1991. The MMD pledged to establish legislation to introduce market mechanisms to the land acquisition system in Zambia. Such legislation was also deliberated upon and passed as a condition for foreign debt relief in Zambia by some donor countries. The 1995 Lands Act had three main characteristics. First, it significantly reinforced the right of title deeds. While land belonged to the President and freeholding was not recognised, article 6 of

the Lands Act provided leaseholds for a 99-year period. This, in addition to Article 5's permission for the sale and purchase of leaseholds, shows that the Act may be interpreted as essentially recognising private land ownership. Second, Article 3(3) of the Act relaxed restrictions related to the possession of land by foreign individuals and companies. This actively introduced foreign capital and was closely connected to the Zambian government's intention to promote economic development. Third, the Lands Act consolidated both Reserves and Trust land into customary land (Article 2), and made it possible for both foreign investors and Zambians to obtain title deeds to customary land. The chiefs had to give approval for the title deeds to be issued (Article 8(2) and (3)). One year later, the Lands (Customary Tenure) (Conversion) Regulations, rerecognised the content of the provisions of the 1995 Lands Act.

The 1995 Lands Act significantly reinforced the power of the local authority to grant land rights and to distribute customary land. As a result of this shift, Chief L of Bemba land introduced and issued independent land rights for customary land. There are many ways in which a local authority can intervene in the issuing of land rights for customary land in Zambia, because the nation contains 73 different ethnic groups, each with its own customs, social life, and political systems (Gadjanova 2017). In Eastern Province, chiefs and lineage seniors provide land certificates and they have reinforced both the commodification of land and increased the inequality of land access (Green and Norberg 2018).

The result of this is that chiefs' approval of title deeds varies widely according to which chiefs are involved, especially because an expanded interpretation of the Lands Act made it possible for chiefs to use their own discretion in granting rights to customary land to the inhabitants of customary land, Zambians, affluent individuals, foreign investors, and foreign companies alike. The 1995 Act recognised existing rights to customary land and eased land right acquisitions by outsiders, foreign investors and Zambian residents (Chitonge et al. 2017; Tobias 2019).

3 Social Organisation, Agriculture, and Land of the Bemba Chiefdom

In the late nineteenth century, the Bemba began to form a powerful chiefdom by leveraging their superior military power and commercial activities. The Bemba chiefdom has a centralised authority structure with a paramount chief called a *citimukulu* at its top. Bemba society includes approximately 30 clans (groups that are thought to have shared ancestors), but all chiefs belong to the clan of the crocodile (the *Benangandu*). There are 21 chiefs (*mfumu*) in the Bemba chiefdom, and the position is passed down matrilineally.

Land in Bemba society is categorised into the land (*ichalo*, pl. *ifyalo*) of each respective chief. The chiefs are politically unified (Meebelo 1971). The term *ichalo* has two meanings: (1) the entire territory of the chiefdom of Bemba; and (2) the territory under the jurisdiction of each chief. In terms of generations and individuals,

the Bemba people have different attitudes to the chiefs, but they all consider Bemba land to belong to the chiefdom and its chiefs. Bemba chiefs played administrative and judicial roles in the nation both before and after the independence of Zambia (Moore and Vaughan 1994). Local chiefs administer civil justice within their domain, adjudicating land and other property disputes between villagers. When a chief dies, the next chief is determined and dispatched from Kasama District in the Northern Province where the *citimukulu* resides.

The *citimukulu* is at the top of the Bemba political system, and is followed by senior and local chiefs. Local chiefs hold autonomy within their own territory and are not considered to be servants of the *citimukulu* or senior chiefs. The territory of all chiefs is demarcated by borders that were established in the seventeenth century. The inhabitants of a chief's territory are loyal to him and present him with millet, beans, groundnuts, cowpeas, alcohol, chickens, goats, caterpillars, and other gifts. They also perform labour for him by clearing and cultivating arable land (Richards 1939). Chiefs play the role of a guardian to the inhabitants. They watch over the people's lives, mediate disputes among the inhabitants, and conduct trials. A patronage system can be recognised between the chief and members of the Bemba society.

The study area was the X District in Muchinga Province in the Republic of Zambia. The Bemba people living in the study area earn their livelihood based on a particular form of swidden farming called *citemene* (Kakeya and Sugiyama 1985; Kakeya et al. 2006). In *citemene*, millet is cultivated one year and groundnuts and bambara nuts are cultivated in the following year. Villagers harvest the cassava planted in the first year, and the following year rows are sometimes formed for the cultivation of beans. After this four-year cycle, the land is allowed to lie fallow. *Citemene* is a rotation crop system, with local people shifting the location of *citemene* fields in the surrounding miombo woodland. A fallow period should be more than 50 years for sustainable land use (Oyama 1996). The *citemene* fields are concentrated within about 5–6 km of roads and cycle times are short to maintain sustainability within the woodlands along roads (Sprague and Oyama 1999).

In 2002, the Zambian government began its Fertiliser Support Programme. This programme enables farmers to obtain agricultural input goods at less-than-market price through subsidies for the purchase of chemical fertilisers and improved seeds for the production of maize, which is a staple food in Zambia. The prices were reduced by 50% at the beginning of the programme, with a further reduction to 75% of the price by 2008, which meant that in 2008 farmers could obtain chemical fertilisers at one quarter of the market price. In 2013, President Sata attempted to reduce or eliminate these subsidies. However, President Sata's sudden death and the subsequent general election of August 2016 meant that the subsidies continue today. These subsidies enable farmers in remote areas, such as X District, to access agricultural input goods and produce maize, which is a cash crop due to its status as a dietary staple. These policies have therefore helped form an affluent class within farming villages and have led to income disparities within these communities (Oyama and Yoshimura 2021).

The Bemba people have a strong sense of pride and identity. Despite their individual differences, they are all aware of their status as subjects of the chiefs of the Bemba chiefdom (*mukalochalo*). They consider the Bemba land and its natural

resources to belong to the Bemba chiefdom and its chiefs. The chiefs rule the land and the people within their territory. Permission is required from the chief for people to migrate, establish new villages or for land to be distributed to villages. Without a chiefs' permission, the Bemba cannot clear land for *citemene*, cut down trees or build houses. Bemba chiefs have great authority (*isambu*) and people respect their own chiefs and follow the chief's decisions. The next section will examine the granting of rights to customary land by Chief L, whose territory is located in the western part of X District, and charts some of the changes in these rights over time.¹

4 The 1995 Lands Act and Customary Land in the Territory of Chief L

After the Lands Act of 1995, land rights began to be granted in the territory of Chief L during the rule of Mr. Y (r. 2003–2007). Mr. Y granted land rights by issuing land allocation forms in a format he himself had decided upon. Because Mr. Y was the son of the chief, he was not the legitimate chief according to the social customs of Bemba society, in that chiefdom is passed down under a matrilineal system. However, as the chief's son, the inhabitants of the area recognised his authority to a certain degree.²

These land allocation forms limited the land parcels to be distributed at 75 ha. In reality, it was slightly less due to the presence of the village and farmlands. Those hoping to acquire land attempted to secure as broad a swathe of land as possible. Land disputes arose among residents over boundary lines. Mr. Y passed away in 2008 after a long illness. Some residents considered his death to be a punishment for arbitrarily distributing Bemba land to outsiders. After Mr. Y's death, Mr. K became chief. Mr. K was a businessman who ran a bakery, bar, and guesthouse in the local town. Like Mr. Y, he was the chief's son, and was therefore not a legitimate chief in the matrilineal society. Although residents did not directly object to Mr. K's inauguration as chief, they did not participate in the inauguration ceremony.

Mr. K listened to the advice of influential persons in the area and developed a detailed process for the issuance of land allocation forms. While Mr. Y had consulted potential land buyers himself and issued land allocation forms based solely on his own judgement, Mr. K established the CS Land Development Trust (hereinafter referred to as the Land Committee) to deliberate upon, and grant the issuance of, land allocation forms.³ Mr. K made himself chair of the committee, appointed influential people from the area, and arranged for the issuance of land allocation forms to be

¹ Chief L is one of the local chief positions within the Bemba chiefdom. To conceal his real name, I have used the initial L to refer to him. I have also used initials for the names of people, villages, and rivers within this chapter.

² The granting of a land allocation form and the accompanying land disputes between inhabitants and the social confusion generated when Mr. Y and Mr. K served as Chief L are discussed in detail in Oyama (2016).

³ The 'CS' in the 'CS Land Development Trust' refers to the name of the first person to serve as Chief L in 1914. The full name has been concealed.

determined through a council system. The Land Committee was composed of eight members and 11 advisors, resulting in a total of 19 people. Committee members provided Mr. K with suggestions regarding local governance and played the role of *cilolo*, assisting in both land administration and a broad range of civil court matters.

Between 2003 and 2009, when Mr. Y and Mr. K held the position of Chief L, two forms of documentation regarding land rights to their territory existed side by side: title deeds issued by Zambia's Ministry of Lands and the land allocation forms independently issued by the chief. The acquisition of title deeds required the approval of a chief through a written request, followed by a meeting at the chief's palace (*musumba*) at which potential buyers would have an audience with the chief, offer tribute, and negotiate. If they were approved, chiefs would give applicants a signed letter as proof of approval, which they could then take to the district office and begin the process of acquiring a title deed. In some cases, applicants obtained the permission of the chief (as needed) but did not consult village heads (doing so was merely optional) and, therefore, some title deeds were issued and land enclosed without the knowledge of the residents and village headmen.

The process of acquiring a land allocation form was quite different. These forms were issued at the discretion of Chief L himself. Unlike title deeds, this form does not permit the sale or purchase of land rights and only makes it possible for the land to be passed down to blood relatives upon the title holder's death. Nonetheless, these forms are considered to guarantee land ownership rights to customary land within the territory of Chief L. Acquiring these forms does not require a visit to the district office or Ministry of Lands (or any other engagement with these bureaucracies), and therefore they are relatively easy to acquire. Inhabitants of the nearby town often used these forms to obtain ownership rights to customary land. These land allocation forms were legally binding because, although the 1995 Lands Act did not contain clear provisions regarding the granting of land rights by chiefs, it did give chiefs authority over the issuance of title deeds, hence, the informal land allocation forms issued in Chief L's territory.

To apply for a land allocation form, applicants needed to supply an application for the purchase of land, an action plan, and a letter of consent from the village committee. Because these forms were not standardised, applications were recorded in the Bemba language on scraps of notebook paper. Action plans described the intended use of the land in detail, e.g., by listing the crops that would be cultivated, the type and number of fruit trees to be planted, the amount of chemical manure to be obtained, the materials to be used in houses or buildings, and the types and numbers of livestock to be raised. The letter of consent contained a signature indicating the approval of the village head.

During Mr. K's time (r. 2008–2009) as Chief L, land allocation forms were issued almost immediately after village headmen approved potential buyers' applications. After submitting the three documents described above and paying an application fee of 190,000 kwacha (US\$60), potential buyers would almost automatically acquire a land allocation form entitling them to 75 ha of land. Although it was the Land Committee's job to examine applicants' intentions and the suitability of their applications closely and carefully, in practice Mr. K had a great deal of influence over

the issuance of land allocation forms. He often signed and issued them on his own. This meant that some of Mr. K's acquaintances and friends were able to apply to him personally and obtain land allocation forms. This generated many disputes between inhabitants and applicants. In March 2009, Mr. K passed away in a traffic accident, which took place while travelling to attend a festival held in Eastern Province, as a chief. Mr. Y and Mr. K's actions, ie, allocating land to outsiders as illegitimate chiefs, was interpreted by locals to be the cause of their unexpected deaths (Oyama 2016).

A ceremony was held in 2010 to inaugurate Mr. B as the next Chief L. Mr. B belonged to the clan of the crocodile and was therefore of the bloodline of legitimate chiefs. However, he was concerned about the sudden deaths of his predecessors, Mr. Y and Mr. K. Mr. B had been an English teacher at a school in Lusaka, but in 2010, after his retirement, he was called to become Chief L by the paramount chief and senior chiefs. His inauguration ceremony followed Bemba customs, was widely attended, and was both dignified and lavish. At the ceremony, he received the congratulations of the participating local chiefs and other attendees. He declared that to protect his subject's traditional lifestyles, the land of Chief L's territory would no longer be distributed to outsiders. The audience welcomed this announcement with joy.

5 Local Land Governance Reforms Issued by the Chief

In December 2011, it was decided that the authority to process and grant land rights should be concentrated in the Land Committee. Both the new Chief L, Mr. B and the members of the Land Committee requested that the wife of the previous chief provide the register book of previously issued land allocation forms, to adjudicate the previous chief's distribution of land, but she claimed that the register book had been lost. In response, the Land Committee and Mr. B decided to invalidate all previously issued land allocation forms. Mr. B did this to establish a precedent whereby land allocation forms would not be issued at a chief's discretion and, therefore, future chiefs would not have to doubt the validity of previously issued land allocation forms. In addition to these reforms, Mr. B instructed the Land Committee to carry out their work in land governance independently of him.

Mr. B made several other changes to the composition of the Land Committee and the role it played. Previously, the committee was responsible for both processing and issuing land allocation forms and adjudicating civil trials. He split the committee into two parts so that it could handle these separate functions more effectively. The Land Committee would continue to process and issue land allocation forms, and ten lay judges (*nchenje*) would judge civil disputes. This reduced the size of the Land Committee from 19 to ten members. In addition to the *nchenje*, two elders assumed *cilolo* responsibilities, advising the chief regarding Bemba traditions, culture, and norms.

When Zambia reorganised its provincial boundaries in 2011, the territory of Chief L was incorporated into the newly created Muchinga Province. As part of this reorganisation, provincial chiefs (including Mr. B) held a conference with President Sata in December 2012. President Sata had won low-density constituencies in Bemba-speaking provinces, with his ability to generate support in rural areas being derived from his status as a Bemba-speaking presidential candidate (Cheeseman and Hinfelaar 2009). At this conference, President Sata emphasised that the chiefs' role was to promote local development. Mr. B took this as an opportunity to further reform and restructure the Land Committee in the hope that by strengthening inhabitants' land rights he could promote regional development.

As of November 2016, three of ten seats on the Land Committee were empty. The current chairman was Mr. P, who was 40 years old and had served as chairman since 2014. Mr. P was the second-youngest member of the committee, but had demonstrated strong leadership through his intense personality. He suggested to the author that some of the committee's seats remained empty because the committee's work was long-standing, difficult, and carried a heavy responsibility. Moreover, the members received no salary or compensation from the committee. There was also some superstition attached to Land Committee membership. Several Land Committee members had passed away during Mr K's rule, and many people believed that they had died as a punishment for distributing Bemba land to outsiders. As a result, it was difficult to find people who were both suitable committee members and who actually wanted to carry out this kind of work.

The Land Committee did not perform land governance during the rainy/cropping season (November to March). During the dry season, they worked four days a week. On Monday, Tuesday, and Saturday they walked through villages, interviewed potential land buyers, and defined the boundaries between plots of land. The area contained 118 villages and, therefore, this work required committee members to cycle long distances and sometimes stay in villages overnight or for several days. On Thursdays, members deliberated on applications and action plans in the chief's palace, drafted land allocation forms, and performed other office work. As of November 2016, there were more than 80 applicants waiting for land boundaries to be defined and their land allocation forms to be issued. Committee members often received demands, requests, and complaints from these applicants when they were not working and, therefore, found it difficult to relax or maintain a sense that they were not always working. Mr. P stated that he found it difficult to continue working on the Land Committee without compensation, but that requesting a salary from the chief would be discourteous.

The process by which potential buyers received land allocation forms was based on the inauguration of Mr. K to Chief L. Potential buyers applied to the relevant village headmen, and their application was typically approved if nobody lived on or cultivated that land. Then, the potential buyer made a formal request to acquire the land to the village committee. At that stage boundaries were negotiated and trees along the boundary lines were cut down. The potential buyer then purchased an application form from the Land Committee. Unlike the situation during Mr. K's rule, a designated application form was made available. The form defines a household as a husband and wife and their unmarried children, and restricts each household to

owning a single continuous piece of land and receiving a single land allocation form. Forms can be issued to anyone, not just the Bemba. The price of the application form is 10 kwacha (US\$1) for villagers living in the territory (*mukaya*, pl. *abakaya*) and 50 kwacha (US\$5) for outsiders (*mwenyi*, pl. *abenyi*) who do not live in Chief L's territory. According to the committee chairman, in the farming villages of Chongwe District near the capital of Lusaka, it costs 350 kwacha (US\$35) to purchase an application form and 500 kwacha (US\$50) to see the application procedure through. Thus, the cost of applying to purchase land in Chief L's territory is relatively low.

Land allocation forms can grant potential buyers up to 50 ha of land. Those who own cows are allocated an additional 20 ha or more, and those who do not are given 15–20 ha of land. The Land Committee's register book indicates the name and gender of the title holder, the name of the village they live in, the amount of land allocated, and the date on which the land boundaries were defined. The register therefore provides a detailed overview of the land allocation process. For example, the register indicates that, as of November 2016, 206 people had acquired land allocation forms. Of these, 151 (73%) were men and 55 (27%) were women. Thirty (14.6%) of the names of the title holders are clearly not Bemba names. This is as close as it is possible to get to knowing the distribution of land to different ethnic groups, as this information is not included in the register book.

The Land Committee uses a 50-m piece of hemp cord to measure the boundaries of land. The register indicates that the majority of applications, 109 people (52.9%), received land allocation forms valued at 20–50 ha (Table 1). Although the chairman Mr. P indicated that 50 ha was the upper limit of land area distributed to a single person, 59 title holders (28.7%) possessed 50 ha or more and six (2.9%) possessed 200 ha or more. According to Mr P, these applicants were particularly stubborn during the boundary definition process and asserted that they held vested rights due to their previous use and inhabitation of the land, which made it impossible to reduce the size of their holdings.

The Land Committee issues land allocation forms under the chief's name and does not approve the newly issued title deeds issued by the Ministry of Lands to prevent confusion over sovereignty and due process. The Land Committee receives potential buyers' application forms, action plans, and letters of consent from village

Table 1 Land distributed by Chief L in November 2016

Registered land size	Number of title holders	(%)
0 ha \leq X < 20 ha	37	18
20 ha \leq X < 50 ha	109	52.9
50 ha \leq X < 100 ha	35	17
100 ha \leq X	24	11.7
No data	1	0.4
Total	206	100

Source Data gathered by author

committees on Thursdays and conducts interviews with them at that time. There are 14 main questions in the interview:

1. How will you use the land that you are hoping to acquire?
2. Do you plan to live on the land?
3. Do you intend to clear the land for *citemene* or make charcoal on the land?
4. Do you intend to plant trees on the land?
5. Do you plan to raise livestock on the land?
6. Do you intend to build roads on the land?
7. If you are subjected to witchcraft and must move, how do you intend to deal with the land?
8. How will the land be dealt with in the event of your death?
9. If you have no children or family, do you agree to allow the land to revert to the chief?
10. Do you agree not to privatise seasonal wetlands (*dambo*)?
11. As compensation for the land allocation form, do you agree to pay a 50 kg bag of maize to the Land Committee each year?
12. Will you participate in jobs related to the village and community?
13. If someone applied to harvest caterpillars on the acquired land, how would you respond?
14. In three years, if you are not able to develop the land as detailed in the submitted action plan, would you agree to return the land?

Chairman Mr. P provided a standard set of responses to these questions:

1. Applicants should describe the materials used in the house, the types of crops and areas of fields, the amount of chemical fertilisers to be applied, the type and number of livestock to be raised, and other relevant items in accordance with the submitted action plan.
2. Absentee landlords are not allowed. All applicants should reside either within the acquired land or in a nearby village.
3. *Citemene* and the making of charcoal are prohibited as they damage the environment and contribute to climate change. If the applicant responds that they intend to do either, then their application will be denied. However, applicants are permitted to open *citemene* to clear land for planting maize.
4. Aside from fruit trees (mango, banana, and guava trees), the planting of pines, eucalyptus, and other trees is encouraged.
5. Applicants are encouraged to raise cows and goats, pigs, and chickens.
6. Applicants are obliged to create the roads referred to in question 6 and, therefore, they must be willing to construct roads to provide access to their land.
7. While it is permitted to transfer a land allocation form to children or relatives when moving away from a plot of land, selling the land is not permitted. The sale of buildings, however, is permitted.
8. If a title deed holder dies, it is possible to transfer their rights to their wife or children.

9. This question attempts to confirm whether the land will be returned to the chief if the applicant has no children or relatives to transfer the land to.
10. Such seasonal wetlands make water resources accessible to all. As water is a shared resource for all inhabitants of the area, the privatisation of marshlands is not permitted.
11. Neglecting to pay this maize tribute for even one year will lead to the loss of land rights. This question is asked to get applicants to make a pledge to continue making these payments.
12. This question establishes an applicant's intention to participate in community work (laying roads, building wells, etc.), which is a condition for acquiring land.
13. Caterpillars are both an important side-dish food for the Bemba and also a valuable source of cash income. It is important to allow people who wish to harvest these caterpillars to do so and thereby contribute to the economic vitality of the area. However, cutting trees down to harvest caterpillars cannot be permitted.
14. This question confirms that the Land Committee will review the circumstances of land use after three years, and seeks the applicant's agreement that if the action plan is not being followed at that time they may be obligated to return some or all of the land to the chief.

After these documents are received and the interview has been conducted, members of the Land Committee inspect the land in question together with the applicant. Together with village headmen and/or members of the village committee, they define the borders of the land by cutting down trees along the border. They then use the hemp rope mentioned above to measure the length of two sides of the land and calculate the total (rectangular) land area.

Nearby residents sometimes attend this process to negotiate the boundaries. This can cause confusion and other problems, especially if the calculated area exceeds 50 ha and the applicant refuses to reduce the size of their holdings. Furthermore, it is difficult for the Land Committee to reduce the area of someone's holdings if the applicant already lives on and is cultivating the land. In such cases, circumstances are often allowed to remain as they are. Calculating the area of the land takes a great deal of time and effort, and it is customary (but optional) for the applicant to provide one chicken to the Land Committee as compensation.

A few days after the boundaries have been defined and the total area calculated, a land allocation form is issued to the applicant and the process is rendered complete. This form is signed by the chief, chairman, clerk of the Land Committee, and one more member of the Land Committee who serves as a trustee. Land allocation forms are issued on a Thursday each week. In 2016, the fee for the issuance was 150 kwacha (US\$15) for land up to 20 ha and an additional 7.5 kwacha (US\$0.75) for each additional hectare. The chief, Mr. B, has complete confidence in the chairman, Mr. P and, therefore, when the chief stays in the capital city of Lusaka, Mr. P serves as the acting chief. He gives progress reports to the chief during the land allocation

process, but the details of the process are left to him to manage as the committee chairman.

As mentioned above, the Land Committee mandated that those who acquire land allocation forms must pay the committee a 50 kg bag of maize each year as tribute. The committee's register book indicated that there were a total of 206 land acquirers. According to the Food Reserve Agency's sale price for maize (85 kwacha per bag), this meant that the committee received 17,510 kwacha (US\$1,751) in maize every year. According to Mr. P, this practice arose from the difficulty of collecting large amounts of money or maize from poor residents (*mupina*, pl. *abapina*). The committee planned to increase the maize payments in relation to the area of land owned in the future. These regulations were intended not only to enhance the economic life of the region but also to prevent people from being absentee landlords. 30% of the collected maize is presented to the chief, with the remaining 70% sold to the Food Reserve Agency or at the general store managed by the committee chairman. Thirty percent of the proceeds to the committee were used to cover expenses incurred by the committee during their duties (the purchase and preparation of stationery, uniforms, shoes, etc.). The remaining 70% was earmarked for the construction of bridges, road maintenance and repair, and other community development projects.

6 A New Trend: Villagers Acquiring Land Allocation Forms

Chief L's territory lies in the western part of X District, the capital of X District. The establishment of planned resettlement and privately owned areas by the government in MK village, 27 km west of the city of X, has resulted in a lack of land for regional inhabitants, which has, over decades, become a severe problem. For example, a development project on the northern side of the village in the early 1990s was centred on the resettlement of retired soldiers, Tanzania–Zambia Railway (TAZARA) workers and copper miners, and urban-dwellers and farmers from the densely populated border with Tanzania. These resettled people purchased plots in the area and began to operate large-scale farms.

As the land shortage intensified throughout the 2000s, the number of households performing *citemene* continued to decline. As forested land became scarcer, farmlands shrank in size. This made it difficult for villages to be self-sufficient, decreased the total area of land under *citemene* and led villagers to complain that their diets were deteriorating (Oyama and Takamura 2001). As of 2007, no villagers had yet acquired land allocation forms.

Land shortages became more severe after 2009. In response, villagers moved, to acquire land allocation forms for themselves. For example, Mr. M, a resident of X township who planned to retire in 2013, decided in 2009 that he wished to move to MK village when he retired. Although he was not related by blood to the village's

core members, he was related to some long-standing members of the village; thus, the village head permitted him to move there. In 2009, after receiving approval from the chairman of the MK Village Committee, Mr. M applied to the Land Committee and obtained a land allocation form in March 2011. According to the Land Committee's register book, Mr. M obtained 50 ha of land.

However, when the villagers found out that Mr. M had applied for a land allocation form, they felt that they needed to secure land for themselves because outsiders or urban-dwellers had moved to their land. Thus, in June 2009 six villagers settled on the boundaries surrounding their own maize fields and cut down the trees along these boundary lines. Each of these villagers were members of the Village Committee. The committee recognised their intention to acquire land. These land parcels ranged from 8.9 to 39.8 ha in size and averaged 24.7 ha. The boundaries were determined by the Land Committee in October 2010, and the villagers received their land allocation forms in November 2010. Their movement inspired four more villagers to begin the process of acquiring land allocation forms. These four additional villagers applied for lots ranging from 12.0 to 23.3 ha in size.

Mr. M eventually retired and purchased approximately 20 ha of land in July 2015 from a villager who was growing maize on an adjacent plot. He bought the land for 300 kwacha (US\$30). Although the buying and selling of land is prohibited by the Land Committee, land is nevertheless sometimes bought and sold between inhabitants behind closed doors. In August 2015, Mr. M combined these 20 ha with the land he was granted through a land allocation form and put up a boundary fence. He held a total of 72.4 ha of land this way. Mr. M did not actually reside on this land; instead, he cultivated about 2 ha of maize and employed a household of workers to raise 14 cattle on the land. He also owned a maize thresher and miller and has planted papaya, banana, eucalyptus, pine, and other trees on the land.

As of November 2016, nine of the 29 households in MK village (31.0%) had acquired land allocation forms. Seven of the title holders in these nine households were men and two were women. Of the women, one was the head of her household. She was born and raised in MK village and became the title holder in place of her husband, who was born in a different village. The other said in an interview that she had acquired the land for her children:

As long as I am alive, I have strong family connections and relationships with important core members [*mukaya*, pl. *abakaya*] in the village, so I am not worried and know that I can cultivate my fields. However, in recent years, not only my relatives but also outsiders [*mwenyi*, pl. *abenyi*] have come to live in the village, so if I die my children may have difficulty finding land to cultivate. In order to leave a foundation for their livelihoods [*umufula*], I acquired land rights as a form of property [*icisuma*].

She also revealed that her relationship with her husband was not going well when she acquired a land allocation form and became a title holder. Thus, the land provided a way for her to provide for herself after her impending divorce.

As of 2016, 15 of the 29 households living in MK village (51.7%) practiced *citemene*. This represented an increase in the number of households not practising *citemene*. Villagers stated in interviews that it had become difficult to earn a living through *citemene*, and that producing maize using government-subsidised chemical

fertilisers and improved maize seeds helped them to be more self-sufficient. In addition, as of 2016, 15 of these households had brick houses with galvanised iron roofs, 16 owned mobile phones, and eight owned solar panels. In 2007, no households had any of these features. This indicates that there has been a sudden increase in the household accumulation of capital. At the same time, the trend toward obtaining land allocation forms and establishing land ownership has become stronger within the local villages.

7 Friction Between Local Residents and Recipients of Land Allocation Forms

7.1 Friction with Local Residents

Mr. L is a 71-year-old man who moved from X township to ND village in 1998. Prior to moving, he worked for 20 years at a company that manages an oil pipeline connecting Tanzania and Zambia. Mr. L was born and raised in Western Province and is a member of the Lozi people. He relocated to ND village because his wife is a Bemba. When Mr. B became Chief L in 2010, Mr. L obtained approval from the ND village headman and applied for a land allocation form. He received his application form in 2014 and the boundaries of his land were defined in June 2015. The total recorded area of his land is 50 ha. Mr. L cultivates *citemene* on this land every year as well as 0.62 ha of maize fields.

In November 2016, three inhabitants of ND village felled trees to enable *citemene*, maize cultivation, and charcoal production on Mr. L's private land. They continued doing so, even after he explained that he had acquired a land allocation form, on the grounds that he was Lozi. Given the land shortages facing ND village, some villagers did not accept that Mr. L had acquired land there. Thus, the structure of the land allocation process and other circumstances, such as land shortages, have created conflicts and confusion during the land allocation process.

7.2 Leasehold Changes Accompanying Changes in Title Holders

Mr. T, the founder of ML village, was born in 1936. He was the grandson of Mr. CS, who was the first-generation Chief L. He was employed in the ticket office at the United Bus Company of Zambia from 1964 to 1988, after which he returned to ML village. Mr. T did not settle along a road with existing settlements but, instead, built his house along the R river. Using the wealth he had amassed in the city, he purchased a cow and worked to raise it, practiced *citemene*, and cultivated maize. In 1990, he acquired a title deed from the Ministry of Lands. When Mr. T died in 2004,

his son Mr. A took ownership of the title deed; however, his son lacked the money to fully use and manage this land. Given these circumstances, he allowed married couple C, who were living in ML village, to grow cassava along the riverbank on the southern side of his land. These cassava fields were not very large (0.4 ha) but they were located on fertile soil, and thus grew large enough to be a substantial source of food during the rainy season.

Mr A needed money to move to the city, so he visited nearby MK village to find a potential buyer for his land. There he met married couple O who were considering buying land as an asset. The husband of couple O was a teacher at the university in Kasama (the provincial capital of the Northern Province) and a member of the Kaonde people, while his wife was from a village adjacent to MK village. In 2012, the couple paid Mr. A 10 million kwacha (about US\$1,985) and entered into a contract with him by which they received the rights to 183 ha of land, i.e., a value of about US\$10.8 per hectare. The wife of couple O told the author that she considered the price of land in Chief L's territory to be cheap and expected the price of land to jump sharply in the future and that, therefore, it was a good investment.

To define the boundaries of their plot, the father of the wife of couple O (Mr. D) cut down the trees along the boundary line. While doing this work he realised that cassava was being grown along the river. He pulled up all of the cassava without receiving permission from or notifying anyone. He knew that married couple C were cultivating the cassava and some people accused him of pulling it up intentionally. Both Mr. D and the mother of the wife of couple C live in MK village, and are cousins. However, the relationship between the two is fraught. Mr. D's actions meant that married couple C were unable to harvest any cassava during the rainy season in 2014, and were barely able to eke out a living.

As it is not permitted to issue new title deeds in Chief L's territory, couple O later applied to the Land Committee in the hopes of acquiring a land allocation form. After going through the formal process, they acquired a form in the name of the wife of couple O in November 2015 (she was chosen as the title holder because she was raised in the region and had many relations nearby). The couple employed villagers to build a house with a corrugated iron roof along the L river and began to clear the surrounding forest. However, as of November 2016, the house had no door, no crops were being cultivated on the land that had been cleared, and the land remained insufficiently managed.

8 The chief's Revocation of Title Deeds and Reversion to Customary Land

In 1988, ex-serviceman Mr. X obtained a title deed to land on the southern side of MK village. He obtained this deed directly from the Ministry of Lands without the mediation of the chief or nearby village head. The area of this privately owned land was approximately 1250 ha. Before the 1995 Lands Act was enacted, the Ministry

of Lands accepted applications for title deeds and issued title deeds to applicants regardless of the knowledge or approval of the chief, village headman, or local inhabitants.

After acquiring the title deed, Mr. X continued to live in Lusaka. His younger brother managed his vast area of private land and lived in the nearby L village with his wife and children. He possessed a licence to own a rifle, which he always carried when he entered the forests owned by his elder brother. If he found villagers felling trees for *citemene* or gathering caterpillars or honey within their land, he would threaten them by firing live rounds from the rifle. As a result, inhabitants of the surrounding villages refused to enter Mr. X's lands. This situation did not change through the reigns of successive chiefs and continues up to the present day.⁴ Thus, villagers from MK village were unable to rely on *citemene* to earn a living, as the government's resettlement scheme was on the northern side of town and Mr. X's vast privately owned estate was on the southern side.

In response, chief Mr. B gathered the inhabitants of MK village and the surrounding villages and held a meeting so that they could voice their grievances in April 2016. At the meeting, he suggested that land disputes between inhabitants should be reported to the chief's palace and that those hoping to acquire land allocation forms should come to the palace. The villagers reported that there was not enough land for them to practise *citemene* and that this had resulted in them becoming impoverished and underfed. They also petitioned him to return Mr. X's privately owned land to the village as communal land. The chief ordered Mr. P to investigate and resolve the issue.

Mr. P and the members of the Land Committee interviewed Mr. X and asked him why the villagers could not use the land in question. This was especially troubling given the land's great productivity; according to the title deed from 1988, Mr. X owned two tractors, had 30 ha of cultivated maize fields, was raising 45 cows and 60 goats, and had 200 mango trees, 150 guava trees, and a large number of pine trees on his property. However, upon investigation Mr. X had no tractors, had not built a house on the land, had not cultivated more than 0.5 ha of maize fields, and possessed only a few mango trees and 20 goats. The land in question was clearly not being used effectively. Mr. X's younger brother explained that he had not been able to work the land for 30 years because his relatives had taken the money he had planned to use to develop the land.

The investigation also found that Mr. X had not paid the government the fixed asset tax of 15,000 kwacha per year (US\$1500). Because he had not paid this tax and not fulfilled his duty to improve the land for decades, the Land Committee determined that the land should be returned to the chief if X was unable to renew the title deed with the Ministry of Lands within 30 days. When he had not done so, his holdings were reduced to 100 ha along the L river and the rest was returned to the chief as customary land. The chief determined that the land should belong to MK village,

⁴ The successive chiefs and their periods in office are: KP (r. 1984–1998), MM (r. 1998–2003), Y (r. 2003–2007), K (r. 2008–2009) and B (r. 2010–).

gave the village headman responsibility for the use of the land and recognised the villagers' rights to use the land.

The headman of CH village, which is adjacent to MK village, objected to this decision. He complained that because a government resettlement scheme was located on the northern side of CH village and the village faced a severe land shortage, the villagers of CH village should also have the right to use Mr. X's formerly owned land. This complaint was rejected by the chief because there was abundant land in CH village. As a result, the headman of CH village drew boundary lines and began the process of applying for his own land allocation form. This process has become the source of an intense dispute between the villages.

