# Conflict over Property Rights in Land in

# Africa's Liberalized Political Economies

by

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Abstract:

Land law reform is high on the agenda of "second generation" structural adjustment in many, perhaps most, African countries. This turns out to be far more than a matter of simply "getting the institutions right." Discussions of land law reform are occurring against the backdrop of on-going debates over land law in many African countries. This paper shows that these debates can engage a complex bundle of political and constitutional issues that complicate efforts to promote the individualization and formalization of land rights in many rural zones, including some of zones of extensively commercialized agriculture. In many African countries, questions of land rights are entangled in debates over the nature of citizenship, local-level political authority, and indeed, over the future of the market and of the liberal nation-state itself. The practical salience of the issues is illustrated through reference to land politics in Ghana and Kenya.

Bio:
Catherine Boone is Professor of Government at the University of Texas at Austin. She is author of *Merchant Capital and the Roots of State Power in Senegal, 1930-1985* (Cambridge, 1992), *Political Topographies of the African State: Territorial Authority and Institutional Choice* (Cambridge, 2003), and articles and book chapters. She has been a member of the Executive Council of the American Political Science Association and is past president of the West African Research Association. Her current projects focus on land-related conflict in Africa.

## Introduction

Land law reform has figured prominently in the push toward "second-generation" structural adjustment in sub-Saharan Africa. Steady movement toward the growth-promoting individualization and transferability of property rights in land is considered to be fundamental to the larger quest to promote investment and technological-upgrading in agriculture. Much of the recent discussion has centered on how to best formalize *existing* land rights into systems that can be operated through a market economy, rather than revolutionizing the status quo with radical top-down interventions. This gradualist approach is supposed to avoid many of the distributive conflicts, impediments embedded in local land practices, risk adverse choices and strategies on the part of farmers, and challenges to local administrative capacity that have slowed or thwarted past attempts at land law modernization in sub-Saharan Africa.

In theory, democratization and decentralization should complement these land law reform initiatives. More open political arenas will facilitate information-flows and negotiation, help promote transparency, and create conditions that allow law-makers and implementers to make credible commitments to stakeholders. Decentralization should off-load some of the administrative burden -- including challenges of land rights information-gathering, adjudication, monitoring, and enforcement -- by passing some of these functions from the central state to local-level state officials and local-level representative political bodies. And perhaps most fundamentally, the creation of more exclusive and secure land rights is presumed to be a process that will gain tremendous momentum from the main beneficiaries of such a transformation -- that is, from the masses who are found at the grassroots-levels of both the economy and the political system. Rural populations, still the large majority in most African countries, will embrace land law reform because they will gain both political and economic autonomy as their "dead assets" are converted into living capital that is protected from arbitrary seizure by the state or its cronies.

This paper argues that in fact, land law reform is and will remain much more difficult, politically, than much of the policy literature would predict. Today's discussions of land law reform are taking place in the context of intensifying conflict over land rights in many African countries. Across much of the continent, demographic increase, environmental stress, and the mounting (although very uneven) pressures of commercialization of land, labor, and output all add momentum to processes that can promote the growing exclusivity of land rights. Pressures or movement in the direction of more exclusive land rights -- including the land law reforms now on the table in many countries -- can provoke contestation and conflict because of the distributional implications of such changes. In countries with weak political institutions for

managing distributional conflict (other than allocation by "ethnic arithmetic" and clientelism), this means that land law reform may be stifled or paralyzed by distributional tensions, or may itself be generative of political conflict.

Formalization of land law, a process that is promoted today by both external actors like the World Bank as well as domestic political actors seeking more secure or expanded rights to property, cannot always be viewed as a gradual, incremental "assist" to endogenous processes of individualization and marketization that are simply occurring anyway. Rather, these endogenous processes of private-property formation often provoke objection or even resistance on the part of those who do NOT gain from the growing exclusivity of land rights, or from those who seek to redirect these processes to limit their losses or secure some new advantage.

This paper focuses on the politicization of land rights that occurs in these contexts. It seeks to explain how and why patterns of land-rights politicization can vary across space and time. The focus is on two dimensions of variation in these outcomes. The first is differences in the extent to which land debates implicate structures, processes, and agents of the central state. Second is the nature of the political discourse that emerges around land conflicts, and the forms of contentious politics that emerge. Our main argument is that the nature of the underlying land regime is a fundamental variable shaping forms of land politics and contention. Some of the recent changes in the macro-political context that we associate with "governance reforms" can have implications for the land tenure regime (eg. decentralization), and thus impact land politics directly. Returns to multipartism can have an indirect effect on land matters by shaping the ways in which tension or conflict over land finds expression in contentious politics.

Using examples from Ghana and Kenya, we show how on-going political contestation over land tenure rules can be wrapped around questions about citizenship rights, the accountability of local authority, and the legitimacy of processes of class formation. These cases were chosen to focus attention on the three dimensions of sub-Saharan African land tenure situations that prove to be particularly salient in shaping land debates and conflicts: the intensity of demographic and/or environmental stress (DES) or the extent of commercialization of agriculture; how land regimes define the locus of authority over the allocation of land rights (central vs. local); and how the land regime defines the property/usufruct rights and political rights of in-migrants. Levels of commercialization of agriculture are high in both southern Ghana and the Rift Valley of Kenya, and in both regions, the experience of land scarcity is widespread among smallholders. Yet the cases vary starkly along the two other dimensions, allowing us to provide some empirical support for the claim that variations in underlying land

tenure regimes produce differences in the forms of land politics visible in rural Africa today.[1] In both Ghana and Kenya, moves toward land law reform are fueling land-related tensions.

This paper is divided into three parts. Part I conceptualizes African land regimes as a political and economic "solution" to governance and development challenges as they were understood -- for better or for worse -- in early to mid-20th century Africa. The land regimes specified relations of property, authority, and citizenship within the decentralized political frameworks of the colonial and postcolonial state. Changing macroeconomic, demographic, environmental and political conditions have destabilized existing land systems and hence, the property, authority, and citizenship rules that were specified therein. Under these conditions, the two basic variants of the existing smallholder land tenure regimes -- the neocustomary model and the statist model -- produce different political effects.

Part II takes southern Ghana as an example of the neocustomary model. Here, the growing exclusivity of land rights is, by many accounts, empowering and enriching chiefs at the expense of stool citizens. This process has provoked localized forms of contentious politics over the lack of accountability of local authority. The land law reforms currently under discussion seem likely to raise tensions around the already high-stakes issue of how to restrain the power of chiefs.

In Part III, we take the farming districts of Kenya's Rift Valley as an example of the statist variant of the smallholder land regime. Farming regions of the Rift are places of enclosure, commercial development, and DES. Smallholders and livestock-raisers experience rising land values and land scarcity. The growing exclusivity of rights, which is both a consequence and a driver of these processes, distributes property rights and political clout in favor of settlers at the expense of *indigènes* of the Rift Valley. In this process of redistribution, those who lose-out are mobilized into a violent politics of contention over the political and economic meaning of citizenship in Kenya. Land law reform, rather than helping to smooth the way for the gradual formalization or even privatization of property rights in land, has become swept up in these conflicts over the construction of the central state.

## I. Land regimes in sub-Saharan Africa

Land tenure regimes that prevail across most of rural sub-Saharan Africa were designed under colonial rule. In many parts of the continent, they are not working very well today. As 2001 DFID-financed study on Ghana put it, "[t]enure problems are reaching a crisis point more

[1]The present paper is drawn from a larger set of case studies that is designed to provide a better test of this causal claim.

or less all over Africa and for similar historical reasons."[2] These historical reasons have to do with rising land values, demographic increase, environmental stress, rising input prices, and the shifting winds of markets for agricultural commodities, all of which are working to fuel social and political tensions that are difficult to contain within the old land regimes.

Existing land tenure regimes were designed under colonial rule in an era of land abundance and low population densities. Shallow and conservative central governments wanted to keep African populations on the land, living within their assigned ethnic territories, and out of the political arena. In general, colonial regimes wanted to promote some export-crop production in particular, geographically constrained zones of each colony (for example, in what became "the groundnut basin" in Senegal, but not elsewhere in Senegal), but they wanted this job done by African peasants who used family labor, land that they did not have to buy or rent, and few if any purchased inputs. Under these arrangements, farming families living within their designated ethnic territories met a large share of their own subsistence needs.[3] The use of family land and labor to produce subsistence crops and, in some places, cash crops, restrained the commercialization of land, labor, and food crops; kept the money costs of producing commercial crops lower than they would otherwise be; and helped shore up the material bases of a form of rural governance that rested in critical ways on the power of neotraditional authorities (chiefs, etc.) to regulate access to land within their ethnically-defined and territorially circumscribed domains. Population increase could be absorbed into extensive farming systems as long as there was an open land frontier so that new families could establish their own farms.

