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Land Tenure Regimes and State Structure in Rural Africa:
Implications for the forms of resistance to large-scale land acquisitions by outsiders

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This paper argues for seeing African land tenure regimes as institutional configurations that been defined and redefined as part of state-building projects. Land regimes have built state authority in the rural areas, fixed populations in rural territories, and organized rural society into political collectivities subject to central control. Land tenure regimes can be understood as varying across subnational jurisdictions (rather than as invariant across space) in ways that can be grasped in terms of a conceptual distinction between neocustomary and statist forms (rather than as infinitely diverse). Differences between the two have implications for the character of political authority in the rural areas, the nature of political identities and community structure, and the nature of property and land claims. These political effects are visible in differences in the forms of local protest and resistance to commercial land acquisitions in periurban Kumasi, Ghana, where a neocustomary land regime prevails, and the Kiru Valley of northern Tanzania, where land institutions are decidedly statist.

Introduction

The prevalence of land-related political conflict in many parts of sub-Saharan Africa today is often very poorly understood. Conflict is often explained as failure of the state to penetrate the rural areas. Much discussion of land conflict conveys the impression that natural-resource disputes in Africa stem from the weakness (or absence) of state intervention in rural property relations. Yet in many cases, this is clearly not so. Some of the most extensive episodes of conflict over land and property rights, including violent conflict, have happened in farming and pastoral zones marked by long histories of deep state involvement in the ordering and reordering of rural property relations. Since the 1990s, highly politicized land conflict has played out in some of the most intensively governed regions of Africa's strongest states -- some examples are the Rift Valley of Kenya, rural Rwanda, North Kivu in DRC, Zimbabwe's commercial areas, and southern Côte d'Ivoire. These cases underscore the need for more comparative and more political theories of land tenure regimes and rural conflict.

Mamdani (1996), Munro (1998), Lentz (2013) and others have insisted that African land tenure regimes be viewed as institutional configurations that have been molded and remolded by colonial and postcolonial governments in efforts to extend state power in the rural areas. They show that existing land tenure regimes bear the heavy imprint of the modern state, even if they are often not entirely defined by states, and that rural land regimes go far in structuring the political relationships that link rural communities to the state.

This paper builds upon this work by advancing two propositions.[1] The first is that African land regimes vary greatly across space, and that as a first cut, critical differences can be captured

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[1] An earlier version was presented at the Kampala 14-16 October 2013 workshop on "Authority, territory, community: Regional dynamics of water, land tenure regimes, and state formation in Africa," organized by the Nordic Africa Institute. Thanks to the workshop organizers and participants. The field research that went into this paper was conducted with the help of Lydia

in two different models of rural land tenure, a neocustomary model and a statist model. The "neocustomary land regimes" referred to here are the land regimes in which state-backed local leaders who are officially recognized as neocustomary or traditional exercise state-sanctioned authority within communities recognized as autochthonous or indigenous by the state, including authority over land allocations and land-dispute adjudication. Under "statist land regimes," by contrast, the central state itself is the land allocator and dispute adjudicator. This analytic framework is crude and schematic: in actuality, local land regimes often mix or combine these different sorts of rules, or display other ambiguities or hybridities. Nevertheless, this schematic model of variation in land regimes captures critical differences in the forms of authority and political identities that structure smallholders' access to land.

The second proposition is that differences that are captured in this neocustomary-statist distinction can help *account for* patterned variations in the structure and political character of land-related competition and conflict. This paper illustrates this proposition by contrasting local responses to large scale land acquisitions in 2009-2010, in two places with land regimes that exemplify the schematic distinction between the neocustomary and the statist. The first is the Kumasi region of central Ghana, where a strong neocustomary land tenure regime structured local resistance and responses to outsiders' acquisition of 400 ha. of prime farmland for a huge infrastructural project, the "inland port" at Boankra. The second is the Kiru Valley in Babati District of Manyara Region in northern Tanzania, where a statist land regime structured local famers' responses to the state's granting of large tracts of land to promoters of commercial sugar cane estates. Two dimensions of the land tenure regimes prove to be particularly salient in shaping the political character of the land-related conflicts examined in this paper. The first is how land regimes define the locus of authority over the allocation of land rights (local versus central state). The second has to do with how local jurisdictions are nested into national

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Nyeme, who holds a MSc in Natural Resource Management from the University of Dar es Salaam, and Desmond Koduah, who holds an MSc from the University of Legon, Accra, Ghana. It draws also upon Boone 2012, 2014, and in press.

institutional structure (either as quasi self-governing ethnic/neocustomary jurisdictions, as in the Asante region of Ghana, or as local instances of the national state apparatus, as in Tanzania's Kiru Valley).[2]

Differences in land tenure regimes that prove to be key in the case study analysis can be understood in terms of the basic, structural differences between neocustomary and statist land tenure institutions. Part I of the paper draws out these general distinctions contrasts. In Africa, these institutional forms were introduced by the European colonial regimes. Postcolonial governments, including Ghanaian and Tanzanian governments, have actively refined or modified inherited land institutions in response to their own political needs and logics. The typological distinction between neocustomary and statist land institutions remains as salient and analytically useful in describing postcolonial land tenure regimes, however, and postcolonial continuities in institutional form are striking in most parts of most countries. Part II presents the contrasting case studies. Changes in political-economic context over the course of the last few decades, especially rising pressure on the land and heightening tensions between commercial investors and smallholders, are fueling a new era of land politics and land-related conflict. These new pressures are mediated through very different land tenure regimes -- that is, different relations of authority, identity, and territory -- in our two cases. The analysis shows that institutional variations give rise to very different kinds of land politics. A conclusion draws some larger implications for thinking about institutionalized political authority in Africa, and how it shapes the scale and character of politics.

I. Land Regimes and State-Building: Two Models

[2] There is another salient dimension of variation that is not explored in this paper. It is the dimension of the land regime that defines citizenship rights and thus, who has the right to access land. For a discussion of citizenship rights that extends this analytic framework, see work cited in note 1.