After the land was released to them, villagers from MK village promptly entered the land and began to practise *citemene*. By November 2016, two households had already cleared land for *citemene* and burned the trees and brush they had cleared. Men from the village were delighted to clear the extensive forest for *citemene*, for the first time in many years, and built huts to live in while cultivating the land. This kind of advance guard is called *baleya intanshi* in the Bemba language. After they had enclosed suitable land for *citemene*, villagers began talking about how the villagers were trying to take the land for themselves. They were thus motivated to practise large-scale *citemene* on this land over the following year.

The Bemba people emphasise how the old 'era of farming only to eat' (*inshita yakurya fye*) has ended and has given way to the 'era of thinking ahead' (*inshita yakutontokanya ifyakuntanshi*). They see practising *citemene* and acquiring a land allocation form as important and positive acts. Those who lack the intention to do so are frowned upon as *balishalila*, or people who only produce enough food for themselves to consume in the short term through *citemene*. This latter group is ridiculed by the former for not adapting to the changing times, as private land ownership increases and land shortages become more severe.

9 Conclusion

Although the 1995 Lands Act did not clearly recognise the chiefs' authority to distribute customary land and the right to use it, the Act mandated that chiefs' approval was a necessary step in acquiring a title deed to customary land. In this way, the Zambian government has situated chiefs at the centre of the regional development process and strengthened their authority over the land. This move has led chiefs to render land allocation forms issued by chiefs before 1995 invalid and to reform the processes governing the acquisition of land allocation forms. As a result, landowners holding old, invalid land allocation forms must now go through the new process and acquire new forms, title deeds issued by the Ministry of Lands have been rendered invalid, and new title deeds cannot be issued within a chief's territory without their consent. The chiefs' new-found power is accompanied by powerful mechanisms to compel potential buyers to contribute to their communities. These changes mean that chiefs in farming village communities have strengthened their

authority over both the land and its inhabitants. This form of land governance is strongly autonomous in that it does not permit the participation of the surrounding chiefs or state governmental institutions.

The establishment of land ownership rights to customary land has brought about land enclosure. While this has created a situation in which wealthy people, retirees, and villagers with foresight have taken the initiative in acquiring land ownership rights, it has also led villagers to seek land ownership to protect their customary lands and lifestyle. It is important that land ownership rights are not only supported by the Lands Act and the chiefs but are also recognised by the inhabitants of farming villages. In adjudicating land disputes, it is necessary to determine the lawfulness of land ownership according to who has the land rights, who actually cultivates the land, and who lives on the land. Claims to ownership need to be examined within the social and historical contexts of the community in question.

As land becomes scarcer, a trend toward acquiring land ownership is expected to accelerate among farming village communities where property has only begun to hold value. With the increasing demand for land, the anxiety among local people over land scarcity will strengthen the political power and authority of the chiefs. As described in the Chitonge chapter, the influence of traditional leaders is not only a result of cultural and ethnic allegiances but is also the result of politicians attempting not to antagonise the rural electorate. The residents of local communities in Zambia emphasise the importance of an autonomous lifestyle based on self-sufficiency that is not influenced by economic and political fluctuations. Land ownership rights in Zambia's farming village communities should therefore be regulated through complex political dynamics, which are a function of the 1995 Lands Act, the intentions of the chiefs, national economic policies, and the social relationships among local inhabitants. The various stakeholders, institutions and the need for social capital have generated a complex situation surrounding customary land rights.

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Land Tenure Reform in Three Former Settler Colonies in Southern Africa



Chizuko Sato

Abstract This study explores the challenges of land tenure reform for three former settler colonies in southern Africa—Zimbabwe, Namibia, and South Africa. While land redistribution programmes have been the primary focus of land reform for these countries since independence, land tenure reform for the inhabitants of communal areas is an equally important and complex policy challenge. Before independence, the administration of these areas was more or less in the hands of traditional leaders, whose roles were sanctioned by the colonial and apartheid authorities. Therefore, one of the primary concerns with respect to reforming land tenure systems in communal areas is related to the power and authority of traditional leaders in the post-independence period. This study highlights striking similarities in the nations’ land tenure reform policies. All of them gave statutory recognition to traditional leaders and strengthened their roles in rural land administration. In understanding this ‘resurgence’ or tenacity of traditional leadership, the symbiotic relationship between the ruling parties and traditional leaders cannot be ignored and should be problematised. Nonetheless, this chapter also argues that this obsession with traditional leadership may result in the neglect of other important issues related to land tenure reform in communal areas, such as the role of customary land tenure as social security.

Keywords Land tenure reform · Traditional leadership · Namibia · Zimbabwe · South Africa

1 Introduction

Three former settler colonies in southern Africa—Zimbabwe, Namibia, and South Africa—introduced land reform soon after they gained independence in the 1980s and the 1990s. The principal focus of their land reform policies was land redistribution, which aimed to dismantle the racially skewed land ownership structure moulded by

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settler colonialism and the apartheid regime (Odendaal 2010; Scoones et al. 2010; Moyo 2013; Aliber et al. 2013). Nevertheless, land tenure reform was also significant for these countries due to at least three reasons. First, land tenure reform in the areas reserved for the black population during the colonial and apartheid periods was also an essential component of their land reform policies. This aspect of land reform has turned out to be equally, if not more, complex and challenging as land redistribution. Second, the question of what form of land tenure should be introduced to the land given to the black population through land redistribution programmes after independence has also been a substantial policy challenge for these three countries. Third, a significant proportion of the rural population still resided in the areas where land tenure reform was to be implemented in Zimbabwe and Namibia. This is also the case in South Africa, albeit to a lesser extent.

While the land redistribution policies of these three southern African countries were often discussed together in order to identify their similarities and possible mutual influences (Hall 2003; Zondi 2003; Moyo 2007; Mkodzongi 2018), their land tenure policies have rarely been compared in the literature on land reform in southern Africa. This study aims to fill this gap by discussing their land tenure reform policies after independence from a comparative perspective. This exercise will highlight the common challenges faced by these three southern African countries in consolidating the land rights of people living under customary land tenure and reforming the institution that manages communally held resources. It will also illuminate how this land tenure system and its accompanying structure of authority (traditional leaders) have historically played an indispensable role in the development of a settler economy in these nations. Reforming the customary land tenure system touches upon the fundamental features of the political economy of these countries (Mukrombedzi 2010).

This chapter first summarises the characteristics of the land tenure system applied to the areas reserved for the black population during the colonial and apartheid periods in these three southern African countries. These areas were first called ‘native reserves’ and were followingly renamed ‘homelands’ (Bantustans) in Namibia and South Africa and ‘tribal trust lands’ in Zimbabwe in the twentieth century. Since independence, they have been called ‘communal areas/lands’. Next, this chapter reviews the land tenure reform policies that were introduced after independence in order to highlight the similarities and differences in their identification of the problems of existing land tenure systems in communal areas and their selection of measures to address them. In the final section, this chapter discusses the salient features that have emerged in the formation and implementation of land tenure reform policies in these three countries—particularly addressing the growing role of traditional leaders in rural land governance and its implications.

2 Types of Land Tenure in Three Former Settler Colonies in Southern Africa

What distinguishes these three countries from other sub-Saharan African countries in terms of land issues is the extensive degree of land that was taken from their black populations during the colonial and apartheid periods. As summarised in Table 1, while the degree of land dispossession in these three countries also differs—with the dispossession in South Africa being the most extensive and that in Namibia being the least—these numbers are much higher in comparison to other former non-settler colonies in southern Africa, such as Malawi and Botswana. The colonial land dispossession created a dualism in land tenure system in these three countries, as land that was taken by white settlers is held in freehold tenure, whereas land reserved for the black population is kept in so-called customary, communal, or tribal land tenure. This latter form of land tenure is similar to those found in several African countries and has two principal characteristics.

One is the multi-layered nature of land rights, and the other is that these rights are conferred to the land's residents based on their membership in a particular group/community, usually centred on chieftaincy or ethnic belonging. In most cases, the legal title holder of customary land is either the state, a parastatal entity, or the head of the state. However, the land's residents have a series of long-established customary rights. These rights include the right to a household plot to build dwellings, cultivate fields, and graze livestock. Their rights to land are different from those of legal rights holders and freehold tenures. For example, it is usually impossible for them to receive loans from financial institutions by using land as collateral. However, once residential land and fields are allocated to certain individuals/households, these lands are considered to belong to these individuals/households, provided that they are in use. Land can also be inherited by family members (Bennett 2004; Sato 2018a).

Table 1 Forms of land tenure in certain southern African countries

	Year of independence	Land taken from native population by 1957 (% of national area)	Types of land tenure and its coverage (% of national area) in 1999		
			Freehold or leasehold (%)	Customary, communal, or tribal land (%)	State land and protected areas (%)
Zimbabwe	1980	49	34	41	25 ^a
Namibia	1990	44	44	43	13
South Africa	1994	89	72	14	14
Malawi	1964	5	13	69	18
Botswana	1966	6	4	70	26 ^b

Source Adopted from Adams and Knight (2012, 28–29)

Notes ^aIncluding 9% resettlement area with state permit

^bIncluding land held in fixed period state grants (a form of lease) in larger towns for residential and business purposes

Before independence, the administration of these customary lands was more or less in the hands of traditional leaders, whose roles were sanctioned by the colonial and apartheid authorities. While these traditional leaders drew their legitimacy from the traditions and customs of local African societies, their roles have changed since colonisation, especially through the system of indirect rule. In southern Africa, this system was originally introduced in the British Natal colony in the mid-nineteenth century. It was then applied nationwide in South Africa through the Native Administration Act (1927) after the Union of South Africa was formed in 1910 (Mamdani 1996; Ntsebeza 2005). The Act recognised the status of traditional leaders, but turned them into local administrative officers of the government. It also gave the Minister of Native Affairs the authority to create a new ‘tribe’ or divide the existing ‘tribe’ and to appoint and dismiss chiefs and headmen (Peires 2014, 15–16). After the National Party came to power in 1948, the Bantu Authorities Act (1951) was enacted, which enabled traditional leaders to act as local governments in their homelands under the name of ‘tribal authority’ (Sato 2000).

Although Namibia had a system of indirect rule similar to that of South Africa because it was effectively ruled by the South African administration after the end of the First World War (Lankhorst 2009, 198–199), the situation was slightly different in Zimbabwe—where traditional leaders were first deprived of their authority to allocate land by the colonial government through the Native Land Husbandry Act (1951). This Act aimed to introduce a system of individual land tenure in native reserves in order to convert rural ‘tribesmen’ and urban migrants into full-time farmers and workers. However, the rural modernisation policy pursued through this Act turned out to be unpopular. In particular, the labour-intensive conservation work and forced reduction of livestock that were implemented under this policy led to increased rural protests. Urban migrant workers who lost their rights to land in their native reserves were increasingly attracted to the cause of African nationalism. Faced with mounting rural unrest and resistance, the colonial government decided to transfer power and authority back to traditional leaders in order to recover political stability in the native reserves. In the 1960s, several measures and programmes to co-opt traditional leaders were introduced, including the Tribal Trust Land Act (1967), which restored the power to allocate land to traditional leaders (Andersson 1999, 560–565; Mbiba 2001, 428–431). The intensification of guerrilla wars in the region in the late 1970s resulted in the traditional leaders that served the Rhodesian state being deemed as enemies and traitors by the guerrilla fighters. Several chiefs were either killed, captured, or forced to flee to the cities, whereas others joined the nationalist movement (Alexander 2006, 2018).

3 Land Tenure Reform Policy After Independence and Its Contestations

Since the 1990s, the strengthening of rural residents' land rights under the customary land tenure system has become an important policy issue in many African countries (Bruce and Knox 2009). In many countries, it took the form of land law reform, and most countries chose one of the following two policy options. One was to establish a new state entity, known as land boards, to administer land at a local level. This measure was introduced in countries such as Botswana and Namibia. The other was to strengthen the role of traditional authorities in local land administration, which was adopted in countries such as Malawi and South Africa. However, this dichotomy is also misleading with respect to southern Africa, as traditional leaders often maintained influence on local land boards in Namibia, and the consolidation of the land allocation power of traditional leaders in democratic South Africa was a highly contested process (Sato 2018a).

3.1 Zimbabwe

Zimbabwe obtained independence from Britain and its settler-rule in 1980 through the Lancaster House Agreement, which set the foundational principles of its land redistribution programme for the first ten years of its independence. With regard to land tenure reform, the newly independent government enacted the Communal Land Act (1982), which repealed the Tribal Trust Land Act (1979) and renamed tribal trust land as communal land (Cheater 1990, 201). The Act also transferred the power to allocate land in communal areas from customary chiefs to the elected rural district councils that were established by the District Councils Act (1980). This Act also introduced the village development committees (VIDCOs) and the ward development committees (WADCOs) as representative bodies for the residents of communal areas. These elected local representative institutions were expected to implement the rural modernisation programmes of the central government (Alexander 2018). Some customary chiefs voiced opposition to these new policy measures (O'Flaherty 1998, 539–540), but the ruling Zimbabwe African National Union–Patriotic Front (ZANU–PF) government crushed these oppositional voices. Nonetheless, many academic studies have reported that traditional leaders, especially village heads (*sabhukus*),¹ continued to allocate land and mediate local land disputes in many communal areas (Cousins et al. 1992, 16; O'Flaherty 1998, 547–550; Andersson 1999, 555–556).

¹ *Sabhuku* literally means 'book-keeper' as the village head became the holder of the tax register during the colonial period (Andersson 1999, 557). It is a customary leader at the village level and is sometimes translated as sub-headman in English literature. However, according to Alexander (2006, 135), in Matabeleland, *sabhuku* was a colonial invention and was not regarded as a legitimate customary institution at the time of independence.

The government significantly altered its course in the late 1990s, after the Commission of Inquiry into Land Tenure recommended the dissolution of the VIDCOs and WADCOs due to their ineffectiveness in contributing to the development of communal areas. The Commission also recommended enhancing the administrative powers of the traditional authorities in communal areas instead of bestowing power upon locally elected entities. In line with these recommendations, the Traditional Leaders Act (1999) was enacted, which officially restored the power to allocate land in communal areas to customary chiefs. However, their decisions had to be approved by the rural district councils. The Act also abolished the elected VIDCOs and the chiefs appointed *sabhukus* to lead ‘village assemblies’ in their place (Chimhowu and Woodhouse 2010, 19–20). The 2002 amendment to the Communal Land Act (1982) ascribed authority to the rural district council, but it also stated that the council should consult and cooperate with the chief that is appointed to preside over the community as per the Traditional Leaders Act (Murisa 2013, 255–257).

Since 2000, Zimbabwe’s land sector has undergone a complete overhaul through the implementation of a new land reform policy—the Fast Track Land Reform Programme (FTLRP). The origin of the FTLRP was in the land occupation movements led by war veterans in 1999, who had fought in the war to achieve liberation from white Rhodesia. The period of land occupation and confusion that preceded the FTLRP is known as *jambanja*. Given the unprecedented level of demand for land redistribution and the emergence of strong political opposition that originated from trade union movements among urban workers in the late 1990s, which resulted in the formation of the Movement for Democratic Change (MDC), the ZANU–PF government decided to assume control of the land occupation movements and incorporated them into its land reform policy (Gideon 2019, 14–16).

The principal significance of the FTLRP undoubtedly lies in the fact that it has successfully dismantled the racially skewed land ownership structure that was moulded by colonial rule. At the time of independence in 1980, more than 15 million ha of land were devoted to large-scale commercial farming at the hands of approximately 6000 farmers, who were predominantly white. By 1999, the white commercial farming area was reduced to 12 million ha, which was approximately 35% of the total agricultural land (Scoones et al. 2010, 2–3). The government appropriated more than nine million ha of white-owned farmland for the FTLRP (Chimhowu and Woodhouse 2010, 14; Moyo 2013, 42). Simultaneously, it is also important to stress that the FTLRP created a new dual structure, which consists of A1 resettlement farms and A2 commercial farms. The former are small-scale, permit-based lands, whereas the latter are medium-scale farms with leasehold tenure (Scoones et al. 2010, 3–4; Chimhowu and Woodhouse 2008, 286–287, 2010, 14; Moyo 2013, 45).

While the FTLRP was essentially a land redistribution policy, it also brought the land tenure policy to the fore with regard to who would oversee the land allocation process on the A1 resettlement farms. Initially, the war veterans controlled the land occupation movements in the sense that they selected farms to occupy and mobilised people to occupy the farms. However, traditional leaders were also involved in the land occupation process, especially with respect to identifying ancestral lands and

conducting cleansing ceremonies after the occupation. Moreover, once the ZANU–PF government took over the process and formalised it as the FTLRP, traditional leaders such as chiefs and village heads (*sabhukus*) were given bigger roles, which included the selection of the beneficiaries and the allocation of land on the A1 resettlement farms. In 2003, the government announced that both the Rural District Council Act and Traditional Leaders Act were to be applied in these areas (Murisa 2013, 261–269, 2014). Through this process, some chiefs were able to expand the territories under their jurisdiction by putting their people on the farms meant for A1 resettlements that were adjacent to communal areas under their jurisdiction (Mkodzongi 2016).

Moreover, the FTLRP unleashed the land restitution demands/claims made by several chiefs based on historical land dispossession that had taken place during the colonisation process (Fontein 2009; Dande and Mujere 2019). The demands for the restitution of land dispossessed during colonisation by traditional leaders existed even prior to Zimbabwe’s independence. However, the ZANU–PF government never met these demands in the 1980s and the 1990s, when it resettled people on farms that it had bought with financial assistance from Britain (Chamunogwa 2019, 74). Unlike South Africa, Zimbabwe’s land redistribution programme did not have an element of land restitution. This implicit rule in the Zimbabwean land redistribution policy was broken during the FTLRP, as some chiefs led people to occupy specific farms that had historically belonged to their tribes but were subsequently lost to white settlers during the colonial period, and their occupations were formalised through the A1 resettlement process (Chimhowu and Woodhouse 2008, 296–297; Fontein 2009). It has also been reported that disputes over traditional boundaries have emerged in certain areas due to the FTLRP, as different chiefs decided to resettle their people on the same A1 resettlement farm (Mkodzongi 2016; Dande and Mujere 2019).

Thus, several studies emphasise the significant roles played by traditional leaders during the *jambanja* period and the subsequent FTLRP, highlighting the personal and tribal intentions governing their acts (Chimhowu and Woodhouse 2008, 296–297; Fontein 2009; Mkodzongi 2016; Dande and Mujere 2019; Chamunogwa 2019). Nevertheless, the extent to which traditional leaders had complete autonomy in their actions is disputed. Alexander (2018, 151) argues that during the FTLRP, traditional leaders were ‘influential only insofar as they subordinated themselves to the ZANU–PF’s partisan project’ on resettlement farms. Despite the FTLRP’s unprecedented achievements with respect to responding to the popular demand for land and dismantling the colonial land ownership structure, Gideon (2019, 21) is also adamant that it was the ZANU–PF’s ‘exclusive partisan programme’ and not the ‘non-partisan national initiative’ that it claimed to be. He states that the ‘ZANU–PF structures mutated with land committees and local community leadership at every level’ in the implementation of the FTLRP.

While the FTLRP enabled black people to resettle in formerly white farms, some communal areas experienced an influx of people from urban areas and white farms throughout the 1990s and the early 2000s. This increased the scarcity of land in communal areas and prompted informal land transactions that were prohibited by

the law (Chimhowu and Woodhouse 2008, 2010; Goodwin 2013). ‘Private’ transactions of land in communal areas were already reported in the 1980s (Cousins et al. 1992, 17–18), and these practices seem to have become more common since then. Chimhowu and Woodhouse (2008, 2010) discussed the development of two forms of commodification of land in the Svosve communal lands in Marondera district in Mashonaland East province in the mid-2000s. One was the sale of grazing land by *sabhukus* to newcomers who sought residential and agricultural lands. The other was the leasing out of agricultural lands by absentee residents who lived in the cities, resettlement farms, or overseas as diaspora, and their relatives. However, in both the 1980s and the 2000s, these land transactions were mediated by customary authorities and therefore did not necessarily undermine the customary land tenure system. In the context of the lack of security of these informal land transactions, Goodwin (2013) illustrated how land purchasers tried to strengthen their land rights by creating and reinforcing their connection with the land through traditional ceremonies and practices.

3.2 *Namibia*

Namibia obtained independence from South Africa in 1990. The scope of Namibia’s land reform policy was discussed at the National Land Conference that was held in Windhoek in 1991, in which 700 people participated (Adam and Knight 2012, 36). Although Namibia also experienced a much higher degree of land dispossession in comparison to other African countries, the extent of dispossession in Namibia was still the least among the three former settler colonies in southern Africa.

Namibia’s colonial land dispossession had unique geographical and ethnic dimensions. The colonial land dispossession in Namibia took place through the German conquest in the late nineteenth century in the middle and southern parts of the country, where the Herero and Nama ethnic groups lived. The German colonial authority named the conquered areas the ‘police zone’, and this area was maintained exclusively for white settlements even after the First World War, when Namibia (known as South West Africa at that time) became a British protectorate administered by South Africa. The Herero and Nama people paid a huge price in both their blood and lands during the German conquest and subsequently relocated to native reserves that were established outside the ‘police zone’. In contrast, the northern part of the country, where the majority of rural inhabitants lived, was never invaded by colonial settlers. It was set aside as native reserves (later Bantustans) for different ethnic groups, and traditional authorities that were appointed by the colonial government maintained a degree of autonomy in administering them (Werner 1993; Lankhorst 2009, 198–199; Amoo and Harring 2012, 223–226). Approximately 40% of the people lived in one of these reserves, which was known as the Owamboland. Its residents (the Owambo people) became the political foundation of Namibia’s liberation movement—the South West Africa People’s Organisation (SWAPO)—which later turned into the ruling party.

Reflecting these historical specificities, discussions at the National Land Conference in Namibia were dominated by issues related to land tenure reform in communal areas (former Bantustans), rather than the question of how to redistribute white-owned farms to black people. Half of the recommendations from the conference concerned land issues in communal areas, such as the need to guarantee land to local people, the abolition of land allocation fees, the recognition of land rights for women, the establishment of effective land administration, the prohibition of the 'illegal' fencing of grazing lands, and the encouragement for moving livestock belonging to wealthy farmers to commercial farms. These recommendations were fed into the policy document of the National Land Policy White Paper in 1997 (Adam and Knight 2012, 36).

It took an additional five years before the legislation on land tenure reform in the communal areas was formulated. The Communal Land Reform Act (2002) stipulated that, in accordance with the Constitution, the ownership of rural land in communal areas is vested in the state. The Act also created two different forms of land tenure for the residents of communal areas. One was the customary land right, whereas the other was the 99-year leasehold right. The Act prescribed the establishment of communal land boards as the entity that would administer these land rights. Every individual or family seeking the recognition of their customary land rights must submit an application to a local communal land board that will handle the registration of their customary land rights. Simultaneously, the Act recognised the limited role of traditional authorities in communal land administration. Thus, chiefs have maintained the power to allocate communal land to individuals/families, but their decisions have to be approved by the local communal land boards that will handle the registration process. In this sense, the communal land boards were tasked with supervising the land allocation conducted by chiefs. The Act further recognised that the traditional authorities have the power to regulate grazing access to commonage within their local communities (Lankhorst 2009, 199–201).

Thus, one can say that Namibia introduced a hybrid system for the administration of land in communal areas. In this system, the traditional authorities were expected to work in conjunction with the newly created state entity—the communal land boards. However, who would constitute the traditional authority in this hybrid system became one of the contentions surrounding land administration in communal areas. Prior to the Communal Land Reform Act (2002), the Namibian government enacted the Traditional Authorities Act (2000), which recognised traditional authorities and the traditional communities that they represented. When the traditional leadership of six San communities applied for recognition as a traditional authority under the Traditional Authorities Act (2000), the Namibian government at first turned down all the applications. Later, it recognised the traditional leadership of two San communities that lived in Bushmanland (one of the former Bantustans in the northeast of the country). They are the !Kung and Jul'hoansi communities, who comprise only 15% of the total San population in Namibia.² Since they do not have any land of their

² There are 17 San distinct groupings in Namibia. The San people are an indigenous hunter-gatherer group who have resided in southern African region. Being a small minority with a less centralised

own, most San communities whose applications for the recognition of their traditional leadership were rejected by the government continue to live on the land under the authority of the Owambo and Kavango people or on white farms as farmworkers. Since their traditional leadership was not recognised by the government, they are not consulted on matters related to the land they occupy (Lankhorst 2009, 207).

The other highly contentious issue surrounding land administration in Namibia's communal areas is the encroachment of commonage through illegal fencing by wealthy or politically well-connected individuals. This problem of privatisation of commonage through illegal fencing has been exacerbated, particularly since independence, as an increasing number of wealthy black farmers who accumulated wealth in urban economies began to invest in commercial farming in communal areas (Lankhorst 2009, 209–210). According to Gargallo (2020, 134–135), more than 1000 fences were set up in communal areas during the first ten years of the twenty-first century. These amounted to three million ha of fenced ranches. In addition, while 46.4% of Kavangoland's total land area was used as a communal grazing area, 30% of it was occupied by commercial ranches. This process was facilitated by the traditional authorities' inability to regulate grazing access to the commonage under their jurisdiction and by the co-optation of traditional authorities by wealthy or politically well-connected farmers. Fencing a part of commonage, especially the most valuable part of the water holes, has reduced people's access to grazing land and water sources. Consequently, it prompted the movement of these excluded people to the commonage of neighbouring communities, which resulted in land conflicts between neighbouring communities (Lankhorst 2009, 209–210).

3.3 *South Africa*

South Africa was the last country among the three discussed here to obtain independence from racial domination. Like Namibia, it held the National Land Conference in which representatives from various corners of the society came to discuss the future direction of land reform policy. The conference was held in 1993, just prior to the country's first democratic elections (National Land Committee 1994). In addition, there were other stakeholder conferences on the future of land reform, such as the one funded by the World Bank, that had some influence on the final land reform policy proposed in the White Paper on Land Policy (hereinafter: the White Paper) published in 1997 (Williams 1996). South Africa's land reform policy was unique, as

political system, the San have historically been the most marginalised people in Namibia. Most of their traditional hunting grounds were seized by white settlers and were converted into commercial farms. The creation of Bushmanland as their homeland occurred much later than homelands for Bantu-speaking people, and most of the San never came to live on this land. As a result, even after independence, most San communities lived on white farms as farmworkers and on former homelands designated for Bantu-speaking ethnic groups in the north-eastern region of Namibia (Lankhorst 2009, 206–208).

it contained not only a land redistribution programme that aimed to distribute white-owned farms to black people to redress the racial inequality of land ownership, but also the land restitution programme that aimed to return land to those who had been dispossessed of it by racially discriminatory laws and practices after the Natives Land Act (1913). The White Paper also proposed a land tenure reform programme to consolidate the land rights of residents of the former homelands (also known as Bantustans) and the tenants and dwellers on white-owned farms.

The White Paper identified two problems with the former homelands' land tenure system. One was that residents' rights to the land were not officially recognised, which placed them in a vulnerable state. The other was that the land administration system in the former homelands was in a state of disarray and its tendency to discriminate against women was incompatible with the democratic principles enshrined in the Constitution (DLA 1997, 30–34). As an interim measure, the Interim Protection of Informal Land Rights Act (1996) was enacted to protect the vested interests (land rights) of people who did not have explicit legal rights to the land that they occupied, such as residents of the former homelands. The Act also stipulated that people with informal rights to the land must be treated as stakeholders when such land is subject to development projects and business transactions (DLA 1997, 62). Following the White Paper, the Land Rights Bill was discussed within the Department of Land Affairs, but it was never introduced to Parliament. While South Africa embarked on the land redistribution and land restitution components of its land reform policy soon after its democratisation, it took ten years for the legislation to enforce land tenure reform. Moreover, the Communal Land Rights Act (2004, hereinafter: CLaRA) was never fully implemented after the Constitutional Court declared it unconstitutional in 2010.

Although the CLaRA was struck down due to procedural reasons, the legal challenge posed to the CLaRA revealed the fundamental contentions surrounding land tenure reform in South Africa. The CLaRA aimed to recognise the various forms of existing land rights—formal and informal, registered or unregistered—of the people residing in communal lands, that is, the former homelands of South Africa. The CLaRA had three principal provisions. First, it proposed two forms of land rights. One was the community/group land rights that were bestowed upon the community and registered under the name of the community. The other was the right to a piece of land within the communal land that was given to individual members of the community and registered under the name of the individual residents. Both land rights could be converted into freehold ownership. Second, it proposed that the community/group land rights were to be administered by a land management committee that had to be established within the community. It also stated that if there is a traditional council within the community, such councils may exercise the authority and obligations of the land management committee. Third, it stipulated the establishment of the Land Rights Board, which was the government agency that would oversee the administration of land by the land management committees (Sato 2018a).

The traditional council is a council established within local municipalities by the Traditional Leadership and Governance Framework Act (2003, hereinafter: TLGFA),

which gave traditional leaders a wide range of roles that covered agriculture, health, the administration of justice, safety and security, environment, tourism, and so forth. Its predecessor was the tribal authority that was established by the Bantu Authorities Act (1951) of the apartheid era (Cousins 2008, 13). The TLGFA aimed to reform the traditional leaders' administration system by introducing the principles of gender equality and democracy (Williams 2009).³ However, not everyone agreed on making the traditional council a land administration committee. Thus, it was the second provision of the CLaRA that led to the legal challenge by those who objected to the traditional council's appropriation of the responsibility of the land administration committee. With the support of land NGOs and activists, four rural communities submitted a legal challenge to the CLaRA in 2006—presenting two oppositional arguments. First, they argued that the CLaRA would weaken people's existing land rights, because whenever a traditional council existed, such councils would become land management committees, which was problematic. Moreover, the CLaRA did not recognise the relative autonomy of communities within the boundaries of traditional councils. Second, they argued that there was a procedural error in the legislation process (Cousins 2008; Murray and Stacey 2008).

Although the CLaRA was found to be unconstitutional due to procedural reasons, the question of how to define the boundaries of the collective/communal land ownership that was raised by this legal case is arguably fundamentally important for reforming the customary land tenure system—where the right to land has been given based on one's membership in the community. If the traditional council were to become the land administration committee, the owner of the communal land would be synonymous with 'tribe'. The four rural communities that challenged the CLaRA claimed that smaller communities within the 'tribe' had relative autonomy (Claassens and Gilfillan 2008; North Gauteng High Court 2009). There are no population statistics for each tribe in South Africa, but Claassens (2008, 265) estimated that each tribe/community would consist of approximately 10,000 to 20,000 people. My rough estimate presented a figure of 18,000 persons per chief,⁴ which is almost identical to Claassens's estimate. The size of each tribe differs, but the practicality of establishing a committee that represents more than 10,000 people to administer collectively owned land should be examined regardless.

The legal challenge to the CLaRA also raised the question of whether traditional leaders should have the authority to administer land in the first place. Unlike other African countries, South Africa's former homelands are not the main targets of agricultural foreign direct investment (FDI) by foreign companies. Therefore, the so-called land grabs have not been a major issue yet. However, in areas where mining occurs in the North West Province, it has been reported that traditional leaders

³ The TLGFA stipulated that a third of the councillors should be female and that 40% of councillors should be democratically elected members of a 'traditional community'. The remaining 60% consists of 'members of the traditional community' who are chosen by traditional leaders.

⁴ According to the FFC (2016), as of early 2016, there were 13 kings and paramount chiefs, 829 chiefs, and 7399 headmen/women in South Africa. The author divided the population of the former homelands (about 15 million) by the number of chiefs (830). Since there are 7400 headmen nationwide, the population per headman is over 2000.

have allowed mining companies to exploit mineral resources without consulting the locals and have monopolised the royalties obtained from the companies (Mnwana 2014). The Bafokeng people in the North West Province are the wealthiest tribe in South Africa due to their income from mines. However, the benefits accrued from such mining activity are not widely distributed among the locals. There is also a conflict among residents regarding the beneficiaries of such mining activity. Should the Bafokeng be the sole beneficiaries? Or should the non-Mfokeng, who live on the Bafokeng land, be included as well? (Comaroff and Comaroff 2009).

4 Traditional Leadership and Rural Land Governance

A brief review of land tenure reform policies of Zimbabwe, Namibia, and South Africa illustrates the striking similarities in the policies that they have adopted and introduced after independence. All three countries introduced legislation to identify and regulate the powers and authorities of traditional leaders. This indicates that the power and authority of traditional leaders are sanctioned by the central government, and statutory recognition is one of the sources of power and legitimacy for traditional leaders (Buthelezi and Skosana 2018). It also signifies that even if traditional leaders have the support of their own people, they may not be able to exercise certain powers unless they are recognised by the central government. This was demonstrated by the San traditional leadership case in Namibia. All three countries also introduced or amended the legislation concerning land in communal areas that gave traditional leaders the power to regulate the access to land in these areas. In the final section of this chapter, I will turn to some of the questions regarding the role of traditional leaders in rural land governance in these three countries—paying particular attention to their sources of power and legitimacy and their possible competitors.

4.1 *Popularity of Traditional Leadership: Resurgence, Tenacity, Reinvention*

When we talk about the popularity of traditional leadership in Africa from the end of the twentieth century to the early twenty-first century, one strand of literature emphasises its ‘resurgence’ or ‘revival’ due to the international political and economic climate of the 1990s. For instance, Oomen (2005), using South Africa as a case study, argued that when the democratisation of South Africa and the restoration of traditional leaders occurred during the 1990s, the importance of preserving and restoring cultural rights was emphasised through the rise of indigenous rights movements globally. In these international arenas, traditional leaders were seen as the embodiment of traditional culture, customs, and languages that were rapidly disappearing due to the wave of modernisation (Oomen 2005, 3–13). Comaroff and Comaroff (2018, 7) also

pointed out the influence of neo-liberal policies, notably the decentralisation ‘of the state and the outsourcing of many of its functions’ or bypassing of its authorities by donors and corporations, on the resurgence of chiefship in several African countries.

This ‘resurgent’ aspect of traditional leadership is probably felt most strongly in South Africa, because well-developed scholarship has vehemently argued that there is no place for traditional leadership in a democratic South Africa. Perhaps the most well-known case was put forward by Mamdani (1996), who argued that the traditional leaders lost popular support due to the ‘despotic’ roles that they played during the apartheid regime and therefore had no place in a democratic South Africa. Ntsebeza (2005) also argued that traditional authority is incompatible with the democratic system, as the former relies on the hereditary system for choosing leaders. Another criticism came from civil society organisations, especially women’s organisations, which indicated that women’s rights were not sufficiently recognised under customary law (Amtaika 1996). Despite these criticisms, the South African Constitution (1996) recognised the traditional leaders and the TLGFA (2003) gave them a wide range of roles, which included rural land administration.