The colonial state and its postcolonial successor claimed ultimate ownership of all land in the national territory. This eminent domain could be used to define or redefine the territorial extent of the jurisdictions of neotraditonal authorities -- for example, by adding land to a chiefdom, or dividing a chiefdom in two, or extracting land from a chiefdom or "tribal homeland" in order to create an urban zone or a game park. The power of the central state trumped the neotraditional system and neocustomary land rights when it served central rulers' purposes.

[2]Alden Wily and Hammond, DFID Study on Ghana, 2001, part 6.1.2.

[3] Hyden (1980:13) wrote that "peasants in Africa devote approximately 60 to 70 percent of their labor time to subsistence farming. On the same topic, Duncan and Howell (1992: 9) wrote that "[i]n Ghana, ... a 1986 estimate suggested that 20% of producers marketed the bulk of their produce, while 54% were marginal sellers, marketing only the residual after family needs were met, and 24% produced solely for family needs.

A. Two basic variants of the smallholder land regime.

There are two basic variants of the land regime in smallholder farming systems in sub-Saharan Africa. They differ in how they define the locus of authority over land-rights allocation and adjudication (as vested in the local vs. the central state), and in how they define citizenship and its entitlements (as derived from indigeneity vs. derived from membership in the national state).

Whether to describe these in the past tense or the present tense is a difficult call, for land systems are changing everywhere, in some places more so (and/or faster) than in others. We opt here for the past tense, in order to underscore the more general or theoretical argument that the old systems or existing systems no longer appear as stable -- in the sense of accommodating incremental changes while managing social tensions -- as many did in, say, the 1960-1980 period.

a. The neocustomary model. The first is the neo-customary model. Under neocustomary systems recognized by colonial and postcolonial rulers, land within the territorial jurisdiction (defined by the state) of a given community was vested in this collectivity. Power to administer land was vested in the community head, usually a chief. Families deemed to be indigenous or autochthonous to these jurisdictions/ collectivities -- that is, to be natural citizens of the local polity -- had lineage land rights in the locality. Although lineage rights are not formally registered or titled, they were generally secure from arbitrary expropriation by other members of the community or local-level authorities. Yet the scope and arbitrariness of chiefly power varied a great deal by context. The range of local authorities' prerogative also varied according to the type of land in question. In general, chiefs under these neocustomary systems had most latitude in the dispensation of lands that were not under current use, or that made up the commons.

Farming systems so organized could accommodate in-migration when the core social group had sufficient land to offer "strangers," and the indigenous group had some incentive to do so. In the 20th century, the rapid expansion of a cash-crop farming in some areas created demand for labor that was often met through in-migration. Indigenous landholders could pay for labor directly, but in many places where in-migrants supplied part of the labor the fueled the extensive growth of cash crops, such as in southern Ghana's cocoa economy, chiefs or lineage heads granted in-migrants access to new land in exchange for rent or a share of the harvest. The migrants usually remained non-citizens in their new homes ("acceptees" without political rights or entitlements) for a couple of generations, and often longer. This is consistent with a

model of local government in which legitimacy of the political community and local political authority, and access to land as an entitlement, was supposed to rest indigeneity and lineage.

Flows of migrant laborers, and the in-migration of sharecroppers, played a central role in the expansion of export-crop production in strategic farming zones in the peasant economies of West Africa.

b. The statist model. There is a second basic variant of the smallholder model in sub-Saharan Africa, which can be referred to as the "state as landlord" or "state-centered" model. In some parts of some colonies/countries, central rulers organized in-flows of migrants to colonize zones in which the central state either recognized no traditional authority, could push existing African authorities aside, or could pressure local populations to allow outsiders to clear and farm what the state viewed as underutilized or unused land. In such areas, the central state itself is the locus of authority over land access and allocation -- the state is a hands-on broker, allocator, and enforcer of land rights. Neotraditional authorities can be non-existent, driven out, or just marginalized: in this state-centered variant of a smallholder land tenure regime, the central state itself does not recognize (or gives short shrift to) ancestral/indigeneity-based land rights. Land rights are derived from the central state itself. These rights can be legitimated in terms of benefit to the national collectivity (i.e., the users of the land are contributing to national development) and/or the national citizenship rights of the users (as in "Kenya belongs to all Kenyans"). In these situations, the constitution of local political authority, and the definition of local citizenship, entitlements, and political rights, is very different from the constitutional make-up of the local polity in the neo-customary model described above.

Where smallholders settled in new lands under the aegis of the government itself, the granting of private property rights to settlers was a political option open to the state.[4] African states declined or were slow to grant title to farmers in the postcolonial settlement programs or schemes, however. Part of the reason was that settlers whose land rights were directly dependent upon the discretion of the central authorities were good political clients for rulers.

Some examples of this state-centered land tenure model are the Office du Niger in Mali, the Gezira Scheme, the smallholding schemes in the Senegal River Delta -- all example of "new land" opened up by the central state through irrigation schemes or dams for land reclamation. Other examples are the settlement of almost half of Rwanda's national territory under the authority of the central state after 1962, when Tutsi were killed or expelled, and the government built dams to turn swamps into arable land. In Kivu Province of the Belgian Congo in the 1950s,

[4]The British Crown granted European settlers in Kenya 999-year leases, for example, which were as good as freehold.

the colonial rulers settled "surplus populations" of Rwandans. The Ivoirian government used its muscle to pressure indigenous groups in the sparsely-populated southwest of their country to allocate farmland to "foreigners" from other parts of Côte d'Ivoire. The example featured in the case study section below is that of the farming districts of Kenya's Rift Valley, where the central government purchased land from departing European settlers in the early 1960s and organized schemes to settle African smallholders on government land.

B. Destabilization of existing land regimes

These land tenure regimes proved politically sustainable, in the main, from the early-mid 20th century until recent decades. Important in explaining the political resilience of neo-customary tenure systems is that they did provide most farming households with access to at least some land within their home areas. The statist land regime rested more squarely on the authority, coercive capacity, and in some cases the repressive capacity of the central state, since enforcement of the user rights granted to settlers or in-migrants often required displacement or overriding of pre-existing claims -- that is, the preexisting claims that the modern state itself recognized elsewhere in its territorial jurisdiction as autochthonous rights. Across most of colonial and postcolonial Africa, until today, access to farmland for subsistence and perhaps cash cropping was a kind of entitlement or, in the case of statist regimes, a "gift" or grant to smallholders. This access to land, backed indirectly or directly by central rulers, it can be understood as the core of a social contract, limited as it was, between most of rural Africa and the state. The land regime was the core structural support of the system of rule by which postcolonial leaders governed much, perhaps most, of rural Africa.

Under the neocustomary model, chiefs and other rural intermediaries brokered access not only to land, but also to the national political system, credit and purchased agricultural inputs, and social services. Under the statist model, this role was played by direct agents of the state. Given the dependence of rural families on the good graces of these local intermediaries, the chiefs and their secular counterparts were in a good position to "deliver the vote" to national politicians at election time.

These smallholder land regimes evolved under macropolitical, socio-demographic, environmental and economic conditions that, in many places, no longer hold. The closing of the land frontier, rising land values, rising populations, environmental change, and the changing structure of agricultural commodity markets all destabilize the existing institutions and political relationships. In some places, structural adjustment reforms and the return to multipartism have

also had destablizing effects, as intended. Land regimes are changing, along with the models of rural governance that they anchored.

Widely accepted theories of land-rights change in sub-Saharan Africa predicted that rising land values and population densities would produce gradual and incremental shifts toward more exclusive and more commercialized land rights. This "endogenous evolution of land rights" (EELR) is understood to be the organic (or bottom-up) development of private property rights in land. From the vantage point of the present, what is clear is that these theories of land-rights evolution did not pay enough attention to the politics that would or could attend this process. Growing exclusivity of rights is a redistributive process that can produce contention. In many parts of sub-Saharan Africa today, growing exclusivity of rights, or the push-and-pull generated by incentives to secure more exclusive rights, play into the larger processes that are destabilizing existing land regimes. Most analysts of land tenure issues in Africa today agree that these changes are intensifying social and political tensions, and even conflict, around land tenure norms and rules.

