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A Debate on Property and Land Rights

Editors' Note: In issue 2/2011, we published an article by Saafo Roba Boye and Randi Kaarhus, "Competing Claims and Contested Boundaries: Legitimizing Land Rights in Isiolo District, Northern Kenya". We invited contributions for a debate on property and land rights and subsequently published related texts in issues 3/2011 and 1/2012 (see <www.africa-spectrum.org>).

Locally and Beyond: West African Land Relations and Global Citizenship

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Keywords: West Africa, Ghana, land law, land tenure, international relations

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When it comes to land issues in Africa, it is hard not to get lost in the details of one more dizzyingly complex story from the field. A plethora of ethnographically rich studies document how land relations play out in various locations and contexts across Africa. Most individual stories of claiming, acquiring, maintaining or losing land rights occur against a backdrop most aptly described by Sally Falk Moore's concept of semi-autonomous fields (Falk Moore 2000). Laws and rules, both endogenous and exogenous, are articulated according to a particular pattern within each social field. Part of the "problem" and the "puzzle" of land tenure systems in Africa is that they are fragmented and subject to so many competing normative orders, which makes them unintelligible through any one lens. Epistemologically, we work through this by using the dominant model of investigating local contexts/social fields to further our understanding of larger-scale issues. Yet, however nuanced the discussions on the fluidity and adaptability of local tenure systems, many of the approaches in the current literature entail the

risk that we will lose sight of the extent to which the wide social and political processes impact particular locations. Far from being unique embodiments, land arrangements in a particular setting are symptoms of the world at large just as much as they are so in any other corner of the planet.

One can garner very little understanding of land issues in West Africa by looking at the theory or workings of customary law alone. Unlike Jacob and Le Meur (2012), I believe land rights to be very remotely related to initial conditions of settlement. Instead, land systems tend to be dynamic; they resonate with and respond to the larger political world. Taking the idyllic pre-capitalist state as a point of reference helps us little to reveal land systems as a postcolonial, capitalism-compatible, fluid reality, one that engages groups and individuals differently based not just on their belonging, but also along lines of gender, age and class. While my direct experiences have been in Ghana, this seems to be the case for most of West Africa.

With land tenure issues regularly at the top of the development priorities, Ghana and other African countries have had to deal with attempts by at least two agents to place the land question under one unitary regime of regulation. The first was the work of the colonial administrators, who collected information and extracted rules about land tenure, mostly in the last decade before independence. They implicitly gathered and simplified stories of migration and settlement, of clans and clan fragmentations, of borders and traditions. Revisionists of African history claim customary law was invented during this process by the colonial powers and African elites; others, who take a more moderate position, look merely at the transformations of previous African arrangements (Peters 2009). The colonial rendition of customary law has generated long-lasting, radical effects partly by virtue of it being wholly written and therefore more difficult to alter. In Ghana, elites in positions of customary leadership still use copies of the colonial commissioners' documents as proof in court. This is part of a process of elite reproduction that has taken place over several generations and might have had a more convoluted trajectory so far than is apparent at the first sight. Some of the chiefs dutifully taking along their bound copies of the colonial land surveys are not the direct descendants of the right-holders identified in the mappings of the early 1950s. Some have drifted away from their native lands and some returned when properties became valuable. Moreover, in any given large clan whose members are entitled to the rights mentioned in the surveys, very few have the education, skills and/or the financial means to lay claim to those rights. Tradition, reinvented, is a product of systematically privileging at every stage of land rights negotiations those individuals that have an advantage from the start. If unmasked, tradition

creates an ideology [...] that is used to regulate and define control over land and natural resources in the interests of the alliance between the dominant classes and fractions within the state and world capital (Amanor 1999: 43).