Today's land tenure regimes have been shaped decisively by the efforts of rulers, both colonial and postcolonial, to project authority over territory and to govern rural populations. Colonial rulers designed land institutions that defined administrative and political jurisdictions at the lowest levels of state apparatus. Authority-based controls over land were codified and institutionalized to define local relations of authority and property, and to shape politically-salient local identities. Independent governments in Africa have also exploited the ways in which authority over land can be deployed to gather power over people, and to structure and incentivize their political behavior.

Colonial rulers states claimed ownership or trusteeship of all land in the African territories. Where they wanted to use and exploit land directly (for urban development, government installations, mining, and the settlement of European farmers or ranchers), colonial authorities usually expropriated African landholders and users. In these places, farmers or pastoralists were forcibly expelled from their ancestral areas or from lands they claimed by other rights. Colonial states proceeded to allocate land access to users directly, either arbitrarily or under statute, institutionalizing the statist land tenure regimes.

Across most of Africa, however, colonial rulers did not seek to assert direct political control over the land. Rather, they sought to craft land tenure institutions that would further their basic political objectives of keeping most of the population in the rural areas; limiting mobility by fixing populations in territories designated as ethnic homelands; and solidifying structures of political control that would ward off revolt, uprisings, and rebellion. To these ends, colonizers sought to take advantage of and accentuate mechanisms of social control that existed (or were presumed to exist) in "African tribal society." Institutionalizing the neocustomary land tenure regimes was the main instrument for doing this.

The neocustomary land tenure regimes were less costly to erect and enforce than the more intrusive and overtly coercive statist land regimes. After the Second World War, the indirect-rule logic embodied in the neocustomary land regimes was colonizers' preferred

institutional choice across almost all sub-Saharan Africa—that is, wherever countervailing considerations did not create rationales for imposing the more costly (in terms of administration and coercion) statist land regimes. Their successors, the postcolonial governments, have modified these institutional configurations, but their efforts and initiatives have been guided by similar state-building logics and constraints. Continuities in actual institutional form are striking in most places.

A. *The Neocustomary Land Regimes*

In most of colonial sub-Saharan Africa, colonial authorities' interest in *land tenure* flowed largely from their interest in establishing and enforcing authority over rural people.[3] Rules of land access were set to establish hierarchical relationships between collaborating African elites and their subjects. Although "some of the organizing concepts of precolonial land tenure systems continued to influence evolving patterns of land control" (Berry 1988, 58), state-recognized chiefs and the male elders or lineage heads who were often designated as their advisers were given wide powers to make up what colonialism recognized as customary land tenure. They used these prerogatives to extend their authority (and their landholdings).

Land powers gave the local authorities recognized by the colonial state carrots and sticks that they used to govern their rural subjects. Neocustomary rulers had the power to allocate unoccupied land; seize and reallocate land deemed not in use; cede land to the central government or at its behest; seize land they deemed needed for communal purposes; seize the land of people who did not pay taxes, fines, meet the corvée, or submit to conscription; force widows and divorced women to turn over land to their in-laws; force younger men to submit to the discretion of elders in deciding land disposition and use; dispose of inheritance cases; rule on other land disputes within and among families; authorize transactions or sanction individuals for land transactions (such as rentals) not deemed to conform to customary practice as defined by the chief

[3] See Chanock (1998)

and elders; and enforce colonial land-use policies (such as forced terracing or destocking). These prerogatives were supplemented by powers to tax, conscript, arrest, jail, and mete out justice (short of the death penalty). Colonialism's political and economic institutions thus worked at the microlevel to impose and enforce the hierarchy of those who had administrative powers over the land, over those who worked the land or needed access to it.

With the help of anthropologists, colonial authorities undertook to draw jurisdictions that confirmed or expanded the geographic sphere of influence of some (trusted) customary authorities and reduced or eliminated the domains of other (often distrusted) local leaders. These new jurisdictions were supposed to be tribal territories encompassing the ancestral homelands of the people (grouped into a tribe) who were subject to the authority of the customary (tribal) ruler. When reality did not fit the administrative map, reality was often adjusted. Official tribal homelands constituted the geographical/territorial arenas for the exercise of customary rulership, and the operation of customary courts, land tenure regimes, and citizenship regimes.[4] These internal boundaries partitioned space, authority, population subgroups, and land. These jurisdictions and chiefly hierarchies constituted the basic administrative units and administrative machinery (the "local states") of rural Africa under colonial rule.[5]

Neocustomary land regimes were founded on the principle that land encompassed within an officially-recognized ethnic homeland was the endowment of a descent-based community. Chiefs or other customary leaders were supposed to manage this corporate endowment on behalf of the group. Membership in the descent-based group was thus understood to confer a land entitlement. Land access rules thus imposed a distinction between those who had a land entitlement within the ethnic homeland, and those who did not. Insider-outsider distinctions became particularly salient where cash-crop production developed in zones of low population density -- that is, where in-migrants provided much of the labor to expand the cash-crop

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[4] See Young 1994, 232-3. Groups without officially recognized homelands lost out completely and were pressured to "join recognized tribes."
[5] Mamdani 1996, 21-2. Lentz 2006 calls this the "native state."

economy. Outsiders or ethnic strangers could gain provisional access to it with the permission of certain community members, contingent on acceptance of their politically subordinate status within the community (and usually some kind of payment to the rightful landholder). As Painter and Philo (1995, 107) put it, customary authority created or reinforced "political system[s] of inclusion and exclusion" by stipulating who was considered a full citizen in the customary jurisdiction (with political rights and economic rights of membership) and who was not.

The integrity of neocustomary land tenure regimes as systems for enforcing hierarchical authority and the cohesion of descent-based groups rested in large part on the principle of nonalienability of land. This is why colonial administrations sought to suppress land sales within the chiefly jurisdictions.[6] They realized that the development of land markets would undermine chiefs' authority over land and over community members. The rulers also saw that the development of land markets would dissolve the hierarchically-structured descent groups, headed by male elders, that they sought to reinforce as the basic landholding unit and the basic political unit (Goody 1980, 152).

African interests also coalesced around the neocustomary land tenure regimes. In rural localities, chiefs and members of dominant lineages had a long-term interest in defending their political prerogatives over land, even if they also often had short-term interests in strategic sales that would generate revenue. At the grassroots level, many smallholders and subordinate members of corporate landholding groups developed vested interests in the principle that access to land in their ethnic homeland was a birthright recognized (if not always honored) by the state (Chanock 1998, 235). Within extended families and households, the neocustomary structures gave senior males authority over land farmed by women and youth, as well as claims to the labor of these subordinate household members.

