

Contending Issues in Land Governance in Africa and Implications for Conflict and Peace

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ABSTRACT

Issues of land governance, relating to ownership and use are at the core of conflicts, which sometimes escalate into violent contestations in many African societies. Based on the Evolutional Theory of Land Rights, (EVTR), this article raises questions about the relationships of conflicting legal frameworks to land tenure security, sustainable land management and boundary issue and how they influence land-related conflict on one hand. On the other, it draws attention to the clash of the religious, cultural and political use of land and its implications for conflict. The central argument is that these complex and contending issues interact in ways that complicate and undermine the effective management of the sensitivities and relationships to land in contemporary Africa with significant implications for violent conflicts and peacebuilding in the continent.

Key words: Land governance, Land ownership, Land use, Conflicting laws, Conflict, Peacebuilding

INTRODUCTION

Land is of critical importance in Africa for socio-political, environmental, cultural, spiritual and economic reasons. It is the main source of livelihoods for majority of the local populations in Africa who increasingly depend on farming for food production and employment. Land is very crucial in defining an individual's cultural and political identity. The concept of "son of the soil" in Africa is important in understanding the interactions of ethnic identity, citizenship and access to opportunities, privileges and rights that implicate the politics of autochthony (Jackson, 2006). The contentious relationships that result from the dichotomy between the indigenes and settlers draw attention to the unresolved question of who citizen in Africa is, an issue that is tied to one's place of birth and ultimately to land. Indeed, by this dichotomy, an individual may be described as an indigene, native, or stranger notably in Nigeria, Cameroun, Côte d'Ivoire, Democratic Republic of Congo (DRC) and Central African Republic because he/she is or is not a daughter or son of the soil. Yet, this binary dichotomization of citizenship into indigenes and settlers in Africa inevitably results in the redrawing of boundaries between insiders and outsiders whereby a citizen may be accepted or rejected by an ethnic community in the distribution of opportunities. Thus, in the governance of land in Africa, especially the management of the dialectical relationship between citizenship and ethnicity, land has become a central issue for conflict and peace throughout the continent. Furthermore, beyond the political significance and the central role of land in the material reproduction of life, it also has some intrinsic spiritual values in Africa. It is the final resting place for the dead. Thus, the desecration of a spiritual land, for example, a forest reserved for religious practices and sacrifices by a local community, may be perceived as an attack on the ancestral gods of the people and which sometimes must be appeased (Alao, 2007). Yet, the issue of who owns the land appears to be at the heart of many violent conflicts, wars and rebellions in Africa that tend to define most countries in the continent, especially sub-Saharan Africa. Conceivably, land governance in Africa is as important as some of the key issues it generates. These issues are complexly

interrelated and manifest in several ways. These include but are not limited to the challenges associated to land scarcity, the complexities arising from conflicting laws governing land tenure systems and land ownership claims. There is also the issue of the contestation of government's regulatory policies on land as well as conflicts arising from land and labor relations (Alao, 2007). The objective of this article is to interrogate the nature of the interrelationships of conflicting land governance laws, accessibility to land use and entitlements, and conflicts. Key questions that this article address are: What is the relationship between traditional and postcolonial land governance regimes and conflict in Africa? What are the implications of these conflicting legal regimes for managing land conflicts and peacebuilding? The article argues that unravelling the complexities of these issues helps us to better understand how they complicate and undermine the effective management of the sensitivities and relationships to land with significant implications for the outbreak of violent conflicts and peacebuilding in Africa. By way of structuring the discussion, I have attempted to group the issues discussed amongst others into six sections to highlight the central argument. The first is the introduction, which pays attention to the multiple uses of land in the African settings. Section two frames how this use of land and associated conflicting claims in Africa have changed over time based on the evolutionary theory of land rights. Section three examines the relationships between conflicting legal frameworks, land tenure security and sustainable land management and their implications for peace. The fourth section is concerned with land scarcity and boundary issues while the fifth and sixth explain gender and racial discriminations in land acquisition and ownership, and the clash between religious, cultural and political use of land. The last section concludes the paper with some recommendations.

The Evolutionary Theory of Land Rights, the Claims to Land tenure and Contending Issues

The dominant argument raised by the Evolutionary Theory of Land Rights (ETLR) as applied to Africa is that land tenure systems gradually evolve towards market integration and individualism (Platteau, 1996). This evolution results in dynamic changes in the development of institutions as well as reforms that privileges the atomization of society and the entrenchment of private property rights in the regulation of land and land use. Analysing the ETLR, Bassett (2007) highlights the point that a key assumption of the theory is that the emergent land institutions reinforce the "self-interested rationality of the economic man" (p.4). As Krier (2009) has also observed, the ETLR is rooted in the economic account of the genesis of property that emphasizes rising individualization. Accordingly, population pressure and the question of scarcity of lands form a key issue in highlighting not only the analytical and explanatory power of the ETLR, but also its formulation. The contention is that population pressure and land scarcity are mutually reinforcing in the drive toward rationality of private ownership in which the state is obliged to accept because of its associated incentive structures. Consequently, as argued by the proponents of the theory, "when faced with scarcity and the difficulties of community-based tenures, a rational decision-maker will choose to hold land under individual tenure in order to maximize his/her utility" (Bassett 2007, p.4). Nevertheless, the persistence of the notion of common ownership and shared use of land for collective purposes in Africa expresses the contradictions and limitations of the ETLR that revolve around the continuing significance of group identity and group rights in Africa. This is also the argument that history matters in understanding the embedded context of institutional change (Bassett, 2007). It would be recalled that the legacies of colonial institutions and laws imposed by the colonial governments in different parts of Africa while integrating the continent into the global capitalist economy in the 20th century continue to intersect with postcolonial indigenous systems of land management and land use that had survived since then. The coexistence of these different cultural ways of governing land and land tenure systems implicate conflict in Africa. For example, in Africa, some cultures and traditions oppose ownership of land by women, but, the new wave of gender struggles in the continent contest patriarchy-based domination and exploitation with ramifications for conflicts. Similarly, in some cultural settings in the continent, land tenure remains community-based and the attempt to transform it into market-oriented tenureship has been fraught with contradictions and complexities of whether to retain or reform it (Bassett 2007). Indeed, throughout Africa,