In these settings, variation in tenure regimes is reflected in differences in the ways in which land rights are politicized. Tenure regimes are built upon rules about how authority and citizenship entitlements structure access to productive resources. In Parts II and III, we show how land pressure and rising land values has produced localized conflict over the nature of legitimate authority in southern Ghana, and nationalized conflict over citizenship rights in the Rift Valley of Kenya. Donor-endorsed or -supported land law reform processes in both countries have been swept-up in these larger constitutional debates.

## II. Land Tenure and Land Politics in southern Ghana

Much of Southern Ghana is roiling with localized disputes, chronic tensions, and periodic conflicts over land rights. Although the temperature is hottest in peri-urban zones (see Ubink, Ato Onoma), the geographic extent appears to be very wide, and profound tensions over land rights exist throughout the highly-commercialized rural areas of the forest zone. In most of southern Ghana, the power to allocate and authorize the sale of land is vested in the hands of chiefs, whose territorial jurisdictions and authority over land was consolidated under a British colonial system of indirect rule. From the 1920s to the present day, a great deal of the conflict over land rights in southern Ghana has centered on the rights and prerogatives of these chiefs.

The rise of a peasant-based export economy in Ghana dates to the second half of the nineteenth century. By 1911, the territory was the world's leading cocoa supplier. Production spread from the original cocoa areas of Akwapim and the chieftaincy of Akim Abuakwa to the

southern Asante region. In-migration provided much of the labor that fueled the development of this cash-cropping system. Before the 1930s, the system of land-pioneering was led by in-migrants who purchased land from chiefs in Akwampin (the "company land" system[5]). Land purchases chipped-away at chiefly power by alienating land from their domains. Around this 1930s, this system gave way to an *abusa* sharecropping system,[6] under which migrant farmers asked local chiefs for permission to cultivate stool lands (Akan "crown lands"), and in exchange paid tribute to the stool, or chieftaincy.[7] This turned land pioneering into a social and economic process that fueled chiefly power.

Stool lands in the Akan polities were and still are defined as communal lands which lie under the jurisdiction of the paramount chiefs, who are supposed to administer these assets in trusteeship for the nation. Early in the 20th century, British codified Asante chiefs' power "to allocate, control, and dispose of land" within their territorial jurisdictions,[8] and the institution of stool land developed as the linchpin of British indirect rule in Ghana. The British saw stool lands and chiefly prerogatives over land as arrangements that would restrain the development of land markets, and thus help reinforce chiefs' control over their subjects. As things worked out, these arrangements have proven to be the cornerstone of a legal framework that has allowed chiefs to extract tribute, rents, revenue and profits from land -- and also to accumulate properties on their own account -- sometimes at the expense of their subjects and the communities they are supposed to represent. The current regime creates wide possibilities for primitive accumulation on the part of chiefs, and this is the source of a great deal of land-related conflict in this region.

[5]Polly Hill, as reported by Southall 1978: 193. See also Sara Berry 1993: 107, 111; Mikell 1989a: 71.

[6] See Allman (1993: 37) and Gareth Austin (1987); see Phillips (1989) and Kay (1972), who attribute the shift to the political needs of the colonial state.

[7] All or part of the land tribute collected by local chiefs was claimed by the paramount stool treasuries In Ashanti Region, the paramount chief received all revenues and then remitted a share to subordinate chiefs.

[8] "In the Gold Coast, land sales had commenced at the turn of the century and had been given judicial recognition [by the colonial state]. The West African Lands Committee, however, in 1912 took the view that the sales of land were inconsistent with African customs which should be enforced...After 1917 neither the administration nor the judiciary would enforce sales by Africans" (Noronha 1985: 27, 31). See also Grier, 1987; Crook, 1986: 87-92; Phillips, 1989. In postcolonial Ghana, chiefs have wide powers to collect land tribute, or rents, from migrant or tenant farmers, and to authorize/prohibit the sale of land in their domains (Berry 1993: 107, 111).

A. The land regime

In 2003, the World Bank (p.88) reported the estimate that more 80% of Ghana's total land area is held under some form of customary authority. In the cocoa belt, this authority is institutionalized in the Akan stools. Stools are the centerpiece of what Kojo Amanor (1999:138) describes as a four-part system of land administration. This tenure regime distributes rights between chiefs, lineages, in-migrants and other outsiders, and the central state, allocating land rights in ways that are the subject of contention when rising land values, demographic increase, and/or land law reform give momentum to processes that contribute to the growing exclusivity of land rights.

a. Lineage lands. While residual or allodial land rights are recognized by Ghana's courts and Constitution as belonging to the stools, families that are considered to be full members of the political community represented by a given stool have lineage-based usufruct rights (aka family rights) to land in territory under the stool's jurisdiction (ie., their home area). Lineage lands are supposed to be secure from arbitrary intervention, and users do not pay tribute to chiefs. [9] (By contrast, lands used by migrants for farming, fishing, grazing, etc., are subject to tribute.) Lineage lands can be mortgaged, leased, or sold with the permission of the chief, upon payment of a transaction tax to the stool. If the stool takes over lineage lands by asserting eminent domain, the local family "has a right to expect compensation." (Berry 2001: 179). These lands are considered to be held under customary freehold, which Alden-Wily and Hammond describe as similar to common law freehold (2001: para. 3.2.1).

b. Stool lands purchased by individuals or families from chiefs. Amanor notes that these properties "tend to become lineage lands over time" (1999:138), or assimilated into the category of customary freehold. Presumably he is also signaling that as a *de facto* matter, the transferability of such landholdings is often encumbered by claims made by extended families.[10]

c. Virgin land under the authority of the chief. (This would include "frontier land" lying within the territorial jurisdiction of a particular stool.) The chief has the right to use this land; to lease it to migrants, foreigners, or other non-community members, or to revoke such leases (as in the termination *abusa* sharecropping arrangements); or to sell it to community members (as in b., above). Given that the land itself is supposed to be

[9] Sara Berry describes family rights in land "as not to be lightly overridden" (2001:179).
[10] Amanor (1999: 138-41 inter alia) tracks the progressive commodification of the social relations of production on land held under these arrangements. This means that rights are becoming more exclusive. On sales, what about sales outside the community?

communal land, proceeds from such use, leasing and the payment of tribute, or sale are supposed to be used on behalf of, or shared by, the community.[11] In practice, however, by the 1980s land used directly by chiefs -- for the creation of their own estates, for example -- had been conceded to them as private property. Ghanaian courts now widely recognize chiefs' private rights as "landlords" (with individual ownership) over stool lands that they had appropriated.[12] (See Austin, 2006: __)

The principle of chiefly "trusteeship" over stools lands creates the widest possibilities for the unrestrained exercise of chiefly prerogative in the case of "unoccupied" stool lands, or frontier lands claimed by stools.[13] Settling "strangers" or non-citizens of the stool on such lands is very much in the interests of the chief -- this kind of occupancy allows stool to assert or enforce its jurisdiction over territory so occupied, and also allows chiefs to collect tribute from migrants.[14] Tribute-paying migrant farmers constituted a very large proportion of the population in the Ashanti and Ahafo regions circa 1960 -- perhaps 20-40 percent of all cocoa farmers[15] -- so this source of income has been very important indeed for chiefs and stool treasuries. Sales are also lucrative and the source of much debate over chiefly vs. communal vs. lineage rights.[16]

<u>d. Concessions under the authority of the stool/chiefs</u>, such as timber and mining concessions. In the case of timber concessions, de jure regulatory authority over forestland has been vested in the central government since 1962, with about 30% of the

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[11] As Alden-Wily and Hammond put it, in principle, "unallocated land is considered as co-owned," (2001: para. 3.1.3).

[12] Gwendolyn Mikell (1989a:93-4) writes that in the Brong-Ashanti area, where the political elite began producing cocoa in the 1910s and 1920s, the chiefs "had a head start. They were able to select extensive and contiguous tracts of well-situated, fertile land." They invested capital not only in landholdings, but also in transport and trade. Many rich planters became cocoa merchants in the 1920s, and a powerful stratum of chiefly planter-traders and absentee landholders developed in the south.