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[6] See Phillips 1989; Chimhowu and Woodhouse 2006; Rathbone 1993.

Political independence intensified state-building in the farming regions of Africa. Most of the independent African governments sought to tap into the political potential inherent in neocustomary land tenure. Whether by constitutional dispensation, law, administrative or executive decree, or practice, most governments have confirmed a role for chiefs or other *autorités traditionneles* in allocating access to open land within their jurisdictions, and in adjudicating land-related disputes arising over boundaries, inheritance, and transactions. These same community-level authorities also often retained the prerogative in allocating access to shared resources such as community forests, water points, and pasture. The notion of customary *rights* also remained politically entrenched in most of rural Africa, where it is wielded for diverse purposes by the multiple actors—at all levels of state and society—who have a stake in the political prerogatives, protections, and promises it can provide.

B. *The Statist Land Tenure Regimes*

Within some geographically delimited jurisdictions in every African colony, the state made itself the direct allocator, enforcer, and manager of rural land rights. This is most striking in the white settler colonies of Kenya, Zimbabwe, South Africa, Namibia, and Mozambique, where colonial states alienated vast domains from African land users, created separate administrative and political institutions to govern these spaces, and assigned rights to arable and pasturable land to European settlers or foreign companies for the creation of commercial farms, plantations, and ranches. In some strategic areas of smallholder farming, *postcolonial* African governments also assumed direct authority over land allocation, the management of land use, and land-rights adjudication.

Both colonial and postcolonial governments have created schemes to resettle *African* populations in new territory, either to clear the way for other forms of land use (including use by European settlers or agribusiness), relieve overcrowding in densely populated districts, or

establish peasantries on previously unfarmed land.[7] Some of the best-known examples of postcolonial settlement schemes are found in Kenya, where the government resettled over 500,000 Kenyan families on Rift Valley farmland in the 1960s and 1970s. In Côte d'Ivoire, 75,000 Baoulé displaced by construction of the Kossou Dam in 1970 were resettled by the government in the western forest zone of the country. In postcolonial Rwanda, settlement schemes placed tens of thousands of families on marshlands reclaimed by government, or pasturelands that had expropriated by the state. Governments have also asserted direct control over land for the creation of cities, public works projects, transportation infrastructure, airports, ports, agricultural research centers and demonstration farms, military camps, and landed estates that can be given to political elites. They have cordoned off forest reserves, national parks, and game preserves, which become off-limits to farmers and, often, most pastoralists as well.

In such areas, land authority is not devolved to state-recognized customary authorities. The central state itself is a direct allocator and manager of land access and use. We refer to this type of land control regime as "statist" to underscore the *directness* of the state's role in allocating land and, thus, to distinguish this mode of land governance from the *indirect rule* arrangements that define the so-called customary land tenure regimes in Africa.[8]

Under colonialism, forcible displacement of settled farming communities or long-established pastoralists was a basic tool in the state's repertoire of techniques of territorial, resource, and political control. As Sara Berry has said, "Colonial officials resorted, time and time again, to moving people from one location and settling them in another. . . . Displacement was commonplace" (Berry 2002, 641). Forced displacements often involved resettlement or

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[7] Amselle (1976, 24) refers to these as movements of rural African populations that were directed, oriented, or planned by the state. See Silberfein 1988, 51; Adepoju 1982.

[8] The distinction between customary and statist land regimes blurs in some situations. Governments may appoint new chiefs to rule over populations in government-created settlement schemes, or state-recognized customary authorities may be pressured by government to settle strangers on customary land. Joireman (2011) notes that in the urban slums of Nairobi (on state land), the government appoints chiefs as local political authorities.

relocation schemes of some sort.[9] Often, resettlement was an end in itself. Mafikiri-Tsongo (1997) refers to *migrations organisées* or *migrations officielles,* wherein states have directed movements of rural African populations into new territories to relocate displaced populations or to develop new agrarian frontiers. In *Modern Migrations in West Africa* (1974), Samir Amin referred to such initiatives as state-sponsored movements of agrarian colonization. Receiving areas have sometimes been developed as actual settlement schemes in which the state itself built roads, demarcated and subdivided settlement areas, and assigned settlers to particular plots of land.

State-sponsored movements of agrarian colonization were promoted to relieve population pressure in high-density areas, control disease, increase agricultural production, assert political control over rural populations through creation of settled farming communities (the creation of peasantries), or clear the way for dams and reservoirs. Both colonial and postcolonial governments encouraged and facilitated the settlement of migrants onto "state controlled agrarian frontiers,"[10] or "new lands" opened up to smallholder farming by the development of irrigation, swamp reclamation, tsetse fly eradication, the drilling of boreholes to create permanent sources of water, expulsion of pastoralists, or the abandonment of properties by white settlers.

Cases in point can be found in discrete subnational territories in virtually all countries of Africa -- pockets or zones of statist land tenure exist in countries in which neocustomary tenure prevails throughout most of the national territory. Tanzania stands out as a country in which postcolonial rulers have deliberately dismantled neocustomary land tenure institutions throughout

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[9] Claassens (2005) comments that even the South African government spoke of "resettlement ... of successive waves of people after forced removal from 'white' South Africa."

[10] Médard (2009, 342) uses this term. Some situations are difficult to classify in terms of the schema proposed here. For example, there are situations in which the *pax coloniale* opened agricultural frontiers that were then "colonized" or repopulated by African settlers, but in which the state itself did not assert control over the settlement process. See Shack and Skinner 1978.

virtually all of the national space. The state-led uprooting and resettlement of over half of the rural population under the Ujamaa policies in the 1970s was a decisive phase in this process.[11]

In these situations, it is the state that regulates land access and land rights. The existing ancestral claims to land rights in zones of state-sponsored or enforced in-migration have sometimes been "fully extinguished" by formal decree of state authorities. Often, central authorities have simply *not recognized* ancestral claims or established user rights, thus giving practical meaning to the principle that a property right not honored by the state is no property right at all. There are places where prior users' ancestral rights have been subordinated, in the eyes of the state, to settlers' land-access rights, which are granted and guaranteed by the central state. This may make the ethnic insiders, or autochthones, "involuntary hosts of uninvited guests."[12] At the extreme, they may believe that they have been expropriated outright by the state and its clients. Settlers, for their part, are vulnerable if the state withdraws its protection.