On the other hand, another strand of literature views the popularity of traditional leadership since independence as a result of the ‘tenacity’ of the institution, which has survived several shifts in political power from the colonial to the post-colonial period. There are at least two elements that explain the tenacity of traditional leadership. The first element applies to many other African countries as well, while the second is probably unique to or at least more prominent in the southern African region due to its colonial political economy. The former is the flexibility, versatility, or adoptability of African traditional leadership, which was articulated by Alexander (2018), who referred to Zimbabwe as her case study:

The ‘return’ of chiefs is a mirage, seemingly always sitting on the horizon. In fact, they never left. But their durability is not to do with staying the same: they have been as changeable and contradictory as state institutions themselves, always bound by the state’s shifting demands and always rooted in versions of custom but never wholly defined by either of them. (Alexander 2018, 154)

In a similar vein, researchers also discuss the flexible nature of the ‘customs’, ‘customary law’, and ‘customary’ land tenure systems that are usually associated with traditional leadership. Distinguished from ‘official’ customary law, such as codified statutory laws during the colonial period and/or anthropologists’ writings in the nineteenth and early twentieth centuries, several researchers advocated for the necessity of understanding the practices and norms that govern people’s daily lives, which they termed as the ‘living’ customary law (Bennett 2004, 2008, 2009). The ‘living’ customary law is characterised by its flexibility and constant minor changes (Oomen 2005, 78). Thus, it is hard to grasp and even harder to incorporate into formal policy (Delius 2020). Cousins et al. (2011) argued that policymakers are hardly aware of the existence of the ‘living’ customary law. Consequently, they tend to rely on the customary laws of past times, which causes significant problems in the formulation of land tenure reform policies. Advocates of the ‘living’ customary law testify to the ever-changing nature of tradition and traditional leadership in Africa.

The more southern Africa-specific source of tenacity of traditional leadership is concerned with the importance of the customary land tenure system for migrant workers and migrant sending societies. As often discussed in the classification of colonial rules in different parts of Africa, southern Africa was developed as labour reserves for settler-led economic development in the form of mines and commercial farms. In this colonial political economy model, African labourers in the mines, farms, and cities were considered temporary sojourners or migrants and were supposed to return to rural reserves once they retired or were no longer useful as a workforce. Native reserves were supposed to accommodate, nurture, and look after the people who were too young, old, sick, or frail to work in mines, farms, or cities (Wolpe 1972). In this context, a customary land tenure system controlled by traditional leadership served as a social safety net for migrants and migrant households by allowing them to retain their rights to the land in native reserves. As much as remittances were important for the daily survival of households in native reserves, remittance-sending migrants also needed to hold onto their land for retirement. Thus, O'Flaherty (1998, 544) argued that '[t]he crucial role played by the traditional political system in ensuring household survival may in part account for the widespread support for the traditional political system' that he observed in the south-eastern region of Zimbabwe. Mbiba (2001) corroborated the importance of the social security provided by customary tenure in communal areas for urban workers, but criticised it for being utilised as an excuse to curb the permanent settlement of Africans in urban areas in both colonial and post-colonial Zimbabwe.

I would like also to touch upon the 'reinvention' or 'restoration' of traditional leadership among the communities that had historically been known as more egalitarian or whose leadership structure was not recognised during the colonial period. In post-apartheid South Africa, the Khoisan people,⁵ whose ancestors were believed to be either decimated or integrated into the mixed population (called 'coloured' by apartheid racial classification) during the seventeenth and eighteenth century in the Dutch-ruled Cape colony, began to assert their indigenous Khoisan identity and called for the recognition of their leadership structures and demand for land. Their activism—often referred to as 'Khoisan revivalism'—intensified in the second decade of the twenty-first century (Sato 2018b) and culminated in the repeal of the TLGFA (2003) and the enactment of the Traditional and Khoi-San Leadership Act (2019). Their movement sought not only to restore their distinct cultural identity, but also demanded recognition from the South African state and the power and authority

⁵ Khoisan is a general term used to refer to the pastoralist Khoikhoi and the hunter-gatherer San, who lived in southern Africa when Dutch settlers arrived in the seventeenth century. The San people were perceived as 'sub-human' by the colonialists and many of them were hunted down in the Cape colony. The Khoikhoi people were largely incorporated into the colonial economy as slaves and servants and were integrated into the mixed population through intermarriages (so-called 'coloured' in apartheid's racial classification). However, in post-apartheid South Africa, some people who used to be classified as 'coloured' began to identify themselves as Khoisan and demanded their recognition as an indigenous population. There are at least five groupings within Khoisan population in South Africa. They are Griqua, Koranna, Nama, Cape-Khoi, and San (Sato 2018b).

that this recognition would bring to their leaders. Therefore, we need to shift our discussion to the relationship between traditional leaders and the state or the ruling party in these southern African countries.

4.2 Chiefs, State/Ruling Party, and Rural Land Governance

In terms of political system, while all three countries under discussion have multiparty electoral systems with different degrees of free and open competition, the politics of Zimbabwe, Namibia, and South Africa after independence are also characterised by the so-called dominant one-party rule that originated from their respective liberation movements. In this context, it is probably more appropriate to discuss traditional leaders' relationships with the dominant political party, rather than with the state itself. Several researchers, including those cited above (Alexander 2018; Gideon 2019), have suggested that Zimbabwe's ruling party, the ZANU–PF, wooed traditional leaders to their side in order to secure rural votes after they began to encounter significant electoral competition from the MDC. This scenario also applies to South Africa, where the African National Congress (ANC) faced fierce competition from the Inkatha Freedom Party (IFP) in the late 1990s. Before the nation's first democratic elections, the IFP was not only popular in the KwaZulu homeland—its original base, but also had many supporters in black urban townships in Gauteng Province, where many Zulu people lived. Although the ANC began to gain overwhelming support inside the country after the release of Nelson Mandela, the IFP's popularity was not shaken in rural KwaZulu. Since the IFP's popular support was believed to have been a result of its close relationship with the Zulu king and chiefs, the ANC hesitated to undermine traditional leaders when it came to power in 1994 (Amtaika 1996; Sato 2000; Beall et al. 2005).

Thus, traditional leaders are seen as voting banks by the ruling parties, even if this assertion may not have been tested scientifically. Nonetheless, the popularity of chiefs and their ability to influence rural voters was proven by a large-scale opinion survey in several African countries, including the three countries discussed here, albeit with major differences among the three. Using the data collected during the fourth round of the Afrobarometer survey that was conducted across 19 African countries in 2008 and 2009, Logan (2013, 354–355, 362–365) illustrated the startling intensity of support for traditional leadership in many countries across age, gender, educational level, and region of residence (rural vs. urban). However, popular support for traditional leadership differed among countries. Among the three discussed here, more Zimbabweans (73%) said that their traditional leaders wielded significant influence, while this proportion was just below 50% in Namibia and just over 30% in South Africa. However, with respect to whether traditional leaders should have more influence in the local community, a greater percentage of Namibians (60%) answered affirmatively, whereas Zimbabweans (51%) and South Africans (34%) were less enthusiastic about this proposition. Thus, it appears that traditional leaders in South Africa have

the least influence over local communities and that the majority of local people are not keen to increase their influence.

A new question thus arises: Does the ruling party need traditional leaders or do traditional leaders need the ruling party or the state? This is not an easy question to answer, but there has been evidence that traditional leaders have actively engaged in politics by organising themselves and becoming politicians in South Africa (Oomen 2005, 95–98; Holomisa 2009, 2011). The most famous and influential association is the Congress of Traditional Leaders of South Africa (CONTRALESA). The CONTRALESA was formed in 1986 by traditional leaders who opposed the KwaNdebele homeland's 'independence' plan. During the period of political transition, it argued that the authority of traditional leaders under customary law should be recognised even after the transition to democracy. After democratisation, several chiefs, including Phathekile Holomisa—the former chairperson of the CONTRALESA—and Mandla Mandela—Nelson Mandela's grandchild—continued to influence the policy formation process as members of Parliament from the ruling ANC (Sato 2018a). The chiefs' lobbying activities appear to be stronger in South Africa than in Zimbabwe and Namibia, which seems to suggest that traditional leaders need more state recognition and support in South Africa since they have the least influence on and popularity among local communities. Berry (2018) argued that South African chiefs have to rely on the state to legitimise their power and authority because they have lost their control over the territory and material resources under settler colonialism.

The analysis of the Afrobarometer survey (Logan 2013) also reveals that popular support for traditional leaders arises not only based on who they are, but also what they actually do. This point was illustrated by Mkodzongi (2016) using a Zimbabwean example. He discussed the rivalry between local chiefs and the central state over the benefits accrued from platinum mines in the context of the indigenisation policy in Mashonaland West Province. The local chiefs, who 'instrumentalised their position as 'representatives' of their ancestors', and the 'ZANU–PF government ministers' tried to control the community trust that would become local shareholders of the mining company. In this conflict between the local chiefs and the ZANU–PF politicians, the latter were perceived as 'outsiders'. The locals thus rallied behind the chiefs to ensure that they would benefit from the mine (Mkodzongi 2016, 103, 107–110). Alexander (2018, 141–143) also stated that the failure of the VIDCOs and WADCOs in the 1980s stemmed from the fact that these local institutions were given the task of implementing the unpopular policies of the central government. When the interests of the central government and those of local communities are incompatible, the locals support the voices that represent local interests. Traditional leaders have served as such voices in several places.

In South Africa and Namibia, the traditional authority was the local government in their homelands during the colonial and apartheid periods. While it was possible that they governed people in a 'despotic' way (Mamdani 1996), other research has argued that chiefs had to rely on support from residents to function as local governments in situations where they did not have sufficient administrative or financial support from the homeland governments. McIntosh (1992) argued that chiefs acquired a

certain degree of legitimacy through this process. Murisa (2013, 256) also stated that in Zimbabwe

[t]he enduring popularity of the office of chief among people derived from the fact that, despite the overt attempts at co-option by the [colonial] state and the lack of explicit coercion, the former maintained a form of independence and autonomy in articulating the interests of the subject communities.

After independence, the system of electing local leaders through a democratic method was also introduced in southern African countries. Therefore, theoretically, local governments or elected local councillors should be able to represent local voices against the central government if the latter wants to intervene in a manner that might damage the local communities. However, there are many examples of inefficient local governments that cannot fulfil their expected roles with respect to the provision of public services. Problems with corrupt local councillors are frequently reported in the media in South Africa (Ainslie and Kepe 2016). Interestingly, the Afrobarometer survey also reported that people do not necessarily view traditional leadership and local government as competing institutions. According to Logan (2013, 367–368), ‘those who trust traditional leaders are also more likely to trust their local councillors’. Moreover, she stated that ‘people regard [traditional leaders] as markedly better listeners’ and this is their ‘greatest apparent advantage over local councillors’. In principle, people appear to be more concerned with whether leaders care about them and whether they display accountability to the local people.

Nonetheless, not all traditional leaders care equally for the people they claim to represent or are capable of managing access to land in a manner that would benefit local people. Even though the central government of all three countries bestowed the power and authority over rural land administration to traditional leaders, this does not mean that their authority is uncontested. I have discussed this notion in Sect. 2, especially in the case of South Africa. Additionally, the system of rural land governance by traditional leaders in communal areas is not free from problems, as was demonstrated through the aforementioned Namibian case. Traditional leaders are not immune to modern sources of corruption, such as wealthy or well-connected individual farmers who want to monopolise communally owned resources for their own interests. Some of them even use their state-sanctioned land administration power to enrich themselves without sharing the benefits obtained from the land with their people. Moreover, according to popular opinion, land allocation is not the top responsibility of traditional leaders. In the Afrobarometer survey, fewer than 30% of respondents stated that traditional leaders should bear the primary responsibility for this task (Logan 2013, 360). Therefore, when it comes to rural land governance, we should also consider alternatives to land allocation by traditional leaders. The community conservancy developed in Namibia serves as an alternative that might effectively defend communal lands against encroachment by wealthy farmers.⁶

⁶ The management of natural resources such as wildlife by rural communities is not unique to Namibia, but it has been widely promoted and adopted in the southern African region since late 1980s, as evidenced by Zimbabwe’s CAMPFIRE programme (Balint and Mashinya 2008; Tchakamba et al. 2019). It was originally devised to manage the conflicts between the human and wildlife

In Namibia, community conservancy is regulated through the Nature Conservation Amendment Act (1996). The Act intends to partially decentralise wildlife management to local communities who organise themselves as a conservancy entitled to the profits accrued from wildlife through tourism ventures, such as safari camps and trophy hunting (Jones 2010). Since the first conservancy was established in 1998, the number of registered conservancies increased to 29 in 2003—covering 25% of the total communal area (Lankhorst 2009, 210–211). By 2017, the number of conservancies increased to 83 and more than half of communal areas became community conservancies or community forests (Gargallo 2020, 132). However, apart from a small number of conservancies that became popular tourist attractions, most of them only generate marginal revenues for local communities. Despite this, conservancies were continually established, apparently because communities saw them as a means to strengthen their land claims. Since establishing a conservancy entails defining its boundaries and membership, people view it as a means ‘to keep outsiders out’ and to prevent the enclosure of grazing lands by wealthy individuals in communal areas. Lankhorst (2009, 211–212) argued that conservancies could bear a particular appeal for the San people to secure their lands, as most of their leadership were not recognised by the Traditional Authorities Act (2000).

However, not all researchers share this optimism regarding community conservancies. Lapeyre (2010, 96) discussed a case where outside farmers grazed their livestock in the section of conservancy that was meant to be used for tourism and was leased out to a private company. Since this act was not illegal and was recognised as their ‘customary right’, the private company could not unilaterally remove the concerned livestock. Moreover, conservancies are not free from a chiefly influence. There are cases where traditional authorities have tried to control the management committees of conservancies or to secure benefits accruing from conservation-related activities. In addition, members of conservancies may not be able to agree on the land use plans. Some may want to use the land for agricultural purposes, whereas others may want to utilise it for grazing or tourism. In most conservancies, members need to demarcate areas to be used for different purposes such as hunting, tourism and livestock grazing, but agreeing on these land use plans is often difficult (Gargallo 2020, 138–140). Thus, community conservancies still entail certain complicated group dynamics of communal land management.

5 Conclusion

In the conclusion, I would like to return to the fundamental question of land tenure reform that was formulated in the South African White Paper on Land Policy, but which should also apply to Namibia and Zimbabwe. In its present form, is the customary land tenure system able to strengthen the land rights of residents

populations. However, what is unique to Namibia is that rural people began to use the concept of community conservancy to prevent the enclosure of communally-held resources by rich farmers.

in the communal areas of these southern African countries? In other words, does the customary tenure system offer a real alternative to the freehold tenure system? (Beinart et al. 2017, 48). Reviewing relevant literature on land tenure reform in these three countries has revealed that the principal contentions surrounding it are related to identifying the appropriate entity to administer the communal land and whether traditional leaders should continue to regulate the access to land, albeit under some degree of supervision by state institutions such as land boards and district councils. Evidently, there are cases where traditional leaders have demonstrated ineffective oversight and control over the access to land, especially grazing lands. This was particularly observed in Namibia, where wealthy and well-connected ranchers either defied or corrupted traditional leaders and privatised communal resources. In Zimbabwe, some traditional leaders, especially *sabhukus*, sold pieces of grazing land to newcomers for residential and agricultural purposes. Although this may be viewed as a 'traditional' practice, and not all *sabhukus* charge exorbitant fees, it can be argued that traditional leaders undermine the locals' future land needs by selling it to outsiders and that some leaders sell land for personal gain.

Some forms of alternative institutions have been proposed, such as a land management committee that is independent of traditional authorities in South Africa and community conservancies in Namibia. However, there is no guarantee that these alternatives will manage communally held resources more effectively. The administration of communal lands will always be a complicated process—regardless of who is selected to do it—due to the group dynamics, different demands for land usage, and the issue of autochthony and migrants. This is particularly true in the context of the increasing scarcity of land in communal areas due to the increase in the number of both population and livestock, which is a result of a natural increase and/or in-migration. Unless the total landmass is enlarged through land redistribution programmes, land management in communal areas will only increase in difficulty—especially in Namibia and South Africa—where land redistribution has progressed in a slow and limited manner.

Thus, I would argue that rather than focussing on traditional leaders, we need to go back to the debates on the role of customary land tenure as social security, even though these two debates have been historically interconnected. In Zimbabwe and in parts of South Africa, the attempts by the colonial and apartheid governments to introduce individual tenure in order to create full-time 'master farmers' in native reserves was met with fierce opposition (Beinart 1984; Alexander 2006). Rural people opposed it because this modernisation programme entailed other measures to make their agricultural practices more conservation-friendly, such as the forced culling of livestock and back-breaking contour construction. Urban migrant workers opposed it because they feared losing their rights to land in rural areas, which acted as a safety net for them. These developments occurred in the 1950s. The question is, are the political economies of southern African countries still characterised by predominantly temporary migration from rural areas to mines, farms, or urban areas? Unless we address the migrants' fear of losing their stakes in rural areas, they will keep relying on rural areas for their social security needs. In other words, we need alternative forms of social security to customary land tenure for urban workers and

city dwellers, so as to relieve the pressure on rural land. Once that is achieved, better ways of managing land in rural areas can be discussed.

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Politics of Land Resource Management in Mozambique



Akiyo Aminaka

Abstract Mozambique's 1997 Land Law was praised by international donors and the country's own civil society for its democratic and open drafting process. The process included public hearings throughout the country and the recognition of customary law. However, once it became operational, there were many instances of so-called land grabbing. This chapter argues that the reason for this lies in the political operation of the law rather than in the technicalities of its application. This chapter aims to explore the political dynamics in Mozambique that distort the implementation of the Land Law of 1997. The land law in Mozambique was developed with the technical support of international donors, and the government of Mozambique followed these external trends in the expectation of receiving financial support and private investment while it also reflected the axis of conflict in Mozambique's domestic politics. The case studies show that the operation of land law has resulted in the emergence of party-political oppositional axes in rural areas. These facts suggest that the specific political environment strongly influences the process of law-making and implementation. Mozambique's political environment is an obstacle to achieving the law's original objectives of establishing rights to land resources and social stability.

Keywords Land · Land law · Traditional authority · Mozambique

1 Introduction

Mozambique's land law reform has been steadily prepared and was provided with a broad direction by international donors that anticipated the transformation of the economic system at the end of the Cold War. The interests of the post-Cold War international community and the Mozambican government were aligned; the former promoted the transformation of the socialist country into a capitalistic economy, while the latter needed external aid and capital. This motivation of economic development

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outlined the direction of land reform to establish rights to use land resources and obtain loans secured by land rights.

Since independence, the Mozambican government has been run by the Mozambican Liberation Front (Frente de Libertação de Moçambique: Frelimo). The economy had been devastated by the civil war (1977–1992) against the Mozambican National Resistance (Resistência Nacional de Moçambique: Renamo). Additionally, with the regime change in the Eastern bloc, which supported the post-independence socialist economy in Mozambique, strategic aid to Mozambique was cut off. The Mozambican government was looking for a new financial supporter in the new international order.

Following the end of the Cold War, Mozambique ended the civil war with the help of United Nations peacekeeping operations and reconstruction assistance, including support for democracy. The peace agreement was signed in 1992 on the condition that Renamo would become a political party, in order to introduce a multiparty system. The democratised government announced the National Development Plan together with the National Land Policy¹ in 1995, immediately after the first general election in 1994, and subsequently enacted the Land Law of 1997.² These are the basic laws on rural land resource management, the subject of this chapter, which apply to almost 70% of Mozambique's population living on rural land.³

The new land law was praised by policymakers and local civil society organisations for participatory processes that represented the ideals of a post-conflict democratic society (Tanner 2002). Despite this, Mozambique is often criticised for the drastic increase in the number of large-scale land trades, so-called land grabs (Oakland Institute 2011). Policymakers have noted an overwhelming gap in legal literacy between investors who apply for land usufruct and rural communities that have land usufruct. To fill this gap, policymakers train practical assistants, aiming to diffuse legal knowledge into rural areas (Tanner and Bicchieri 2014).

However, the root of land conflict in Mozambique extends beyond technical problems that can be resolved by the law. The question concerns the difficulty of democratic decision-making and the fair distribution of interests in rural communities. This is because the Mozambican state gives a place to the village governing bodies in a highly politicised power structure that, throughout the introduction of the multiparty system, saw fierce contests between Frelimo and Renamo. The state reconstructed the relationship between the state and rural society relative to its land reform by adopting customary elements within its land resource management policies. It is dangerous to treat rural governance through land resource management as a technical problem, separate from the political power structure (Takeuchi 2014).

This chapter presents the political dynamics of land resource management in Mozambique by examining the actual situation at the site of implementation of the

¹ Resolução 10/95, Política Nacional de Terras.

² Lei 19/97, Lei de Terras.

³ With the enactment of the Local Authorities Law of 1997 designating special local authorities (municipalities) in preparation for the first local elections in 1998 and the subsequent creation of new local authorities, urban land is now administered by these municipal authorities.

land law. The remainder of this chapter is organised as follows. The first section traces the evolution of Mozambican land law in an international context. The second section examines how the Frelimo regime has used the legislation on resource management discussed in the first section as a political resource. Two motives for the ruling party will be evident here: one is the interest in the revival and integration of traditional authorities into administrative structures, in order to gain votes from the introduction of democratic electoral systems in the 1990s; another is the interest in the management of new natural resources since the 2000s. The final section discusses the combined effects of those political interests on the operation of land resource management at the sites. Finally, the chapter draws implications from these considerations.

2 Legal Design Amid an FDI-Driven Economy

Recent legislation on resource management in developing countries is not free from international influence as, although it is a national law, it was developed through contact with foreign actors. The case of Mozambique is no exception. This section traces the evolution of Mozambican land law and its shift in the focus of land policies in an international context since Frelimo's decision to transform its economic system from socialism to capitalism in 1984.

Frelimo's decision on regime change had a profound impact on the 1995 National Land Policy. Its opening statement explains that Mozambique is entering a new stage of economic and social development, characterised by a market economy. It is justified to formulate a new land policy that differs from the socialist-era guidelines that guided the drafting of the current law. The new land policy is based on the simple principle that land is one of the most important natural resources for the country and should, therefore, be valued (República de Moçambique 1996). It is based on the following principles. First, it guaranteed the use of land for the nation and investors by establishing competencies for land; second, it elaborated a principle for the transfer of land usufruct rights to construct partnerships between the government and investors, though the title belongs to the state, which bans trade in land.

The construction of partnerships with investors to promote the reconstruction of the Mozambican economy was already a fixed plan since the negotiations between the Mozambican government, the World Bank, and the International Monetary Fund in 1984, which resulted in the acceptance of the Structural Adjustment Programme in 1987. These international donors deeply influenced the management of land resources and intended to make loans available to peasants by establishing modern individual titles to land in rural areas from the 1990s (Burr 2005; De Renzio and Hanlon 2007). However, this does not imply that the World Bank is refusing to recognise the importance of customary law. On the contrary, it asserts that customary institutions in Africa, such as common titles, play a role in the avoidance of landless poverty.

In addition to donor agencies, foreign direct investment (FDI) has a tremendous impact on domestic politics. Over the years since colonial times, foreign capital has driven economic development in the absence of national capital, without distinction among colonial, socialist, or post-democratic capitalist regimes. In Mozambique, the economic opportunities for local politicians to emerge from local notables were virtually non-existent. Thus, the donor intentions and FDI trends also strongly influenced national development policy, making it easier for politics to emerge with a direct link to the centre of the party-state.

The Mozambican government prioritised legal preparations to attract FDI, in order to rebuild its economy, soon after the peace agreement in 1992. Legislation on land resource management was also prioritised, in order to standardise it globally and to accommodate FDI. The National Land Policy was announced in 1995, and the Land Law and the Land Law Regulation were enacted in 1997 and 1998,⁴ respectively. At the same time, the Policy and Strategy for the Development of Forest and Wildlife was published in 1997, and the Forest and Wildlife Law was enacted in 1999.⁵ In 2000, the Technical Annex for Community Land Delimitation⁶ was enacted to provide guidance for delineating boundaries between adjacent villages in rural areas and between villages and forests, followed by the Regulation for Forest and Wildlife Law.⁷ Then, in 2005, a ministerial order⁸ made a mechanism for channelling and using 20% of forest and wildlife exploitation tax in favour of local communities. These sets of laws set out the policy for the use of land resources and the legal procedures for establishing the use of land in rural areas, as well as the potential for use of land extending beyond the rural areas. These laws have laid the groundwork for land use throughout the country.

The new series of laws approved the acquisition of land usufruct (*direito de uso e aproveitamento*: DUAT) certificates by individuals, corporate bodies, and communities, except for title to public land. In addition, for the first time, they approved customary land usufruct by peasants on rural land and detailed regulations for delimitation. Further, the acquisition of a DUAT by communities or individuals is not obligatory, and both customary law and the new land law entail land usufruct. According to the Land Law in 1997, which recognises the customary law, the land usufruct is originally granted without a DUAT deed, and DUAT is not mandatory for those in rural areas that are subject to customary law. In this sense, the precedent in land reform was a procedure for external development actors that are not subject to customary law to obtain DUAT for use of land resources in rural areas.

Based on the National Development Plan published in 1995, the Mozambican government implemented its 'Agricultural Development Programme of 1998–2005 (Programa de Desenvolvimento da Agricultura: PROAGRI)' under the initiative of the Ministry of Agriculture to protect peasants' access to resources and increase

⁴ Decreto 66/98, Regulamento da Lei de Terras.

⁵ Lei 10/99, Lei de Florestas e Fauna Bravia.

⁶ Diploma Ministerial 29-A/2000, Anexo Técnico para a Delimitação das Terras das Comunidades.

⁷ Decreto 12/2002, Regulamento da Lei de Florestas e Fauna Bravia.

⁸ Diploma Ministerial 93/2005.

their productivity through improved resource management. However, the tone of increasing smallholder productivity began to change gradually from the end of the programme. The Frelimo government reacted to the growing global interest in biofuels from 2004, the year before the 2005 general election, and began to develop the idea of linking cash crop cultivation by smallholders and recommending the cultivation of the oilseed crop *jatropha* to farmers. The cultivation of *jatropha*, as well as existing sugarcane plantations, has attracted interest from private investors as a raw material for bioethanol. As a result, FDI in the agricultural sector has increased significantly (Schut et al. 2010; see Fig. 2). As if to follow those FDIs, Mozambique was selected as one of the 11 priority countries for a major agricultural project founded by the American entrepreneurial foundation, the Alliance for a Green Revolution in Africa (AGRA) for 2006–2020.

The government followed up on these legislative developments with several campaigns to advance land registration across the country. This included the campaign for land resource management, which in effect includes encouraging land registration, communicating information about the process, and creating branches of financial institutions throughout the countryside based on the premise that there would be the possibility of future land-backed loans—although simply registering the land does not immediately result in loans or investment. At the same time, from 2006, a series of campaigns supported by European donors and the World Bank began to disseminate information to the rural population, including information on how to determine the common land, initially starting with training and capacity building for paralegals (Tanner and Bicchieri 2014).⁹

While the training of these personnel takes time, the intention of the agricultural policy evolved into large-scale investment following the worldwide jump in cereal prices in 2007 and 2008. The government responded to these foreign interests by publishing the Strategy for Green Revolution and the National Biofuels Policy and Strategy.¹⁰ There was no shortage of plans to promote agricultural investment from outside the country. During this period, the governments of Japan, Brazil, and Mozambique announced a broad-based agricultural development project, ProSavana, touting South–South cooperation, with emerging countries also joining the ranks of new donors soon after the drastic increase in crop prices in 2008. Agricultural investment as a share of total investment drastically increased by 85.5% in the following

⁹ Beginning with ‘Community Land Initiative (Iniciativa para Terras Comunitárias)’ (2006), ‘Consultative Forum for Land (Forum de Consultas sobre a Terra)’ (2010), and, more recently, ‘Secure Land Campaign (Campanha Terra Segura)’ (2015), there is an impression that this was done in haste for the 2017 assessment, the 20th anniversary of the implementation of the 1997 Land Act. Supplemental campaigns have continued in 2017 and beyond, such as the ‘Land Management Project (Projecto de Administração da Terra em Moçambique)’ (2018–2024) led by the Ministry of Land, Environment, and Rural Development (Ministério da Terra, Ambiente e Desenvolvimento Rural: MITADER). Current projects aim to improve infrastructure with a package of land registration, water, electricity, roads, and financial institutions to return the revenue from land resource use and management to local communities through village administration.

¹⁰ Resolution 22/2009.

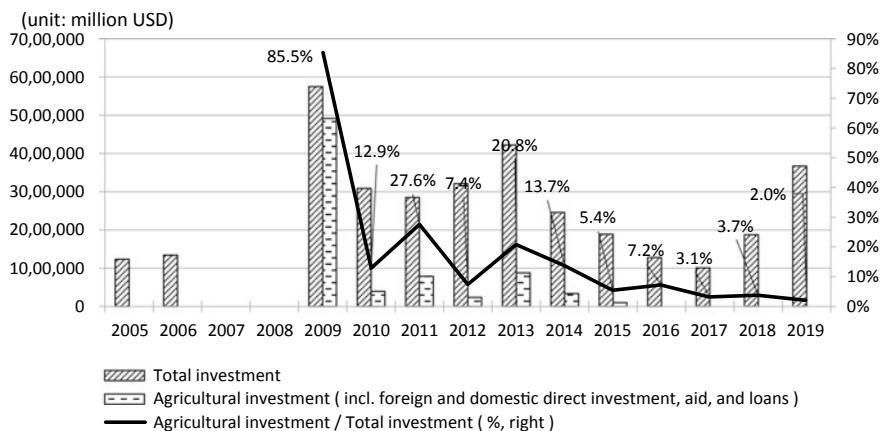


Fig. 1 Agricultural investment as a part of total investment in Mozambique 2005–2019. *Source* INE (2006, 2007, 2011–2020). *Note* No data were available for 2007 and 2008

year, as shown in Fig. 1. The number of applications for DUAT increased, while the number of contracts not fulfilled by investors also increased.

In response, the Mozambican government began to issue DUAT with more caution and set a moratorium on the issuance of large-scale DUAT of over 1000 ha from the end of 2009 until October 2011 (Oakland Institute 2011). During the moratorium, the agricultural policy was revised to promote small- and medium-scale commercial agriculture in addition to large-scale ventures. It also revised the procedures found in the Land Law Regulations of 1998, increasing the number of community consultations. Around the same time, in 2010, the World Bank published its ‘Principles for Responsible Agricultural Investment’ (PRAI). In 2011, when, after the moratorium, DUAT was reopened, the government published its ‘Strategic Plan for the Development of the Agricultural Sector (PEDSA): 2011–2020’. The Ministry of Agriculture drafted this plan in 2007 with the technical cooperation of and funding by the Food and Agriculture Organization of the United Nations (FAO). PEDSA does not explicitly mention PRAI; however, as the FAO was involved in the elaboration of both PEDSA and PRAI, it can be concluded that the policymakers of the FAO and Mozambique expected the establishment of a common international understanding of agricultural investment by PRAI and then subsequently published PEDSA. PEDSA targets food security, nutrition improvement, and the reform of the agricultural sector to increase sustainability and competitiveness in the world market. It was also intended to improve management of agricultural land, fishing ground, and forests, recommending the registration of communal lands to protect them (MINAG 2011). The Community Land Initiative campaigns mentioned above, including paralegal training, PEDSA, and PRAI, all involve common policymakers.

After the global jump in cereal prices in 2007 and 2008, international donors demanded even more reform from the Mozambican government to make DUAT tradable (USAID 2007). Additionally, the ‘New Alliance for Food Security and

Nutrition', the support framework set up by the G8 summit in 2010, recognised ten African countries as having great potential for agricultural development, of which Mozambique was one.

However, the tide of this agro-energy resource changed in around 2007, when it was discovered that there is a high potential for the development of natural gas fields offshore in the Afungi Peninsula, northern Mozambique. In 2010 and 2011, world-class reserves of natural gas were confirmed by several major energy companies. While the extraction of the natural gas discovered takes place offshore, the logistics facilities to liquefy it and transport it to international markets are built onshore. This led to a need to secure large tracts of industrial land and forced the resettlement of local people who had made their livelihoods through fishing and agriculture. In accordance with the land law, initial consultations were carried out with local communities in the Afungi Peninsula, the area targeted for development in 2013. The consultation process had to be repeated several times over the years due to the inappropriate use of documents that should have been signed by representatives of the community when a company applies for DUAT, but were signed and submitted by a person not representing the community. Eventually, the resettlement process proceeded between late 2017 and 2018, with the construction of the plant underway as of 2021.

It remains unclear whether the consultation process, which was supposed to have been set up with the administration in the area, led to the signing of the petition by someone who did not represent the community. An important hint for the design of the discussion in the third section of this chapter is the fact that the area covered by this development project at the Afungi Peninsula was the site of Renamo's support base in the early elections.¹¹

During this time, the application and acquisition of DUAT by individuals or jointly by rural communities was being pursued with the technical assistance of the Ministry of Land, Environment, and Rural Development (Ministério da Terra, Ambiente e Desenvolvimento Rural: MITADER). It was a part of a countermeasure to articulate their rights to avoid land disputes with external developers, alongside the Environmental and Social Management Framework that each borrowing country was obligated by the World Bank to produce from 2018. The framework was meant to strengthen the land rights of communities and individuals through delimitation and to improve their ability to negotiate with investors (MITADER 2016). Land registration is still underway in rural areas, as of 2020.

¹¹ The percentage of votes cast in the early elections can be found down to the county level on the Website of the Institute of Social and Economic Studies (Instituto de Estudos Sociais e Económicos: IESE), Mozambique's independent research institute (www.iese.ac.mz/cartografia-eleitoral/#/). The area around Afungi Peninsula, which was Renamo's base of support in the immediate aftermath of democratisation, has been weakened by the development of party politics in Mozambique and has lost its capacity to receive the political demands of the population. The lack of transparency in the development of this political space is not unrelated to the start of radical Islamist terrorism, which continues to this day. The northern part of the country, including the Afungi Peninsula, has been affected by attacks by armed groups, identified as Islamic extremists, since October 2017, forcing more than 700,000 people to flee their homes by June 2021.

Another important aspect of land resource management is the creation of revenues for local communities to benefit from these developments. The Conservation Law of 2014 provided specific guidelines for the use of land resources by local communities in rural areas. This was preceded by the Landscape Protection Law and related regulations and a ministerial diploma in 2005, which defines the mechanisms for channelling and using 20% of the value of the consigned fees on local communities.¹² The 2014 Conservation Law allocates 20% of the profits from the use of forest resources and other resources to local communities and encourages their development planning. The Conservation Law clarified the role of the district administration in drawing up community development plans in line with this legal framework. It gave the district administration the power to decide how to redistribute a portion of the proceeds of large-scale resource development within the district.

This section has confirmed that the flow and direction of legal design were oriented under the auspices of international legal development. A great deal of capital investment was made in accordance with the legal system created. In the process of land law reform that we have seen in this section, the proactive position of the Mozambican government only appears to welcome investment in response to powerful external influences. However, in the next section, by looking at Mozambique's land law reform in light of domestic political developments, we will observe that the ruling and opposition parties, which are in close competition, were extremely interested in land law reform.

3 Political Interests in Village Administration

This section examines how the Frelimo regime has used the legislation on resource management discussed in the first section as a political resource. This section presents two phases of political interest. The first phase encompasses the integration of traditional authorities into administrative structures, in order to gain votes from the introduction of democratic electoral systems and between the first general election in 1994 and the third general election in 2004. The second phase sees growing interest in the management of new natural resources between the third general election in 2004 and the sixth and most recent general election in 2019 (Fig. 3).