The second attempt at systematization and regulation was initiated by the state after independence, but mainly – backed by the international donors – at the time of structural adjustment in the 1980s. Indeed, the ambiguous and indecisive role of the state is to be understood within a wider context. Under the conditionalities of structural adjustment, the state pushed for land reform, titling and registration. These worked mainly to protect the interests of large-scale capitalist farmers who had secured large tracts of land, either bought from the chiefs or expropriated from the peasants. The process of registration remained largely unavailable to the peasantry (Amanor 1999). Later, when the World Bank opted to bypass the state and aimed to consolidate traditional authorities instead, the state took a step back and involved itself in dealing only with litigious cases. In no ambiguous terms, most of the state policies relating to land have been directly influenced by international donors. Land issues are also a highly emotionally charged topic on the political agenda, meaning political parties are likely to avoid any radical attempt at reform for fear of a loss of electorate or, even worse, conflict.

In areas with high competition for land, the rights of groups and individuals are constantly questioned, and the rights themselves are divided, cumulated, formulated and reformulated in such a way as to provide relative security for many rather than certainties for few. The process of negotiation is likely to afford land rights to more individuals than would be the case under a clear-cut property regime (Berry 1997). This, however, ultimately depends on the circumstances, and there are no guarantees of equity. Land rights are granted primarily based on some variation of the principle of local citizenship or autochthony, which nevertheless is likely to undergo changes or be manipulated. Customary law and tradition are, at almost all times, under attack by competing revisionists. To further complicate things, commoditization means there are also actors that claim the same resources under different logics, such as through leasing plots from owners or through sub-leasing. Subsequent reformulations of tradition and customary law risk leaving these individuals in the most vulnerable position, since their plots are likely to be leased out to yet other buyers. This is part of the high risk taken by investors, because those who build houses on the residential plots they lease are protected from further interference. It turns out to also be a huge risk for those who can spare the money for the lease, but cannot immediately start building. Individuals from the local communities often mobilize different layers of their local citizenship in order to make claims to land;

similarly, lessees assert themselves as – paying – allies of different local individuals or groups, at times several at once, so as to cover at least partly for the risk of land changing hands. Like many other African institutions, property is a process, rather than the result of a clear-cut transaction, while the bundle of rights attached to a piece of land might be divided in a non-conflictual manner between several people. Many such statuses of equilibrium are, however, disrupted when the competition for land increases.

This kind of overly complex local situation, nowadays common in urban and peri-urban areas, risks drawing the focus away from the large processes in which the negotiation of African land rights is involved. However, one only need examine *who* these investors contributing to the fast commoditization of land and demanding residential conversions are: Ghanaians from abroad. Indeed, the Ghanaian diaspora's remittances and direct investment, most of which are directed toward residential developments, are the third-largest capital inflow, after exports of minerals and cocoa (Kasanga and Woodman 2004). The global class of migrants significantly impacts the urban and peri-urban areas in Ghana. And the members of the diaspora are not alone in competing for the urban lands. Besides population growth, there have been massive internal relocations of people since the times of colonialism, which has contributed to rapid urbanization and to the emergence of areas with scarce lands (Berry 2009).

In a regime of reality occupied by several legal and normative orders, the subject, too, finds him/herself a multi-layered citizen, in a political relationship with communities of different scale (Lund 2011). Local citizenship – for instance, belonging to a hometown, a clan or a lineage – has the potential to be the key resource in accessing land rights, for groups and individuals alike. Gaining access to landed property outside of one's hometown becomes a more intricate affair that might involve a multiplicity of institutions competing over the right to lease. If we read the relationship between citizen and institution from the point of view of the citizen, the widest normative order mobilized to legitimize a claim is likely to be that of the national state. However, as some of the examples outlined here suggest, the particularities of land relations as experienced by the African citizen do not set him/her apart in his/her role as a citizen of the global world. Historical details and intricacies notwithstanding, the continent goes through many of the global processes that the complexity of the local contexts is likely to obscure. The recent intensification of conflict and contestation over access to land and rights to land is strongly connected to processes of urbanization and international migration, along with being a side effect of the relentless progress of neoliberalism. As opposed to many other international contexts, however, the situation in West Africa is complicated by the ambiguous role

of the state, which tends to distance itself from most land-related responsibilities, intervening only in the domains of conflict resolution, development and urban planning.

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