Statist land tenure regimes create structures and relationships of political control over farmers that differ greatly from those prevailing under the (neo)customary land tenure regimes. Terms of land access draw them into direct relation to the state, rather than one that is mediated by neocustomary authorities or the collectivities they are supposed to represent, as is the case in the neocustomary land regimes. Under these conditions, membership in an ethnic group may well have no salience in the land-tenure relationship. In-migrants are *beholden to the central state* for land access, rather than to a customary chief, local landlord, or other indigenous host. The relation of on-going dependency upon or exposure to state actions finds legal expression in the fact that farmers on smallholder settlement schemes have rarely received negotiable titles to their land. Land disputes and adjudication are mediated through the administrative and political organs of state, rather than through neocustomary institutions. The statist land tenure regimes work to

[11] Boone and Nyeme (in press).
[12] Shack and Skinner 1978, 5.

define the land-user a subject (and potentially a citizen, in the best circumstances) of the state, rather than a member of an ethnic collectivity.

Just as the customary land regimes have had their stakeholders and defenders among land allocators and users, so too have the statist land regimes. Farmers whose land rights have been granted directly by state authorities, without appeal to the customary land regimes, have a vested stake in the central government's authority to allocate land, and in the national principle that citizens have a right to settle and farm anywhere in the country.

C. Destabilizating the postcolonial land tenure regimes

Postcolonial governments in Africa have crafted land tenure regimes that give political authorities -- be they of the neocustomary or statist type -- a direct role in mediating land access and land dispute adjudication for smallholder farmers. These institutional configurations serve as the basic political infrastructure by which rural Africa is governed. Both the neocustomary and statist land regimes can embody a kind of social contract that ties land users to political authorities, that defines communities and their relations to the state, and that confers entitlements or claims (however provisional, fragile, or inconsistently honored these may prove to be) on land users (Boone 2007). This helps to explain the levels of political and social stability of these arrangements achieved in most places for most of the postcolonial period.

Over the last generation or so, however, it has become increasing obvious to outside observers that sub-Saharan Africa's smallholder land tenure regime are coming under intensifying stress as demographic, political, environmental, and economic conditions are changing. This is especially clear in in the post-1990 period, when several difference sources of pressure on the land have coalesced to produce land scarcity for smallholders. Closing of the land frontier, rising land values, rising populations, environmental change, and the changing structure of agricultural commodity markets have all worked to destabilize social and political relationships around land

that were institutionalized in earlier eras. In some places, structural adjustment policies and the return to multipartism have also had destabilizing effects. Donor-endorsed or -supported land law reform processes now underway in many countries are intended to overwrite the pre-existing arrangements, in order to commodify land, free it from social and political encumbrances and controls, and invest authority over land-transfer in users and thus remove this prerogative from neocustomary authorities and/or the state.

The commercial and large-scale land acquisitions that have received a great deal of attention since 2008 must be understood against this wider backdrop.[13] They are moves toward more complete commodification of relations of both land tenure and production. By definition, these deals transfer control over large tracts of land to commercial commercial operators, almost always "outsiders" in some sense. Such land acquisitions may uproot, dispossess, and displace farmers, trample upon users' political and historical rights to the land, dissolve community ties, and undermine established, land-based political and social hierarchies.

Much of the scholarly analysis of "large scale land grabs" has focused on the exclusion of smallholders from participation in deal-making, and on the legal, political, and economic forces that conspire to severely constrain peasant farmers' and (agro-)pastoralists' abilities to defend acquired rights when their lands and pastures are targeted by large-scale, often foreign, investors. Yet the commercial land deals that can deprive small-scale land users of access to and control over family lands are often deals struck between *domestic* investors and states.[14] In these cases, the actors, intermediaries, processes, and mechanisms of deal-making are often very close to home, affording land users who are threatened with expropriation or loss of land rights with more opportunity to organize protest or even resistance -- that is, opportunity in terms of time, venues for exercising "voice," and possibilities for mobilizing allies within the domestic political system.

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[13] Cotula et al., 2009; de Schutter 2011; Vermeulen and Cotula 2010.
[14] Peters 2013, Klopp 2000, Ouédraogo 2006.

In the two situations examined below, this was indeed the case: small-scale farmers sought to defend property entitlements or land rights against domestic investors. The case analyses aim to show that cross-case variation in the nature of the existing land tenure regimes -- the Ghana case provides an example of a neocustomary land regime, while the Tanzania case is an example of a statist land regime -- produced variation in the ways in which smallholder land rights were politicized, advanced, contested, and defended. In both cases, institutionalized political relationships around land defined the authority norms and figures, the political identities, and political channels for protest and resistance that were implicated in smallholder resistance to land acquisitions by large-scale commercial users. Contrasts across the two cases go far in revealing land tenure institutions' structuring effects on politics.

III. Local Responses to Land-Scale Land Acquisitions by Outsiders: Contrasting cases

A. Ghana's Inland Port at Boankra (Kumasi)

i. Ashanti Region LTR. Ghana provides a clear example of deliberate and even muscular postcolonial state action to sustain and reproduce neocustomary forms of rule that were institutionalized under colonialism.[15]

In what is now the Ashanti Region of Ghana, the British colonial authorities delimited the Asante chiefs' territorial jurisdictions early in the twentieth century. The colonial state codified chiefs' powers to allocate, control, and dispose of land within their territorial jurisdictions. The institution of stool lands (lands controlled through the Akan chieftaincies) developed as the linchpin of British indirect rule. The British realized that chiefly prerogatives over land could be

[15] One example of this is Ghana's 1992 constitution, which makes chiefs owners and managers of stool and skin lands, which are lands attached to the chieftaincy as an institution and supposed to held in trust for the members of the collectivity. See Kassanga and Kotey (2001, 1).

wielded to restrain the development of land markets, thus allowing the chiefs to retain authority in the rural areas, and political leverage over their subjects.