¹² Lei 10/99, Lei de Florestas e Fauna Bravia, Decreto 12/2002, Regulamento da Lei de Florestas e Fauna Bravia, and Diploma Ministerial 93/05.

3.1 Revival of Traditional Authority for Vote-Getting

The revival of traditional authority within the framework of the modern state is a phenomenon that has been common to many African countries, including Mozambique, since the 1990s. According to Oomen (2005), the re-emergence of traditional leader is linked to the postmodern phenomenon of the weakening of the nation-state and the assertion of collective rights based on culture. There are several reasons for supporting the chiefs: achievement, government direction, and the lack of other options. They were supported not because of their antiquity, but because of the symbolic value and political power that they have in the new world (Oomen 2005). Oomen’s argument that the revival of traditional authority is a postmodern phenomenon can be applied to the colonial state and the modern state is, as Ntsebeza (2005) states, an extension of the colonial state. This would also apply to the ups and downs of the social status of traditional authorities throughout Mozambique’s history of colonial rule, independence and socialism, and post-democratisation.

This subsection presents how the Mozambican government positioned and articulated the traditional authority within the hierarchical structure of administrative organisations. Mozambique’s administrative units are shown in Fig. 2, divided into provinces, municipalities, districts, and administrative posts. An administrative post is divided into districts in urban areas, while it is segregated into localities and subdivided areas in rural areas. According to the definition of the Land Law of 1997, among the mentioned divisions, ‘communities’ refer to localities or smaller areas

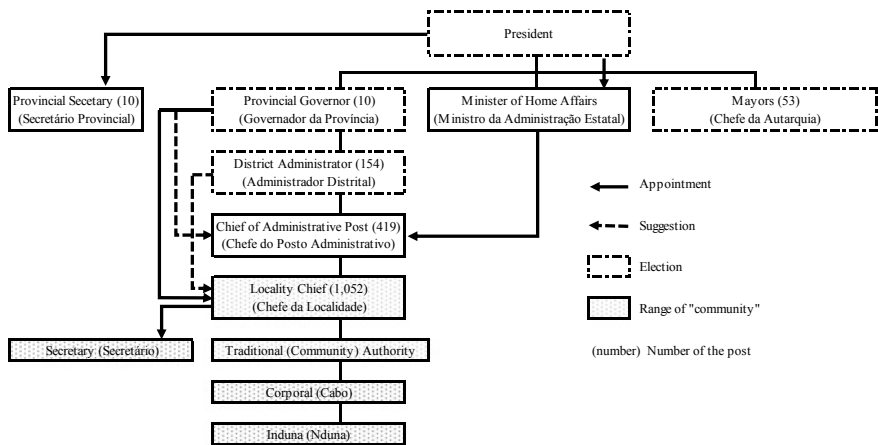


Fig. 2 Structure of administration and routes of appointment or election in 2020. *Source* Lei 8/2003, Lei 1/2018. *Note* The Communal Authority, a new framework established in 2000, consists of a hereditary ‘traditional authority’, the régulo, as well as a permanent secretary (secretário), originally an executive body of the socialist era, and ‘community leaders’, many of whom are veterans of the Frelimo and national armed forces. The scope of ‘community’ and ‘communal authority’ was defined by the 1997 Land Act and the 2000 Proclamation on the Joining of National Administrative Institutions and Communal Authority (Decreto15/2000). Numbers in the round brackets show the number of each position in 2020

with groups of households and individuals that protect the public benefits of its residents through the preservation of residences and the cultivation of land, forests, culturally important places, pastoral areas, water sources, and reclaimed land.

These administrative units work for land resource management as follows. At the provincial level, provincial governors are responsible for the allocation of DUAT for parcels of 0–1000 ha of land, according to article 22 of the Land Law of 1997. Issuance of DUAT on larger land is up to the minister with jurisdiction over the activities of the applicant for the issuance of the land usufruct. At the district level, the role of district governments was somewhat driven by the passing of the law, establishing the principles and rules of organisation of local state bodies. The passing of legislation on land-use planning in 2007 additionally strengthened the role reserved for these bodies about the management of land and other natural resources at the local level, highlighting the importance of approving district land-use plans. It should be noted that under the land law the lack of district land-use plans with cadastral services prevents district governments from making land-use decisions in their area of jurisdiction. At the community level sit localities that are subordinate to the villages within the administrative division. The series of laws on land and forests include the specific provisions that require the participation of these communities and their institutions in the management of natural resources by customary law.

The traditional authority in Mozambique called *régulo*¹³ is the gatekeeper for communal lands, as it is responsible for customary law according to the Land Law of 1997 (Serra 2014). However, the role of the *régulo* has been highly politicised and used by the state as a political tool for rural governance since the colonial period. After independence, the Mozambican revolutionary government, led by Frelimo, deprived *régulo* of this role. In opposition to the deprivation of its authority by Frelimo, some *régulo* naturally turned to support Renamo. After democratisation, the *régulo* were once again authorised by the state as a member of the newly established village governance body, the ‘communal authority’, by the proclamation of the decree in 2000 on the Forms of Articulation of the State’s Legal Organs to Communal Authority.¹⁴

The political process that established this decree in 2000 reflects the interests of Frelimo and Renamo as follows. Since 1991, in anticipation of the end of the civil war, the Ministry of Home Affairs (Ministério da Administração Estatal) played a role in managing community security to prevent the recurrence of the civil war and, therefore, recognised the importance of traditional authorities overseeing communities at the grassroots level. The ministry carried out a research project on the social position of the *régulo* called ‘Decentralisation and Traditional Authority (Descentralização e Autoridade Tradicional)’ between 1991 and 1998 (Serra 2014).

¹³ *Régulo* in Portuguese means ‘king of a small country’. Colonial administrative reform in 1907 set the administrative units *regedoria* for African ‘natives’ and appointed *régulo* as being responsible. Its political position shifted several times, along with regime changes in the colonial, socialist, and democratic periods.

¹⁴ Decreto 15/2000, Formas de articulação dos órgãos locais do Estado com autoridades comunitárias.

Around the same period, the tensions that accompanied the elections in 1994, 1998, and 1999, the period immediately after the end of the civil war, vividly reproduced the axis of conflict that existed during the civil war. Laws on land and the legal role and status of a traditional authority constituted an important issue in the elections. During deliberations on the Land Law in 1997, Renamo pointed out that Frelimo had previously deprived the traditional authority of its powers, while Renamo supported the establishment of rights to private property and the expansion of the power of traditional authority. Frelimo, for its part, expressed the negative opinion, at first, that traditional authority was not always a guardian for peasants, due to frequent abuse of power (AIM 1997; Kloeck-Jenson 2000).

In the two early national elections, Frelimo won by a narrow margin. Frelimo felt threatened when it became clear that the difference in vote share to the opposition was very small (Fig. 3). The high turnout of the opposition parties, especially Renamo, was a result of their solid support in the rural areas. With each experience, Frelimo became more aware of the need to enlist the support of traditional authorities to increase their vote share in rural areas. Therefore, the interests of the concurrent parties, both Renamo, who had traditionally supported the traditional authority position, and Frelimo, who had renewed its recognition of the traditional authority, coincided at the point of each strengthening its constituency by incorporating traditional authority at the lowest level of the administrative organisation of the state.

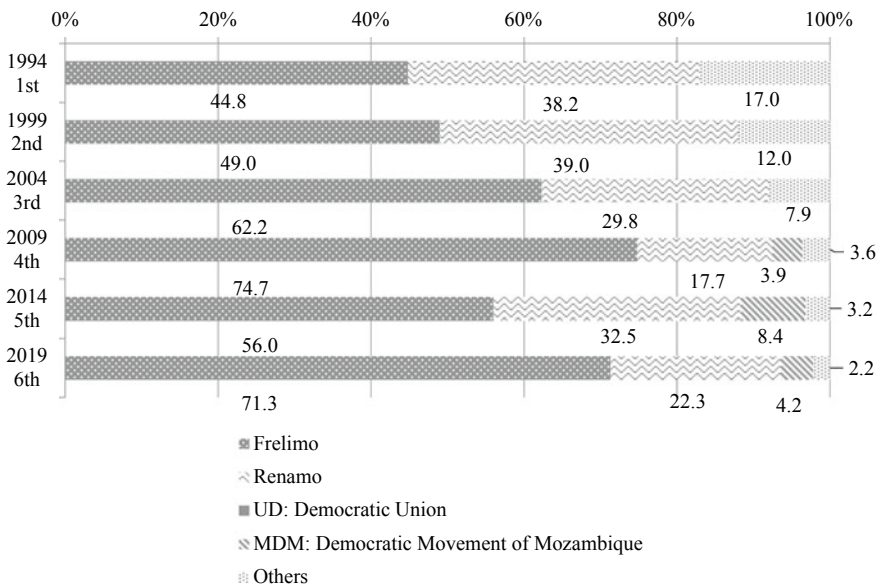


Fig. 3 Vote share by party in the National Assembly elections (%). *Source* Retrieved from IESE Cartografia Eleitoral (www.iese.ac.mz/cartografia-eleitoral/#/) on 5 March 2021

In 2000, the law officially recognised the traditional authority of *régulo* as part of communal authority. Although the same decree also recognised as members of the communal authority the administrative secretary (*secretário*) at the village level, which had existed since the socialist period, and the community leaders, who were strong supporters of Frelimo, as a member of communal authority. In sum, communal authority in village governance was implemented through political appointments, and Frelimo supporters remained dominant (Buur and Kyed 2005) (Fig. 1).¹⁵

Moreover, another law in 2003 placed this communal authority within the consultative council, which is the governing body for each administrative unit that is smaller than an administrative post, such as locality and population (Forquilha 2010).¹⁶ Then, another decree in 2005 approved the use of the national emblem by members of the communal authority, provided them with a uniform, and granted them a salary.¹⁷ The expected role of the *régulo* in the context of land law should be recalled here, namely, passing judgement on the management of land resources according to customary law.¹⁸

The consultative council was originally intended to act as a decision-making body for communal land under the Land Law Regulations of 1998 and the Technical Annex for Community Land Delimitation of 2000 (Forquilha 2010). According to these laws, the consultative council in the locality, which is the lowest level, is to be led by the chief of administrative post as chair, who is appointed by the Ministry of Home Affairs. The remaining components of the consultative council are the communal authorities, including the *régulo*, secretary, and community leaders. Among these personnel in the communal authority, only the *régulo*'s political position could be divided into pro-Frelimo or pro-Renamo, while others are all pro-Frelimo. The communal authorities, who play a decisive role in decision-making regarding community issues, are required to act neutrally and contribute to the public interest. However, as they are politically appointed, they inevitably act politically.

As we have seen in this subsection, it is evident that both Frelimo and Renamo perceive the advantages of deepening and widening their influence in rural areas using international trends for the recognition of customary law on land reform. The composition of the consultative council and communal authority directly reflects party politics at the community level. Thus, it is necessary to understand the influence of the highly political composition of the consultative council upon implementation of the 1997 Land Law. The impact of the political position of the *régulo* and the political antagonism within the consultative council on the implementation of the 1997 Land Law will be examined in the following Sect. 4.

¹⁵ For example, in 2014, the municipality of Nampula registered 326 community leaders, and 90% of those were ex-combatants of the liberation struggle or demobilised soldiers of the civil war—in other words, those who stood on the side of Frelimo (Verdade 2014).

¹⁶ Lei 8/2003 Conselho Consultivo de Povoação e de Localidade.

¹⁷ Decreto 11/2005, Regulamento da Lei dos Órgãos Locais do Estado.

¹⁸ The bewilderment and the rivalries that emerged and faced rural communities at the inclusion of traditional authority *régulo* in the administrative structures of the early 2000s were detailed by Gonçalves (2006), who conducted research in southern Mozambique in 2002–2003.

3.2 *Growing Interest in Resource Management*

The interests of the ruling and opposition parties in village administration during the 1990s and the early 2000s were largely political and directly related to elections, as confirmed in the previous subsection. However, this situation changed rapidly after 2007. Since the international grain price hike in 2007, there has been a massive increase in FDI in agribusiness, and a spate of natural gas, coal, heavy sand, graphite, rubies, and other resources have all been developed in rural areas (Fig. 1). This subsection is designed to put forward the fact that the increased potential for economic development in the countryside gave rise to another political motive that of increasing the influence of these interests.

Let us review the relationship between the provincial government and the central government regarding its functions, roles, and powers. The central government passes responsibility to the provincial government for the transmission and execution of various policies and the budgets allocated to them. In contrast, information and tax revenues could be siphoned off from the provincial governments by the central government. Whether or not to give state governments the power to manage these resources, if any, will be a focus of debate in the central government. In this regard, in Mozambique, where it is estimated that 90% of the economically active population works in the informal sector, the institutional tax revenue potential is from corporate taxes. However, from 2005 to 2006, when the law on the provincial legislature was being debated, companies of a certain size that could be expected to collect corporate tax were concentrated in the suburbs of the capital city, and the central government very rarely looked at the provinces for a large amount of tax revenue that could be generated.

As these resources were being developed in rural areas, there was an expectation of local financial resources and an increased incentive for the Frelimo government to immediately manage the resources, including the land itself. Since the announcement of the world's leading reserves of natural gas, the Frelimo government led by Armando Guebuza (2005–2009, 2010–2014), looking ahead to its second term in office from 2010, had been surrounded by expectations of future resource development and new interests aimed at acquiring the concessions associated with development. From this period onwards, the authoritative tendencies of the Guebuza regime increased. Guebuza threw all his resources at the election campaign for the 2009 general election and achieved an overwhelming victory, in the face of criticism of electoral fraud. The results of the election in 2009 also showed that even in the central provinces, where Renamo had defeated Frelimo in previous elections, Renamo lost by a wide margin (Table 1). As Frelimo won the election in 2009 by an overwhelming victory, giving Frelimo an advantage in the National Assembly that allowed it to pass legislation on its own, Frelimo made the most of that advantage and passed laws that further strengthened its support base.

Frelimo's intransigence led to the clashes between Renamo's military wing and Mozambican forces from 2012 to the present. In the latest official negotiations with the Frelimo government in 2018, Renamo demanded the transfer of a part of the

Table 1 Results of general elections at the national, province, and district levels 1994–2019 (%)

	1994		1999		2004		2009		2014		2019	
	Frelimo	Renamo	Frelimo	Renamo	Frelimo	Renamo	Frelimo	Renamo	Frelimo	Renamo	Frelimo	Renamo
National	44.3	37.8	49.0	39.0	62.0	29.8	74.7	17.7	56.0	23.5	71.2	22.3
Nampula Province	32.3	48.9	39.2	44.0	50.0	39.5	63.7	27.3	44.6	44.3	58.0	35.0
Nampula City	43.8	44.6	51.0	41.6	54.4	39.1	74.6	23.0	–	–	–	–
Monapo District	22.5	55.7	25.0	54.1	41.0	46.6	59.7	31.9	–	–	–	–
Monapo Area	25.3	48.3	28.0	52.1	37.0	51.2	63.1	30.5	–	–	–	–
Itoculo Area	29.7	51.1	28.1	52.1	31.5	54.4	54.3	35.4	–	–	–	–

Source Retrieved from IESE Cartografia Eleitoral and composed by the author

Note The data from all the polling posts before 2009 are available, but the result of the last election in 2014 has been shown through a 10% sample survey, and the data at district and area levels were unavailable for the focus area of this study.

authority of land resource management to issue large-scale DUAT from the provincial governor appointed by the president to the provincial assembly composed of elected members. Renamo also required that a part of the tax revenue acquired by resource management would be used to support the provincial government (MNRC 2015). These requirements exhibit a repulsion to the centralisation spearheaded by Frelimo, and Renamo's requirements became more relevant for land resource management. As a result of negotiations between these two major parties, public elections were introduced for the position of the provincial governor from the 2019 elections and for the positions of district administrators from the 2024 elections. However, the 2019 election was won by Frelimo candidates in all provinces, including those that had historically been Renamo's ground.

Leaving aside the results of the most recent elections, it was clear that both the ruling and opposition parties had turned their attention to the rural areas, initially to ensure electoral victory. Later, the possibility of resource exploitation emerged, to seize official powers to control tax revenues, as well as having the political and economic interests in mind for the personal investments of the leading figures of each party. In the next section, the chapter examines how land law operates at the sites of land resource management, where political and economic interests are manifested in the manners described above.

4 The Site of the Implementation of Land Law

This section examines two cases of land disputes in different villages in the areas of Monapo and Itoculo in the district of Monapo in the province of Nampula. The data are based on collective and individual interviews carried out during fieldwork in August 2016 and September 2019, except as noted in the sources. It focuses on the Monapo District from a socio-economic and political perspective. Economically, Monapo attracts FDI, as well as domestic investment, faces more requirements for its land resource management, as it is located on the first-grade trunk road of the Nacala Development Corridor, which extends from the Port of Nacala, one of the deepest ports in east Africa, and serves as a gateway to Malawi and Zambia, landlocked countries of the interior (Fig. 4). Politically, Monapo is embedded in an area of significant competition between Frelimo and Renamo.

4.1 *Social Structure and Changing Land Use*

Makua-speaking ethnic groups dominate in Nampula Province and, under their customary law, the lineage-based chief *muene*, whose status of *muene* follows the maternal line, handles land delimitation, distribution, and conflicts, as well as resolving family matters, such as divorce and other ceremonies. *Muene* is different from the *régulo*, first appointed by the colonial administration and converted to a

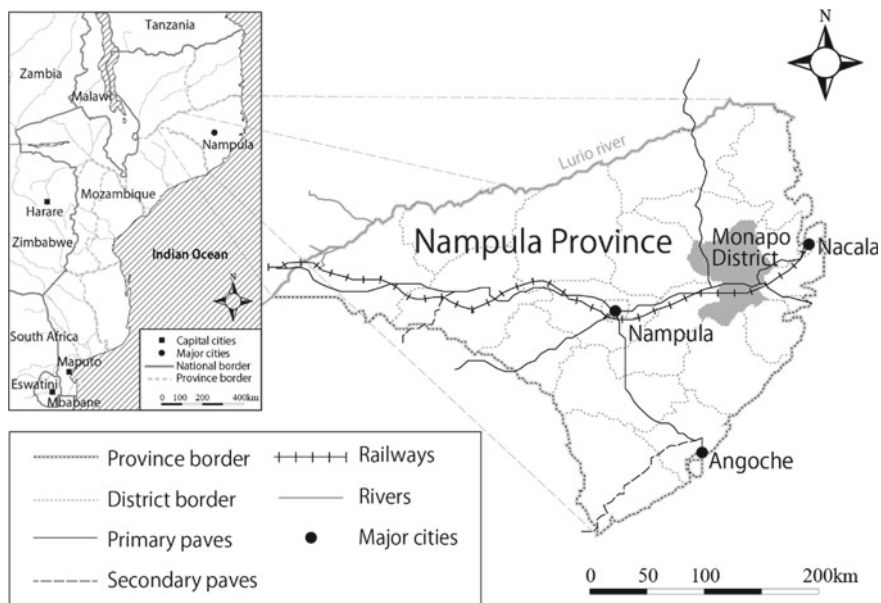


Fig. 4 Map of Monapo District

member of the communal authority in the consultative council. In 2005, the Ministry of Home Affairs put together a list of names of those belonging to the communal authorities of Monapo, following the establishment of the communal authorities in 2000 and the consultative council in 2003, and the provision of salaries in 2005. The Ministry of Home Affairs recognised 42 people as traditional authorities, comprising part of the communal authorities. Of those 42, 32 were registered as *régulos* and two as *rainhas* (queen). The latter may be a female *muene*, but, if so, they remain a minority among communal authorities.

The role of *régulo* in today's rural society can be seen in two ways in relation to land use. The first is the allocation of common land to members of the community; the other is the mobilisation of the labour of the members of the community. The mobilisation of labour works in the same way as the political mobilisation described in Sect. 2, where the revival of traditional authority worked effectively to attract votes in elections. Agricultural companies today use the same methods of labour mobilisation and production management, with *régulos* as intermediaries, just as the colonial governments did. With each change in political regime, from the colonial to the socialist and then to the democratic era, the legal entities of actors in production management have changed from state-owned enterprises to private enterprises, but the method of management on the production level through *régulos* remains the same (Pitcher 1998; Dinerman 2001).

4.2 Political Dynamics Over Benefit Distribution

Obarrio (2018) conducted fieldwork around nearby areas in Nampula Province just before the 2004 general election, drawing on the political considerations between local influential people, including traditional authorities and government officials. However, tensions between people and their interest in land resources have intensified significantly since then, as we saw in the second section of this chapter, to the extent that the situation in 2004 seems almost idyllic. These tensions have been exacerbated by successive elections under an increasingly authoritarian regime.

The Monapo District is composed of three areas, Monapo, Itoculo, and Netia, and there are several villages in each area. In Monapo District, as shown in Table 1, in the first general election in 1994, Frelimo received only 22.5% of the vote, with Renamo receiving 55.7%. Monapo was a Renamo power base until 2009, when it was won by that party until the fourth general election in 2009. However, the political arena has recently become unstable, as armed clashes between the military wing of Renamo and the government sporadically occurred here and in surrounding districts from 2012 to 2017, including the period of this fieldwork.

The procedure for obtaining DUAT proceeds as follows. If someone is applying for a DUAT, the applicant must first check with the community concerned and delimit the parcel of land for which the one is applying. The Land Law Regulations of 1998 require private investor applicants to identify the applicable land and present a written statement with a map approved by the administrative body, registration body, and local community. A written statement requires the inclusion of the history, culture, social structure, practical use of land and other natural resources, and the mechanism for advisory and conflict resolution. The process of elaborating the written statement again requires the participation of the local population, with their gender, age, and other attributes. Similar to community consultations, the application documents require a minimum of three and a maximum of nine signatures by members of the community or representatives who are the communal authorities. Community consultation follows the delimitation; this community consultation aims to obtain information about the merits and demerits of the transference of usufruct for the people affected and to hear their opinions.

However, communal authority and the consultative council itself are cogs in a highly centralised organisational machine, under the appointment of administrative superiors. In the Mozambican administration until 2018, the president appointed both the Minister of Home Affairs and the provincial governors. Then, the Minister of Home Affairs appointed the district governors and the chiefs of the administrative post, under the advice of the provincial governor. The provincial governor also appointed the village chiefs, under the advice of the district governor. The Mozambican administration, at its lowest levels, is characterised by the ease of influence from political antagonism at the central level because of the involvement of the *régulo* and the set-up of the consultative council. In sum, Frelimo's governance has a strong tendency towards centralisation, with a decentralised appearance through its power of setting up decision-making bodies in rural governance.

Within the Monapo District, the study selected two villages to be examined from a comparative perspective, which had a political difference in the affiliation of *régulo* in the consultative council. The *régulos* of Village A in the administrative post of Monapo and Village B in the administrative post of Itoculo are sharply distinguished by political party, while both villages received agricultural investment from the private South African Company X. The *régulo* of Village A supports Frelimo, while the *régulo* of Village B supports Renamo. The difference in the political affiliation of the *régulos* in these villages attracted the attention of this study, as the influence of political affiliation on community consultation provides an interesting comparison. The *régulo* OM of Village A was registered by the district office in 2002, while the *régulo* JJ of Village B was registered in 2004. Both names are printed in the communal (traditional) authority list in a report on district regional development published by the Ministry of Home Affairs in 2005. In the following sections, the behaviour of the village administration and residents is examined with regard to the acquisition of DUAT by Company X in both villages.

4.3 Case 1: Temptation of pro-Frelimo régulo

This subsection examines the case of Village A, in which the consultation of the local population, as required by the Land Law Regulations, was not carried out in accordance with the correct procedure because of the takeover of the pro-Frelimo *régulo* by the administration and investor.

Company X acquired a DUAT in 2013 for part of this cotton cultivation area in Village A and first produced soybeans on 450 ha, but then changed to plant cashews in 2016. It planned to expand its cultivation area to 2000 ha; however, in late 2016, it abandoned its plans due to the resistance of the residents of Village A and was cultivating only about 120 ha.

The acquisition of the DUAT by Company X is considered inappropriate for the following reasons. At the early stages of the acquisition of the DUAT, it was deemed necessary to carry out local community consultations to agree on the future use of the land, which at least three and a maximum of nine community representatives would sign. However, Company X invited only three representatives of the community, including *régulo* OM, to a closed-door community consultation to sign the agreement acquiring the DUAT. The district administration and Company X did not inform the residents of the community consultation, neither beforehand nor afterwards; thus, most residents only learned of the acquisition of the DUAT by Company X when the soil was being prepared for planting. The land in question is in a corner of the cotton cultivation area, and those who had been cultivating in the area left. However, in August 2015, Company X began to expand its area into space where 30- to 50-year-old cashew trees stood. Because of these trees, the local peasants recognised the land as customarily belonging to them (Strasberg and Kloeck-Jenson 2002), so, naturally, the owners of the trees protested the expansion. Nevertheless, Company X ignored their protests and expanded its area of production. All the facilities are fenced

off, and the productive cashew trees remain within the fence, in a place off-limits to persons unauthorised by the company.

Due to this coercive expansion without local consultation, residents of Village A concluded that the three representatives of their community, including *régulo* OM, were bribed by Company X. As described above, the *régulo* is recognised as the key person in the community for the management of land resources by outsiders, whether this concerns cotton production areas or customary land. To protest, residents with fields in the area under question appealed to the district administration and the company through the peasants' union, religious organisations, and civil society organisations. However, because the district administration itself had approved of the DUAT applied for by Company X, the situation did not improve. The residents then petitioned the provincial government and the expansion ceased; however, the DUAT was not cancelled.

The villagers' movement not only halted expansion, but also affected village governance. As a result of the petition and once the provincial government learned the details of what had happened, OM was dismissed. During this time, the community leader of Village A was not invited to the community consultation, nor was he given information on the acquisition of the DUAT by Company X through administrative channels. This may be because he was one of those with a field in the area in question. The dismissed *régulo* and the community leader were close in their positions in village governance. Both were supporters of Frelimo, and they aligned politically, but they did not share information. As a result, the community leader participated in the protest movement.

4.4 Case 2: Exclusion of pro-Renamo *régulo*

This subsection examines the case of Village B, in which the administration did not follow the correct procedure of consultation with the local population as required by the Land Law Regulation to exclude the pro-Renamo *régulo*.

The *régulo* JJ of Village B was approved by the district administration in 2004 and was then registered in the Minister of Home Affairs' list, published in 2005. This *régulo* JJ was a Renamo supporter and died in 2015. His successor is a Frelimo supporter. Besides the *régulo*, Village B has a community leader who worked elsewhere as mobilised personnel for the Frelimo organisation *Grupos Dinamizadores* (Activating Group) during the socialist period and was only assigned to Village B in 1997 by Frelimo. The position was officially made part of village governance with the establishment of the consultative council in 2003.

Village B had previous experience with a DUAT, when the Dubai Company Y applied for the cotton cultivation area in around 2000. At that time, Company Y met with some male residents and acquired their signatures and agreement for the DUAT without any dispute. Company Y followed the old procedure, which did not require community consultation with the cooperation of the consultative council, which was only established in 2003. Between 2000 and 2001, the company produced lentil peas

on 435 ha, employing residents, but it halted production due to a bad harvest and did not use the land subsequently.

Company X, the same company that had sparked protests in Village A, acquired a DUAT for 450 ha in the cotton cultivation area, with a plan to expand to 800 ha. Company X was expected to increase its land into Village B between 2013 and 2015, at which point community consultation was required, with the cooperation of the consultative council. However, Village B residents only learned of the actions of Company X when their neighbours in Village C informed them that the company had begun digging for a water supply. The residents of Village B, including *régulo* JJ, were not informed of the activities of Company X on their territory. Company X acquired its DUAT using an inadequate procedure; the company had not held its community consultation with Village B, the area named in the DUAT, but by soliciting signatures from the neighbouring Village C. After determining that Company X did not follow proper procedures, the residents of Village B protested the district administration through the peasants' union, which also supported the protests of Village A. A trace of the digging, but no land preparation, remained at the time of the fieldwork in 2016.

4.5 Impact of Political Intervention on Village Governance

This subsection draws out the implications of the comparison between the two above cases. Regardless of whether there is antagonism within the consultative council, the pro-Frelimo administration negatively influenced the implementation of the land law. What is more important is its applied logic. The district administrative body and the consultative council are highly politicised in favour of the party in power, so that, in the case of Village A, with a pro-Frelimo *régulo*, the consultative council suppressed the objections itself, while in Village B, the administrative body rejected opening the route for any kind of benefit to the pro-Renamo component.

These land disputes provide us with three points for consideration. The first point is the district administration's lack of neutrality. According to the Land Law of 1997, when the land size marked out in a DUAT application in a rural area is less than 1000 ha, the district administration should play the role of mediator between the applicant and the community and mediate the issue of the distribution of benefits generated from land resources and their management. The access route to the management of resources should be equally open to all the communities concerned. However, in practice, the district administration opened the route only to selected residents of Village A; it did not open it to residents of Village B. One reason for this may be the political position of the pro-Renamo *régulo* of Village B, who plays a crucial role in the handling of customary law over land resources. This element should not be overlooked, especially for the clashes between Renamo's military wing and national forces in rural areas, including Nampula, from 2012 to the present. This shows that the substantial given-party-centred centralisation goes deep into village government and makes administrative bodies supportive of certain parties.

The second point is the representation of the *régulo* in village governance. In the case of Village A, the route to access the distribution of benefits was set, and the minimum number of people required to sign a DUAT application accessed the route behind closed doors. The people using this limited route, including the pro-Frelimo *régulo* OM, did not represent the interests of the community. Their judgement for the DUAT application was not based on customary law, although in the Land Law of 1997, the *régulo* is given legitimacy as an executor of customary law. In Village A, the pro-Frelimo *régulo* did not fulfil this mission, but sought personal benefit instead, abusing the position as an executor of customary law. The introduction of customary law into the Land Law of 1997 did not simply bring about the protection of customary law, but also created a new political link between rural communities and politically biased administrations.

The third point is related to Frelimo's intention, as seen in the relationship between the *régulo* and the community leader. The mobilising power of the community leader of Village A, whose *régulo* was pro-Frelimo, was weak, while that of the community leader of Village B, whose *régulo* was pro-Renamo, was strong. The community leader of Village B did not come from this community, but was relocated from elsewhere in 1997, just before the first local elections in 1998. The assignment of active personnel in Village B represented a positive strategy taken by Frelimo, intending to obtain support in a Renamo-dominant area and competing with a pro-Renamo *régulo*. Legal recognition by the state in 2000 of the community leader and *régulo* as members of the communal authority and the payment of a salary was added to motivate them and reward their contribution to increasing Frelimo's support. Both are components of the consultative council for the implementation of the land law.

As mentioned above, in today's Mozambique, district administrations are not always neutral, and they work in favour of the ruling party. Besides, although the position of the traditional authorities represents the community, their behaviour is not necessarily representative of the community; it may instead be for individual interests, which in some cases have been encouraged by the administrative bodies, which are politically biased. Furthermore, the ruling party has been increasingly influential in rural governance since independence and continues to be so today.

So, summarising the above three points in the context of land law reform in Mozambique, it can be said that the philosophy of land law in Mozambique was not free from the interests of party politics in the country. The philosophy was to protect the common resources of rural areas by establishing usufructuary rights and recognising customary law. At the same time, it was to make land usufructs tradable, thus commodifying land resources and attracting capital. However, the ruling party has gained increasing influence in rural governance. What we can observe in present-day Mozambique's political environment is a situation where the administration, lacking neutrality, uses the operation of the law as a tool for political profit distribution.

5 Conclusion

Since the mid-1980s, the Frelimo government pursued the land law reform presented by donors at the end of the Cold War in exchange for economic support, in line with the wishes of donors and aid agencies. The law was highly praised nationally and internationally on its enactment, as it progressively adopted customary laws. It was elaborated through public hearings and discussions that were open to the entire country. There was an atmosphere full of promise that seemed to embody the building of a democratic society after the end of the civil war.

However, the Frelimo government has not only responded to the demands of donors and aid agencies for institutional design. The government is trying to promote more centralised governance through rural land resource management. When it comes to implementing these policies and institutions, domestic politics often influences practices, and the policies implemented with external funding are themselves used as political resources by the ruling party and present a very narrow, profit-driven administration by the Frelimo regime to strengthen its support base from the democratisation of the 1990s. In addition, the discovery of promising natural resources in the countryside in the 2000s has led to a growing interest in local governance by the central government. Correspondingly, Frelimo has designed a new system of local governance to put members of the Frelimo party through elections into the positions of the provincial governor and district administrator.

The Mozambican Land Law of 1997 is not free from these political influences. Although the 1997 Land Law was drafted in line with international legal support, it is often used politically as a means of profit-sharing to broaden Frelimo's political base. The top-down chain of command created by the Frelimo government easily spread antagonism, formerly confined to the central level, to the villages. Considering Frelimo's intention, it is rarely claimed that the enforcement of competence for rural land is a way to protect communal land; rather, it destabilises their land usufruct, radicalises political antagonism at the local level, and promotes local antagonism that has its origin at the central level.

When the state awards recognition of what already possesses social legitimacy, the assessment of the state among its citizens generally improves. However, in the case of Mozambique, as the state politicised the social legitimacy of customary law, social dissatisfaction is only increasing, and the assessment of the state has worsened. This has been a major element destabilising this country in recent years in several places, principally targeting the state under the Frelimo regime, including the military attacks by Renamo's military wing in the central region and the acts of terrorism committed by Islamic extremists in the northern region surrounding the world's leading natural gas development area.

In 2017, on the 20th anniversary of the implementation of the 1997 Land Act, the Frelimo government launched a series of public hearings to review it. The government then proceeded, in July 2020, to launch a public consultation process on the review of the National Land Policy, published in 1995, under the assistance of the technical commission for the elaboration of new national land policy. The commission is

composed of ten professionals, including jurists, sociologists, architects, and social activists under coordination with the consultant of the FAO (Carta de Moçambique, 2020). Given the recent trends of land reform in Mozambique and the political environment surrounding it that have been examined in this chapter, it is predictable that the new land policy will become even more market economy-oriented as a justification for the progress of land registration in rural areas. However, as we have seen in this chapter, it is the political environment surrounding those who administer the law, rather than the law itself, which causes problems that arise around land resource management in Mozambique.

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Land Law Reform and Complex State-Building Process in Rwanda



Shinichi Takeuchi and Jean Marara

Abstract This study sheds light on recent land law (land tenure) reform in Rwanda by examining its close and complex relations with state-building. By prioritising land law reform and receiving strong support from external funding agencies, the post-civil war Rwanda became the first African country to complete land registration throughout its territory. Land law reform should be considered a part of the radical interventions in rural areas frequently implemented by the Rwandan Patriotic Front-led government and, therefore, has been closely connected to its aspiration to reinforce the existent political order. The government has utilised reform and external financial support for this purpose. However, despite the success of the one-time land registration, Rwanda has encountered serious difficulties in institutionalising sustainable registering systems since transactions of land have been recorded only in exceptional cases. Additionally, it suggests that the government does not have a strong incentive to collect accurate information about properties in rural areas. The widening gap between recorded information and the real situation may affect land administration, which is of tremendous importance to Rwanda and, thus, possibly undermine state control over society.