[13] Frontier lands may also be claimed by neighboring jurisdictions. Frontier lands can thus become the object of conflict between chieftaincies.

[14] Sara Berry (2001, 154, 180-83) recounts deep resentment in the Afram Plains in Ashanti Region, where in the 1980s and 1990s chiefs in Kumawu pursued a "campaign to colonize the Afram Plains" by allowing migrants from "the North" to settle and farm lands over which the Kumawu stool (Kumuwuhene) was trying to asset a claim (against Kumase). Those who had been farming the land when the migrants arrived "were sacked."

[15] See Schildkrout (1974: 187-8), Apter (1972): 163.

[16] Alden-Wily and Hammond 2001 (para. 3.2.7) argue that the 1986 *Land Titles Registration Law* confirmed and abetted these processes by moving the definition of allodial title, which is supposed to be vested in stools on behalf of the community, closer to individualized freehold, thus strengthening chiefs' private hold/claims over stool land.

proceeds from forest concessions reverting to the stool, paramount chief, and local District Assembly.[17]

This four-part land tenure regime concentrated powers of land-rights allocation, enforcement, and adjudication in hierarchies of Akan chiefs, and the councils of elders with whom they are supposed to consult. The Ghanaian court system served as a venue of appeal for cases not resolved through the neo-traditional system. This constitutes the "Asante Model of Dispute Adjudication,"[18] which is often mentioned by land policy analysts as a positive example of how local actors can more or less successfully resolve their own disputes without resort to costly formal procedures.

Systematic biases are inherent in the system, however. The neotraditional character of adjudication of chiefs by elders, which by definition is supposed to defend community interests and "cultural integrity" against outsiders and threats, tends to bias this part of the adjudication system against non-citizens of the stool (migrants, foreigners, etc), women, and youth. And external checks and balances on the power of local elites are limited and often ineffective. Notorious backlogs of land cases in the court system, and the high costs of formal adjudication in these venues, means that only high-profile cases end up in the courts. High barriers to entry into the courts reinforce the weight of chiefs as arbiters of land disputes and obviously make it difficult for citizens to bring cases against the chiefs themselves.

Conflict over land has been a pervasive feature of life in the rural and peri-urban parts of southern Ghana for many decades.[19] Today, the stakes and tensions are heightened by rising land values, demographic increase and urban sprawl, and broader changes in the national economy that conspire to place many rural families in situations of land shortage.[20] Here as everywhere, the drive on the part of many users and rights holders to secure more exclusive land rights, along with commercialization in general, are processes that produce winners and losers. In southern Ghana, the character of the land tenure regime goes very far in defining the socio-economic contours of this process.

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[17] Alden-Wily and Hammond, 2001: para. 3.3.5-7.
[18] Alden-Wily 2003: 66; Camara et al., 2007: 14.
[19] The system was rife with abuse and corruption. Chiefs were known to privatize stool resources, exploit tenants, abuse debtors, and forsake material and spiritual obligations to their subjects: from the 1920s onward, popular protests and anger against chiefly abuses led to an ever-rising number of “destoolments” of chiefs.
[20] On land shortage and rising land values, see Amanor 1999:138+; Alden Wily and Hammond 2001: 3.1.1-2.

The most obvious tendency is the accumulation of land powers and landed property on the part of the chiefly elite, at the expense of lineage-rights holders.

B. Politicization of land issues in Southern Ghana

Those at the losing end of the growing alienation and exclusivity of rights have three options: exit, loyalty, and voice (Hirschman 1970). Exit in this context could mean exit from farming, from the rural areas, or even from the country. Loyalty could mean taking losses and making the best of it, appealing for some considerate dispensation from decision-makers, and/or employing weapons of the weak.[21] Voice would refer to the contestation over land rights in the public/political arena. In southern Ghana, where the authority to allocate and enforce land rights is concentrated in the hands of the chiefs, exit and loyalty are certainly the modal or everyday responses to processes by which the chiefly elite and their associates are gaining ever-more-exclusive land rights. Yet there is a great deal of voiced contestation over the processes that are transforming the allocation of land rights. The explicit politicization of land-related conflict focuses on (a.) the procedural matter of whether use of chiefly prerogative is wielded according to agreed-upon rules, and (b.) to a lesser extent, the substantive problem of concentration of control over land in the hands of the wealthy elite.

(a.) Chiefly prerogative and the struggle to restrain the local state. At the center of land rights discourse is attempts to activate or invoke procedural restraints on the use of chiefly authority to convert communal rights in land (or proceeds from the sale of stool land) into the private possession or private property of the chiefs themselves. At one level, this is a discourse that tries to call chiefs to account for the abuse of office for personal enrichment. Yet as Sara Berry (2001: 115, 196-7 inter alia) argues, it feeds into, and can be interpreted as, a broader discourse about the constitution of the "local state" -- that is, on how to institutionalize legitimate and accountable authority, structure taxation, define property, and delimit the boundaries between public and private.[22]

[21] "Weapons of the weak" would include threats, rumor, and grumbling. An example is found in the Ghanaian Chronicle of 11 Aug. 2005 ("Asante warns Ga chiefs of possible youth uprising"), where Gabby Asumin reported that the President of the Ga-Dangme Council, Mr. K.B. Asante, "warned of a possible uprising against chiefs and elders of the Ga State by the youth who feel marginalized... by the reckless sale of lands without accountability. [The youth] lack places to lay their heads [while] their lands have been sold out."

[22] There are complex problems having to do with real vs. fake/self-styled chiefs, rival chiefs, and boundary disputes between chieftaincies, but we are not considering those here.

It seems that in recent years, the most flagrant violations of the local constitutional order occur when chiefs sell off stool lands (to private developers, for example) without consulting the elders, and pocket the money themselves. Some chiefs sell off stool lands and spend some portion of the proceeds on the community, as would be considered proper (to build a road, for example), but keep too much of the money themselves. Sales of lineage lands without proper consultations with the affected clan and/or the payment of compensation seem downright illegal, but in the periurban areas of Kumasi, for example, such sales appear to be a very frequent occurrence (Janine Ubink 2007).[23] Not surprisingly, this problem is rampant around Accra, as documented by Ato Onoma (Ph.D. dissertation, 2005), Firmin-Sellers ( ), and others. When it comes to settling migrants/strangers on stool land or the use of other "commons" (such as forests), the scope and proper limits of chiefly prerogative are often more ambiguous. This opens the door to serious and frequent contestation over chief's discretionary powers. Ghana's newspapers are full of stories of chiefs being caught red-handed in corrupt, exploitative, and opportunistic deals that violate the letter and spirit of laws that give chiefs trusteeship of community lands. Ubink found that some chiefs argue explicitly that in today's circumstances, the old norms of trusteeship have become outdated and should be revised in their favor, with some arguing explicitly that as land values rise, "communal lands that can be used in a more productive way should be brought back under chiefly administration" (2007:4).

Protest and resistance that takes place in the public/political arena seems to take two main forms. The first is the "contentious politics" of scandal-making, denunciations, petitioning, public protests and demonstrations, highly public attacks on chiefs' palaces, other property of theirs (such as cars, plantations), or on the chiefs themselves (assaults, chasing away, etc). Ubink (2007: 6) recounts a extreme cases in periurban Kumase in 2003-04:

[23] She finds that "[d]espite the fact that the chiefs are customarily and constitutionally obliged to administer the land in the interests of the whole community, they generally display little accountability for any money generated and most indigenous community members are seeing little or no benefit from the leases. The customary land users are only rarely – and then very inadequately – compensated for the loss of their farmland, and in most villages only a meagre part of the money is used for community development (Ubink 2007: 2-3). Ubink (2007: 3, n. 4) reports the results of one study of land sales in periurban Kumasi (ie., 40 km radius): "[In one] research project it was found that of the 364 farms in peri-urban Kumasi taken away from community members for housing development, only 7% of farmers had received compensation, and most of those were related to the royal family in the village, as described in Kotey and Yeboah 2003: 21."

> In some villages there have even been large-scale violent uprisings of commoners against the chief. For instance in Pekyi No. 2, where the chief sold a large part of the village land to the Deeper Life Christian Ministry and then pocketed the money, the commoners chased both the chief and the church representatives out of the village, killing one of the latter in the process."