These arrangements remain the cornerstone of a postcolonial political and legal framework for governing southern Ghana. It has allowed chiefs to extract tribute, rents, revenue, and profits from stool lands and also to accumulate properties on their own account—sometimes in favor of and sometimes at the expense of their subjects and the communities they are supposed to represent. The ultimate vesting of land in the stools also gives chiefs political leverage over both stool citizens and in-migrants within their jurisdictions. Ever since the 1920s, much of the conflict over land rights and political authority in southern Ghana has centered on the rights and prerogatives of these chiefs.[16] National governments, with a few short-lived exceptions, have chosen to ally with chiefs and to keep land-related redistributive politics bottled up at the level of the chieftaincies. Chiefs remain pivotal in dispute adjudication when conflicts cannot be resolved within families, especially in cases of interlineage or interjurisdictional disputes.[17]

In the customary land tenure system that the Ghanaian government has institutionalized in Ashanti region, family and lineage land rights are *usufruct rights for farming*. These rights are secure from confiscation by the stool as long as the land is dedicated to this use. Lineage rights are not exactly freehold rights in this land tenure regime, however: the usufruct is "superimposed" on the a stool's ultimate ownership of the land (allodial title), which is recognized in the Ghanaian constitution. Stools retain direct control over all land transactions involving outsiders (noncitizens of the stool), and non-agricultural use of lands to which the stool holds allodial title.

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[16] A World Bank report from the early 2000s estimated that more 80 percent of Ghana's total land area is held under some form of customary authority.

[17] Crook (2008,131-2) elaborates: Chiefs run "'customary courts' for the settlement of land and other disputes. Most customary landholders are, therefore, still very much dependent on chiefly and local or family institutions to uphold their right of access to land, and for protection against unlawful dispossession of their customary landholdings..."

Around the urban fringes of Kumasi (about a forty-kilometer radius from Kumasi center), an estimated 98 percent of land in the urban fringes of Kumasi constitutes stool land in this ultimate sense.[18] By the 1990s, very little of this was vacant communal land available to the chiefs to reallocate for farming purposes (as is the case throughout most of the old cocoa zone of southern Ghana). Janine Ubink (2008: 157) explains: "Now,.. the only way that chiefs can make money from land is to cancel out the usufructuary rights of the citizens." In periurban Kumasi, this is what they have done.

Chiefs retain power to allocate unused land, and to authorize commercial land leases is vested in chiefs. They also retain power to reclaim land from lineages under certain conditions. In periurban zones such as the region around Kumasi that is the focus of the present analysis, this has emerged as a focal point of land conflict between chiefs and citizens of the stools in periurban zones.

Conversion of farmland to urban uses involves the termination of family and usufruct land rights. It is a process that creates clear winners and losers. Hamidu Ibrahim Baryeh, a Kumasi Lands Commissioner, did not mince words: "The current situation is a free for all affair and the winners are the most powerful in society such as chiefs, government officials, and rich men. The losers are the youth, women folk, and the disabled; thereby sowing the seeds of instability in the future" (Baryeh 1997, 23). Low-status lineages are also more vulnerable than more powerful lineages. Dispossessions can result in landlessness and homelessness, as Baryeh points out.[19] Also lost in many (perhaps most) cases is the presumed right of the usufruct holder to give or withhold consent and to receive compensation.

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[18] Baryeh 1997,14-15.

[19] "At Atasamanso it is estimated that 700 people have no place to farm and neither do they possess building plots. At Kyerekrom it was estimated that 90% of the adult population were landless... 100% due to the urban conversion process." Baryeh 1997, 22.

ii. Reclaiming farmland in periurban Kumasi. The city of Kumasi, the regional capital, a fast-growing city with a population of almost 1.5 million in 2005.[20] With the backing of the state, chiefs have been able to assert an interpretation of existing law that allows them full discretion over the decision to convert farmland to potential urban use, thus *annulling the lineages' and families' usufruct rights* and "merging" the plot with stool land under the direct control of the chief (Baryeh 1997). With urban sprawl and suburbanization, much of the roadside and village land around periurban Kumasi has become vulnerable to potential conversion. An Assemblyman from Ejusu explained it,: "When the town reaches your land, your farm becomes the property of the chief."[21]

These processes give rise to land-related conflicts that find expression in ways that are largely structured by the prevailing land tenure regime. Land-related conflict plays out in the local political arena defined by chieftaincy, is often communitywide in scope, and targets the chieftaincy itself. Chieftaincy creates a "public sphere" where contestation over loss of land rights can take the form of voice. At issue are the scope and limits of chiefly prerogative over land. Do chiefs monopolize the power to decide to convert farmland to urban use? Do chiefs monopolize the right to allocate parcels designated for potential urban use, and to sell leases to converted land? Do they control unilaterally the disposition of revenues so generated, even to the point of simply pocketing the funds?

Open contestation over the chiefs' land powers takes place both within and outside channels institutionalized in the local state that is represented by the stool. Protest

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[20] Contestation over the scope of chiefly prerogative in matters concerning timber and mining concessions, which pay royalties to the stools, is also prominent. Berry 2001.

[21] Interview, Ejusu-Juaben Assemblyman, 21 July 2009. Sara Berry explains that if the stool asserts eminent domain, the family "has a right to expect compensation" (Berry 2001, 179). See also Berry 2013. Lineage lands in Ashanti are often described as held under customary freehold, with the caveat that they are difficult to transfer outside the family. However, in periurban Kumasi today, chiefs and some local state officials insist that lineage rights are *only usufruct rights for farming*. This represents a narrowing of the meaning of lineage land rights.

and resistance takes the form of the contentious politics of public denunciations; petitioning; public protests and demonstrations; and highly public attacks on chiefs' palaces or other property of theirs (such as cars or plantations) or on the chiefs themselves (assaults, chasing away, and so on). Ubink (2008:158 emphasis added) writes that "*all study villages* witnessed various kinds of on-going struggles and negotiations between the land-owning chiefs and their people, ranging from direct confrontation with the chief [including swearing and shouting at the chief at public village meetings] to bringing in other people or agencies, to more evasive techniques to 'get around' the chief."