Keywords Land registration · Rwanda · State-building · Land law reform

1 Introduction

As proposed in Chap. “[Introduction: Drastic Rural Changes in the Age of Land Reform](#)”, recent land law (land tenure) reforms in Africa have had important and complex implications on politics and state-building. Rwanda is a representative case, as the country has utilised land law reform to consolidate the existent political order. The Rwandan Patriotic Front (RPF), which was a former rebel group and seized

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137

power by winning the civil war in 1994, undertook land law reform to strengthen its authority and control over society. Considering the Rwandan case study, this chapter indicates how the RPF-led government consolidated the political order through land intervention. Simultaneously, it also argues that the state-building process has never been simple.

With its origin tracing back to the precolonial kingdom, Rwanda has a long history of land intervention by the state. The precolonial state-building of the kingdom of Rwanda (Nyiginya) included land dominance by the king's families and the ruling class, which was mainly Tutsi (Vansina 2001). In the colonial period, chiefs and sub-chiefs, who were simultaneously landlords and officials of the colonial administration, attempted to expand their influence by providing land to their clients, thereby increasing competition and conflicts over land (Reisdorff 1952). Following the breakdown of chieftaincy during independence (Lemarchand 1970; Reyntjens 1985), the country was deprived of strong and autonomous local communities, thus accelerating state intervention in rural areas. Strong control of the political elites over rural societies explains in part the genocides in 1994 (Straus 2006). Since the power seizure by the RPF, the range and extent of such policy interventions in rural areas have significantly increased. Subsequently, land law reform has been an important component of these reforms. Due to this reform, which had strong financial support from donors, Rwanda became the first African country to complete land registration throughout its territory.

Although land registration in Rwanda has attracted considerable attention, assessments of its effects on land tenure security have been divided among researchers. World Bank researchers presented that land registration has enhanced the access of women (particularly legally married women) to land, thereby contributing to gender equality (Ali et al. 2014, 2017). The positive effects of land registration on gender equality were also confirmed by another study that analysed NGO projects (Santos et al. 2014). Conversely, other researchers have been sceptical and pessimistic on Rwanda's land law reform and the effects of land registration to secure the land rights of tillers (Pottier 2006; Ansoms 2008; Pritchard 2013; Ansoms et al. 2014; Huggins 2017). They argued that Rwanda's authoritarian policy implementation would have a negative impact on the security of property rights.

The following sections reveal that since the power seizure in 1994, the RPF-led government implemented multiple radical policy measures on land. These measures have not only drastically changed Rwandan rural society, but have also strengthened government control over land and society. The land law reform that was initiated in the mid-2000s has been a part of a series of radical interventions, through which efforts for state-building were undertaken.

However, the results have been diverse. This is particularly salient regarding land registration. Since it was strongly emphasised in the national land policy in 2004 (Republic of Rwanda 2004), land registration has been a top priority of the reform that was successfully completed by the country throughout its territory in 2013. However, the register has been updated only in exceptional cases of land transactions, including selling, purchasing, and inheritance, especially in rural areas. Consequently, the gap between the official information on the register and the real

situation has been increasingly widening. Although the country successfully implemented a big project of one-time land registration, it faced serious difficulties in constructing an institution for its sustainable management. What are the reasons for this stark contrast and what are its implications for Rwandan state-building? The present chapter attempts to answer these questions.

The remainder of this chapter is organised as follows. Following a brief explanation of the methodology, a rough historical overview of the relationship between land and state-building in Rwanda is provided before presenting a detailed explanation of Rwanda's land law reform. Later, policy interventions in rural areas under the RPF-led government are examined to investigate its motivations for undertaking land law reform. Finally, the successes and setbacks of the land registration are illuminated to explore its implications.

2 Methodology

This study is based on multiple literature surveys and field observations of the authors. One of the two authors (Marara) observed Rwanda daily, while the other author (Takeuchi) visited the country for the first time in 1998, and launched collaborative research with Marara, focusing on two rural communities in Southern and Eastern Provinces. After conducting a socio-economic questionnaire survey for approximately 100 households in each community (Takeuchi and Marara 2000), 25 inhabitants (respondents of the former survey) from each community were selected for conducting interviews through semi-structured questionnaires. However, the death of some respondents and addition of new respondents in accordance with our research aims changed the number of interviewees. While such interviews sometimes included administrative officers and leaders of cooperatives, unofficial discussions and observations in the communities were frequent in multiple cases. This constituted indispensable background information for understanding the perspectives of people to the policy reforms.

3 The Rwandan State and Land Before the Civil War

The origin of the precolonial kingdom of Rwanda can be traced back to the seventeenth century, and its state formation process was characterised by the expansion and the strengthening of control over land. In the early nineteenth century, the ruling class of the kingdom (majorly Tutsi), which was mainly dependent on pastoralism, began to subjugate peasants (majorly Hutu) by imposing tributes based on land control (Vansina 2001). This Tutsi–Hutu division gradually widened and was institutionalised during the colonial period. Under indirect rule, the king's power was reinforced by the support of the colonial authority. During political stabilisation, the chiefs and sub-chiefs, who were overwhelmingly Tutsi, actively provided land to their

clients to seek their dominance (Reisdorff 1952). Therefore, in the state-formation process of the kingdom, intervention in land constituted an essential part.

Traditional Tutsi leaders, such as kings, chiefs, and sub-chiefs, who had once monopolised political power in the colonial period, had completely lost their influence following the social revolution, which started in 1959 (Lemarchand 1970; Reynjtjens 1985). The kingdom collapsed and the Hutu-led party, PARMEHUTU (*Parti du mouvement de l'émancipation Hutu*), seized power. Because of this political development, Hutu lower officials actively intervened in rural lands. Appointed by the ruling parties, the PARMEHUTU and the MRND (*Mouvement républicain national pour le développement*) under the Kayibanda (1962–1973) and Habyarimana (1973–1994) regimes, respectively, often reallocated the land left by Tutsis who had fled from Rwanda for the sake of poor landless Hutu farmers (André and Lavigne Delville 1998).

During this period, Rwanda's population density was already high, thus, causing land scarcity and de facto privatisation (Blarel 1994). However, similar to other African countries, the Rwandan state attempted to strengthen its control over customary land by claiming its official property rights. Additionally, it banned the trade of customary land, although such deals were widely practised unofficially (André 2003). Whereas this incident demonstrated the weak implementation capacity of the government, the absence of chieftaincy facilitated the government to implement policy interventions in rural areas. In fact, Rwanda has witnessed multiple state-led rural development projects during this period (Boone 2014, 229–252).

4 Land Law Reform in Rwanda

The 2004 land policy marked the beginning of the recent land law reform in Rwanda. The new constitution was ratified in 2003, nine years after the end of the civil war. The adoption of the new land policy in the year following the promulgation of the constitution indicated that land was one of the most urgent priorities for the RPF-led government. A keen sense of crisis regarding land and agriculture characterised the 2004 land policy. During its introduction, nine 'obstacles' hindering 'the efficient management of land in Rwanda' were pointed out: rapid population growth, low technological use in agriculture, customary land tenure system, multiple landless people, scattered farming plots, lack of a land registration system, absence of land-use planning, chaotic land transactions, and unplanned use of marshlands (Republic of Rwanda 2004, 5). Among these, the first five 'obstacles' could be interpreted as the causes of the crisis, and the last four as possible solutions. To summarise, to tackle Rwanda's structural problems, including population pressure, land scarcity, and land fragmentation, the policy proposed enhancing efficient land use through the development of the land market. Additionally, land registration and land-use planning were prerequisites for this purpose.

The necessity of land registration was frequently emphasised in the 2004 land policy. One of its key concepts was 'land administration', which was defined as 'the

process of registration and dissemination of information in relation to land titles and all sorts of land transaction, as well as the use of land-linked natural resources' (Republic of Rwanda 2004, 30). The policy argued that good 'land administration' secured land rights, levied land tax, provided collaterals, activated land transaction, reduced land conflicts, and improved infrastructure development. Emphasised as a central piece of the 'land administration', land registration was prioritised in the 2004 land policy.

The 2005 land law, which was designed based on the 2004 land policy, provided policy frameworks not only for land, but also for agriculture and rural development. Although it covers a wide range of policy areas, the following three points are particularly important and deserve to be mentioned.

First, the law recognised customary rights by committing to protect 'equally the rights over the land acquired from custom and the rights acquired from written law' (article 7). Although private use of customary lands was generally practised even before the enactment of the 2005 land law, this had no legal framework. The 2005 land law officially recognised customary rights as grounds for registration. Second, land registration was mandatory (article 30). This provision clearly corresponded to the 2004 land policy. Third, the law introduced various measures to enhance the efficiency of land use. By compelling landowners and land users 'to obey laws and regulations relating to protection, conservation and better exploitation of the land' (article 60), the law authorises the government to requisition the land that is not 'well managed and productively exploited' (article 73). Similarly, to improve rural land productivity, the law promoted the 'consolidation of small plots of land', prohibited 'to reduce the parcel of land reserved for agriculture of one or less than a hectare' (article 20), and obliged to make 'the area's master plan' (article 63). These regulations aim at boosting land productivity through putting together small plots, avoiding land fragmentation, and controlling the land use.

Since then, regulations and rules adopted in the 2005 land law have been rigorously implemented. Following a pilot project, the Rwanda Natural Resource Authority (RNRA) undertook a systematic land registration project from 2009 and built a digital database of 10.4 million plots in the Rwandan territory, with information about their borders and owners (Sagashya and English 2010, 64; Innovations for Successful Societies 2017, 4). In rural areas, people's customary rights were recognised as they were, and certificates were automatically distributed for every plot at a relatively reasonable charge.¹ Following multiple measures for raising awareness about the importance of titles and for facilitating their take-up, 7.16 million out of 8 million certificates that had been printed by the RNRA were handed over to owners as of June 2017 (Innovations for Successful Societies 2017, 18). Importantly, the certificates provided following the registration were issued in the form of 'emphyteutic leases', namely, long-term leases, available for up to 99 years on agricultural lands and 20–49 years on other land types.

¹ The commission for issuing land certificates was 1000 Rwandan Francs (Frw) per plot. The amount was equivalent to US\$1.8 according to the exchange rate in 2009.

In addition to land registration, several measures have been implemented for efficient land use. For instance, through land-use planning, which was mandatory for every district,² the distinction between residential and cultivation areas was clarified. Consequently, the local administration demanded people to use land according to the distinction and urged them to live in residential areas. As Rwandans had no tradition to live in gatherings, their dwellings had been scattered on the hills. In this context, the government utilised land-use planning to promote its villagisation policy, which was adopted immediately after the end of the civil war, but was gradually implemented. Subsequently, people have increasingly moved to residential areas under governmental pressure.³

The land consolidation policy, which constitutes a major part of the crop intensification programme (CIP), is another measure that has vast impacts on Rwandan agriculture and rural societies, promoting the cultivation of six selected food crops (maize, wheat, rice, potato, bean, and cassava) by distributing their improved seeds and chemical fertilisers.⁴ In areas where land consolidation policy has been implemented, farmers are required to cultivate the same crop promoted by the government. This policy has been majorly implemented in marshlands, which are owned by the government; subsequently, only members of cooperatives are allowed to cultivate in these areas.⁵ As a result, production of some food crops has rapidly increased since then (Fig. 1).⁶ Presently, the government intends to expand areas under the land consolidation policy from marshlands to hills.

Although certificates were distributed to every landowner, the registration did not aim at establishing private property rights. The delivered certificates were in the form of long-term leases and, therefore, effective for a limited period. Thus, the state can theoretically confiscate lands that were not ‘productively exploited’,⁷ indicating that

² Rwandan local administration includes four provinces and Kigali city, 30 districts, 416 sectors, 2148 cells, and more than 14,000 *imidugudu*, which is the smallest local administrative unit with no paid official.

³ See Newbury (2012), and the authors’ observation in Southern Province.

⁴ The distribution has been handled by cooperatives. In its early stage, the government provided subsidies to encourage farmers to use improved seeds and chemical fertilisers at a low price; however, the subsidy was later reduced.

⁵ Historically, marshlands in Rwanda were used as pasture only in the dry season, and the colonial government started their development and conducted drainage. For this historical reason, the land rights of those land parcels were given to those who began to use first, although they legally belonged to the state. However, the control of the marshland has been remarkably strengthened since the enactment of the new land law, as the government announced that only members of registered cooperatives could cultivate marshlands.

⁶ Rwanda’s food production index (average 2004–2006 = 100) was 155 in 2014, significantly exceeding the average of sub-Saharan countries, which was 132, in the same year. The CIP undoubtedly contributed to this increase. See also Huggins (2017).

⁷ According to the authors’ observations, requisition of lands has not been rigorously implemented. Besides the participation in the strictly monitored land consolidation, land use of each field has not been carefully examined. Although we do not know if the lack of strict monitoring should be considered as a deliberate policy or a mere limit of administrative capacity, we can assume that the provision of the 2005 land law has not been literally implemented to this point.

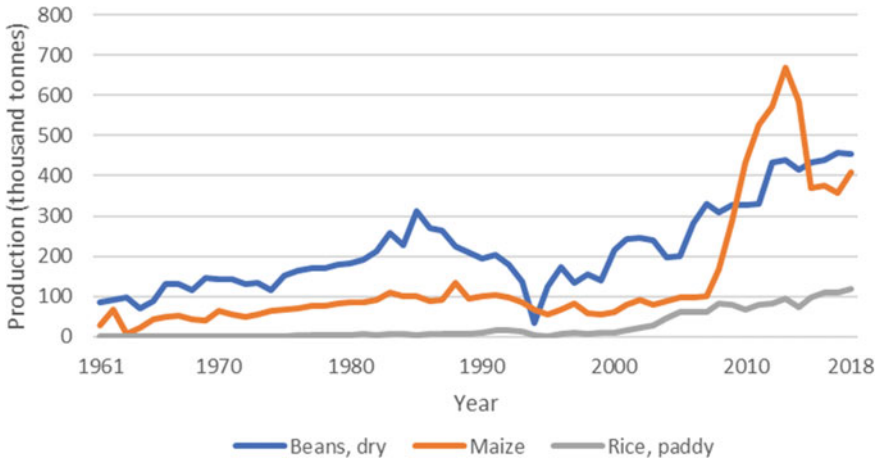


Fig. 1 Production of targeted food crops in Rwanda. *Source* FAOSTAT

the law has given the state strong powers to closely monitor and control land use more effectively, since the state has urged people to live in residential areas and imposed a limited number of food crops under the CIP.

5 Context of Land Law Reform in Rwanda

Adoption of the land policy in 2004 and the enactment of the new land law in 2005 were undoubtedly important events for the Rwandan government to strengthen its intervention in land. However, the intervention did not start abruptly with the land policies. As mentioned earlier, political interventions on land trace back to the precolonial period in Rwanda. Additionally, RPF, which won the civil war in the 1990s, implemented multiple radical measures on land immediately after the establishment of the government.

Although the RPF was originally organised by the second generation of Tutsis expelled through the social revolution, they never attempted to revitalise the Tutsi-led chieftaincy. Rather, they implemented measures immediately after their power seizure that served as a land provision policy for Tutsi returnees. This is called ‘land sharing’ (Bruce 2009; Huggins 2009; Leegwater 2011; Musahara and Huggins 2005; Takeuchi and Marara 2014). The RPF’s victory during the civil war in 1994 resulted in the increased return of Tutsi refugees (‘old returnees’) who had previously stayed abroad. On their arrival in Rwanda, the old returnees occupied vacant lands and houses, particularly in the eastern part of the country, following administrative instructions. This was possible with ease because the RPF’s power seizure caused the mass exodus of Hutu inhabitants into neighbouring countries, particularly the Democratic Republic of the Congo (at the time, Zaïre; hereafter, Congo)

and Tanzania. However, conflicts arose when the Hutu refugees began to repatriate following the beginning of war in the eastern Congo in 1996 because these ‘new returnees’ found their lands and houses occupied by the old returnees.

Under the land-sharing policy, the new returnees had to hand over half of their lands to the old returnees. This policy had a clear objective of ensuring land ownership for the old returnees, who had returned to Rwanda after several decades. It was a radical measure because it ensured land ownership for the old returnees to the detriment of the new returnees. While the Rwandan government has defended the policy for tackling the lack of land ownership (Republic of Rwanda 2004, 27), it evidently had a more specific focus. Since the old returnees were strong supporters of the RPF, land sharing evidently aimed at strengthening the political basis of RPF by providing land for their supporters. Although the policy came as a shock and led to deep dissatisfaction among the new returnees, such resentment did not result in political instability that could jeopardise the hegemony of the RPF. The military victory of RPF in the civil war and its subsequent authoritarian governance did not create a political position in Rwanda for any effective opposition movement, thus enabling the ruling party to suppress criticism.

The government has consistently undertaken efforts to provide legal support for land sharing. Overwhelming cases of land sharing in the late 1990s were urged by administrative guidance, but lacked legal basis. However, the 2005 land law recognised that beneficiaries of land sharing ‘shall enjoy the same rights as those under customary holdings’ (article 87). Subsequently, its modalities were officially fixed in a ministerial order in 2010.⁸ Although it was legalised after more than a decade, an overwhelming majority of land sharing had actually already occurred, indicating the eagerness of the Rwandan government for providing official recognition to land sharing. Land registration was completely aligned with this stance since it reinforced the legality of land sharing by providing official certificates. By placing the understanding of land registration in the context of RPF’s frequent interventions in land, the policy aligned well with its agenda of territorial control.

In addition to land sharing, the post-civil war Rwanda witnessed multiple radical interventions in its rural and agricultural sectors. Revision of the civil code in 1999⁹ significantly influenced Rwandan rural societies because it recognised the rights of women to inherit land. Rwanda has been a patriarchal society, where women have been excluded from land inheritance. However, the law adopted in 1999 clearly advocated gender equality for inheritance. Although the law confined equality among children of legitimate marriage, it undeniably brought radical changes in rural societies, which effectively implemented the law. Currently, the inheritance of land to daughters is commonly observed in rural areas, contrary to what was observed two decades ago.¹⁰ The RPF attitude, which substantially influenced the administration

⁸ Ministerial Order No 001/16.01 of 26/04/2010. ‘Ministerial Order determining the modalities of land sharing’.

⁹ Law No 22/99 of 12/11/1999 to supplement book I of the Civil Code and to institute part five related matrimonial regimes, liberalities, and successions. OG no 22 of 15/11/1999.

¹⁰ The effects of the legalisation of inheritance of land on women without legitimate marriage are still unclear. Based on the pilot survey conducted in 2010, Ali et al. (2014) argued that Rwanda’s

and the judiciary, significantly resulted in this change. Since the ruling party regularly supported women's equal rights of inheritance, this principle has been strictly regarded in the administration and judiciary.

Furthermore, the campaign against thatched roofs was also another radical policy (Ingelaere 2014). A presidential speech had blamed thatched roofs for insanitary conditions; consequently, multiple dwellings with thatched roofs were destroyed during the campaign conducted in 2011. The authors observed that many villagers in the study site were suddenly instructed by the executive secretary (the only formal official receiving a salary in the cell) to remove their thatched roofs. A couple of weeks later, the executive secretary personally inspected every household in the cell and ordered young male collaborators to remove and destroy any remaining thatched roofs. However, although the executive secretary promised that a tin roof would be provided in compensation for the destroyed thatched roofs, its implementation and provision either took several months, or the promise was never fulfilled. The case shows that policy interventions that aimed at modernising the rural and agricultural sectors have been compulsory and violently executed. Thus, since its establishment, the RPF-led government has regularly brought about radical policy interventions, including land law reforms.

The government's motivations for taking these radical policies may not be understood simply by the partisan interests of the RPF.¹¹ Rather, it shows that the ruling party had a strong will and mission to restructure and modernise Rwandan rural society. Scholars have already indicated the RPF's ambition in rural engineering (Newbury 2012; Behuria 2015; Huggins 2017). For instance, Ansoms argued that the RPF regime, whose core members grew up in foreign refugee camps and, therefore, had only tenuous connections with Rwandan rural society, considered the existing social norms and agricultural technologies as outdated. Therefore, they undertook radical measures for modernisation from the elitist viewpoints (Ansons 2009).

Rather, the authors consider that the RPF's desire for social engineering originated from a strong sense of crisis. As seen in the previous section, given serious land shortages and agricultural stagnation, RPF considered the socio-economic modernisation of Rwandan rural societies as inevitable. Additionally, Chemouni emphasised the importance of the vulnerability of the RPF elites in explaining the radical measures implemented for decentralisation in Rwanda. He insisted that the sense of vulnerability 'is particular by its intensity as it reaches not only mere political survival, but

land tenure reform resulted in 'significant reduction of the probability of having documented land ownership' for women who were not legally married (Ali et al. 2014, 272). Although another paper published three years later evaluated that the 'inclusion of women in informal marriages were effective' (Ali et al. 2017, 379), it did not provide any compelling evidence. The authors observed that the name of the second wife in the certificates were described with her husband's name, but whether this case is exceptional or typical is unknown. Considering that polygamy is illegal in Rwanda, the risk of tenure insecurity for women in informal marriages by legalisation of land rights is highly possible.

¹¹ The *imihigo* (performance contract) between the superiors and the subordinates in the administration undoubtedly explains the reasons for implementing radical policies, but it does not explain why the government chose such radical policies. Regarding *imihigo*, see Chemouni (2014).

also the physical security of the elite' (Chemouni 2014, 255). Social engineering has been a measure of power consolidation and a result of vulnerability (Doner et al. 2005), which is an important part of the RPF's sense of crisis.

The argument in this section shows that Rwanda's land law reform should be understood in the context of its active interventions in rural societies in the post-civil war period. As a tool of social engineering, the reform has been motivated by the desire not only to improve agricultural productivity, but also to sustain and reinforce the current political order. In other words, modernisation of rural society has been pursued under the condition that the RPF-led political order should be reproduced. Land law reform therefore, is significant for the state-building project that the RPF has been conducting since 1994.

6 Mixed Results of the Land Registration Project

Has the land law reform contributed to RPF-led state-building? Apparently, the answer seems to be 'yes', but the reality is not so straightforward. Following the enactment of the 2005 land law, Rwanda quickly registered land throughout its territory. The operation was undoubtedly technically and financially assisted by donors,¹² but the remarkable speed for accomplishing the registration indicated the willingness and effectiveness of the Rwandan administration.

However, the results of land registration are diverse. Land registration has evidently brought some improvements. For instance, the provision of a certificate, which distinctly indicates the shape and position of a parcel, has reduced conflicts over borders. Additionally, another effect is the increase in activities in the mortgage market promoted by the ease of using land as collateral (Ali et al. 2017, 380).

Conversely, the project encountered great difficulties in updating the data on land tenure. Due to the land registration project, people were provided with their respective land certificates even in remote areas. However, changes in the land registration data because of selling, buying, and inheritance have been recorded only in exceptional cases, thereby increasing the gap between the registered information and the real situation. This gap was particularly evident in rural areas. The author encountered many farmers who had sold or bought parcels, but none of them had updated their certificate. A study conducted by World Bank researchers corresponded to the authors' observations. The national database and the survey data of this study revealed that among the 31,209 transactions of residential land recorded in 2014 and 2015, only 6.23% in Kigali city and 0.33–0.93% in the four provinces were registered. Regarding the 22,850 transactions of agricultural land, only 1.67% of the land in Kigali city and 0.06–0.23% in the four provinces were registered (Ali et al. 2017,

¹² Of the total budget of the land tenure regularisation project up to end of July 2013 (£42,206,324), the government of Rwanda contributed less than 10% (£3,912,939). See Gillingham and Buckle (2014, 20).

384). Thus, the infrequent updating of the register is a critical problem, endangering the central pillar of land administration.

The extremely low rate of updating was explained by the following two important factors. First, the cost of updating is identical throughout the territory; thus, it is too expensive for ordinary people, particularly in rural areas. In addition to 27,000 Frw as the commission for the new issuance of a land certificate (Ali et al. 2017, 382), those who request updating and reissuing have to cover additional expenses, including transport fees for surveyors.¹³ In the case of the division of a parcel, a commission is charged for each new certificate, thus making the official procedure too expensive and practically impossible for ordinary rural people. Second, dividing a parcel of 1 ha or less was banned by article 20 of the 2005 land law. Due to the general land shortage, only a few Rwandans have parcels larger than 1 ha.¹⁴ According to statistics, the average size of landholding per household was 0.76 ha and 80% of the size of landholding per household fell into the category of less than 1 ha (Republic of Rwanda 2010, 36). In most cases of inheritance and deals, the size was not sufficiently big to be officially divided, thus resulting in people to engage in unofficial transactions.

Additionally, the registration of family land made official land divisions more complex. After the initiation of official registration in 2009, Rwanda quickly completed the demarcation and adjudication of the whole country. One of the factors contributing to this rapid completion was that land registration was not only recognised through an individual, but also through a family (Takeuchi and Marara 2014, 94). During the registration process, people could register a plot under the name of a deceased father or grandfather, thus enabling their children or grandchildren to be entitled to a land without individually demarcating it.¹⁵ People appreciated this method. Besides reducing the expense of issuing land certificates, it also shelved complicated debates over inheritance among family members. Furthermore, this was expedient for the government, which depended on foreign aid for the land registration project. As this method eliminated the obstacles for registration, the project was completed in a short duration before the aid was exhausted.

However, now this is one of the reasons for the increase in unofficial transactions. Restoring land rights for each individual is the most difficult challenge in the transition from a system based on customary land tenure to that based on modern land registration (Coldham 1978). Rwanda could address this challenge by registering the entire family land without distinguishing individual plots. However, in reality, it simply deterred the problem inevitably posed by inheritance. The division of family

¹³ Information collected from multiple respondents during fieldwork in August 2015 and August 2016. The average exchange rate of Rwandan francs to a US dollar in 2015 was 720.98 (calculated from the data of the IMF, *International Financial Statistics*). 27,000 Frw was around US\$37.

¹⁴ After the initiation of registration in 2009, land certificates were provided for all land plots, including those smaller than 1 ha.

¹⁵ The registration of family land under the name of a deceased person is indicated in the certificate as a 'succession'. For instance, an indication of 'succession Rwakairo' as the title holder means that the plot belongs to the children of the late Rwakairo.

lands has emerged as a serious issue in rural areas. Once land has been registered, officially dividing it is nearly impossible. In addition to the above-mentioned obstacles, building consensus among family members has been difficult. Currently, banks and cooperatives refuse to accept a parcel registered by a deceased person as collateral.¹⁶ In rural areas, many people have complained of the inability to officially divide the land for inheritance or sell the land.

Today, in Rwanda's rural areas, parcels are generally transferred without any official procedure for updating the register. In the case of land trade, a handmade memo mentioning its shape and size along with the signatures of witnesses is prepared as a proof, similar to the procedure that was followed by people before the implementation of land registration (André 2003). Such unofficial dealings cause dissatisfaction because it provides and assures weak legal rights. For instance, parcels without official certificates cannot be used as collateral for financing. Additionally, people are aware that in the case of an expropriation, compensation will not be paid for a plot without a certificate.¹⁷ In fact, a serious dilemma exists: although they cannot afford to meet the huge expenses for the official updating of land certificates, they are compelled to divide lands either to raise money for their daily living or for inheritance. Therefore, unofficial land deals have increased.

Although Rwanda has completed land registration throughout its territory, the system has become stagnant as updating has been conducted for only exceptional cases. Despite the recognition of this issue by the government,¹⁸ no effective measures have been implemented so far to address it. Recognition of the issue in the revised national land policy in 2019 was a positive step (Republic of Rwanda 2019, 27), but concrete measures have not yet been proposed. The government's slow response has been contrasting with the take-up problem, which was revealed following the preparation of the land certificates. When the RNRA realised that land certificates were not being collected, it promptly undertook multiple effective measures to facilitate quick take-up of the certificates (Innovations for Successful Societies 2017, 8–15). Considering that accurate land registration is a prerequisite for effective land administration, to which Rwanda's land policy attaches cardinal importance, the current situation may be serious.

Political inertia can be explained by the weak pressure on the government to improve the situation.¹⁹ Two important reasons can provide suitable explanation.

¹⁶ Interview at a village in Southern Province conducted on 24 February 2018.

¹⁷ In an area near our study site in Southern Province, a land expropriation was performed for the construction of a military camp. The interviewees were aware that parcels without certificates would not be compensated in case of expropriation (interviews in February 2018).

¹⁸ This problem has been already highlighted by consultants and researchers. See Innovations for Successful Societies, 2017 and Ali et al. (2017). In addition, the pro-government newspaper commented on the expensive cost for updating based on research conducted by INES-Ruhengeri. See *New Times*, 'Land transaction fees too high, says new survey', 27 June 2015.

¹⁹ Although during our interviews we raised this issue with officers in the local administration, they were generally indifferent to this problem. They attributed the reason of non-updating to the lack of public awareness and general ignorance of rural inhabitants rather than the cost (our interview in September 2019).

First, land-related taxes do not constitute an important source of Rwandan revenue. Currently, the first 2 ha of agricultural land are exempted from taxes.²⁰ As we have argued previously, few people possess lands larger than 2 ha, and the majority of landholders in rural areas pay no land tax. As the government does not depend on land tax, it has little incentive to provide accurate information about land tenure.²¹ Goodfellow points out that Rwanda's state revenue barely depends on land-related taxes than on the experience in Asian developmental states (Goodfellow 2017). He suggests the reason as '[a]n aversion to disrupting what has thus far been a relatively untouched sphere of elite capital accumulation' (Goodfellow 2017, 564). Second, the Rwandan land and property regime has an excellent reputation among the international community. Among the World Bank 'Doing Business' indices, 'Registering Property' places Rwanda in the third highest position in the world after Qatar and New Zealand.²² The index explains that the evaluation is based on the administrative procedures regarding property, including its purchase, transfer, and use as collateral, and the quality of land administration.²³ It does not take into account that information about land registration has been updated only exceptionally in the country. In a bid to attract foreign capital, Rwanda placed high importance on the bank's indices and made efforts to improve it. If the index overestimates the Rwandan land registration system, the country has no pressure to change.

7 Conclusion

Although closely intertwined, two main objectives have been identified regarding interventions in land by the state. The first objective is resource management. The state holds strong interests in intervening in land because the land includes vital resources, and their appropriate management is critical for its own survival. The other objective is territorial control.²⁴ It is imperative for the modern state to establish a political order in its territory. Both colonial states and independent African states had keen interests in restoring their authority with people living within the territory. Although land policies are concerned with resource management, the major hidden intentions are concerned with the regulation of state power. In the post-conflict Rwanda, the RPF-led government pursued these two objectives through multiple

²⁰ Republic of Rwanda, *2019 National land policy*, p. 28.

²¹ This contrasts with land tax reform conducted in the early stage of modernisation in Japan. The reform initiated in 1877 to gather accurate information about land tenure and issuing certificates for all landowners was one of the first attempts for modernising the tax system, which was prioritised by the new Meiji government. It was considered crucial, as the government heavily depended on land taxes. See Sasaki (1989, ii).

²² www.doingbusiness.org/en/rankings (accessed 10 March 2021).

²³ Regarding the methodology, see www.doingbusiness.org/en/methodology/registering-property (accessed 10 March 2021).

²⁴ The idea that two objectives are identifiable in the state intervention in land has been inspired by Lund (2013).

radical interventions in land, increasing agricultural productivity and strengthening the political order. Radical policy interventions in rural societies in general, and land in particular, can be considered as an essential part of the state-building project in post-conflict Rwanda.

The present complex process of land registration indicates the difference in intention of the Rwandan government and the financial and technological donors. Although one-time land registration was successfully completed with huge assistance from donors, establishing a sustainable land registration system faces serious difficulties. The donors eagerly assisted the project because they presumed that fixing property rights would be a prerequisite for economic development (de Soto 2000). Conversely, Rwanda had a strong incentive to undertake land registration to stabilise political order and strengthen the state control over land. While the two parties had the same interests in completing the registration quickly, Rwanda did not have any additional incentives to institutionalise a functioning registration system, mainly because its revenue does not heavily depend on land and property taxes, and donors have continuously encouraged the country's current property system.

These reasons indicate the close linkage of state-building with external actors. Undertaking land registration is quite unusual for a country whose revenue does not depend on land taxes. Historically, land registration has been initiated at the government's request to modernise and rationalise tax collection. However, this is not observed in recent land law reforms in Africa because they are often led by the international community on the assumption that land registration will reinforce tillers' rights and enhance economic development. Rwanda's experience indicates that a reform driven by external actors is possible only if the intentions of the recipient country support it. While the country strengthened its control over land and territory through one-time land registration, the widening gap between the available information and the real situation may affect land administration and, thus, possibly undermine state-building.

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Post-cold War Ethiopian Land Policy and State Power in Land Commercialisation



Teshome Emana Soboka

Abstract Land policy is one of the issues that affects the lives of millions of people in Ethiopia. The main purpose of this chapter is to explore how the policy has become instrumental for state land commercialisation after the 1991 regime change when the guerrilla fighter group—the Ethiopian People’s Revolutionary Democratic Front (EPRDF)—took power by overthrowing the military dictatorial government. Based on the data gathered from various sources, the chapter argues that the government has implemented different land policies, all of which were used to strengthen state power over land ownership. This state land monopolisation assisted the government to commercialise land by developing state-sponsored institutions that have been catalysing the process of land transaction in favour of large-scale commercial farming. At the beginning of its coming to power, the EPRDF-led government promised to overhaul the land policy of the country with the objective to ensure fair access to land for the citizens. In the meantime, however, all the legal frameworks were directed towards the strengthening of state power over land. This state domination over land ownership brought about several unintended outcomes, such as corruption and unfair access to the land, which, in turn, resulted in mistrust between the state and society.

Keywords Ethiopia · Corruption · Institutions · Land commercialisation · Land policy

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1 Introduction

The year 1991 marked the end of the global Cold War; the year also had enormous significance as regards the political economy of Ethiopia, for it marked a regime change in the country. In May 1991, the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), which was once a guerrilla fighter group, overthrew the dictatorial military government (Derg), which had lasted in power for 17 years (1974–1991). The new regime was established as a transitional government until the country enacted a new constitution in 1995. Since then, land and land policy have been central to the socio-economic and political debates within the country. Land plays an important role in realising the efficiency of all the robust envisaged increases in agricultural productivity and improving citizens' livelihoods (USAID 2004, 3) as the landholding issue is 'not simply an economic affair' (Nega et al. 2003, 103) but 'intrinsically connected to political, social, and cultural identity' of the people.