A second recourse open to angry citizens of the Akan stools is to invoke the authority and adjudication processes of the central state. Taking chiefs to court is the most obvious of these, but this is a slow, costly, and complicated option.[24] Very often, aggrieved citizens appeal to agents of the provincial administration, ask agents of the District Administration to use the police to apprehend or expel those exercising economic rights improperly granted by chiefs or Traditional Councils, write or otherwise appeal to the Head of State or Minister of the Interior; demonstrate in front of government offices, etc. For example, in December 2005, there was conflict between local farmers and Fulani herdsmen on Kumawu stool lands (in the Sekyere East district in Ashanti).[25] The herdsmen had been granted permits to graze cattle on stool lands by chief, the Kumawuhene, and the Kumawu Traditional Council. The farmers accused these Fulani herders of "causing wanton destruction," disrupting farming activities in the area, contaminating sources of drinking water with cattle dung, destroying vegetation and water bodies without restraint, destroying 10 hectares of maize, harassing women, and causing children not to go to school for fear of an encounter with the herdsmen. The *Ghanaian Chronicle* reported that "the affected communities have lodged a complaint with the District Assembly and the local police, hoping that the District Chief Executive would direct some energy into bringing the situation under control."[26] This appears to be an case of local residents invoking the authority of the central state to counterbalance or even override that of the neo-traditional institutions of local government. According to Ubink, the central administration generally tries to stay out of these cases,[27] but this may not stop citizens from trying to bring the administration in on their side.

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[24] Many such cases are, in fact, reported in the Ghanaian press. See for eg. Dominic Jale, "Tension Mounting at Nmai Dzorn [a suburb of Accra]," *Ghanaian Chronicle*, 1 September 2005, posted online by the Financial Times, accessed Spring 2006, which explains that in a protracted dispute, the Supreme Court "ruled in favor of the Okpelor Sowah Din family, "the rightful owners of Nmai Dzorn lands against the chief of Ashalley Botwe."

[25] S. Berry (2001, ch. 5-6) focuses on land politics in this area.

[26] This incident was reported in Freiku, 5 December 2005.

[27] In periurban Kumasi, according to Ubink, the District Assemblies rarely get involved in land disputes (Ubink 2007: 6).

Ubink argues explicitly that so far, no Ghanaian political party in the current period has attempted to take-up the issue of land rights, land law reform, or abuse of chiefly authority.[28] According to her, the entire Ghanaian central administration adheres to a "policy of non-interference" in chiefly affairs in an attempt to stay on the good side of those who broker land and votes at the local level.

b.) Landlordism and class-like conflict: criticism of new structural inequalities in resource access. Many analysts of the political economy of southern Ghana have focused on the existence and dynamics of class-like tensions between commoners and chiefs, which have simmered across the cocoa belt since the early 20th century (see for example Allman, Arhin, Austin, Rathbone, Beckman, Mikell 1989a, Amanor 1994, Amanor 2005:104-5). The existence of class-like tensions should be expected: the last century has witnessed a dramatic concentration of power and wealth in the hands of a chieftaincy-centered elite class in southern Ghana. The rise of landlordism has been as stark in is region as it has been anywhere in West Africa.

Yet important, structural features of the cocoa economy do work to deflect both class formation and the expression of class tensions in the forest zone. These include: the existence a land frontier during the 20th century; the existence of a large peasantry in this region; the ability of the landlord elite to extract surpluses from these independent producers via the chiefs' control over commercial circuits, rather than via the exploitation of labor; and the centrality of sharecropping as the relation of production by which landlords have extracted a large share of the surplus from agriculture. To these factors we can add the political salience of the cross-cutting ethnic cleavages in Ghana (a phenomenon that is itself related to a land regime that privileges lineage rights over immigrants' land rights), which can deflect social tensions away from class-like relations and focus political debates on questions about region and ethnicity.

Kojo Amanor (2005:104-5 inter alia) argued that around mid-century, where land allocations to migrations created situations of increasing land scarcity for stool citizens, commoners sometimes mobilized against chiefs, rather than blaming the migrants themselves.[29] Allman tracks these dynamics in Ashanti Region in the 1940s and 1950s. One question for on-going research is whether this pattern is observable today.

[28] However, both Nkrumah and Rawlings, at various times in their respective tenures in office, did seek to mobilize popular support by giving voice to ordinary people's frustration with chiefs.
[29] However, a few of 38 newspapers reports on land conflict in 2005 (based a Factiva search done by Amanda Pinkston) describe direct attacks on migrants, rather than on the chiefs who gave migrants permission to use the land (for grazing, in these cases). Cite refs.

C. Land law reform in Ghana

Moves toward land law reform in Ghana take place against the backdrop of a political discourse about land rights that is largely centered on the problem of chiefs' appropriation of *les biens publics*.

The 1999 National Land Policy, which provides the policy framework within which a World-Bank supported Land Administration Program (LAP) now operates, aims at formalizing more coherent, efficient, and transparent land administration processes. Goals of the LAP are to harmonize statutory and customary laws, create and maintain capable institutions at all levels of government, promote communal and participatory land management, minimize protracted land disputes and litigation, and formalize land markets, thereby decreasing the incidence of encroachment, unapproved development schemes, multiple or illegal land sales, and undue land speculation and racketeering.[30]

The 1999 Land Policy aimed to accomplish these goals by further decentralizing administrative authority over land, and by enhancing the information-gathering, record-keeping, and administrative capabilities of Customary Land Secretariats, starting with the Kumasi Traditional Council and Gbawe family lands in Accra. Eventually the government envisions the creation of more modern and transparent (more bureaucratized) land administration processes in at least 50 Customary Land Secretariats.

The difficulty is that traditional land authorities are likely to resist the restructuring and accountability measures that would constrain their prerogatives. This is precisely the problem identified by Alden-Wily and Hammond in a 2001 DFID-funded review.[31] They saw the 1999 National Land Policy as streamlining and accelerating these processes of "elite capture" of community interests, and thus exacerbating inequality in landholding, and in access to official machinery of land administration. Other analysts nevertheless remained optimistic that chiefly prerogative could be disciplined. State pressure could be put on the relevant agencies to work together and reorganize. In this optimistic view, popular pressure, rallied by information campaigns, could be leveraged against chiefs, forcing them to move towards greater transparency, fairness and accountability in their land dealings.

In her study of the administration of land in peri-urban Kumasi, Janine Ubink (2007) sides with the skeptics. She notes that "despite the fact that the chiefs are [*already*] customarily and constitutionally obliged to administer the land in the interests of the whole community, they

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[30] See Ghana Land Administration Project, "General Information about LAP."
[31] Alden Wily and Hammond 2001.

generally display little accountability for any money generated, and most indigenous community members are seeing little or no benefit from the leases" (1). Many chiefs are unwilling to explicitly account for stool land revenues, including chiefs who spend the money, as they should, on community development projects.[32]

Ubink argues that few fora exist for communities to speak out against chiefs and leverage popular pressure against them. Chiefs can ignore village-level oversight committees (Ubink 6-7). Traditional checks to chiefly power – namely, councils of elders and sub-chiefs, and the possibility of destoolment – are also ineffective, as these have eroded over time (8-10). This leaves commoners without effective local representation. Those most vulnerable to the loss of land rights are also unlikely to find advocates at the national level, given central authorities' commitment to devolving power over land administration to traditional institutions, the central government's general unwillingness to interfere in chiefly affairs, and state officials' unwillingness to enforce State law against traditional authorities (12-13).

The Government of Ghana's 1999 land policy framework, which defines the policy direction of the Land Administration Project, aims to confirm the land adjudication powers of local-level authorities. This is an effort to clear the backlog of an estimated 35,000 land dispute cases currently tied up in the courts and to increase efficiency in future land litigation, but as Ubink (fn. 58) points out, it is a highly political choice, for it leaves local authorities in the position of legislator, administrator, and jury. Since these authorities are themselves the target of politicized conflict over land rights, the reform initiative therefore seems likely to highten the stakes of larger struggles and debates over how to to create and maintain legitimate authority at the local level in a context of rising community tensions over land rights and access to livelihoods.