iii. The Boankra inland port in 2009. The Boankra Inland Port is one of nine "national infrastructure projects" designed to help revitalize the domestic and regional economy. Development of this rail and road shipping hub would ease pressure on Ghana's existing ports, lower costs of transport for land-locked neighbors, rehabilitate the Tema-Kumasi rail line, support the development of a new export processing zone in the Kumasi area. The Ghana Ports and Harbors Authority and the Ghana Shippers Council acquired 400 acres of prime, intensively developed farmland in the town of Boankra, near Ejusu, about 20 miles from Kumasi, capital of Ashanti Region. By 2009, the land had been demarcated, enclosed, cleared, and a complex of buildings stood nearly finished and nearly ready to be occupied. Yet forward movement had been stalled by land-related conflict, and the search for a new set of outside private investors to partner with the national investors who had originally spearheaded the project. In 2012 "a leading Chinese bank" was the most promising among prospective investor. [22]

[22] In September 2013 *The Chronicle* reported that the 140 farmers displaced by the project had been compensated, and that another 3.2 billion Cedi had been deposited in the accounts of the Kumasi Traditional Council in payment of compensation to the land owners. *The Chronicle*

Heated controversy over the loss of farmland to the "inland port" infrastructure project in Boankra stretched over a more than a decade. In 2007, those who had lost land took over a town meeting in protest.

> At an emotionally charged meeting at the town on December 30th [2007], the land owners, clad in red and black attires, hoisted red and black flags in and at the entrance of the town and demanded that Nana Abena Afriyie [the Queenmother] should cough up the said amount given to her by the Otumfuo [the Asantehene] as compensation by the 8th of [January]. They claimed that they would make life unbearable for the queenmother if she fails to release the said amount by the deadline. The secretary of the land owners association [said they would not allow] the Queenmother to rob them in broad daylight. When contacted, [the Queenmother]... said the land owners got everything wrong because by the dictates of custom, individuals do not own lands and that traditional authorities do so on their behalf."[23]

Ubink (2007, 6) tells of an even more extreme confrontation over the sale of land to build a church 2003-04:

> 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."

(Accra), 29 Sept. 2013, "Chasing $800 in China," by Sebastian R. Freiku, posted at http://thechronicle.com.gh/?p=26325

[23] *Ghanaian Journal,* "Boankra Inland Port Threatened," Business section, 4 January 2008. http://www.theghanaianjournal.com/2008/01/04/boankra-inland-port-threatened/. Accessed 10 May 2010.

Some village communities have sought to appeal a chief's decisions by going up the chiefly hierarchy to the Asante Traditional Council or seeking the intervention of the paramount chief, and some have threatened chiefs with destoolment.[24] Bayreh (1997), the Kumasi Land Commissioner, points to a few "best-practice" cases in which villages have successfully demanded the creation of Land Allocation Committees to include community representatives in decision-making (alongside the chief and elders), but he himself notes that in some localities, demands for the creation of such committees have been the subject of hostile confrontations between chiefs and local community members.

In the Boankra controversy, aggrieved citizens attempted to transcend the political parameters imposed by the neocustomary by appealing to agents and institutions of the central state. They appealed to the District Assembly, implored the police to sanction unlawful behavior, petitioned powerful persons, and demonstrated in front of government offices. Citizens who had lost their land to the Boankra project petitioned the Ejusu-Juaben District Assembly (unsuccessfully), took the scandal to the local press, and petitioned then-president John Kufuor and the Speaker of Parliament. Yet in Boankra as in the cases analyzed by Ubink (2008), the central administration tried to to stay out of the case, and the District Assemblies, which are party-representative bodies and local instances of the national government, avoided taking action in the dispute. In discussing the Boankra case, one Assemblyman in peri-urban Kumasi explained the passive role of decentralized local government in land-related conflicts by saying that "the Assembly cannot do anything. Anyway, people fear the chiefs."[25] Ubink (2007:6, 13-14) argues

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[24] Ubink mentions that some village Unit Committees have threatened the chiefs with destoolment (Ubink 2008, 159). Some Unit Committees have pushed for the creation of Land Allocation Committees or tried to mediate conflicts between chiefs and particular families (as in Boankra, for example, field notes July 2009). These are instances of citizens taking advantage of the grassroots-level emanations of national representative institutions to try to impose some accountability on chiefs and democratize decision-making.

[25] Author's interviews, Besease/Ejusu, 17 July 2009.

explicitly that 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. 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.[26]

In peri-urban Kumasi, struggles over the land-related prerogatives of chieftaincy are very difficult to "export" to these other institutional forums. Partly this is due to the narrow political (electoral) incentives of the ruling elite, but it is also the result of a national legal system which defends "customary law" as a semi-autonomous realm in which the secular courts and legislature exercise limited powers of lawmaking and legal interpretation. As Amanor explained it, "while the peasantry is also theoretically recognized via its elected representatives in the democratic process, this has limited impact on the land question, since land matters are recognized as the preserve of chiefs, not elected local councils" (2005, 105). For ordinary citizens, the practical impediments to appealing to the courts of the civil administration for redress can also be overwhelming, especially in settings where the exercise of power is clearly biased in favor of chiefs.

B. Kiru Valley in Babati District, Manyara Region (northern Tanzania)

i. Land Tenure in Manyara Region. Land tenure institutions in the farming districts of Manyara region of northern Tanzania are exemplary of a "statist" type of land regime. Here, political rules and institutions governing land differ starkly from the neocustomary land regimes that prevail throughout most of rural sub-Saharan Africa. Since the 1970s in Tanzania, the

[26] The Ghanaian government's 1999 land policy framework defines the policy direction of the Land Administration Project. It aims to confirm the land adjudication powers of local-level authorities. See Ubink and Amanor 2008.

postcolonial state has not offered juridical recognition to *ethnicity-based* customary land claims, and it has not institutionalized the land powers of neocustomary authorities in administrative practice. Rather, the LTR invests land-allocation authority in local political institutions that are local instances of the national state (local agents of the ruling party, and village and ward land committees) and channel land-related conflicts into secular political institutions and the national political arena.[27] This statist LTR works to structure settled communities' land claims as nationalist, legal, and livelihood claims, or in terms of a race-centered ethnonationalism (black or African Tanzanians), rather than as ethnic claims, and into the national political arena via legal, party, and administrative institutions. Land administration is largely secularized and land disputes scale-up into the national court system. There is *de jure* legal and administrative non-recognition of ancestral (and ethnic) land rights, and non-recognition of neo-traditional local leaders with land powers.