Several studies have exposed the land tenure systems of Ethiopia from different perspectives. Some of these studies were historical, others political, and some others based their studies on economic grounds. Pankhurst (1966) attempted to provide a historical picture of Ethiopian land tenure from the time of the kingdom of Axum up to the twentieth century. Rahmeto (1984, 1992, 1994, 2011) has documented the historical, political, and economic significance of land and land policies in Ethiopia. He argued that interventionism and statism were the central elements of land-related policy management in the country, where the former imposed uniformity in the success of developmental activities while the second, statism, asserted that the 'state is the chief actor, thinker, planner, and the main provider of all benefits' (Rahmeto 1994, 1). This has left the Ethiopian land policy issue as 'unfinished business' (Rahmeto 1994, 13). Therefore, he suggested an alternative approach—associative ownership to argue that land should be owned by the community and individual land users (Rahmeto 1994, 14). Hebo (2006, 20) categorised the Ethiopian land tenure systems of the imperial period as 'the North' and 'the South, where the North referred to Abyssinia proper (the Amhara and the Tigrean) and the South referred to all the conquered and subjugated people in almost every part of the empire regardless of their geographical location. This is in line with Hoben (1973), Rahmeto (1984, 1994), Crummey (2000), and Zewde (2001), who dichotomised the Ethiopian land tenure systems into North and South prior to the 1975 land reform. The North had what we call the *rist* system, with its various forms, while the South was manifested by private and government land ownership (Solomon 2020, 34). Other studies by Nega et al. (2003), Rahmeto (2011), and Solomon (2020) examined Ethiopian land policy mainly from the economic and political aspects within the framework of state–society relationship, since government always assumes a central role in land ownership. So, in Ethiopia where land is still a political tool, it is imperative to study land policy owing to two main reasons.

First, the country has no colonial legacy since it has never been colonised, except the five-year Italian occupation (1936–1941), which did not, unlike with the other European colonisers in Africa, in any real sense have a significant influence on

Ethiopian land policy. Larebo (1994) reviewed the land and agricultural policy schemes that the Italian colonial government brought to Ethiopia in terms of three interrelated schemes. The first one was the resettlement of military veteran soldiers in strategic geographical areas of Ethiopia so that a peasantry could be created to protect the colonial system. The second scheme was what Larebo calls 'demographic colonization' to refer to the facilitation of the relocation of Italians from highly populated areas to defined Ethiopian localities. This, of course, was to support the third scheme in the colonial plan—the realisation of Italian commercial farming in Ethiopia. All three schemes did not work in part due to strong resistance from the already established indigenous land tenure system in Ethiopia and partly due to the fact that the settlers from Italy could not withstand the harsh climate conditions in Ethiopia. Above all, although Italians developed the above schemes to transform Ethiopia's agriculture into a colonial format, strong opposition from the Ethiopian side forced the Italians to retreat before they could implant their legacy in Ethiopia's land policy.

Therefore, apart from the expansion of infrastructure, such as the Ethio–Djibouti railway and various roads, which were built to access mineral resource abundant areas, there is no observable legacy of Italian colonial land policy in Ethiopia. Of course, the construction of roads and the implementation of new urban designs contributed to the emergence of new urban settlements along the new roads, and fascist architecture and urbanism in Ethiopia (González-Ruibal 2010, 6).¹ The Italian fascist architecture and urbanism bequest is somewhat visible in deconstructing indigenous cities to make them appear as colonial cities where the roads and houses were designed in European styles and even reflect racial segregation in the naming of neighbourhoods in cities such as Addis Ababa. While undertaking these construction activities for their own sake, Italians did not dare or get time to make profound land policy reforms. That is why, Crewett et al. (2008, 6) argue, in Ethiopia one cannot find the colonial heritage experienced in other sub-Saharan African countries, brought about through land grabbing by European settlers, which contributed to the institutionalisation of private property rights to land. Yet, Binayew (2015) argues that 'the traditional land tenure system was disrupted' because the Italian rulers took the *gult* and *rist* lands of Ethiopians in the North and distributed them to their loyal servants. This exhibited the Italian colonial land-grabbing policy during their brief occupation, which weakened the land-owning nobilities in those parts of the country. Mengistie, cited in Binayew (2015), also considers this a turning point in the history of the lord–tenancy relationship in Ethiopia. But, Crewett et al. (2008, 6) argue that 'the colonial legacy in Ethiopia is rather an imperial colonialism in the second half of the nineteenth century with the expansion of the Abyssinian Empire towards the South and the imposition of an exploitative land tenure system in the conquered territories'. These parts, as different from the North, include 'the concurred and subjugated

¹ Bertazzini (2018, 5) argues that massive road construction projects connecting the main cities with asphalt roads were undertaken during those five years. From 1935 to 1936, for example, 'the main sections of the Asmara–Gondar, Asmara–Dessié–Addis Ababa, Addis Ababa–Jimma, Addis Ababa–Lechemti (Nekemete) and Addis Ababa–Harar–Mogadishu roads were completed. In the following years (1937–1939) some other paved roads were built, namely the Addis Ababa–Debra Tabor and Assab–Dessié roads'.

people in almost every part of the empire regardless of their actual geographical location' (Hebo 2006, 20). Since then, land policy and land tenure issues have been real sources of contention and a means of power consolidation in Ethiopia.

Second, since the imperial period Ethiopia has never exercised a land policy that frees land tenure rights from the strong grip of the state in modern Ethiopia, because land policy is the 'real source of power in imperial and in present day Ethiopia, being the centre of policy debates' (Crewett et al. 2008, 1). Furthermore, Lavers (2018) argues that Ethiopia seems to be special as it has a somewhat consistent system of state land ownership despite regime changes. Of course, each regime state used to appear with its own particular plan to use land for its own power accumulation. Thus, this chapter explores how state power got a strong land commercialising effect after the Cold War, the post-Derg period in Ethiopia.

During the Cold War, Ethiopia was stretched between the two world blocks (the capitalist American camp and the socialist Soviet camp), which influenced the land policies of the country in one way or the other. The one influenced by the capitalist block was imperial Haile Selassie's landholding policy, which lasted for 40 years (1933–1974), in which both customary and statutory land tenures were in practice with various forms such as lineage (*rist* and *gult*), private, and state ownerships. During the Cold War, particularly from the mid-1970s, there was a movement called the Ethiopian Student Movement of the socialist progressive group, to ensure an egalitarian land holding system that would break the landlord–tenant relationship. Yet, there still existed debates on whether the country should privatise land or keep it under state ownership. These debates are still going on, although the present government advocates state ownership of land by leaving only usufruct rights for the holders (Constitution 1995; Crewett et al. 2008; González-Ruibal 2010).

The government justifies its position based on two main rationales. The first, not different from that of the Derg regime (1974–1991), asserts that, historically, Ethiopian farmers experienced land deprivation and forceful dispossession during the imperial period and that this should be stopped once and for all.² Second, the government advocates that state ownership of land ensures justice in land access for every citizen. The government has taken an unshakable stand in this regard and labels arguments against it to be politically motivated (Rahmeto 1994, 2004; Adal 2002; Crewett and Korf 2008). There are generous promises in government documents, such as the Constitution, at least on paper, that all citizens have the right to access land and the protection of property rights. For example, the 1995 Constitution guarantees that Ethiopian peasants have the right to protection against eviction from their possession (article 40(4)) and the same for pastoralists—they are protected against displacement from their land (article 40(5)). Yet the realities and the results of various studies (Rahmeto 2011; Gebresenbet 2016) show that peasants and pastoralists are being dispossessed of their lands due to public or private development

² The Tigrean Peoples' Liberation Front, due to the socialist/communist background of its leaders, continued to promote egalitarian type of land tenure, which was no different from the Derg because, in its declaration on economic policy in November 1991 (Transitional Government of Ethiopia 1991), it announced the continuation of the land policy. But later, the country's free-market economic policy upset this stand and put land under complicated commercial purposes.

projects by domestic and foreign investors. Acquiring large tracts of land and leasing them to investors has resulted in the dispossession of several peasant and pastoralist communities in Ethiopia, which, in turn, has rendered impotent of the government's promise to ensure citizens' access to land.

Thus, this chapter examines post-Cold War Ethiopian land policy and state power in land commercialisation. First, it presents an overview of Ethiopian land policy before 1991, to connect the past and the present. Then, post-Cold War land policy will be discussed with the main emphasis on government strategies of land commercialisation. Then, the roles of overseas development agencies will be discussed. The final part includes concluding remarks. The chapter is based on data from extensive analysis of existing government land policy documents, empirical data from previous studies, and the author's own observations and interviews.

2 An Overview of Ethiopian Land Policy from the Imperial to the Derg Period

Ethiopian land policy before the end of the Cold War was much complicated but, for brevity, it can be divided into two: the imperial period and the Derg period. Adal (2002, 2) argues that land tenure during the imperial period was so complex that it is difficult to have a complete picture of it: 'Ethiopia has one of the most intricate land tenure systems in the world' (Cohen 1973, 366). This complexity has made it difficult to improve the land reform system of the country, and thereby, affected land productivity. In both the Menelik and Haile Selassie regimes, the 'pre-1974 Ethiopian land regime was typically a feudal system where land was concentrated in the hands of landlords and the Orthodox Christian Church. Land tenure rights were highly insecure because it was highly characterised by arbitrary evictions of citizens' (Cotula 2007, 5).

Broadly speaking, land tenure during the imperial period can be either of the North or South type. In the northern areas, such as Gojjam and Tigray, there were different tenure systems, such as 'communal (*rist*), grant land (*gult*), freehold, or sometimes referred to as private (*gebbar* tenures), church (*samon*), and state (*maderia, mengist*) tenure regimes' (Crewett and Korf 2008, 7).

According to Cohen and Weintraub (1975) and Adal (2002), *rist* is the right to claim a share of land based on kinship from a historical ancestor held in common with other *rist* holders. 'Those who can establish kinship through either parent may enter a claim to a share of the land in a unit from elders controlling the allocation of land held by what is in effect a descent corporation' (Adal 2002, 4), but it does 'not guarantee equal access to land to all dwellers of the area. Individuals' access to land was highly determined by their social status' (Hoben 1973; Rahmeto 1984, 1994). Conversely, Hoben explains that *gult* rights over land were given to members of the ruling elite as a reward for loyal service to their lord and to religious institutions as

endowments; they were granted the right to collect taxes from those who tilled it. The *rist* and *gult* systems were complementary types of land rights.

The imperial period was also characterised by a private land tenure system that was prevalent in the southern and south-western part of Ethiopia. This landholding pattern is the most dominant tenure, affecting over 60% of Ethiopia's peasants (Mengisteb 1990) and prevailing in the areas where 65% of the Ethiopian population lived (Cohen and Weintraub 1975). According to Cohen and Weintraub (1975, 35), private tenures were created when the crown confiscated the land³ conquered by its armies and granted vast blocks to a wide range of people and institutions. Rahmeto (1984) stated that these confiscated lands were granted to soldiers, northern civil servants who came from Gojjam, Gondar, Wollow, and Tigray to administer the new conquered areas, and to those peasants who migrated southward due to land hunger in the north. In addition, local traditional village leaders who did not resist the crown conquest, and church officials and institutions who facilitated the expansion of the Coptic religion towards new areas in the south and west, had similar privileges.

In addition to *rist* and *gult*, church land was another form of tenure in the imperial regime in which the Ethiopian Orthodox Church was an important landholding entity. However, the size of land held by the church was not well documented because of the 'complexity of the forms, the decentralized nature of ownership of church lands and due to the secrecy of the church's central treasury' (Cohen and Weintraub 1975, see also Rahmeto 1984; Mengisteb 1990, 51). Much of the church lands were in the south, estimated to be 25–50% (Cohen and Weintraub 1975) of the total land area of the country. Yet, Rahmeto (1984) reduced the estimate, saying it would not exceed 10–12%, which was obtained through grants from the crown designated as *semon* land and *gult* land. *Semon* land was given to functionaries in place of salary, while *gult* lands was given to the administrators of churches and the high priests (Adal 2002, 1). Finally, state land included all the unoccupied lands whose tenure system was 'freehold', which refers to the land distributed to men of influence and power in the state apparatus, and which was later converted into private tenures. Land under private ownership could be sold or exchanged without any restrictions except those provided by law.⁴

The other pre-Cold War land policy worth considering was the 'Derg Land Policy'. The political change in 1974 led to a sweeping land reform, with its Proclamation No. 31/1975 (Public Ownership of Rural Lands Proclamation), the aim of which

³ Teshome (2016, 113) argues that the land tenure system during this period was characterised by absolute power imbalance between feudal lords and peasants, given the importance of land resource as a source of power that served the monarchy and the feudal land lords as an institution to exploit the masses. The emperor had absolute rights over all land with the authority to grant and withdraw land rights at all levels. The power of the emperor was clearly asserted in the 1931 Constitution and the 1955 revised Ethiopian Constitution. He further elaborated that the southern part of the country was affected by massive political intervention, in the form of and grabbing favouring landlords and political authorities.

⁴ Rahmeto (1984) argues that lands under private tenures were private not in the strict capitalist sense, because what the state had granted was originally state property. Such lands, which were given to settlers and commercial farmers who came from outside the areas, were common in the nomadic areas.

was to confiscate rural land from those who held it and provide equal access for all farmers (Teklu and Adugna 2004), and Proclamation No. 47/1975 (A Proclamation to Provide for Government Ownership of Urban Lands and Extra Urban Houses). In addition to claiming that a person's rights, honour, status, and standard of living are determined by his relation to land, Proclamation No. 31/1975 was intended to end the serfdom condition under which a majority of the Ethiopian population was living: it made 'rural land the collective property of the Ethiopian people' (Schwab 1978, 50). Thus, redistributive land reform transferred usufruct rights to the rural peasantry, maintaining the continuity of state land ownership. The policy put all rural land under state ownership without compensation to previous right holders and prohibited tenancy relations [article 4(5)].

Peasant associations (PA) were given administrative and judicial powers, and the mandate to allocate land (Tesfaye 2003, 6). In addition, agrarian collectivisation, such as farmers producers' cooperatives and the Rural Villagisation Programme, were established in the 1980s because smallholder farmers were believed to be inefficient to take advantage of economies of scale. Furthermore, large-scale state farms⁵ spreading over 75,000 ha of land were established by procuring land from individually owned commercial farms; this was later expanded to about 216,000 ha in 1987/1988 (Ofcansky and Berry 1991). These farms were mainly located in southern and western parts of the country, such as Sidamo, Wollega, and Illu Abbabor. The ten-year plan of the Derg regime indicated that state farms would expand to 468,000 ha by 1994, accounting for 6.4% of the cultivated land (Ofcansky and Berry 1991). Unfortunately, this plan did not materialise as the EPRDF came to power in 1991, whose interest, as opposed to the socialist Derg regime, was to move towards 'free-market' economic policy. Following the rural land law, a radical urban land law came into being. In Proclamation No. 47/1975, the Derg military government posited that it would be necessary to 'bridge the wide gap in the standard of living of urban dwellers by appropriate allocation of disproportionately held wealth and income as well as the inequitable possession of services among urban dwellers and to eliminate the exploitation of the many by the few'.

Despite the radical change in land ownership from the 'Land to the tillers' motto to the 'Urban Land and Urban Extra Houses' laws, there has been severe criticisms of the land policy of the Derg regime, mainly from those who argue in favour of land privatisation, because land rights were highly controlled; transfer through sales, lease, or mortgage was entirely prohibited, and inheritance was highly regulated (Crewett et al. 2008). Lavers (2018, 2) strengthens the above criticism.

While the significance of the 1975 land reform is indisputable, nonetheless there remains ambiguity in land tenure regarding the authority of state and non-state actors

⁵ In sub-article 7.1 of Proclamation No. 31/1975, it is declared that any large-scale farm shall be organised as a state or a cooperative farm or shall be allotted to tillers; provided that until the establishment of state or cooperative farms the government shall administer such farms in any manner it deems fit and provided further that until the government decides upon the manner in which such farms are to be administered, the ex-owners of these farms shall have the responsibility to continue administering them.

and the implications of different land tenure institutions for citizenship. This ambiguity is partly due to the continuing influence of neo-customary tenure regimes, which in many places were not actually wiped out by state ownership, and, arguably, have become increasingly influential in recent years.

In general, there is a continuous debate whether the Derg land policy ensured land tenure security—according to me, it did both. However, since the scope of this chapter is to analyse Ethiopian land policy after 1991 (after the Cold War), I will not engage in providing evidence whether the Derg land policy really had both constructive and destructive effects on the lives of the Ethiopian majority.

3 Land Policy After the Cold War

The EPRDF-led government that took power in 1991 following the downfall of the Derg regime promotes a ‘free market’ economic policy under its ‘Democratic Developmental State’ ideology, which has made no substantive change to the state ownership of land. The 1995 Ethiopian Constitution draws a broad framework for land policy in the country and enshrines the concept of public land ownership and the inalienability of landholdings. It asserts that there are no private property rights in land. In the Constitution, some important articles, such as articles 40 and 89, provide for state power over land. Article 40(3) states:

the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the state and the peoples of Ethiopia. Land is a common property of the nations, nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of exchange.

In addition, article 89(5) of the Constitution provides that the state, on behalf of the people, will manage land.⁶

Regional states are given the power to administer land within their administration consistent with the provisions in the Constitution and other federal laws such as Proclamation No. 89/97, the Federal Rural Land Administration and Use Proclamation, which gives the regional states the power to make laws to manage and administer land within their boundaries. This power, among others, includes determining systems for land expropriation and compensation, land lease, communal rights, and land use planning. Accordingly, each region has its own unique laws, rules, and practices and incentives for agriculture land lease fees, whereas Proclamation No. 29/2001 (EC) provides that plots over 5000 ha be administered by federal authorities and included in the land bank. The following sections of this chapter, therefore, discuss federal land laws that have direct bearing on the government power of land commercialisation after the 1991 regime change, which we refer to as the post-Cold War period.

⁶ Article 89(5) of the Constitution states that ‘Government has the duty to hold, on behalf of the People, land and other natural resources and to deploy them for their common benefit and development’.

After farmers associations were quickly dissolved in 1991, it was confirmed by the transitional government (1991–1995) that there would be no change in the state ownership of land, which later was enshrined in the 1995 Constitution [article 40(3)]. It ‘established a non-flexible land policy in the country’ (Temesgen 2020, 7) as it stipulates that the federal government shall enact laws for the utilisation and conversation of the land and other natural resources [article 51(5_)]. With this constitutional background, the first federal rural land administration law (Proclamation No. 89/1997) was enacted though, later, it was repealed by the Rural Land Administration and Use Proclamation No. 456/2005. This is the governing law that regulates rural land administration in the country today. Consistent with the Constitution, the law, in its preamble, states that the main purpose is ensuring tenure security, strengthening property rights of farmers, sustainably conserving and developing natural resources, and establishing a land database and conducive land administration in the country. This statement is both a promise and indicative in its nature. It is promising, though arguable when implemented, in that the rural land tenure security would be ensured. It is also indicative of the upcoming land registration and certification processes in the country.

Together with the above proclamation, Proclamation No. 455/2005, Expropriation of Landholdings for Public Purposes and Payment of Compensation,⁷ was enacted to enable the government to dispossess land and transfer it to others in the name of ‘public purpose’. What difference will this proclamation make? Firstly, there is an issue of compensation upon expropriation of land holdings. Article (1) of this proclamation mandates *woreda* (districts) or urban administrations to make an advance payment of compensation for expropriation based on the decision made by the appropriate higher regional or federal government organ for the same purpose. There are two concepts that need clarification here: ‘appropriate higher body’ and ‘public purpose’. Who decides that a certain organ is the appropriate body to expropriate land and pay compensation, or who proves that the land is actually taken for public purposes? These are self-explanatory questions since the ownership of land is constitutionally vested in the state, and the 1997 Rural Land Administration Proclamation delegates regional governments to assign holding rights and to allocate landholdings. In addition, the federal ‘Poverty Reduction Strategy’ (PASDEP

⁷ Another proclamation, Proclamation No. 1161/2019, was made to ensure the continuation of land expropriation but appeared with a new settlement package, named Expropriation of Landholdings, Payment of Compensation, and Resettlement.

I)⁸ states that every farmer who wants to make a livelihood from farming is entitled to a piece of land free of charge.

But the overall rural land tenure policy of the country faces many challenges because ‘there is often a wide gap between rights on paper and rights in practice, where land policy is understood as political power policy in agrarian societies such as Ethiopia’ (Crewett et al. 2008, 5). This is due to variations in interpretation of the law by officials at various levels. Moreover, there is a contradiction between what is written and what is practised because, although land administration is decentralised to the regional governments, the federal government still assumes much power in formulating fundamental land policy. So, the federal government seems to assume an all-time interference in the regional governments’ power over land administration and can directly allocate land in the regions for any purpose of public or private development projects without the knowledge of the concerned regional governments. Notification letters suffice in this regard. Furthermore, Temesgen (2020, 69) argues that regional legislation is not comprehensive in that they focus on farmers and few provisions concern pastoralists and agro-pastoralists even though a significant proportion of the Ethiopian rural population is pastoralists and agro-pastoralists. Thus, he further argues that rural land administration law lacks a focus on the land rights of pastoralists and semi-pastoralists, although pastoral communities are estimated to be 12–15 million (14–18% of the total population) who occupy 60–65% of the country’s land area (UNICEF 2019:1).

4 Post-Cold War Land Commercialisation Schemes

The present Ethiopian federal government has some institutions in place that help it to concentrate the power of land ownership in both rural and urban areas. Large-scale agricultural investment, land bank, using loan-giving institutions (mainly state-owned), and rural land registration are a few of the land monopolising schemes as discussed below.

⁸ PASDEP stands for ‘A Plan for Accelerated and Sustained Development to End Poverty’ (PASDEP) (2005/06–2009/10). The objectives of the PASDEP are to define the nation’s overall strategy for development for the coming five years; to lay out the directions Ethiopia wants to take, with the ultimate objective of eradicating poverty; and to outline the major programmes and policies in each of the major sectors. Although the PRSP process started in 2000 as a process largely between government and donors in Ethiopia, it has now evolved beyond that, and the PASDEP is now considered a national plan for guiding all developmental activities during the coming five years. Additionally, it is a nationally agreed development plan belonging to all Ethiopians, developed through a process of consultation among all elements of society (Ministry of Finance and Economic Development 2006: 1). This is followed by GTP I and GTP II.

Table 1 Total land transferred from regions to Federal Land Bank for investment

S.No.	Region	Land in Federal Land Bank (ha)	Land transferred to investors	
			No. of investors	Size (ha)
1	Gambella	1,226,893	45	220,812
2	Benishangul Gumuz	1,149,047	72	115,054
3	SNNPRS	209,723	20	69,718
4	Oromia	1,079,974	–	–
5	Amhara	6,183	–	–
6	Somali	6,000	–	–
Total		3,677,820	137	405,584

Source Ministry of Agriculture (2020)

4.1 Large-Scale Agricultural Investment

The EPRDF (now Prosperity Party) government made a total shift from state-owned large-scale farms to private large-scale agricultural investment with the assumption that this would improve land productivity, access to technology, job opportunities, diversification of the local economy, increase income, market linkages, and attract complementary investment (Ministry of Agriculture 2020). In the last ten years, the government of Ethiopia has divided its development policy in all sectors into two: GTP I (2011–2015) and GTP II (2016–2020). Ethiopia's Growth and Transformation Plan I (2010/11–2014/15) aimed at achieving the country's long-term vision and sustaining rapid and broad-based economic growth, while GTP II (2016–2020)⁹ aims to spur economic structural transformation and sustain accelerated growth towards the realisation of the national vision to become a low middle-income country by 2025. During these policy implementation years, due to the shift of pro-capital land policies, large-scale agriculture investment gained momentum by transferring large areas of land to the Federal Land Bank, and thereby leasing to both domestic and private investors. According to Rahmeto (2011, 11) the land to be transferred to large-scale investors in the first GTP was expected to increase from 0.5 million ha in 2011 to 2.8 million ha in 2013, and 3.3 million ha in 2015.

Table 1 shows the size of land transferred to the Federal Land Bank, land transferred to investors for large-scale agriculture investment, and the number of investors during the second Growth and Transformation Plan¹⁰ (GTP II) period.

⁹ This Growth and Transformation Plan is an exhaustive and ambitious document that assumes the partnership of several countries and donor agencies for its success (See the plan document for the objectives for each sector.).

¹⁰ Since the beginning of the new reform in April 2018, the Ethiopian government has no intention to declare whether it is still implementing the second Growth and Transformation Plan. Yet, one cannot see any new economic development policy produced by the new reformist government under Prime Minister Abiy Ahmed.

Table 2 Large-scale agricultural investment products in GTP II (2016–2020)

Years	Land size and products	
	Land size (ha)	Products (tons)
2015/16	902,546	1,716,885
2016/17	915,627	1,815,211
2017/18	921,278	1,799,548
2018/19	935,325	1,848,614
2019/20	899,797	1,795,788

Source Computed from Ministry of Agriculture Report (2020)

As Table 1 shows, 3,677,820 ha of land was transferred to the Federal Land Bank, of which 405,584 ha was leased to 137 investors for commercial agriculture. The three regions that contributed more than a million hectares of land to the bank were Gambella, Benishangul-Gumuz, and Oromia, because of the availability there of ‘unused’¹¹ land. The above source does not, however, explain why the three regions (Oromia, Amhara, and Somali) did not report the status of large-scale agriculture investment during the years indicated. Yet, although millions of hectares of land was accumulated in the Federal Land Bank, only 11.03% (405,584 ha) of it has been transferred to investors, and there is no data that compares the size of land transferred to investors to the country’s total arable land. The Directorate for Agricultural Investment Support in the Ministry of Agriculture (2020) has provided complete data of the size of land transferred to large-scale agricultural investors in the 2019/20 fiscal year.

Accordingly, all regional states except Harari had land banks in 2020. The only reason why Harari region does not have land for agricultural investment is that it is a city-like region with a population of 183,344, where 49.5% is engaged in agricultural activities and the remaining 50.5% is of a non-agricultural background (CSA 2007). Unlike the other eight regions, it does not have sufficient land for large-scale agricultural investment. Thus, land commercialisation through large-scale agriculture investment has continued to the present because the new reformist government, since April 2018, does not make any change to the state ownership of land.

Ethiopian government land commercialisation should also be assessed in terms of the types and purposes of crops produced by large-scale agricultural investment. Table 2 shows large-scale agricultural investment products during GTP II (2016–2020) mainly for export. The table illustrates the size of land used for producing the indicated tons of crops in each year from 2016 to 2020.

From the data, we can see that the highest yield from large-scale investment projects was in 2017, which accounted for 1,815,211 tons of crops from a total land of 915,627 ha. A single year (2019/2020) performance also indicates the achievements of large-scale agricultural investment for export as a source of currency earning. From

¹¹ Unused land is a misleading term to refer to land that is assumed to be uncultivated or unoccupied, and thus available to be developed for the benefit of economic growth, so that such ‘idle’ lands would become paragons of development.

the five major crops (cereals, pulses, oilseeds, industrial crops such as cotton, and cash crops) listed in the report, cereals take the lead while industrial crops and oilseeds stand second and third, respectively, as a source of foreign earnings due to large-scale agricultural investments. The Ministry of Agriculture (2020) has also narrated the thus far success stories of the large-scale agricultural investment programme in the country. First, it was reported that the country has fetched significant amount of foreign currency earnings. In addition to national image building, large-scale agricultural investment has created job opportunities¹² for several citizens. It has also contributed inputs for the supply of raw materials for export and domestic industries. However, several challenges were observed in the implementation of investments. As opposed to the presence of large parcels of land in the land bank (see Table 1), it was reported that there is a shortage of sufficient land to be transferred for large-scale agriculture investment. Additionally, the investors' lack of commitment to start investment due to lack of infrastructure such as roads, imposition of high bank interest rate, and absence of the required support from host community at the investment destination are other serious challenges. Finally, the already commenced projects are reported to have low productivity due to the lack of appropriate incentive for importing farm machinery, and the lack of loan services.

Moreover, investors also complain that they face challenges from the government side. An investor whose land was taken away by the local administration in Gambella said the following:

I am one of the 100 investors who secured land in 2015. I leased 1000 ha of land from the region. But, I was evicted by the local administration because I was accused of taking land that was reserved by the federal government for special economic zone. Thus, it seems that they do not know what the federal government does in this regard. There is also inconsistency in the manual on how clients can acquire loan from the banks. There is also a delay in the process. For example, once you secure a land for investment, it will take one up to two years to get the loan. (Interview with My H S, 23 April 2020) (Addis Fortune, 16 April 2020)

In addition, the Development Bank of Ethiopia attributed the increase in non-performing loans to prolonged unpaid loans and agricultural production failures mainly by large-scale commercial farms.

4.2 Land Banks

The development of land banks¹³ are closely connected with the lack of enough land supply for the fast-growing global urban population in both developed and

¹² In its report (2020. 5), the Federal Ministry of Agriculture stated that large-scale agricultural investment has created an average of 15,125 full-time jobs and 276, 204 seasonal job opportunities during the second phase of the Growth and Transformation Plan (GTPII 2016–2020).

¹³ Land banks in Ethiopia were often used to control landholdings in both rural and urban areas until 2019 when the new Federal Land Bank and Development Corporation was brought into being. However, this study could not trace any legal framework that bound the operation of land banks in the country.

developing countries (Western Reserve Land Conservancy 2020, 1). In developed countries, land banks are involved in implementing urban renewal, preserving open spaces, and stabilising property and land values in a particular area (O'Brien et al. 2005, 17) because the basic intent in the practice is to hold onto land until one proves that it is profitable to transfer it for various purposes. In the US, this strategy was developed as a mechanism to control urban development in the 1960s.

According to the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP 1993), land banking in developing countries.

implies that government acquires land in advance of needs. The main advantages are that it allows the purchase of land, relatively cheaply, for public purposes and provides a tool to influence the pattern of development in accordance to overall planning objectives.

In the Philippines, for example, a land bank was established in 1963 under the Agricultural Land Reform Code¹⁴ 'to finance the acquisition and distribution of agricultural estates for division and re-sale to small landholders and the purchase of landholdings by agricultural land tenants'. So, technically, 'a land bank is a land purchase/acquisition practice with the intention of being developed/matured to meet future development needs'. The land bank is a concept related to accessing land for the purposes of providing public services for housing, industry, agriculture, with land management, directing the land market and preventing land speculation (World Bank 2017, 723). With an attempt to clarify the purpose of land banks, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ 1998, 1), now Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ),¹⁵ provides some major guiding principles, which include improving access of the poor and other specific target groups to land, supporting the implementation of urban development projects, reducing inflation in land prices and land speculation, promoting public/private partnerships, and improving the land tenure structure in developing countries.

Some studies show that land banks are practised in African countries too. Areetey and Udry (2010, 1), for example, explored how they work in Ghana, a country where 'most land is held in customary tenure and its allocation is controlled by the leadership of stools, clans or families'. In their study, they described the institutionalisation of land banks as follows: the land would be deposited by acquiring it from land owners and, in turn, leased out to commercial farmers and developers who are individuals from the community (including chiefs) and the local government. In Nigeria, land banks are used in both urban and rural land management where land is acquired for future real estate development in urban areas and rural virgin lands are appropriated

¹⁴ See Republic Act No. 3844. (1963). Agricultural Land Reform Code.

¹⁵ GIZ is a German organisation that supports Ethiopia's urban development activities through its 'Urban Governance and Decentralisation Programme (2005–2014)', which was commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ). The main objective of the support was to realise that urban centres and cities provide better services to their citizens and apply principles of urban good governance. The programme comprises the improvement of urban planning and public service provision, the improvement of urban financial management, the expansion of municipal knowledge management, and pro-poor urban development.

for farming mainly with suitable topography, soil structure, and favourable climate. In the Republic of Rwanda, in 2016, the government started to use land banks to acquire land from individuals to provide low-cost houses by developers in the capital, Kigali (Republic of Rwanda 2017). So, the idea of the land bank is urban focused and a relatively new phenomenon to judge by its impacts in Rwanda.

Although we found limited literature on land banking practices in Ethiopia, a few documents (Ministry of Agriculture 2020; Proclamation No. 2001 EC) show that it has been prevalent in Ethiopia since 2009. The very nature and concept of land banks in the country entail the commodification of land that is not common in the traditional sense of land tenure. Today, several land-related actions, such as identifying and depositing land in the Federal Land Bank, have been exercised in different regional states, particularly those that have the potential to supply land for large-scale agricultural commercialisation and urban areas such as Addis Ababa, where real estates and industries need large tracts of land. A business-oriented land bank, the Land Bank and Development Corporation, was established in 2019 as a 'profit government enterprise tasked with creating a methodological and inclusive national landholding development, management and administration system for maximization of socio-economic profit' (The Reporter 2019). Intro Africa (2019), based on an interview with Lensa Mekonnen, CEO of LBDC, stated that the bank has three strategic pillars¹⁶: federal landholding management and administration, landholding business development, and federal landholding development.

Based on the 1995 Constitution and the 2005 Federal Land Administration and Land Use (Proclamation No. 456/2005), the federal government decided to actively encourage large-scale land investment and improve technical support for land investment. As per article 89(5) of the Constitution, which mandates the federal government to administer land on behalf of the people of Ethiopia, the Council of Ministers issued Proclamation 29/2001 EC, which provides that 'plots of over 5000 ha were to be administered by federal authorities and be included in land bank' (Keeley et al. 2014, 15–16). So, five land-abundant regions (Afar, Benishangul-Gumuz, Gambella, Oromia, and SPNNR) were instructed to prepare 'parcels of 5000 ha and above that would be suitable for large scale commercial agriculture'. Accordingly, by 2009, a

¹⁶ Land Bank and Development Corporation of the Federal Democratic Republic of Ethiopia is a company established to identify all landholdings under FDRE federal institutions and public enterprises, tally all landholdings and secure title deeds; to properly develop and manage landholdings for maximum and all-inclusive economic benefit; to develop landholdings in a manner that facilitates service provision of federal government institutions and public enterprises; to methodically manage landholdings for maximised economic and social benefit; to ensure government's interest is protected when landholdings are transferred to private possession; to transfer previously issued title deed certificates to its name and serve as a data centre for decision making and develop the identified landholdings under its ownership through joint ventures (FDRE LBDC website, 15 April 2020). From this explanation, it is evident that, directly or indirectly, the purpose of the establishment of the new LBDC is to strengthen the ongoing land registration and certification programme in the country.

total of 3.31 million ha was in the land bank in the five regions under the management of the Agricultural Investment Land Administration Agency (AILAA), which assumes an upward delegation by the regions. However, some regions accumulated more lands in their banks to lease to large-scale agricultural investors (Gebresenbet 2016, 15).

4.3 *Loan-Giving Financial Institutions*

The Ethiopian government has used all possible means to realise large agricultural commercialisation. In addition to controlling all the power of land allocation to investors at all levels, the federal government has been developing some mechanisms to offer financial support for investors in large agricultural investment. One such scheme was the facilitation of generous bank loans. Although the major government-owned financing institutions are the Development Bank of Ethiopia, and the Commercial Bank of Ethiopia, there are also other private banks such as Awash and Abyssinia that provide loans for large-scale agricultural investment projects. According to the 2018 report from the Development Bank of Ethiopia, the loan portfolio concentration of the bank by economic sector shows that manufacturing accounted for Birr 26.9 billion (69.03%) followed by agriculture, which accounted for Birr 6.95 billion (17.84%) while financial service took Birr 3.4 billion (8.72%) of the total loan.

Until 30 June 2019, the total loan portfolio of the Development Bank of Ethiopia consisted of 3779 loans, with a total loan balance of Birr 63.55 billion (Loan Portfolio Concentration Report, Development Bank of Ethiopia, July 2019). However, the bank gradually ceased to give loans to the agriculture sector due to the failure of the investors to pay back. According to this report, there were nine agriculture sub-sectors with a total of 889 loans; the borrowers in the three top most loan concentration sub-sectors are shown in Table 3.