## III. Land Tenure and Land Politics in the Farming Districts of the Rift Valley, Kenya

The farming districts of Kenya's Rift Valley Province (Nakuru, Uasin Gishu, Tranz-Nzoia, Nandi) have been ravaged by waves of land-related violence that have swept the region at election time since the return to multipartism in 1992. Approximately 1,500 were killed and 300,000 were displaced in the 1991-3 election period. In the most recent episodes in 2007-8, the government recognized death and displacement of the same magnitude, while some observers argue that up to 5,000 people were killed. Much of the world press reported these

[32] Ubink cites the Jachiehene, "who was enthusiastically developing his village…[he] not only abolished the local Plot Allocation Committee but stated outright that 'land in Jachie belongs solely to the royal family' and 'a chief does not need to account to anyone, only if things go wrong'" (11).

episodes and outbursts of ethnic violence involving the militant supporters of rival political parties. A deeper look confirms that land politics in the Rift have been deeply ethnicized by all of Kenya's governments, both colonial and postcolonial, which have used their control over land allocation to engineer ethnically-defined political constituencies that would bolster them against their rivals. Since the 1980s at least, geographic extent and duration of land-related conflict has been largely managed through the intervention of state agents, who have served as both conflict-instigators and as conflict-squelchers.

One Kikuyu farmer who was swept up in the 2007-8 land-related violence in Kenya said that "The government owns the Rift," and so it does.[33] In direct contrast to the rules prevailing in Ghana, the government of Kenya does not recognize customary rights over land in the farming districts of the Rift. Here we have a clear example of a statist land regime in a farming region of sub-Saharan Africa. The political consequence is that in these parts of the Rift, conflict over land rights centers on the history of state-sponsored land allocations, the legitimacy of central state authority over land tenure in the Rift, and the battle over whether "national citizenship" trumps ethnic citizenship (and indigeneity-based claims to land) in these zones.

A. Land Regimes in the Farming Districts of the Rift

Much of the Rift was expropriated from the Maasai and other peoples indigenous to this region by the colonial state, and allocated to European settlers in the early decades of the 20th century. European settlers, including some white South Africans, created mixed farms, huge ranches, large plantations, and commercial estates, relying on Africa labor recruited from the African reserves -- land units designed for African peasant farming or pastoralism. By the 1940s, many thousands of "squatters" and laborers were living and working in the so-called White Highlands. A large majority of these were Kikuyu. Attempts by the colonial state and white farmers to expel some of the (mostly) Kikuyu farmers from the Rift farming districts, and to roll-back the workers' rights to use land for farming on their own account, fueled the rise of the Mau Mau movement which, in turn, propelled Kenya's nationalist struggle.[34]

Dealing with land questions in the Rift Valley was absolutely central to economic and political deals by which the radical nationalist movement was defused and Kenya gained independence from Britain. Between 1962 and 1966, approximately 20% of the land in the White Highlands (Leys 1975) was purchased through state-financed and state-run programs, parceled up to create settlement schemes, and transferred to Kenyan smallholders. In the

[33] Interview in Eldoret, 19 November 2008.
[34] See Kanongo 1987.

1970s, more ex-settler farms were acquired by the government, through financing provided by government parastatals, or by leading politicians, who also gained access to government financing for this purpose. Some of these lands were also divided up and distributed to create small-scale farms for in-migrants to the Rift. High population densities in the (ex-)African reserves created land hunger that the colonial and postcolonial administrations very clearly understood as a political problem that, if left unaddressed, threatened political stability.

For smallholders, there have been three basic modes of state-mediated access to farmland in the Rift.

a. Settlement Schemes. All together, land transfer programs created a total of 123 state-run settlement schemes, which generally ranged in size from 5,000 to 10,000 acres.[35] Most were designed as either "low density schemes," which were divided up into parcels of 8-16 ha. that were designed for commercial farming, or "high density schemes," which were subdivided into parcels of 4-6 ha. (in most places) and were designed for subsistence farming (Odingo 1971: 200-1). The 20% of the ex-White Highlands so transferred to African farmers totaled about 1.5 million acres, or about 65% of what had been considered to be the "European mixed farm area" (about 4% of the total area of the country). Through this process, the government had established about 500,000 people on the land by 1970, out of a population of 11.2 million (Leys, 1975:75)

State officials were in direct control of the allocation of plots to individual household heads, who were selected on a case-by-case basis by the official settlement authority.[36] Settlers on the schemes accepted 30-year mortgages, payable to the government. Harbeson (1973: 282-5) explained that "[T]he actual titles to the lands are held by the Central Land Board and are to become the possession of the settlers only when they meet their financial and developmental obligations [to pay for their plots, financed on a 30-year government loan at 6% rate of interest, and farm according to conditions laid out in a Letter of Allotment]. The settlers... have no legal recourse in case the settlement administration tries to recall loans or repossess plots. .... Harbeson describes the settlers as "in reality tenants on sufferance of the settlement administration."[37]

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[35] Von Haugwitz 1972:12. Harbeson 1973:266-7.

[36] Harbeson, 1973:154-5, 253. See Anderson 2005, Bates 2005.

[37][Their] security of tenure is substantially less than that of the Africans involved in the land-consolidation programs [in Central Province] and even of those who have access to land according to traditional rules of tenure" (Harbeson 1973:282, 283, 284-5).

Rates of loan repayment on the schemes were low, and evictions of defaulters were rare.[38] Often, no individual titles were issued to members of cooperative societies who received state financing to purchase shares in group farms.[39] Transferability of rights was restricted: sale of land on the settlement areas had to be approved by the Land Control Board.[40] These features of land-rights on the schemes kept alive the direct, political tie between the rights-holders and the state.[41]

b. Land Buying Companies (LBCs). In the late 1960s and 1970s, the Kenyatta government also encouraged the formation of semi-private land buying companies. Land buying companies purchased or leased farms or estates in the ex-White Highlands from the government, often from the Settlement Fund Trustees (SFT), and then subdivided these holdings among individual (family) shareholders. Many ordinary Kenyan citizens, mostly Kikuyu and Luo, acquired land in the Rift by purchasing shares in the land buying companies.[42] As Onoma (2008) explains, this process was often very politicized. Around Nakuru, for example, the SFT acquired estates and then sold them to land-buying companies headed by high-ranking members of the Kenyatta regime who had often received state financing for this purpose.[43] The Akiwumi Report (1999: 138, 147, 60) cited the case of a Member of Parliament who represented Laikipia West Constituency and later, Molo Constituency, both in Nakuru District, and who owned private finance companies that provided loans for settlers obtain plots on properties that he himself had acquired from the government, and that lay in his own electoral constituencies.[44] Those who settled the land in this way often became the political clients of those who controlled the land-buying companies (Ato Onoma 2008).

c. Forests. A third category of government land that has been allocated to smallholders -- often informally and basically illegally -- is forest land. Approximately 25%? (check figure) of

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[38] On repayment rates, Harbeson 1973:300; Migot-Aholla et al., 1993: 129-30. On the low incidence of eviction of defaulters, see Leys 1975: 79. On repayment relief, Harbeson 1973:300-1.

[39] See for eg. Akiwumi Report 1999:62-3, and 210 on the lack of title deeds on Trans-Nzoia shemes.

[40] Migot-Adholla et al., 1993, 127.

[41] In two settlement areas surveyed by Migot-Adholla (1988:125), 34% and 58% of parcels (and the vast majority of land as measured by area) were still held by those who had received the allocation directly from the goverment. In each area, rates for this mode of acquistion were higher than rates for other modes of acquisition. In the reserve areas surveyed, by contrast, the major mode of land acquisition "continues to be inheritance."

[42] Berman and Lonsdale 1992b:460, see 460-463; Leys 1975: 74-5.

[43] As explained in the Akiwumi Report (1999: 138)

[44] This MP, Dixon Kihika Kimani, "weilds a lot of influence in the two areas, largely because of his past role in assisting the majority of the residents to get land there" (Akiwumi 1999: 160).

the total area of the farming districts of Rift Valley Province is classified as forest reserve. Forest land can be formally redesignated for alternative use through the process of "declassification." Sometimes through this legal process and sometimes completely informally, governments since Kenya's colonial area have used these lands opportunistically as a state-owned resource that is available, virtually without cost or restriction, for arbitrary allocation to private users. In the 1940s and 1950s, for example, when the colonial government decided that there were too many African "squatters" on the white-owned farms in the Rift, this surplus population was forcibly resettled in the Olunguruone area of the Narok forest. Over the course of the 1960s and 1970s, it seems that politicians, district officers, and the forestry service looked the other way as parts of the Mau Forest in Nakuru District -- around Londiani, Njoro, Elburgon in Molo Division -- were settled by Kikuyu "squatters." Given that settlement schemes were often bordered by forest reserves, this process could well have happened very incrementally as families on the settlement schemes expanded and sought more land.