Tanzania's statist land tenure regime if the product of legal reform, administrative practice, and state-building. The process of building this secular land regime in Tanzania has been punctuated by a series of decisive state initiatives.

In the 1920s, the British colonial administration erected an indirect-rule infrastructure of customary authority. Indirect rule in Tanganika had distinctive features that reflected Tanganika's "protected" status under a League of Nations trusteeship. A critical 1923 ordinance (and 1928 amendment) recognized customary rights of occupancy in established farming areas, and invested these in *the land user*, not the ethnic group.[28] The land-user gained a customary (or deemed, permissive) right to land after 12 years of undisturbed use. The 1923 land law would pass unchanged into the legal architecture of the new Nyerere government in 1961.

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[27] They also dilute the political salience of ethnicity as an axis of political competition, and as an overt political discourse for justifying land claims. See Boone and Nyeme (in press).

[28] "The right of occupany was undoubtedly a lesser interest than English freehold, but a piece of proprietary interest in land all the same, guaranteed by statute" (Shivji, Report of the Presidential Commission, 1994, 14).

In the immediate wake of independence, the central state removed most chiefs in the rural jurisdictions and replaced them with direct state agents. 1967 was the year of the Arusha Declaration. It nationalized most privately owned properties (including most of the approximately 2% of Tanzania's land surface that was alienated to Europeans and other foreigners under colonial rule) and asserted state control over these properties. This was followed by the Ujamaa period of forced resettlement and expropriation of African-held large landholdings from 1973/4 to 1976/7. Ujamaa resettlement cut against customary rights as they had been defined in law since the 1920s: villages were reconfigured, people were relocated into some 8,000 new villages, and smallholders were allotted new plots of land for farming. This process was accompanied by the creation of new, local-level political structures: " The reformulated community institutions were to be supervised by a parallel system of governmental and party bureaucrats, thus effectively eliminating community leaders affiliated with the old colonial system. Land was henceforth available only from party-supervised village councils" (Williams 1996, 217-8). Williams describes this as "a vast administrative apparatus set up to displace lineage and neighborhood institutions..." (219-220). According to Mascarenhas, "villagization removed the last vestiges of 'tribal security'" (2000, 70).

The statist character of the land tenure regime was further entrenched in the roll-back of socialism in 1992. To protect the state's earlier land reallocations from legal challenge under Tanzanian law, the government moved boldly to (retroactively) legally extinguish customary land rights to all lands reallocated u

This legal moves set the stage for the 1995 National Land Policy, the 1999 Land Act, and the 1999 Village Land Act. The 1999 Acts constituted villages as local-level administrative units and territorial jurisdictions. The Acts made secular, decentralized local government the allocator of village lands that are not assigned to an individual. In Manyara region and many other parts of Tanzania, the new political units are *often* multiethnic and composed of both old inhabitants and

ujamaa-era in-migrants.[29] The 1999 Land Acts also created a hierarchy of formal land tribunals, running from newly-created village land tribunals, to new ward land tribunals, [30] to district level land and housing courts, and the national level high court for land which sits in Arusha (with the possibility of appeal to supreme court in Dar es Salaam). All levels of this integrated juridical hierarchy were linked via the appeal mechanism.

The turn to neo-liberal investment policies has deepened the statist character of the land tenure regime. Legal arrangements set in place over the course of a almost a century have *facilitated* the alienation of village lands to investors, and the development of commercial land transactions throughout much of the national space. Individuals with registered allotments can now rent or lease their land under the Land (Amendment) Act of 2004. Many observers have described this measure as fully commoditizing agricultural land.

Over the course of the postcolonial period, the Tanzanian government has built a fully statist land regime. Smallholder property claims have become more secular, better institutionalize in the state's legal and administrative structure, more bureaucratized, less clientelistic, and more commodified over time. Coupled with the building of legal machinery for land adjudication in the 1990s and 2000s, this has produced what Chris Peter (2005) calls the "judicialization of conflict." Land-related conflict is channeled into the judicial system.[31]

ii. Kiru Valley. The Kiru Valley is a well-irrigated, fertile valley in the Babati District of Manyara Region (formed with the division of Arusha Region in 2002). A statist land tenure

[29] A village jurisdiction in Tanzania can cover 100 sq. kms.
[30] The Ward Tribunals Act of 1985 created ward tribunals (*Mabaraza ya Kata*); the 1999 act created separate ward land tribunals.
[31] There is unevenness across space in this process and outcome. Some partial exceptions seem to be areas constituted as reserves for pastoralists, such as the colonial-era Maasai reserve lands. Another partial exception could be the micro-homelands of that have long been densely settled, such as the Chagga area where there was not much state intervention in the land tenure regime.

regime prevails without any traces of (ancestral) or customary claims by settled agriculturalists.[32] Smallholders and large landholders use the national court system intensively. There is no institutionalized customary authority. Until the 1940s, the Kiru Valley was tse-tse infested and inhabited by a small community of hunter-gathers (the Mbugwe) in its northernmost reaches.[33] The colonial government made large-scale land concessions to European settlers.[34] With tse-tse eradication in the late 1940s, the process took-off, and most land in the Kiru Valley was owned by white settlers at the time of independence. Tanzanians in-migrated from many disparate parts of northern and, mostly, central Tanzania to provide farm labor and often were allowed to farm small plots of a few acres on their own account, much like the African workers in Kenya's so-called White Highlands.

These large landholdings were expropriated by the state under the 1967 Arusha Declaration. Most of the land was leased by the Tanzania government as large NAFCO (National Food Corporation) concessions to foreign companies (mostly for large-scale wheat production).[35] After the economic failure of these ventures and the onset of privatization policies in the 1990s, the government -- -- leased these same properties to new investors. This time, most of the investors were Tanzanian citizens of Asian descent. There were strenuous objections from members of the ethnically-heterogeneous communities of African farmers who were, by now, long-established in the Kiru Valley, some as squatters of properties abandoned by Europeans and/or NAFCO.