Table 3 shows fibre crops (such as cotton) with a value of Birr 2.39 billion (5.06%), oil crops with a value of Birr 2.05 billion (4.33%), and horticulture (by flower industries) with a value of Birr 1.35 billion (2.86%). Although the bank did not disclose

Table 3 Agricultural sub-sector loans whose concentration exposure ranked 1–3

S.No.	Sub-sector	No. of loans	Total portfolio excluding Com. Balance (billion Birr)	% Share to total portfolio excluding Com. Balance (%)
1	Fibre crops	150	2,388	5.06
2	Oil crops	283	2,047	4.33
3	Horticulture	164	1,353	2.86
	Total	597	5,788	12.25

Source Loan Portfolio Concentration Report, DBE, July 2019

the 2020 report, the following quote was taken from a newspaper, *Addis Fortune* (16 April 2020) to show the status of the current year:

Throughout the current half fiscal year, both public and private banks announced 18 auctions in just agriculture investments. Of total auctions, the share of private banks is Birr 7.3 million while the rest 72.1 million (91 pc) was issued by the two state-owned banks.

4.4 Rural Land Registration and Certification

Neo-liberal projects seems to dominate the EPRDF development ideology because the government tried to liberalise the economy in the name of the ‘free market’. The economic policy put smallholder agriculture at the centre, with the justification that more than 80% of the total population depends on this main form of land use; 17.7 million ha of land was utilised by smallholder farmers for cultivation (CSA 2014). In addition, Beyene (2018) argues that it accounts for 90% of total agricultural production, which makes it an important area of policy, politics, poverty reduction, and land tenure at large. The government claimed that double-digit economic development was achieved because of the implementation of smallholder agriculture policy under the state monopolised land tenure system. Parallel to that was the plan for the commercialisation of smallholder agriculture, with the assumption that smallholder production will constitute sources of materials and inputs for the emerging manufacturing sector.

Yet, as smallholder agriculture is practised in areas where land is scarce and fragmented, this sector could not cope with the challenges of production relations and land tenure rights. Empirically, state land monopolisation inhibited investment in land and environment at individual farming households, since they consider the land belongs to the state with mere usufruct rights for them. Development partners who try to promote land privatisation have continued to warn that this, in turn, could result in reduced productivity and environmental degradation due to tenure insecurity. So, land registration and certification was introduced to fill these gaps.

As shown previously, the Ethiopian government has used every possible means to control land ownership. One is land registration, which has been implemented in two stages. First level land registration was initiated to secure the land titles of smallholder farmers and pastoralists under the Rural Land Administration and Land Use Proclamation No. 456/2005. This was a process of issuing simple temporary landholding certificates, which did not have information, such as geo-referencing and maps of land parcels (Ministry of Agriculture 2013). The certificate cites land size, uses, borders, and names of proprietors. If a plot is a common holding of spouses, the certificate bears the names of both. However, the second stage¹⁷ registration was implemented to rectify the weaknesses observed in the first stage by using geo-references and maps of parcels to minimise disputes over land. Table 4 shows the

¹⁷ As the second stage of the land registration and certification process is at its pilot level, there is no accurate data to tell the success stories currently.

Table 4 Land registration in four regions

Regions	Amhara	Oromia	SNNPR	Tigray	Total
Area (km ²)	170,752	350,000	113,323	80,000	714,075
Population (mil)	17.2	28.0	16.0	4.4	65.6
Rural <i>woredas</i>	128	264	134	34	560
Kebeles	3,146	6,419	3,586	695	13,846
Kebeles per <i>woreda</i>	25	24	27	20	25
Rural households (mil)	3.696	5.314	2.848	0.924	12.782
Estimated total parcels (mil)	19.634	20.335	6.277	3.431	49.676
First-level certificates issued (mil)	2.749	1.800	1.900	0.906	7.355
Completion calculated (%)	74	34	67	98	58
Second-level certificates issued	1,612	3,000	0	0	4,612

Source World Bank (2012, 51)

coverage of Ethiopian rural land registration and certification up to 2012 (World Bank 2012). As the second level registration was at its pilot stage, the percentage of completion in the table refers to the performance of the first level.

Despite all the achievements that the government actors claim, there are some concerns with respect to the legal issues and scope of land registration, and the certification programme itself. Apart from what is mentioned in the Rural Land Administration and Land Use Proclamation (Proclamation No. 456/2005, and MoFED 2002), which does not provide any detail, there is no legal document that governs implementation. In addition, Davies (2008, 243) argues that as Ethiopia's land registration and certification project encompasses several agendas, such as tenure security, conservation, authority enhancement, and gender, which are haphazardly placed together, this puts the programme's success and continuity under question. Yet, it is at its second stage of implementation with the support of foreign donor agencies.

5 Role of Transnational Development Agencies

Do transnational institutions/external forces influence Ethiopian land policy and land administration? Evidence shows that several institutions, including the World Bank and other bilateral organisations, are working towards land policy reforms in sub-Saharan African¹⁸ countries (Abdo 2014). One may argue that Western powers

¹⁸ The LEGEND Report (2016, 13), for example, shows that DFID supports many African countries through its various land programmes. For instance, it helps Ethiopia through the Land Investment for Transformation (LIFT)-Wealth Creation, while Mozambique has received support from DFID for its Community Land Use Fund, Mozambique Land Action (MOLA), and Global Legal Empowerment Initiative. Rwanda also receives support from the 'Rwanda Land Tenure Regularisation Programme'. Tanzania has run the 'Tanzania Land programme' while South Africa has received support for the 'Urban Land Reform-Urban Land Market' programme. Ghana forest governance, markets and

dictated land reforms in colonial African countries during the colonial era, and we can still see the influence of their interests and ideologies in the land reforms of Africa even after the end of the Cold War. These ideologies include pro-private land ownership and market liberalisation, and they have been pushing the Ethiopian government towards them. Donors believed that tenure insecurity, particularly in the agriculture sector, was the major inhibiting factor in the economic growth of the country because all development endeavours revolve around land tenure rights (Steven 2018). However, as the government is unwilling to change the state-public ownership of land, they could not go farther. Thus, their partnership on the land tenure issue has been through the implementation of rural land registration and certification. Therefore, Ethiopia has received much support from countries such as the US and the UK through their overseas development agencies. It is often pronounced that these agencies are very important to give political and technical expertise in land management. In the following sections, we examine the role of two organisations, namely USAID and the UK Department for International Development (DFID), in intervening in Ethiopian land policy formulation and implementation strategies after the Cold War.

5.1 USAID

USAID¹⁹ has been operating in Ethiopia since 1961. It appears with different development intervention strategies in alignment with the country's development policies. In its Ethiopia Land Policy and Administration Assessment report (2004, 25–27), USAID identified five areas of intervention in Ethiopian land policy, land administration and other related support programmes. Of these, I will highlight two, which are closely related to land administration. The first was the 2013–2018 project, the Ethiopia Land Administration to Nurture Development (LAND), which worked at the national and regional levels to improve the legal and regulatory framework of land tenure and property rights in Ethiopia. The LAND project builds on two previous projects. The first is the Ethiopia Strengthening Land Tenure and Administration Program (ELTAP) (2005–2008) and the Ethiopia Land Administration Program (ELAP) (2008–2012) to improve land governance and land administration and strengthen land tenure rights in Ethiopia and, thereby, promote economic growth, increase agricultural productivity, reduce conflict and resource degradation, and improve women's rights to control and manage assets. It has three objectives.

climate initiatives were also undertaken with financial aid from DFID. Of course, the 'Investment Climate Facility' programme was designed for various African countries.

¹⁹ USAID has been supporting Ethiopia since the beginning of the 1960s. In 1962, for example, it set priorities that include education, agriculture, fisheries, health and sanitation, community development, social welfare and housing, industry and mining, and transportation. (See 'Evolution of USAID Development Priorities in Ethiopia: Details of USAID programs and funding from 1961–2013'.).

First, it aimed to support national and regional governments to improve land administration and land use laws. Second, it worked to improve the efficiency of Ethiopia's land administration institutions in the areas of land use rights certification and transactions. And third, to encourage pastoral regions to introduce certification of communal land use rights and management of natural resources. From these objectives, USAID's interference in Ethiopian land policy implementation programmes becomes evident.

In November 2019, USAID declared the development of a new project with the theme 'Invest to Improve Land Governance in Ethiopia'. This US\$11 million-worth project was assumed to support the government of Ethiopia towards increasing land tenure security, improve land use rights for pastoralists and farmers—especially, those of women to increase farm productivity and incomes among families in rural areas. 'Improving planning, policy, and land management is critical to helping Ethiopian farmers and families reap the fruits of their labour more fully, and have better opportunities for themselves and their children to fulfil the bright future they deserve' (USAID Mission Director).

This new project has five intervention areas. The first one is land policy itself. It is clearly stated in the plan document that 'there is a great need to help the Ethiopian leadership think about how it can modify land policy and administration in ways that will encourage efficient farmers to produce more and improve their land management without reducing their livelihood security' (USAID 2019). The second area of intervention is capacity building to administer land. This supports the country in the process of recording and disseminating information about the ownership, value, and use of land and associated resources.

Thirdly, USAID has planned to intervene with the assessment and determination of land use rights in Ethiopia with the belief that, although the Ethiopian Constitution guarantees the rights of peasants and pastoralists to free land and protection against eviction or displacement subject to certain condition, there is no sufficient evidence as to the 'systematic procedures for determining and securing these use rights' (USAID 2019, 26). So, the plan is to intervene in the land certification programmes to identify and record land users and their landholdings. Fourthly, USAID intends to create public awareness by enabling people to become aware of their rights and obligations and install the mechanisms to enforce those rights, and by educating them about the objectives and structures of a decentralised land management system. This would be followed by a plan to undertake an assessment of the perception of land holders regarding the land certification programme, assessing the long-term sustainability of the programme itself and, finally, to develop mechanisms to monitor changes in land use, investment, and land tenure security.

From the above-mentioned points, it is evident that the US is investing in Ethiopian land administration through its international agency USAID by penetrating all forms of Ethiopia's land policy implementation activities, thereby becoming another tool for the Ethiopian government to build its land-controlling power.

Next, we will examine how a UK-based international agency, DFID, plays a similar role in the Ethiopian land policy and land administration activities.

5.2 DFID

Similar to the US government intervention through USAID support strategies, the UK government also offers land policy and land management support to Ethiopia through its international organisation, DFID.²⁰ In its portfolio review (2016) report 'Land: Enhancing Governance for Economic Development' (LEGEND), DFID indicated that it funds around 25 programmes that work on land globally. The report focused on exploring how investment facilities that receive substantial support from DFID deal with land issues in their investment in commercial agriculture and how infrastructure was handled. In this report, it was indicated that DFID support has produced impressive results in delivering large land registration programmes for strengthening land tenure rights for women. DFID's main rationale for promoting better land governance in Ethiopia is that stronger land tenure improves economic growth and reduces income poverty (Henley and Hoffler 2016, 7), but the government also uses this external support for controlling land and the land-connected daily activities of citizens.

According to its portfolio report (2016), DFID is supporting land-related activities in several African countries including Ethiopia. The support programmes include components such as strengthening land titling and land administration, forest management and land tenure, land reform as part of the broader reforms to improve the business climate, and urban development programmes that work with local government to improve services and lives of citizens in slums, and the poorest and vulnerable groups (LEGEND Report 2016, 15–17). Henley and Hoffler (2016, 12) identified two categories of DFID support for different African countries including Ethiopia. These are labelled as 'core' and 'substantial' land components.²¹

DFID supports Ethiopia through its Land Investment for Transformation (LIFT) project, which has six themes: Land tenure and certification, protecting land rights, land administration, access to finance, land rental, agricultural inputs for sustainability (DFID Annual Review, January 2020). For the above list of core and substantial land components, Ethiopia shares nearly £67 million (LEGEND report 2016, 13) for the LIFT as a DFID core land programme. LIFT was implemented during 2013–2020 based on the experience from the Rwanda Land Tenure Reform Programme

²⁰ As part of DFID's prioritisation, a specific advisory group on Land Tenure and Policy was established by the UK government. This group convened a series of workshops and conferences on land, providing advisory support. It also worked to influence policy and programming on land by the World Bank and EU, as the major multilateral donors taking forward work on land. After 2003, DFID scaled back its work on land. This was because it was thought the department did not have the internal capacity to engage beyond a coordinating role and because its experience at the time suggested that to pursue property rights programmes, there needed to be political consensus for reform from governments in its partner countries, who often had 'strong views on land tenure'. It published a policy paper in 2007 that highlighted how improving poor people's access to land was one of DFID's priorities and set out its support to country-led approaches. (See LEGEND: DFID Land Portfolio and Programmes: an Overview (2016, 10).)

²¹ Henley and Hoffler (2016, 12) identified 'core' programmes as those that have land governance as the main focus while 'substantial' programmes are those that have a different or broader land component, either strengthening land tenure or improving land governance.

(LTRP) and Land Tenure Regularisation (LTR), which lasted from 2003 to 2018 with a success story that tells that 11.4 million parcels of land were demarcated, 8 million titles were issued, and 7.4 million titles were collected (DFID LIFT Technical Report 2019). DFID planned to scale this up in Ethiopia (LIFT support) to implement rural land certification aiming at driving investment and increasing productive land use particularly in four regions (Amhara, Oromia, SNNPRS, and Tigray). The DFID review report (2020) shows that there were several achievements reached by the LIFT intervention strategies in Ethiopian land administration. For example, the support enabled the demarcation of 15,186,635 parcels of land, the approval of 13,260,949 certificates, the preparation of 12,918,846 certificates, and the distribution of 10,907,158 certificates to landholders (DFID LIFT Annual Review 2020).

In general, Western agencies' development supports go to Ethiopia with a significant ambitious plan to influence the country's land policy and citizens' tenure security. Their main ambition was to influence the government to privatise land. However, they seemed to lose their power eventually, for the Ethiopian government took the position that land would in no circumstances be privatised. So, they were trapped by the government and ended up contributing for the state monopolisation of land in the country. From the above two cases, USAID and DFID, we can understand that their areas of intervention are overlapping and reinforcing each other with some minor differences in their activities, with some sense of competition. From the support components of the agencies, one can understand that they greatly influence Ethiopian land administration practices while they themselves are also influenced by the government in trimming down their support to the level of the satisfaction of the government, not fully addressing the demands of millions of citizens whose livelihoods are directly connected to land tenure questions.

6 Corruption and Large-Scale Agricultural Investment

The post-Cold War Ethiopian land governance policy creates a loophole for corruption as a result of the state's intention to tighten its power over land ownership. The present land holding system of the country reflects the changes and continuities in the political economy of the country because land remained in the hands of a few feudal land lords during the imperial period and full ownership of the state during the military command economy, 1974–1991 (Misganaw 2019, 1). Today, despite the claim that the government works towards realising a free-market economy, land is still owned by the state with a high risk of corruption in its administration (Rahman 2018, 7).

Lindner (2014) has listed several factors that expose the Cold-War Ethiopian land administration system to corruption. These factors are interrelated: ranging from policy formulation to investment implementation stages. In support of this, Lindner (2014, 5) argues that 'land administration system in Ethiopia has a potential for

corruption because of lack of clear policies, weak institutions, lack of transparency, and lack of public participation in the land related decision-makings’.

In addition, Plummer (2012, 303) has conceptualised the country’s land-related corruption to appear at ‘upstream and downstream’ levels. According to Plummer, corruption occurs at the upstream level during policy formulation or in the institutions that allocate budgets for land administration tasks; the elites capture public assets through a range of mechanisms, such as influencing policy and legislation at the expense of society’s benefit. Similarly, corruption occurs in the institutions that formulate and allocate budgets during procurement, as staff often conspire with suppliers, or due to nepotism, fraud, or bribery. Land sector corruption has also been a point of discussion after the April 2018 new government reform in Ethiopia. Several mainstream media, such as TV and radio, have discussed this issue. They have presented interviews and documentaries from both rural and urban areas. The discussions include success stories in the land transfer processes to investors, sources of finance for large-scale agricultural investments, and the magnitude of corruption in accessing both land and financial loans for agricultural investments. Here, we take the case of land-related corruption in Benishangul-Gumuz Regional State which is a region where large-scale agricultural investment is implemented. On 5 July 2020, FANA TV presented a documentary film supported by individual interviews with the regional governor (Ashadle Hasen), the former regional head of land administration (Mr. Musa), Mr. Geleta Hailu, who is the current head of the regional land administration, and two investors from the agriculture and hotel investment sectors.

The interview results, though they may not be representative of other regions, are briefly presented below to shed light upon the scale of corruption in land acquisition and access to financial loans for investment in the region. We start with the interview with the regional governor.

Journalist: How could investors access land in your region before the reform and after?

Regional governor: To tell the truth, about 600 investment licences were given in the last few years. But the result was not as expected for different reasons. The so-called investors come here in different ways. Some of them were assigned from the central government to our region in the name of technical advisors for development activities. Others come through a network of federal level political officials just to secure land.

Then the journalist interviewed the former head of the regional land administration (Mr. Musa).

Journalist: How could investors access land for investment in your region?

Mr Musa: The land transfer process was not transparent in the past (before the new reform). Simply we were given orders/instructions from above, from the people in the ruling party [EPRDF] to allocate land to people whom they want.

In the meantime, a video of damaged agricultural machinery was shown as a background to the interviews. These included damaged bulldozers, tractors, and harvesters, lying ruined in the grass. Later two other investors, Mr. Kefyalew and Mr. Assefa, were interviewed one after the other on the same topic, to understand how they were able to get loans for their investment activities before and after the 2018 reform. Both of them were running agricultural investment and hotel businesses.

Journalist: Can you tell me how you got the land and bank loan for your investment?

Mr Kefyalew: Before the reform, I approached the Commercial Bank of Ethiopia several times to get loan but could not get any. But at the same time some other people were able to get it without any difficulty. They have the network. So, I returned the investment licence and stopped talking about bank loan further. The bank loan system was biased for it was networked by individuals and politicians.

Then the journalist continued his interview with the other investor, Mr. Asseffa.

Journalist: How did you get land and loan for your investment activities here?

Mr. Aseffa: Whenever I tried to get a bank loan, a certain organised group harassed me to prevent me from investing. But for themselves, they used the existing political security system as an instrument to get land easily. Such people can get land within a few days. Things were networked at the top. But now I see the situation is changing after the new reform.

Mr. Geleta Hailu, the current head of the regional land administration office, was also included in the interview.

Journalist: How do you see the success of investment projects in your region?

Mr. Geleta: Many people used to come to this region for agricultural investment. They took loan from banks, and went back to Addis Ababa to construct complex buildings with the money. They did not invest here at all. So, now their license has been cancelled and the land allocated for them has been transferred to the land bank.

Towards the end of the interviews and documentary film, the regional governor appeared and said: ‘The regional state did not have any decision-making power over land in the past. Information and data were hidden there at the federal level. We have no data now to talk about.’ But one should not forget that what Plummer (2012) calls downstream corruption appears all the way during land transfer or land certification processes because local authorities or politicians abuse their power in the land allocation for investment.

In addition, Addis Fortune, in its 16 April 2020 edition, exposed that the failure of the large commercial farms in Gambella regional state has a domino effect on loan-giving banks. The case in point was the Development Bank of Ethiopia, which was the major financier of large-scale agricultural farms in the country. However, due to the poor performance of the farms, the bank ceased to extend loans for commercial farms as of March 2020 to restructure its performance in loans and loan disbursement. The main reason behind this decision was the extent of corruption in commercial farms in the region where the bank was even deceived into ‘giving two loans for a single agriculture project’.

According to the above source, the bank incurred a 100% increase in its non-performing loans portfolio to Birr 3.4 billion in 2014–2015. The bank’s official report attributed this increase to prolonged unpaid loans and agricultural production failures mainly by large-scale commercial farms. For example, BHO, an Indian company, which was offered Birr 89 million loan, disappeared after developing less than 3000 of the total 27,000 ha of land it was granted in Gambella regional state. At the same time, 98,800 ha of land was retaken from the Indian Karuturi company, because

it developed only 1200 ha though it had received 100 ha of land. Being the major areas for large-scale agricultural investment in Ethiopia, the above two regional states (Benishangul-Gumuz and Gambella) might have many more cases to illustrate the magnitude of land sector corruption. This calls for further full-fledged research.

7 Conclusion

This chapter explored state-sponsored land commercialisation in Ethiopia after the Cold War. This was realised by examining the institutions that were designated for controlling land resources, thereby limiting the freedom of citizens over land tenure rights, which are mainly connected to ownership security issues. It is related to the often overstated land use rights—the right that any rural family should exercise to use land for grazing, growing crops, or collecting minor forestry products for household consumption, or sometimes for market purposes to augment income, though it is highly regulated in its practical sense (1995 Constitution). As land is solely owned by the state, citizens do not actually exercise their rights; this reflects the land holder's level of freedom to make decisions on how they should use the land and their agency of land utilisation; it is the government that determines what kind of crops a family, a farmers' association, or a farmers' union should cultivate on clusters of lands. In addition, under the Constitution citizens' land transfer rights are restricted by the land laws.

Land banks, as a state institution, are a major means of consolidating state power over land administration by creating and recreating high-value land zones for undertaking large-scale agricultural investment. Evidence shows that there are success stories among these investment projects, although their productivity remains under question. However, the picture of a success story is more complex, as seen in the case of agricultural investment projects in some areas such as Gambella and Benishangul-Gumuz regional states.

Finally, when we consider the overall challenges of Ethiopian land policy after the Cold War, there is a contradiction between the assumptions of the Constitution and specific land laws. The state exercises power over land and is often facilitated by government agents, such as the financial institutions and foreign aid organisations, which often include land components in their support.

Conceptually, transnational institutions are working towards influencing the Ethiopian government to guarantee land security for citizens but, practically, they are also co-opted to be the third hand to support state-sponsored land commodification. Specific land-related intervention strategies are carefully chosen and implemented by the donor agencies and the federal government of Ethiopia so that regional states and citizens cannot voice their alternatives or choices, leading to dissatisfaction and conflict among different stakeholders. This, in turn, has resulted in the failure of many large-scale agricultural projects, which have led to the cancellation of investment

licences. The country now needs to examine its land laws so that a robust alternative land holding system will be available to facilitate investment and to ensure more sustainable use of land, which is the most important resource for an agrarian country like Ethiopia.

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Traversing State, Agribusinesses, and Farmers' Land Discourse in Kenyan Commercial Intensive Agriculture



Peter Narh

Abstract From a qualitative study of sugarcane production in Chemelil (western Kenya) and insights drawn from the Kenyan land reform enacted in 2012, this study contends that the goal of land reform to provide farmers with certainty of rights to land to invest in and benefit from agriculture is heavily weakened by the farmers' lack of control over agricultural inputs. Land reform and intensive agriculture, such as sugarcane production, share the same market-based land discourse, where land is considered an environmental asset to be harnessed efficiently for high productivity. Although this discourse supports the application of high inputs for maximum agricultural outputs, it has also eroded farmers' power and control over their lands. This loss of power and control occurs through the supply of high-cost agricultural inputs from external sources, such as state research agencies and the Chemelil Sugar Company. The control of inputs by sources external to farmers stifles possible farm-based innovations that could reduce farming costs. The chapter, thus, contends that, although land reform aims at farmers' utmost benefit from land, the farmer's lack of control over agricultural inputs limits the benefits they derive from land use for intensive agriculture; this is especially true in the case of small-scale farmers.

Keywords Land discourse · Intensification · Power · Control

1 Introduction

In this work, a political ecology approach is employed to discuss the ways in which efficient land use and land productivity principles connect state-supported land reform, agribusinesses, and sugarcane farmers in Kenya, along with the outcomes of this connection for the control of these farmers over their lands. In particular, this study uses a high land use productivity principle to connect the Kenyan land reform enacted in 2012 with intensive sugarcane production in Chemelil in western Kenya, probes how the discourses around this principle distribute power and control

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S. Takeuchi (ed.), *African Land Reform Under Economic Liberalisation*,
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over sugarcane farmlands, and discusses its implications for farmers. According to Manji (2006), land reform denotes the process and associated actions of the enactment, enforcement, and evaluation of land policies and legislation by which land rights relations among people are restructured or reorganised. From the 1970s, the World Bank provided credence for land reform, noting that land reform is necessary to meet the growing food needs and enhance agricultural productivity in general (World Bank 1975). The Bank asserted that reorganisation of land rights would provide more equitable access, improve land productivity, and broaden the distribution of benefits.

Focusing on sugarcane production in Kenya, the claim of this study is that, despite the long history of land reform in Kenya, which aims to clarify and strengthen the tenure and control of farmers over their lands and improve agricultural productivity, smallholder farmers in Kenya have lost significant control over their lands. The weakened control is a result of power imbalance between farmers and agribusinesses, leading to a gradual loss of land over time within farming households. Currently, the goal of land reform to ensure efficiency in land use for higher productivity, especially in agriculture, does not address how agricultural inputs generate power over land and constrain farmers' innovation to create infrastructure to sustain their lands. Land sustainability infrastructure in this context includes purposefully established institutional and physical structures of any sort that have the ability to motivate farmers as a collective to learn from each other. Additionally, this infrastructure will empower farmers to negotiate with agribusinesses and the state over land inputs and thus benefit more from their lands. Land reforms and agricultural development are currently positivist in nature and process in a way that neglects other outcomes of inputs besides productivity, such as political control over land.

In this study, the goal is to contribute to scientific evidence suggesting that land reform and its linkage with agricultural productivity in Africa should transcend beyond market-led, positivist outcomes of efficiency and high productivity of land to one that considers the role of agricultural productivity processes in the development of power and control over farmers' lands over time. Land reforms are usually couched at the national level and, although they are directly linked to agricultural development that occurs at the sub-national level, hardly reach down to identify and incorporate local outcomes that can improve the reforms and agricultural development to benefit local contexts. In a country where agriculture, particularly intensive cash crop farming such as production of sugarcane, contributes about 22% to the gross domestic income (Kenya Economic Update 2019),¹ understanding that land is the primary assets of farmers, analysing how land reform and agricultural intensification connect with farmers' control over their lands have significant implications for the sustainability of land, agricultural development, and livelihoods currently and in the future.

The linkage between land reform, agricultural productivity, and farmers' control over their lands is relevant because agriculture forms the basis of the economies of

¹ <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/820861554470832579/kenya-economic-update-unbundling-the-slack-in-private-sector-investment-transforming-agriculture-sector-productivity-and-linkages-to-poverty-reduction>.

most African countries. To this end, in Africa, the land productivity principle has driven intensified agriculture into a dominant paradigm that has gained prominence over the last decades, with implications for national transformation (Loconto et al. 2020). In Africa, harnessing agricultural land in a highly intensive manner has been partly programmed through land tenure reforms. Unfortunately, land reforms and their attendant agricultural productivity goals are poorly foregrounded in the evolving social and political outcomes for farmers, produced by these same reforms. The outcomes of land reform and the land productivity discourse significantly determine the sustainability of land and agriculture in local contexts; however, this remains oblivious to policymakers and agricultural managers. Considering and emphasising the local land discourse in land reform and agricultural development in a reflexive process will provide a better sense of ownership, control over land, and profitable investments for farmers (Place 2009). In this study, these issues are analysed through different perspectives, beginning with a broad perspective on Africa.

2 Land Reform's Linkage with Agricultural Productivity

Lipton (2009) confirms that land reform is about instituting 'laws with the main aim of reducing poverty by substantially increasing the proportion of farmland controlled by the poor, and thereby their income, power, or status'. In this statement, control over land by farmers is a key goal that ought to play a significant role in shaping land reform. In the context of rural areas, the aim of land reform is to enhance agricultural productivity and reduce poverty among people. Through increased security of tenure, the theory is that land reform provides motivation for farmers to increase investments in land, thus, harnessing land resources more effectively. Although the contexts vary, the theory underpinning land reform in Africa is that efficiency in land use can raise the productivity of land to meet the needs of growing populations (World Bank 1975). Secure land tenure is processed through the registration of land titles following a market approach that makes land a commodity to be exchanged. The notion that the formal land titling and individualisation of land rights in developing countries leads to higher investments in land and agricultural productivity prevails in academic and development practice circles (Narh et al. 2015). In 1975, the World Bank gave credence to the economic principles of efficiency and productivity that underlie land reforms. However, land tenure reforms in pursuance of market-based productivity weaken farmers' control over what they produce and how they produce; thus, this tenure places control over land and land inputs in the hands of external forces (Obeng-Odoom 2012) and erodes farmers' control over land.

In Africa, each country's peculiar condition has directed the approach adopted for land reform (Netshipale et al. 2020). On the whole, liberal market-led approaches are used in most land reform programmes in Africa (Netshipale et al. 2020). The general trend is the direct linkage between land reform and agriculture; this has enabled land reform policy to support the provisioning of institutional and technological capital to promote agricultural development and intensification grounded in biotechnologies

and agricultural infrastructure, such as irrigation schemes, marketing cooperatives, and crop research facilities, among others. These technologies and infrastructure undoubtedly improve farmers' capital stock (Netshipale et al. 2020). In the same vein, Tenaw et al. (2009) showed from their research that investments in agricultural technologies and ameliorating climatic conditions are the predominant issues for agriculture in most of Africa. Gottlieb and Grobovšek (2019) also found a direct link between land reform and agricultural development, highlighting that land reform addresses the agricultural investment challenges associated with communal land tenure that is said to inhibit productivity. Logically, this implies that land reform that formally diminishes customary laws over land would almost always create conditions for investments in agricultural productivity. With regard to Zimbabwe, Zikhali (2008) confirms that land reforms enhance the land productivity of poor households through the enhanced use of agricultural inputs, such as fertilisers, by households whose land tenure is governed by the reforms. Nonetheless, deduced from the field data for this work, what is missing in land reform and agricultural development is the conditions that would encourage farmers to collectively innovate local technologies and infrastructure that can complement supplied inputs. The essence of this process is to reduce power imbalances between farmers and managers of current input knowledge and technologies, such as agribusinesses.

Fuglie and Rada (2013) explained the status of agricultural research that, although still low, land tenure reforms and agricultural research investments are increasing and driving farm productivity in Africa. Therefore, the objectives of land reforms in Africa have been to increase the productivity of land through the efficient use of high inputs externally supplied to farmers (Fuglie and Rada 2013). Since the 1990s, agricultural output in Africa south of the Sahara has risen significantly through land reforms and investments in agricultural technologies rather than expansion into new lands (Fuglie and Rada 2013). Although it is contentious whether vacant lands still exist in most rural areas, agricultural technologies have transformed agriculture and reduced pressure on land to produce more. However, this has not been without power struggles between farmers and agribusinesses.

In the discussions on land reform and agricultural productivity, control for farmers (over land) is assumed to be achieved through security and clarification of land rights. Field research for this study shows that assuming control over land under the weight of land tenure security and certification of land rights does not bring into effect the recognition of the full impact of land reform on power production at the farm level. The result of power imbalances at the farm level is that innovation by farmers is stifled, which ironically erodes any gains made in agricultural development. This is explained in our study, with empirical evidence provided in the section 'Results and Discussion'. Boone (2019) observed that land reform and agricultural productivity approaches have centred on a 'one principle fits all' process, but this is not necessarily good. Factors that significantly impact the outcomes of land reform and agricultural productivity vary under different ecological and human conditions, including land-based power production (Gollin et al. 2014). Based on the empirical data, this study contends that the utility of reforms and attendant agricultural productivity for local

people depends to a great extent on how farmers are able to exert control over agricultural technologies and infrastructure.

Perhaps, it is crucial for land reform to consider Place's (2009) finding that in Africa, the link between land tenure reforms for agricultural productivity is not a direct one that only involves promoting investments in land. Rather, the link should vary depending on a myriad of factors from community to community. Place (2009) suggested that policy responses to agricultural challenges must consider the micro-local context of targets of agricultural development, as well as how overarching macro and sectoral conditions influence the local contexts. In Africa, where land reform has been implemented, the goal of reforms for agriculture has been reduced to market principles of economic efficiency and increased productivity (Obeng-Odoom 2012). These principles have been oblivious to the effect of power (produced through control over agricultural inputs and processes) on farmers' innovations towards land sustainability and agricultural productivity. Although their land tenure may be secure, the prominent power inherent in agricultural technologies and infrastructure can weaken the control of farmers over their lands and, thus, reduce the benefits they derive from such lands. The high influence of power inherent in agricultural technologies and infrastructure beyond the control of farmers can pose high transaction costs for farmers, tie them to exploitative modes of agriculture, and inhibit their innovative power crucial for sustainable livelihoods. Narh et al. (2015), in accord with Place (2009), also call for land reforms to be reprogrammed from time to time in their local contexts to incorporate factors that affect benefits from land for all stakeholders. In this respect, a national-level land reform should possess the flexibility to be reformulated at sub-national levels for inducing sustainable positive effects on local livelihoods.

3 Methods

The data for this study are drawn from a larger dataset obtained through empirical field research conducted since 2018 in sugarcane growing communities in and around Chemelil in the Nyanza region of Kenya and Mumias in western Kenya. However, this study focuses on the Chemelil sugarcane growing belt. Chemelil was chosen for this study as part of a wider study on the implications of land reform for agricultural intensification and land sustainability in Kenya. The Chemelil sugarcane growing zone was chosen owing to the relatively less complicated access to the Chemelil Sugar Company (Fig. 1), made possible by previous contacts that the author made with officials of the company. Moreover, the Chemelil sugarcane industry is situated within a competitive zone of cane millers in Kisumu City and Muhoroni Town, which could influence its relationship with farmers. Unlike many of the cane mills in Kenya, the Chemelil Sugar Company was still functional as of October 2020.

The Chemelil Sugar Company has a history of suspension and resumption of operations, due to low returns on purchased cane. Chemelil is one of the largest sugarcane growing belts in Kenya. The suspension and resumption in operation



Fig. 1 Map of Kenya showing location of Chemelil Sugar Company Ltd.

afforded the opportunity to identify that farmers' access to cane millers were not significantly affected because of the growing competition for cane from neighbouring Kibos Sugar Company near Kisumu City and Muhoroni Sugar Company just a few kilometres away. Due to growing competition among cane millers in western Kenya, farmers have no incentive to stop producing cane using external technologies because external technologies provide the required cane harvest for competing companies. Thus, the politics of control over farmers is sustained by the companies through not only the market they offer but also the technologies they provide farmers to grow their cane. With regard to land reform, farmers' benefits from land through certainty of rights to land that seeks to motivate agricultural investment are unattained if the inputs and processes to harness land are beyond the control of farmers. Thus, the political ecology analytical framework suits the interpretation of the field data. This framework is presented after the methods section.

In our study area, farmers owned their lands, which were registered with the zonal land registry. Only a few farmers have leased lands that they have rented from their neighbours for two or three cane growing seasons. Land lease in Chemelil (for sugarcane production) is often quite expensive, and the terms are most often unfavourable to the tenant; for instance, the tenant farmer has to leave the land after two or three harvests. Subsequent shoots of cane, which can develop into a full-blown

cane farm, becomes the property of the original landowner, not the lessee. Thus, only a few farmers can afford or are willing to rent land for this purpose.