From 1986 on, under Moi, government forest lands seem to have become almost a *caisse noire* patronage resource that was used to reward rulers' friends and to build political support. Once settled on government forestland, farming communities became constituencies that were completely dependent upon the discretion of the regime.[45] The Moi regime settled thousands of families in the Mau forest starting in about 1986. In the 1990s, this government also allowed large numbers of Kalinjin squatters to settle in the Anabkoi and Singalo forests of Uasin-Gushu District, in forest reserve areas that were often adjacent to settlement schemes and LBC farms in this district. In the last year of the Moi regime (2001), vast tracks of the Mau forest reserve were cleared for settlement.[46]

Agents of the central state were directly implicated in the allocation of land rights in the settlement areas, including both the settlement schemes and the land-buying companies, as well in the forests. The on-going role of these authorities in the maintenance of such rights (which surely appeared more or less arbitrary, depending on location and circumstance) was a

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[45] Interviewees said that that expulsion of Kenyatta-era Kikuyu settlers from the Mau forest began in 1986. Need to check. The forest evictions of 1986 "were the start of all these problems." (Kinyajui #19).

[46] In 2001, 27.3% of the SW Mau Forest Reserve (22,797 ha) was degazetted. "This excision was challenged in court and orders were given by the high court to stop it, but settlement went ahead and the area is now settled." Also in 2001, 54.3% of the E. Mau Forest (35,301 ha) was degazetted. "This excision was challenged in court and orders were given to stop it, but settlement went ahead and most of the area is now settled, although with varying densities." Ermis Africa Leadership Development, 2008.

lived reality for smallholders in the farming districts of the Rift.[47] The settlement schemes, land-buying companies, and squatter settlements in the forests created a prevailing land allocation was an explicitly political artifact. The logic of the situation was that land grievances that arose from this status quo would be focused on the central state.

C. Politicization of Land Issues in the Rift

The settlement schemes, land-buying companies, and squatter settlements in the forests created a prevailing land allocation was not only a political artifact, but also a very partisan outcome. There were clear winners and losers. Under the Kenyatta regime, there was a clear bias in the allocation of farmland in favor of the core constituencies of the ruling party, even through the pattern of allocation also reflected larger historical currents, the force of circumstance, and disparities rooted deeply in the socio-economic history of modern Kenya. The ethnopolitical groups that formed the backbone of support for the Kenyatta regime were non-indigenous to the Rift. There is no doubt that settlement policies and practices in the core farming districts of the Rift ignored customary rights to land, which were viewed by the Kenyatta state as having been extinguished by the British land expropriations of the early 1900s. Those at the losing end of this process were those who claimed these ancestral rights.

The option of opening the Rift to settlement by "all Kenyans" – i.e., to those that could not claim ancestral or precolonial rights to these lands -- had been bitterly resisted by politicians representing the indigènes of the Rift in the early 1960s, who had argued for restitution of rights that had been taken away by the British. These voices were silenced in 1964 when the leader of the Rift Valley coalition, Daniel arap Moi, was brought into the ruling KANU party by Kenyatta and given vast rewards in exchange for towing his President's line on land issues in the Rift. Kenyatta ran Kenya as a one-party dictatorship from 1964 to until his death in 1979, closing down debate and dissent on the land question.[48] In these circumstances, "loyalty" on the part of those who regarded themselves as land-rights losers could have been rewarded through the allocation of other patronage benefits from above (e.g., access to schools or water for communities).

Moi inherited the dictatorship in 1979. From the mid-1980s onward, his regime became progressively more interested in using land allocation as a tool to forge a cohesive political

[47] Farmers who are allowed by the provincial administration to live in semi-legality in the forest reserves are even more vulnerable to the arbitrary exercise of government power.
[48] JM Kariuki, ex-Mau Mau fighter, Kenyatta's personal secretary from 1963 to 1969, and populist Member of Parliament from Nyandarua constituency (1974-5), gave voice to land grievances. He was assassinated in 1975.

constituency out of the various Rift Valley groups claiming to be native to the Rift.[49] (As Klopp 2000 explains, Moi also gave huge landed estates in the Rift to key members of a tight circle of regime operatives and insiders.) Efforts on the part of the Moi clique to weld the various ethnicities of the western-central Rift into a cohesive "Kalenjin" ethnic group were a critical part of this process.[50] The government shifted the bias in land allocation to these Kalenjin constituencies, plundering the forest reserves for new land that could be used as a patronage resource. The Moi regime also encouraged the airing of the land grievances of those who resented or had lost-out in the land-allocation politics of the 1960s and 1970s, calling into question the legitimacy of settlement schemes and LBCs created under the patronage of Kenyatta. These realities underscored and heightened the political contingency of smallholders land rights in the Rift Valley.

Demographic and environmental stress heightened tensions and the stakes in conflicts over land allocation (see Kahl 2006, Ch. 4). Closing of land frontiers in smallholder farming areas throughout Kenya gave many poor families few options for creating viable livelihoods in agriculture for their children. Drought, sedentarization, and moves into agriculture on the part of once-largely-pastoral people increased demands for farmland. Domestic legal challenge to the razing of forests, and international pressure to curb corruption and lawlessness at the pinnacles of the Moi regime, raised the costs of using the forest reserves as a new land frontier to settle Kalenjin farmers. These pressures made it harder for Moi to feed his own constituencies without directly attacking the acquired rights of those who had received land under Kenyatta. As Klopp (2000) emphasizes, it was also convenient to scapegoat Kikuyu and Luo smallholders in order to deflect the wrath of land-hungry Kalenjin away from the vast properties of Moi's own cronies.

The return to multipartism in 1991-2 brought land-allocation politics to a crisis point. If those who had lost out under the land-allocation politics of the 1960s and 1970s had been silenced by Kenyatta, these aggrieved constituencies gained full voice -- in Hirschman's full sense of the term -- in the era of political liberalization. In 1991-2, Moi regime operatives campaigned openly on a platform of chasing settlers out of the Rift and reallocating land to its own supporters. Pogroms targeted at settlers on settlement schemes killed hundreds and drove

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[49] See Onoma 2008 for how Moi pushed titling of plots that had been acquired through the LBCs. This weakened the link between settlers and their patrons, and thus weakened the Kenyatta-era political machine in Nakuru, especially. Settlers' rights became less contingent on the goodwill of Kenyatta-era patrons.

[50] See Lynch 2008.

thousands off their land.[51] Moi regime supporters moved into vacated farms and homes, with the assistance and protection of the government, in a process that started in 1991 and continued well after the election. These conflicts were replayed in 1997 and 2007-8. If the Kenyan government "owns the Rift," then the battle lines were clearly drawn in electoral struggles that would decide who would gain control of the central state and with it, control over the allocation of access to farmland in this region of Kenya.[52]

This explicit politicization of land conflict focuses on (a.) the moral legitimacy of land-rights allocated by a central state seen as corrupt, overly partisan, and willing to manipulate or disregard the law (and the market) to serve the regime and its leaders; (b.) a debate over the scope, limits, and primacy of citizenship rights in the Kenya state (relative to those tied to associated with rights invested in indigenous communities).

(a.) Legitimacy of state action. If the central state is unfair, lawless, and systematically partisan (in the sense of representing the political supporters of the regime rather than "all Kenyans"), then there is room to question the legitimacy of any of its actions. So it is that even title deeds formally and legally issued by the Kenyatta government were called "worthless pieces of paper" by high-ranking officials of the Moi regime.[53] Reciprocally, title deeds to lands in (ex?) forest reserves that were acquired in the late 1980s and 1990s have been declared "illegal" by the post-2002 Kibaki government.