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[32] There are six large commercial farms and eight registered villages in Kiru Valley, according to one of our interviewees (19 July 2011).

[33] A 1934 population map of Tanganika, reproduced in Borjenson (2004, 100) shows no one in the Kiru Valley.

[34] George Six, for example, had 2,000 acres just south of Lake Manyara, close to the escarpment wall (NTz Info. Forum, Kiru Valley #1296, in www.ntz.info/gen/n01296.html, accessed April 2011).

[35] Some of the land was used to create registered administrative villages for African Tanzanians living in Kiru Valley, many of them ex-farm workers or their children. Some of the Europeans, including George Six, had given some of their land to their African workers before abandoning or selling their properties in the 1960s (author's interview, commercial farmer, west side of Kiru Valley, 19 July 2011).

The government's decision to lease land to the Tanzanian citizens of Asian descent for the creation of sugar plantations, and the eviction of squatters that has come with this, has been bitterly contested by the small-scale farmers in the Kiru Valley, who are experiencing acute land shortage. As their families have expanded over time, the land available to them has shrunk. Today's large landowners combat encroachment by smallholders and their livestock, sometimes using force to evict them and to enclose their plantations. Small farmers, workers, and the landless have attacked the investors and vandalized their properties, burning sugar plantations and killing farm owners and managers in the early 1990s, mid-1990s, and in 2011. Via violence, protests, civil disobedience, and the multiparty system, they continue to demand that the government terminate the commercial leases and allocate land to them. The central government backs the investors but has not responded forcefully to repress violence and threats against the "investors" or and to prevent encroachment on the plantations.

In the absence of any claims to customary rights and any institutional infrastructure for the development or confirmation of such claims, land-related conflict in this setting has taken the form of politicized land-related violence pitting "indigenous Tanzanians" against "outside investors" (who are, in this case, mostly non-indigenous Tanzanian citizens).

Local politicians have not missed the chance to exploit this conflict for electoral gain. A Chadema candidate for a Babati District seat in the national legislature has sought to represent those who are demanding that the government turn over some of the largeholdings to land-poor and landless peasants. A Kiru Valley landowner reported that "All the people in Kiru Valley voted for Chadema in the elections. The Chadema candidate campaigned on the promise that the land would be returned to the people."[36] The government, for its part, sent several MPs., including the Speaker of Parliament, to Kiru Valley in 2010. It "promised to resolve the conflict, but it has not done so."[37] For the most part the government seeks to lay low: in summer 2011 it

[36] Interview, Babati, July 19, 2011.
[37] Ibid.

stationed extra policemen in the Kiru Valley, but declined to pursue aggressively or prosecute the local villagers who are accused of farm burnings and of the recent murder of a plantation manager of Asian descent.

This Tanzanian case provides support for an argument about how land tenure regimes shape the scale of politics, the locus of land grievances, and the kinds of identity that are activated in making land claims. Where neocustomary forms of land authority prevail, there is a structural disarticulation of local political arenas in which land politics is embedded from the secular institutions of the national state. The statist land regimes, by contrast, link rural political structures and processes directly into national level institutions and processes. Institutional conditions permit the scaling up of land politics to the national political arena. And under the statist land regime, ethnic identities have little salience in making land claims; national identities -- in the Kiru Valley case, the identity of "black Tanzanian" -- are mobilized to claim land rights. Some of the structural and institutional conditions for the incorporation of rural interest groups into national-level political processes -- including multiparty politics -- are present under these conditions, even if these possibilities are often subverted by the authoritarian practices of rulers.

Because of the deeply statist nature of the land regime, most of the political debate about land rights in Tanzania centers on the possibility and desirability of *democratizing* what often some see as excessively bureaucratic-authoritarian forms of land administration (see Shivji 1998, for example). The questions of customary rights and ethnic rights that are so high-profile in many African cases are muted in Tanzania, appearing most visibly in Tanzania as arguments for pastoralists' rights.[38] In the 1990s these were often framed in international-style discourse about protecting the rights of *indigenous peoples* (rather than as ethnic claims per se).

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[38] A number of studies that have documented the fragile nature of land rights for the perceived ethnic 'outsiders' in Tanzania, especially in the case of pastoralists and pastorialist groups who have become agro-pastoralists within the last generation or two (e.g. Maganga et al. 2007, Walsh 2012).

Conclusion

Studies of land politics can reveal variation across African countries in how institutionalized political authority works to constitute the scale of politics, define political identities, and to institutionalize synergies between formal and informal forms of political authority. Formal and informal power relations often layer and blend in land institutions. In the case of neocustomary land tenure institutions, has happened largely by design, as part and parcel of the general construction of colonial and postcolonial indirect rule. "Local states" constituted around neocustomary land tenure institutions have worked over time, for the most part, to both extend state authority in the countryside and to define the scale and scope of everyday politics in ways that work to consolidate ethnic political identities, and to deflect social pressures and tensions away from the central state. Where statist land tenure regimes prevail, more direct forms of rule generate different, more secular, political identities, and forms of politics that can expose the central state to direct demand-making by mobilized citizens. This paper illustrates these different processes in two situations of resistance and protest against commercial land acquisitions. In significant and observable ways, different forms of land politics in central Ghana and northern Tanzania are traceable to variation in the land tenure institutions that governments have constructed very deliberately over time.

The main thrust of this paper has been show how established, postcolonial land tenure institutions structure and mediate new challenges and conflicts. In reality, however, these new pressures and conflicts also work to redefine the institutions themselves (and the political relationships around authority, identity, and territory that they encode). A full analysis of these recursive processes lies beyond the scope of this paper, but future scholars will surely be compelled to tackle this issue. The institutionalized political relationships around land that have linked smallholders to postcolonial states, and that have produced various forms of political order in most of rural Africa for most of the postcolonial era, are now under tremendous strain. As they

crack and give way, new forms of politics will emerge around land. These processes can transform the basic structures of state-society relations in Africa.

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