Qualitative in-depth interactions and informal conversations were conducted among 40 farmers, 25 of whom were small-scale farmers cultivating between two and ten acres of land, ten were medium-scale farmers cultivating between 11 and 150 acres of land, and five were large-scale farmers cultivating farms larger than 150 acres. The inclusion of all three farmer categories was for triangulation purposes to ensure that the views of all segments of farmers were obtained.

Interactions with all categories of farmers, small-, medium-, and large-scale, who were all outgrowers² in the Chemelil sugar belt, were conducted within the operational zone or cane catchment zone of the Chemelil Sugar Company. This means that all the farmers interviewed were outgrowers and supplied their cane to the Chemelil Sugar Company. The sugarcane growing belt covers over 18,000 ha of land.³ It encompasses outgrower farms in Muhoroni, Nyando, Tinderet, south Nandi, and east Nandi. The belt is divided into four parts, each manned or supervised by one extension officer operating to assist farmers in each zone. The interviews were conducted in all four zones in the presence of field officers from the Chemelil Sugar Company. These officers provided language interpretation where necessary, along with a vehicle for mobility in the remote areas of the region. Thus, the time for travelling around each day offered opportunities for the author to interact extensively with the field officers of the company.

4 Political Ecology Analytical Framework

The relationship between humans and the natural environment is mediated by many factors. In political ecology, researchers are concerned with issues of power and control over environmental resources, and how these influence different groups of people to harness and manipulate these resources (Batterbury 2018). Political ecology in the context of this study, with regard to land reform, focuses on the integration of ecological, political, and sociological factors for understanding the outcomes of land reform and agricultural development for farmers and other stakeholders. Such integrated understanding is even more complex when the influence of corporate entities in relation to environmental resources is large and deep (Adams 2017). The Chemelil case exhibits this complexity; the state agencies, such as the Kenya Agriculture and Livestock Organisation (KALRO),⁴ the Chemelil Sugarcane Company, and

² An outgrower is a farmer who is connected to input and extension service supplies from Chemelil Sugar Company but does not farm within the sugarcane fields (nucleus farms) owned by the company.

³ Chemelil Sugar Company Brief. Company Head Office (obtained in October 2020).

⁴ KALRO (www.kalro.org/) is a corporate body in Kenya focused on coordinating, regulating, and disseminating research in crops, livestock, genetic resources, and biotechnology.

farmers co-produce and provide a rich context for understanding land and agricultural discourses.

The framework of political ecology applied on the discourse of land, as analysed through practices of intensive sugarcane production, indicates that smallholder farmers' control over their lands and innovations have been weakened by the power of knowledge over external agricultural technology wielded by external agents in the sugarcane industry, such as the Chemelil Sugar Company and KALRO. This political control over farmers has implications on the local agricultural infrastructure development and benefit to farmers. In the context of land and agriculture, political ecology suggests that it is important to view manifestations of systems of land administration and management as well as agricultural development, not as isolated events, but as processes controlled by political factors within the local agro-economy (Clay 2018). Thus, the process of land use and how conceptions and incidence of power mediate these land uses, and their outcomes are relevant for understanding rural transformations through agriculture. Culture, politics, and social conditions are key elements of political ecology. How these conditions mediate the way a group of people relates and responds to land and agricultural policies and programmes plays an important role in understanding land discourses (Minch 2011; Bryant 2015).

In Chemelil, a political ecological understanding of land and power in land reform and intensive sugarcane production enables us to identify that, for agricultural productivity, sociological and political factors are as important as technology. The cane cultivation process in Chemelil captures how power over land transfers from farmers to state agencies and sugar companies, which helps understand land discourses and their major impact. In addition, we find that land tenure security is not the only factor that helps farmers to benefit from land titling. Power over land production inputs is equally relevant. The political ecology applied in Chemelil shows that beyond tenure reforms are issues of how power in and over land is generated and used to control benefits. In effect, ownership of knowledge of technologies and infrastructure, with attendant inherent power, is crucial for a wider conception of land reform for agricultural development. Local responses to power in the harnessing of land are also an important focus of political ecology (Bassett and Peimer 2015).

5 Land Discourse in Kenyan National Land Policies

5.1 Land Reform for Agricultural Productivity

Kenya enacted its latest land reforms in 2012. Key laws that culminated from the land reform process include the Land Act (No. 6 of 2012), Land Registration Act (No 3 of 2012), and National Land Commission Act (No. 5 of 2012). Other significant laws on land that were enacted prior to or with the land law reform include the National Land Policy in 2009 and the 2010 Constitution of Kenya, in which land policy is significantly highlighted in Chap. 5 'Land and Environment'. The reform,

among other things, was aimed at ensuring equitable access to land and the security of rights in land through the registration of titles (Manji, 2014). It also sought to directly link land tenure security and equity with the promotion of agricultural productivity.

Historically, land reform in Kenya from the colonial era to the latest reform in 2012 has been premised on the 'efficiency and productivity' theory, particularly with regards to its intended positive outcome for agriculture (World Bank 1975). For instance, the 1954 land tenure reform in Kenya was formulated on the market-led approach of codifying individual freehold titles that were expected to revolutionise agricultural production through increased security of rights to motivate investments in land (Barber 1970). Thus, in the colonial period, land tenure reform aimed to uplift rural areas through increased agricultural productivity from a restrictive customary land tenure to a productive base of the economy. To this extent, the reform was primarily driven by agricultural officers to maintain a close link with agricultural production (Barber 1970). Being the first land reform (specifically land tenure reform), land titles were registered after land adjudication and consolidation (Coldham 1979).

In Kenya, the view that stronger user rights to land are likely to enhance investment and thereby land productivity, drives the intention of land titling to secure rights, investments in agricultural land, and land use efficiency. Land reforms in the context of agricultural production in Kenya are, therefore, an institutional reformation process towards enhanced productivity of land by encouraging investments of all sorts, including technological, financial, and human labour. In the previous Kenya land reform programmes, a Western market-led institutional model was the basis for the adjudication and registration of land rights. The model promoted private land titles (mostly individual but there were also a few communally owned titles) based on the values of the state in the land to increase agricultural productivity through external input supply to harness land that has clear ownership and titles. The drafters of the land reform laws believed that registered titles would grant clarity to ownership, full control, and security over land. Overall, land markets in Kenya are expected to induce efficiency in harnessing agricultural land, although equitable rights are also central yet less achieved (Kijima and Tabetando 2020). The case in Kenya reflects a general trend across eastern and southern Africa, where the means of land reform are often designed in ideological dualities yet combined in one reform. These dualities frame land reform in a continuum; at one end is land redistribution, sometimes associated with the state and equity goals (Logan et al. 2012) and, at the other end, there is market-led reform, which is often linked to efficient agricultural production (Logan et al. 2012).

Not much equity has been attained in Kenya's current land reforms (Manji 2014). Corrupt officials, hasty processes, and a lack of participation of most Kenyans in rural areas have hindered the achievement of equity with respect to access to the land addressed by the reforms. Nonetheless, the fieldwork for this chapter shows that land titling, which has been devolved to the county and sub-county levels, has contributed to securing the land rights for farmers and to the further development of agricultural intensification (in this context, intensive sugarcane production). However, the fieldwork also revealed that, despite farmers holding titles to their lands and, thus,

enjoying secure rights in lands, most of these farmers are far removed politically from their lands. They hardly control any processes that go into the production of cane, except to refuse to plant for a particular season. For instance, in Chemelil, farmers plant cane ideally after the Chemelil Sugar Company has tested and certified the kind of cane to grow. Farmers also apply weedicides and chemicals recommended by the Chemelil Sugar Company to maintain a high yield and sucrose content of the cane. Thus, farmers who do not follow the recommendations risk producing cane that could be rejected at the factory. To this end, land reforms and their complementary agricultural efficiency are largely isolated from farmers' own innovative inputs in cane development and land conservation, which could give them more control over agricultural productivity benefits. The market-led productivity approach for land reform certainly provides immense benefits to the security of tenure that promotes investments in land. However, the realisation of these advantages depends on the context, that is, how the land law fits with existing local conditions.

Neo-liberal land reforms in Africa have ignored (in the context of this work, also created) local conditions and narratives over land. This has stifled agricultural productivity and exacerbated poverty (Logan et al. 2012). Logan et al. (2012) called for local narratives to be at the centre of land reform designs. The critique of the market-led approach for land reform is to find ideas that can complement the existing ones. These new ideas centrally include local discourse over land. In this study, the suggestion is that the basis and reasons for land reform should be broadened from the viewpoint of efficiency and productivity to acknowledge the political conditions that develop and affect farmers to innovate so as to benefit from agricultural productivity and sustained land. With respect to Tanzania, Boone and Nyeme (2015) show that local contexts strongly affect land tenure regimes.

Other concerns have been raised about the transformational outcome of the Kenya land reform programme, all of which point to the relevance of broadening the theoretical scope of land reform across all levels of society. Although the registration of titles has been successful, its success in economic and ecological transformation is debatable. There has been an increase in the concentration of land in the hands of a political/economic elite and agencies, with consequent growing landlessness. In agriculture, the conviction has been that land titling and the associated security of rights in land will promote investments in land and, thus, enhance agricultural productivity. Notably, investments in agricultural productivity have been witnessed by the author. However, this author also observed, similar to Holden and Ghebru (2016), that land tenure security may be a necessary but insufficient condition for farmers to sustainably manage their lands and benefit from agricultural investments and productivity. Land reform in Kenya has unfortunately failed to remove land control from the hands of bureaucrats, technocrats, and lawyers who, with their political power, are able to access and control land for their selfish personal interests at the expense of larger societal benefits (Boone et al. 2018). In the context of this work, land reforms and agricultural productivity have also placed much political control over land in the hands of agribusinesses at the expense of farmers' innovation to sustain their lands and benefit sustainably from sugarcane production. In the next section, empirical data from the field address these issues in the context of Chemelil.

6 Results and Discussions

6.1 *Farmers Control Over Sugarcane Production Processes*

In this section, empirical work in Chemelil shows how sugarcane farmers are tied to practices imposed on them by state research agencies and the Chemelil Sugar Company. These practices have become imperative, according to the state research agency KALRO and the Chemelil Sugar Company for efficient land use and maximum land productivity. Farmers believe this discourse. Thus, for agribusiness-supported intensive sugarcane cultivation, the same discourse applies as that observed in state-supported land reform, in which land is considered to be an environmental asset that must be harnessed efficiently through optimal mechanisms for maximum productivity. However, local conditions that may affect farmers' innovations have not been a central focus in this approach. For state-sponsored land reform, the efficiency and productivity discourse is maintained by land title registration that provides certainty of rights to land to stimulate efficient investments in high agricultural productivity. This discourse is not different for agribusiness. For agribusinesses, such as Chemelil Sugar Company, the discourse of land is that land is considered to be an environmental asset to be harnessed through maximum use of external inputs and pursuance of externally determined farm practices for obtaining high productivity.

Sugarcane production involves a series of defined activities and decisions from soil preparation to harvesting and sales. Land preparation is strictly defined by extension advice from Chemelil Sugar Company, and soil analysis is conducted by the company to ascertain the best fertiliser and cane type to fit the land. The application of weedicides, pesticides, ploughing, planting of legumes, maize, and harvesting are all defined by the field managers of the Chemelil Sugar Company. Over time, farmers have learned to follow some of these practices without the aid of the extension personnel. Farmers pay for all these inputs, such as soil testing, ploughing, weedicides, and fertilisers. These inputs, according to the discourse on productivity, are necessary to ensure maximum output from the land. These decisions are embedded with power, coming from state research agencies like the KALRO to farmers and through the extension services of the Chemelil Sugar Company. Just as the land reform programme of the state carries power for landowners through the state title registration machinery and generally have to be adhered to, state agencies and the Chemelil Sugar Factory are seen by farmers as credible sources of cane-based power. Such power affected by the inputs and practices of cane farming provides the basis for farmers' behaviour and benefits from their lands over time (Batterbury 2018).

The application of externally developed inputs and defined sets of activities towards high productivity of cane farms is not unusual for agricultural intensification systems. The core features of any intensive agricultural system include the application of capital inputs, such as chemical fertilisers, mechanical ploughing, official soil testing, and 'improved' seedlings (Loconto et al. 2020). These technologies and capital inputs, often developed inorganically, are expected to guide how much and what kind of yield can be produced from a given piece of land. Thus, they are

sources of power for those who possess such knowledge. In Chemelil, farmers do not possess or have failed to possess such knowledge.

Whether in land reform or intensive sugarcane farming, the discourse of land being an environmental asset to be harnessed through the productivity principle remains the same for both the state and agribusinesses. Sugarcane farmers have become a central channel for the legitimisation of this discourse. However, for sugarcane farmers, this principle comes with extensive costs borne by them. Farmers indicated that they would find ways to reduce these costs if they were free from external pressure to produce according to certain standards, although this would mean reduced yield at certain periods. In summary, the productivity principle, though crucial for enabling maximum profit from sugarcane lands, does not make these lands only an environmental asset but also a source of power as capital to promote one's interests. This power currently resides in the state and agribusiness. However, for farmers, the management of land entails a host of decisions and behaviours beyond productivity alone; it includes intergenerational access to land and land as the basis of community sustenance, among others. All these utilities of land are being weakened by the farmers' lack of control in the cane production process.

During the fieldwork, the definition of farm size in Chemelil was found to be interpreted differently by the farmers and the Chemelil Sugar Company. However, generally, most cane farmers in Chemelil classify themselves as small-scale farmers (i.e. those who farm between two and ten acres of land; the majority of the farmers in Chemelil are small-scale farmers), medium-scale farmers (those who farm between 11 and 150 acres of land), or large-scale farmers (those who farm over 150 acres, and even several hundred acres). In terms of efficiency and maximum productivity of land, all these categories of farmers pay for all the sets of activities, which is recurrent every growing season (ratoon),⁵ to grow cane to maturity; the only exceptions are the costs of soil testing and land preparation, which are not necessary after the first ratoon. Generally, these activities are more expensive in the first ratoon, where much more preparation of the land is required than in the second, third, and subsequent ratoons. For small-scale farmers, who are in the majority, paying for all these activities always involves high expenditure. Medium- and large-scale farmers enjoy economies of scale. In these decisions, farmers, especially small-scale ones, have little leverage to experiment with any form of practice to reduce their expenditures.

6.2 Control Over Land and Local Infrastructure

The deep influence exerted by the power inherent in external agents' supposed superior knowledge on farm practices and their technologies poses consequences that interfere with events that benefit farmers (Adam 2017). A consequence of the practice of Chemelil farmers maintaining their cane farms exclusively according

⁵ Ratoon is the complete cycle of cane growth till harvest. It spans a period of about 15–18 months, depending on the cane type and discretion of the farmer.

to external formal scientific advice is that there is little focus on local innovations towards performing operations in a different but less expensive manner. Throughout the season, farmers apply a list of fertilisers, such as ammonia and NPK, and weedicides, such as Sencor plus, on their farms in the name of efficiency of land production for high productivity. For every ratoon of cane growth, the cost of the application of inorganic fertilisers, weedicide, ploughing, and harvesting is borne heavily by the farmers, especially on the small-scale farmers. However, owing to high competition from the increasing number of sugarcane processing companies, farmers are interested in cultivating cane this way more than experimenting with new ideas from their experiences. Primarily, this is because they are not sure of the cane yield from their innovations. To this extent, they are unable to wean themselves from their high dependence on external technologies. The Chemelil Sugar Company currently competes with the Muhoroni Sugar Company and Kibos Sugar Company for cane from farmers.

A clear instance of power stifling local innovation in Chemelil is revealed in the farmers' attitudes towards beans. Farmers interplant cane with beans during the early growth period of the cane. However, interactions with farmers suggest that they do not actively invest time in institutionalised learning and are not innovating based on their everyday farming experiences. They know that beans, as legumes, are useful for soil nutrient enrichment. Further, the farmers acknowledged that they are not convinced that legumes can reduce the application of chemical fertilisers. Therefore, all farmers, whether they grow beans or not, still apply the same amount of inorganic fertiliser to enable yield as usual. When the beans are harvested, the herbage is sprayed with a weedicide to facilitate the growth of cane. Thus, farmers grow beans mainly for household consumption and not so much for the nitrogen fertilisation effect on the soil. Moreover, the cane brans left behind after harvesting the cane are burnt to clear the land for new planting, rather than being used as mulch or compost.

The external influence on cane production and land productivity discourse has the effect of stifling the development of farmer innovations to produce from but conserve their lands and maintain control over them for generations. Farmer innovations and infrastructure to promote productivity in this context could be locally designed agro-forestry systems, with plants that have value for farmers, composting systems that can make use of the large amount of cattle droppings and sugarcane brans left after harvest, and farmer cooperatives to negotiate for improved farming conditions. Although dependence on external inputs, such as advice and expertise from KALRO and the Chemelil Sugar Company, ensures adherence to cane development standards and, thus, guarantees income for farmers now, the effect is that farmers are already limited by the developments in the cane industry, which has been rather market-focused than farm-transformation focused.

6.3 Dependence on External Inputs and Youth Access to Land

The efficiency and productivity goals, on which land reform and intensive agriculture are based, provide the older generation of people certainty of rights to land. However, this certainty of rights and attendant heavy agricultural investments pose counter challenges to the younger generation's access to land. The certainty of rights to land coupled with the lack of development of farm-level innovation and infrastructure for land production means that the cost of farming in Chemelil is high and beyond the means of many young people. In Chemelil, sugarcane production is an occupation for the older generation and not for the youth. The consequence is that land transfer to outsiders is increasing because the younger generation is discouraged from farming cane and is, thus, migrating to urban centres. The reasons are high investment expenditure in cane farming or lack of interest in cane production after their parents retire. During the field research, out of the 40 farmers who participated in this research, only two were below the age of 32 years and were involved in cane farming. One was a manager for an Indian family owning more than a thousand-acre cane farm, whereas the other was a cane farmer on his own land. These two farmers believe that the cane farming industry may not be sustainable in the near future because it does not have many young people for the two main reasons already mentioned, that is: (1) the heavy use of external inputs and technologies means expenditure is high—the youth find it better to leave for urban areas to find jobs than to work in cane farms; and (2) the inheritance system in rural areas is such that parents grow old and retire from farming before they hand over the land to their children. Consequently, many young potential cane farmers who have inherited cane farmlands from their parents are in urban areas and use labourers to manage their lands with possibility of mismanagement. These challenges weaken the value of land as a social and political asset at the community level. This problem was acknowledged by almost every farmer in this study.

The contention in this study is not against agricultural intensification. Intensification is an important approach to tackling poverty and redundancy in agriculture. This study agrees with Clay (2018) that constructing large-scale state development interventions, such as land reform and agricultural intensification, solely as inhibiting locally grounded agricultural strategies, masks the complexities of agrarian change and does not make way for understanding the nuanced methods in which local agencies interact with, overlap, and intersect external interventions to produce hybridities that are important to rural transformation (Clay 2018). From a Rwandese experience, Clay (2018) observes that large-scale state-supported intensification as development intervention has existed alongside small-scale innovations by smallholder farmers. In Chemelil, however, the power in the external direction for cane cultivation has tied farmers to unsustainable cane development paths (Waswa et al. 2012). This is why farmers did not pursue any major local innovations, at least not during the period of field research for this study.

7 Conclusions

State-sponsored land reform and the Chemelil Sugar Company share the same discourse on land, where land is an environmental asset to be managed and harnessed efficiently for high productivity through agricultural intensification. In this study, this land discourse has been analysed as creating a linkage between state-supported land reform, agribusinesses, and farmers in the context of intensive sugarcane production in Chemelil. However, this discourse underlies and brings together land reform and sugarcane production into a strong force that impedes farmers' control over their lands. The discourse on land with both the state land reform and agribusiness is that land is a material asset for which ownership is to be secured through titling. Land is also useful for its natural resources of soil and nutrients for agricultural productivity. In a political ecology sense, this process of pursuing efficiency and productivity, from land titling to agribusiness intensive sugarcane production, while not inappropriate in itself, has acquired the status of a political mechanism that imposes agricultural inputs on farmers, with high financial costs. As farmers are incorporated deeply into sugarcane production through readily supplied inputs, their innovative capacities to reduce the costs of farming for sustainable benefits from their lands have not been harnessed.

The social and political consequences of pursuing efficiency and productivity in harnessing land without considering the context of farmers are that the place of land in the social organisation of the household has been eroded. The erosion occurs because land is held by the older generation without the assured continuity of farming by younger people. Household land transfers to outsiders that reduce household land property are also rising as a result of many people preferring to lease inherited land or sell it off to outsiders. The problem is worsened by land fragmentation through inheritance, which reduces the possibilities for efficient use of land. The solutions for these issues cannot be professed at this stage in this study. Rather, the current study opens opportunities for further research on ways to complement current ideas of land reform and agricultural productivity that can ensure farmers' equitable control over their lands. The study also provides exploratory insights for research into the consolidation of land for farming households.

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Index

A

Absentee landlords, 68, 76, 78
African National Congress (ANC), 102, 103
African Union, 42, 43
Afrobarometer, 102–104
Aid, 9, 42, 43, 111, 112, 132, 133, 147, 177, 191
Akyem Abuakwa, 25, 26
Ancestralisation of property, 46
Ancestral rights, 46
Asante, 24, 25, 31

B

Bafokeng, 99
Bantu Authorities Act (1951, South Africa), 90, 98
Belgian Congo, 9
Bemba, 65–75, 77, 80, 83
Britain, 24, 68, 91, 93
British East Africa, 9
British South African Company (BSAC), 67
Burundi, 5
Bushmanland, 95, 96

C

Categories of Land in Zambia, 50
Chemelil, 181, 185–188, 190–195
Chief, 3, 12–16, 21–33, 35, 36, 41, 43–45, 53–55, 58, 60, 65–78, 80–84, 90–93, 95, 98, 100, 102–104, 119, 122, 125, 127, 138–140, 154, 166
Chieftdom, 25, 56, 65–67, 69–71
Chieftaincy, 14, 22, 29–31, 52, 55, 89, 138, 140, 143
CIKOD (Ghana), 31

Citemene, 70, 71, 76, 78–80, 82, 83
Citimukulu, 69, 70
Civil war, 14, 16, 112, 120–122, 132, 137–140, 142–144, 146
Cold war, 9, 111, 112, 132, 154, 156–158, 160, 162, 171, 174, 177
Commercialisation of land, 2, 16
Commonage, 4, 8, 95, 96
Communal
- areas, 16, 87, 88, 91–96, 99, 101, 104–106
- land, 3, 8, 25, 68, 82, 91, 94, 95, 97, 98, 104–106, 116, 120, 122, 132, 172, 184
- land board, 95
Communal Land Act (1982, Zimbabwe), 91, 92
Communal Land Reform Act (2002, Namibia), 95
Communal Land Rights Act (2004, South Africa, CLaRA), 97
Community
- conservancy, 104, 105
- consultation, 116, 127–130
Conflict, 8, 12, 29, 30, 46, 66, 80, 96, 99, 103, 104, 111, 112, 121, 125, 127, 138, 141, 144, 146, 149, 150, 171, 177
Congress of Traditional Leaders of South Africa (CONTRALESA), 103
Constitution, 22, 32, 44, 52, 56, 68, 95, 97, 100, 140, 154, 156, 158, 160, 161, 167, 172, 177, 188
Constitutional Court, 97
Corruption, 30, 104, 153, 174–177
Crop Intensification Programme (CIP), 142, 143
Crown land, 51, 52, 67, 68

C

- estates, 54
- land, 1–5, 8–12, 25, 32, 34, 41–60, 65–69, 71, 72, 81–84, 89, 90, 114, 129, 140, 141
- land administration, 15, 41, 44, 56, 57, 60, 65
- land boards, 54
- land rights, 10, 84, 95
- land tenure, 1, 3, 4, 9, 25, 35, 42, 53, 66, 87, 88, 91, 94, 98, 101, 105, 106, 140, 147, 189
- law, 4, 35, 100, 103, 111, 113, 114, 120, 122, 125, 130–132, 184

D

- Democratic Republic of the Congo (DR Congo), 5, 143
- Democratisation, 12, 45, 46, 59, 97, 99, 103, 117, 119, 120, 132
- Department for International Development (DFID), 170–174
- Development bank of Ethiopia, 165, 168, 176
- Doing Business, 149
- Dominant one-party rule, 102
- Donor, 2, 9–12, 17, 32, 42, 43, 58, 68, 100, 111, 113–116, 132, 138, 146, 150, 162, 163, 170, 171, 173, 177
- DUAT, 114, 116, 117, 120, 125, 127–131

E

- Ecology, 181, 186–188, 195
- Election, 14, 27, 28, 30, 59, 68, 70, 96, 102, 112, 115, 117–119, 121, 123–127, 131, 132
- Eminent domain, 28, 34, 55
- Enclosure, 12, 16, 84, 105
- Ethiopia, 5, 8, 10, 14, 15, 153–158, 160, 162, 163, 165–168, 170–178
- Ethiopian People's Revolutionary Democratic Front (EPRDF), 14, 16, 153, 154, 159, 160, 163, 169, 175
- Ethiopia's Growth and Transformation Plan I (GTP I), 163
- Ethiopia's Growth and Transformation Plan II (GTP II), 163, 165
- Ethnic groups, 44, 66–69, 75, 94, 96, 125
- European settlers, 67, 68, 155

F

- Fallow period, 70
- Farmworkers, 96
- Fast Track Land Reform Programme (FTLRP), 92, 93
- Food and Agriculture Organization of the United Nations (FAO), 116, 133
- Foreign debt relief, 68
- Foreign Direct Investment (FDI), 8, 10, 11, 16, 98, 113–115, 123, 125
- Foreign investors, 36, 56, 65, 66, 69, 157
- Forest Policy (1994, Ghana), 32, 33
- Freehold, 3, 35, 68, 89, 97, 106, 157, 158, 189
- Frelimo, 13, 16, 112, 113, 115, 118, 120–125, 127–129, 131, 132

G

- Ghana, 5, 12–15, 21, 22, 29–32, 35, 36, 44, 166, 170
- Global food crisis, 10
- Gold coast, 22, 24–28
- Gold Coast Aborigines Protection Society, 24
- Governance, 9, 10, 15, 21–24, 26, 27, 31, 32, 36, 41–45, 47, 48, 52, 55, 57–61, 68, 72, 73, 97, 112, 120, 122, 127, 129–132, 144, 166, 170, 173
- GTP I. *See* Ethiopia's Growth and Transformation Plan I
- GTP II. *See* Ethiopia's Growth and Transformation Plan II

H

- Herero, 94
- Homelands (Bantustans), 88, 90, 96–98, 103
- House of Chiefs, 55, 56

I

- Ichalo, 69
- Illegal fencing, 96
- Imihigo, 145
- Independence, 14, 22, 23, 26, 27, 29, 52, 53, 58, 68, 70, 87–94, 96, 99, 100, 102–104, 112, 119, 120, 131, 138
- Indirect
 - governance, 68
 - rule, 23–26, 45, 90, 139
- Infrastructure, 17, 30, 31, 115, 141, 155, 165, 173, 182, 184, 185, 188, 192–194
- Inkatha Freedom Party (IFP), 102

Interim Protection of Informal Land Rights Act (1996, South Africa), 97

J

Jambanja, 92, 93

K

Kaunda (Kenneth), 68

Kavangoland, 96

Kenya, 9, 17, 181, 182, 185–190

Kenya Agriculture and Livestock Research Organisation (KALRO), 187, 188, 191, 193

Khoisan, 101

Kingdom, 138–140, 154

L

Labour

migrant labour, 26

- reserve, 101

Land

- access, 65, 69, 156

- administration, 15, 21–24, 34, 36, 41, 44, 46–48, 52–54, 56, 57, 60, 65, 68, 72, 91, 95–98, 104, 137, 140, 141, 147–150, 161, 162, 167, 168, 170–177, 188

- bank, 160, 162–168, 176, 177

- certificate, 14, 69, 146–148

draft land policy, 43, 49, 50, 53–56, 58

- governance, 15, 21, 42, 43, 47, 48, 52, 67, 73, 74, 84, 88, 99, 102, 104, 171–174

Informal land transactions, 93, 94

- law reform, 3, 11–14, 91, 111, 118, 131, 132, 137–140, 143, 145, 146, 150, 188

- market, 22, 24, 31, 34, 36, 42, 140, 166, 170, 189

- policy, 8, 13, 16, 22, 25, 28, 29, 41–43, 45, 47, 49, 53–56, 59, 60, 65, 67, 112–114, 132, 133, 138, 140, 141, 143, 148, 149, 153–163, 170–174, 177, 182, 188

- redistribution, 8, 10, 13, 87, 88, 91–93, 97, 106, 189

- reform, 1–3, 8, 9, 11, 12, 15, 16, 23, 27, 36, 42, 57, 87, 88, 92, 94, 96, 97, 112, 114, 122, 133, 154, 157–159, 166, 170, 171, 173, 181–192, 194, 195

- registration, 10, 14, 16, 35, 115, 117, 133, 137–142, 144, 146–150, 161, 162, 167, 169–171, 173, 188

- restitution, 16, 93, 97

- rights board, 97

rural land administration, 16, 87, 100, 104, 160–162, 169, 170

- tax, 141, 149, 150

- tenure reform, 1, 2, 8–14, 16, 17, 87, 88, 91, 95, 97, 99, 100, 105, 106, 145, 173, 183–185, 189

undeveloped land, 68

Land Act (1995, Zambia), 12, 13, 16

Land Law (2004, Rwanda), 141, 142, 144, 146, 147

Land Matrix, 5, 8

Land Title Registration Act (Ghana), 34

Leasehold, 3, 35, 50, 52, 53, 55, 68, 69, 80, 89, 92, 95

Living' customary law, 100

Local government, 23, 26, 28, 29, 46, 90, 103, 104, 166, 173

M

Madagascar, 5

Market mechanisms, 68

Marshland, 77, 140, 142

Mining, 5, 24, 67, 68, 98, 99, 103, 171

Mouvement républicain national pour le développement (MRND), 140

Movement for Multiparty Democracy (MMD), 60, 68

Mozambique, 5, 11, 13–15, 111–120, 122, 123, 131–133, 170

Muchinga Province, Zambia, 70, 74

N

Nama, 94, 101

Namibia, 2, 3, 8, 16, 59, 87–91, 94–96, 99, 102–106

National Democratic Congress (NDC), 30

National Land Conference (Namibia), 94, 95

National Land Conference (South Africa), 96

National Land Policy White Paper (Namibia), 95

National Liberation Council (NLC), 29

National Liberation Movement (NLM), 27, 28

Native Administration Act (1927, South Africa), 90

Native Land Husbandry Act (1951, Zimbabwe), 90

Native Reserve, 16, 67, 88, 90, 94, 101, 106

Natives Land Act (1913, South Africa), 97

- Natural resources, 5, 22, 23, 28, 32, 33, 45, 61, 71, 104, 113, 118, 120, 127, 132, 141, 160, 161, 172, 195
- Nature Conservation Amendment Act (1996, Namibia), 105
- New Alliance for Food Security and Nutrition, 10, 117
- Nigeria, 5, 8, 166
- Nkrumah, 21–23, 27, 36
- North-eastern Rhodesia, 67
- Northern Rhodesia, 67
- North-western Rhodesia, 67
- O**
- 'Official' customary law, 100
- Outsider, 4, 12, 16, 66, 69, 71, 73–75, 79, 103, 105, 106, 129, 194, 195
- Owamboland, 94
- P**
- Paramount chief, 25, 29, 31, 32, 69, 73, 98
- Parti du mouvement de l'émancipation Hutu (PARMEHUTU), 140
- Patriotic Front (PF), 57, 60, 66, 91
- Patronage, 16, 31, 65, 70
- Police zone, 94
- Political ecology, 181, 186–188, 195
- Population density, 4, 5, 140
- Private ownership, 66, 158
- Privy Council, 25
- Progress Party (PP), 28, 29
- Provisional National Defence Council (PNDC), 30
- Public Land, 50, 51, 114, 160
- R**
- Redistributive land reform, 2, 8, 159
- Régulo, 119, 120, 122, 125–131
- Renamo, 112, 117, 120–125, 127–132
- Resource management, 13, 16, 112–115, 118, 120, 123, 125, 132, 133, 149
- Rural District Councils, 91–93
- Rwanda, 5, 8, 11, 13–16, 133, 137–150, 167, 170, 173
- Rwandan Patriotic Front (RPF), 14, 16, 137–140, 143–146, 149
- S**
- Sabhukus, 91–94, 106
- San, 95, 96, 99, 101, 105
- Sata (Michael), 66, 70, 74
- Senegal, 5, 8
- Sierra Leone, 5
- Social Revolution, 14, 140, 143
- Social security, 12, 87, 101, 106
- Soft power, 46, 49
- South Africa, 2, 3, 8, 16, 87–91, 93, 94, 96–104, 106, 133, 170
- South West Africa People's Organisation (SWAPO), 94
- State-building, 15, 16, 137–139, 146, 150
- State land, 35, 45, 49–52, 55, 68, 89, 153, 156, 158, 159, 169, 195
- Statutory recognition, 87, 99
- Structural adjustment programmes, 30, 42, 113
- Sugarcane, 17, 115, 181, 182, 185–195
- Swidden farming, 70
- T**
- Tanzania, 78, 80, 144, 170, 190
- Territorial sovereignty, 44
- Timber Concession Act (Ghana), 28
- Timber Lands Protection Act (Ghana), 28
- Title deeds, 16, 65–69, 72, 75, 76, 80–83, 167
- Traditional
- authority, 4, 12, 13, 15, 21, 27, 28, 31–35, 43–47, 49, 50, 53, 57, 58, 60, 91, 92, 94–96, 100, 103, 105, 106, 113, 118–122, 126, 127, 131
 - council, 97, 98
 - leaders, 1–4, 12–16, 41–50, 52–61, 65–68, 84, 87, 88, 90–93, 98–100, 102–104, 106, 119
- Traditional and Khoi-San Leadership Act (2019, South Africa), 101
- Traditional Authorities Act (2000, Namibia), 95, 105
- Traditional Leaders Act (1999, Zimbabwe), 92, 93
- Traditional Leadership and Governance Framework Act (2003, South Africa, TLGFA), 97
- Tribal Trust Land Act (1967, Zimbabwe), 90
- Trust Land, 52, 68, 69, 88, 91
- U**
- United Gold Coast Convention, 27
- United States Agency for International Development (USAID), 43, 116, 154, 171–174

Updating, [146–148](#)

W

War veterans, [92](#)

Watson Commission of Enquiry, [26](#)

White Paper on Land Policy (South Africa),
[96](#), [105](#)

Z

Zambia, [12–14](#), [16](#), [43](#), [46](#), [47](#), [49–56](#), [58–61](#), [65–70](#), [72](#), [74](#), [78](#), [80](#), [84](#), [125](#)

Zimbabwe, [2](#), [3](#), [8](#), [13](#), [16](#), [87–93](#), [99–106](#),
[184](#)

Zimbabwe African National Union-Patriotic
Front (ZANU-PF), [13](#), [91–93](#), [102](#),
[103](#)