(b.) Citizenship. In April 2005, an article entitled ‘Kenyans are 'Free to Live Anywhere'' appeared in *The Nation* (Nairobi).[54] It opens with ‘Kenyans have the right to live anywhere in the country, the Government has reaffirmed. ... Kenyans have a right to buy property, reside, conduct business, live and die anywhere in Kenya. Kenya belongs to all Kenyans.’ This position is an explicit repudiation of the so-called majimboist (or "regional autonomy") political platform that was embraced by the Moi coalition pre-1964, and that they have promoted with a vengeance since 1991. The majimbo position is that regions of Kenya belong to the ethnic groups that are indigenous to those areas. Therefore, regions should be administered by members of "their own communities;"[55] political representatives in the central government should represent their own territorially-and ethnically-defined communities; and land ownership in the regions should be reserved for individuals and groups indigenous to those places. In this

[51]Boone 2008.
[52] Under Kibaki (2004+), hundreds of thousands of farmers settled in the forests under Moi were evicted.
[53] Klopp 2002; Kahl 2006:145.
[54] The Nation, 1 April 2005, posted on the web and accessed 31 March 2005 at allafrica.com)
[55] Decentralization raises the stakes by further empowering these agents.

view, ethnic citizenship trumps national citizenship when it comes to political representation and land rights. This debate over citizenship in Kenya is raging at this very moment.

C. Land Law reform in Kenya

Since the 1950s, the World Bank has endorsed and supported moves toward land registration and titling in Kenya, with the long-term goal of creating formal markets for private property in farmland and ranchlands. Policy interventions aimed at this end have been launched against the backdrop of debates over *whose rights* are to be registered and titled, and *which rights* are to be secured. In Kenya as in Ghana, these deeply political questions are logically prior to, and engulf and subsume, the narrower land-administration questions. This dynamic is captured graphically in Throup and Hornsby's (1998: 198-9) mention of how land registration heightened tensions around the time of the 1991-2 violence in the Rift:

> "In several settlement areas, the process of land registration was underway [as provided for in precedent and existing national land policy in Kenya]. Individual titles were being issued to local residents, replacing earlier communal [ie. cooperative or company] title deeds. If Kikuyu, Abaluhya, Gusii and Luo settlers could be driven out of the Rift Valley borderlands before the process was completed, small-holdings could be appropriated by their Kalenjin former neighbors and they would forfeit all claims to the land."

Government action to formalize land rights forced the logically-prior question of whose land rights these are. This is a question that must be decided in the political arena.

This political process is well underway, in fact. It has played out through the issuing of the Ndungu Report of 2004 and in the Draft National Land Policy (DNLP) process, also underway since 2004. Provisions of DNLP were included in Kenya's proposed new constitution, the so-called Bomas Draft of the constitution, which was rejected by voters in 2005. The opposition campaigned for a no vote on the constitution, in part by focusing voters' attention on land provisions that would have (a.) given women equal rights to inherit land, and (b.) added momentum to the implementation of the recommendations of the Ndungu Report which, among other things, called for a revocation of land rights that had been allocated illegally by the Moi regime. The main thrust of the DNLP today (the version approved by the Ministry of Lands in May 2007) seems to be a call for a complete overhaul of the land administration machinery of the Kenya state, and a review of virtually all land rights, deeded or not, that have been issued or confirmed by the state since 1963. The stated purposes are to make it possible to redress historical land grievances and safeguard minority rights. The Kenya Landowners Association

(KELA) and the Machakos and Makueni Ranchers Association claim that core provisions of the DNLP go far in undermining the sanctity of private property rights in rural Kenya.[56]

The DNLP seems to have opened up a Pandora's Box of land issues that implicate the nature and legimitacy of the central state and the modern nation that it is supposed to represent. These issues are played out on the national stage and are intimately intertwined with partisan politics and electoral competition at the national level. The central state is implicated so directly because it is the allocator of land rights in the farming districts of the Rift, which are the epicenter of land conflict in Kenya.

## III. Conclusion

In the last decade, more than twenty African countries have undertaken overhauls of existing land tenure legislation. In Ghana and Kenya -- as well as in Côte d'Ivoire, Uganda, Tanzania, Senegal, Mozambique, Zimbabwe, and South Africa -- land policy has been a high-visibility public issue. Returns to multipartism have played a role in these processes. As P. McAuslan writes, 'in all, the pressure to act [on land law] is, at least in part, the result of contested democratic politics and the perceived need to meet the concerns of rural voters. This is most obvious in South Africa but also applies in Namibia and Tanzania."[57] Governments in many African countries have sought to use land law reform to address questions of poverty, equity, restitution for past expropriations, investment and innovation in agriculture, and/or sustainability.

The World Bank and other international lenders/donors have been major players in these processes. By making land law reform part of second generation structural adjustment processes, the Bank played a key role pushing governments to acknowledge the need for workable legal frameworks for handling the backlogged, long-deferred, and divisive land problems that bedeviled many African countries. The Bank itself points to a 'tremendous expansion' in its lending portfolio for land-related projects since the mid-1990s: 'While in FY 1990-94 only 3 stand-alone land projects were approved, the number increased to 19 ($0.7 B commitment) and 25 ($1B commitment) in the 1995-99 and 2000-04 periods, respectively. This trend is expected to continue: FY04 projects and land-related projects ... alone amount to $1B and, following the lead of the Bank, other donors are now addressing land issues much more

[56] Norton-Griffiths, Tom Wolf, and Raul Figueroa, 2008: 16-17. See also Machakos and Makueni Ranchers Association 2007.
[57] McAuslan 1998: 525-552, 527.

vigorously in their programs as well."[58] Since the 1990s, DFID and a host of NGOs, most prominently Oxfam, have indeed invested in a wave of initiatives has aimed at promoting wide-ranging overviews of national land law and dialogue among stakeholders.

For the World Bank, individualization and transferability of title are the goal. Private property in land is still the economic and institutional gold standard, although Bank advocates of land tenure reform are now less confident about advocating land privatization across all of rural Africa than they were in earlier decades.[59] Recognition and securitization of user-rights is a seen as a more modest, interim priority. It has been promoted by land-rights advocates like Oxfam, who have come to see the vulnerability of smallholders to the arbitrary expropriation of the land rights as an important constraint on investment and innovation in agriculture, as well as a threat to livelihood security. Some land rights advocates, especially those with agendas honed in the UN's (Latin America-focused) campaigns for indigenous rights, are focused on securing state protection for "original rights," minority rights, and/or communal rights.

The political and administrative decentralizations of the 1990s have been seen by nearly all of the foreign donors and advocates as aiding and abetting the land reform process. One of the express purposes of decentralization was to strengthen local prerogatives in land management (including the registration of existing rights) and dispute resolution.[60] This is widely considered to be a change that complements efforts to promote the formalization and securitization of land rights.[61]

This paper has taken a cross-cutting view that emphasizes the intensely politicized nature of land administration in many African countries, taking Kenya and Ghana as case studies. In zones of highly commercialized farming in Kenya and Ghana, tensions around distributional issues run very high. The prospect of land law reform, rather than being seen as an incremental "assist" to the gradual processes of land-rights privatization, hits raw political nerves, raising the stakes of what are highly divisive political questions about authority, inequality, and citizenship rights. Contrasts across the two cases provide support for the argument advanced here: Existing land regimes in sub-Saharan Africa, which vary considerably across space, structure the political conflicts that are set in motion by the closing of the land frontier and the growing exclusivity of land rights, and by extension, by the specter of land law reform. The neotraditional land regimes, of which the Asante region of southern Ghana is one

[58] World Bank, Land Policy and Administration Homepage. For an overview of land law reform, 1990-2003, see Liz Alden Wily 2003.
[59] See for example Deininger and Binswanger 1999: 247-76; Manji 2001: 327-42.
[60] See Crook and Manor 1998; and Ribot 2004..
[61] See Ribot 2004.

variant, focus tensions around distributional issues on the structure, legitimacy, and accountability of the local state, and on power-struggles within the community. Statist land regimes à la the farming districts of Kenya's Rift Valley, by contrast, focus conflict on how the central state itself exercises land prerogatives, thus bringing land conflict directly into the national political arena, with potential to force *de facto* referenda on questions of property and citizenship.

Conflicts around land rights are coming to a head in many parts of Africa. Political liberalization has amplified the voices of land-rights losers, some of those who were dispossessed in the past, and those who are not on the winning side of processes that are producing more exclusive (more individualized, transferable) land rights. Land questions raise tangled knots of state-formation issues that many African countries have been able to duck or defer until now, when demographic and environmental stress, and intensified pressures associated with the commercialization of agriculture, all work to raise the stakes.

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