land policy reforms continue to grapple with the idea of complete transition to the liberalization and commodification of land while also contending with the challenges of grabbing community lands by the state, transnational corporations and private business entrepreneurs (German, Schoneveld and Mwangi, 2013). Notwithstanding its limitations, the ETLR is relevant in explaining some of the persistent but contending issues in the management of land in Africa and the potential conflicts they generate.

Conflicting Legal Frameworks defining Land Ownership and Land Tenure Security

The existence of conflicting laws: customary, colonial and post colonial land laws, is perhaps, the most crucial issue in the governance of land in Africa today. These laws conflict and reinforce almost all other issues such as land scarcity, land tenure systems, land ownership claims and labour relations. These divergent and contradictory laws are a product of customary laws that were in existence prior to European colonialism, which bequeathed colonial land laws to Africa and significantly influenced postcolonial land legislation. The nature of these laws as well as their implementation processes interact in such a way that they undermine the harmonization of the indigenous land tenure systems with the modern arrangements, making it difficult to achieve a unified and effective system of land management. Even in cases such as South Africa, Tanzania and Ghana where harmonization has been effected, implementation challenges such as absence of social acceptance further compounds and complicates effective land governance in Africa and results in violent conflicts. In the traditional land tenure systems, land was acquired and owned through inheritance and passed on to the next generations. Existing scholarships, suggest that two modes of land acquisition and ownership can be discerned in Africa: communal and individual in which the chiefs play a crucial role in their allocations, especially for communal ownership (Wiley and Mbaya, 2001). Importantly, in each of these land acquisition processes, land was held as a sacred resource in trust for future generations, and no legal documents such as deeds of entitlements or Certificates of Land Occupancy were required for proof of ownership. In fact, where contestations over ownership arise, they were settled through established and effective traditional conflict resolution mechanisms, which may include oath taking and the consultation of oracles or “Dibia” as obtained in Southeastern Nigeria amongst the Igbo, Ogoni, Ijaw and Ikwerre ethnic groups. But by the Western land governance arrangement, conflict over land ownership must be backed by documents, if not, ownership may be fluid and not legally binding (Palmer, Friccka and Wehrmann, 2009). Efforts by post-colonial African ruling elites aimed at the simultaneous preservation of the customary and western laws have seen the formulation and enactment of different kinds of land reform policies and laws to manage land relations in Africa. As noted earlier, in places such as Ghana, Mozambique and South Africa, customary land tenure systems have been institutionalized in their national constitutions to protect local communities and the rural populations against any forms of expropriation (Wily, 2011). The challenge, however, is that in most cases, the implementation of these laws and reforms have been generally ineffective, which relates to the issue of weak institutional capacity of African states. In 2013, for instance, the Minister of Rural Development and Land Reform of South Africa, Gugile Nkwinti noted that two decades of post Apartheid rule in South Africa, “land reform processes are too slow and that only 7% of agricultural land has been redistributed to date” (Synthesis Report, Land Divided, 2013, p.6). Another manifestation of legal pluralism in Africa is the exercise of sovereignty over all natural resources including land by African states. This legal framework that puts all natural resources under the control of the state is informed by an overriding public interest, the notion of the common good. In most cases, this national interest has been dubious and controversially defined. Accordingly, it often clashes with local modes of land ownership and community interests, and ultimately results in conflict between the state and local communities. This is because the exercise of absolute power over land has also meant that African governments grant rights to multinational companies to explore and exploit mineral resources found in community lands without their involvement and consultations. In Nigeria, for instance, all lands belong to the Nigerian state, a form of land expropriation from the people that was consolidated by the Land Use Decree of 1978. Accordingly, the Nigerian government can have access to and use any land including granting license to transnational companies such as Shell and other multinational oil companies to use any

piece of land without recourse to the people who by their native customs and traditions of inheritance own the lands in the first place. In most cases, these oil companies, as studies have shown, engage in unhealthy oil production activities that can be described as an ecological war on oil-producing communities in the Niger Delta. In 2011, the United Nations Environment Programme (UNEP) published a damning report on the role of Shell in the despoliation of the Ogoni environment in which it linked the threat to public health, especially the high risk of benzene-induced cancer in Ogoni, to Shell insensitive oil production activities. The Report notes that it would take “20 to 30 years for environmental restoration of Ogoniland” (UNEP Report, 2011, p.12). Similarly, the phenomenon of international land grabbing in Africa by foreign investors has been facilitated by the sovereign rights of African states to acquire lands with or without the approval of their local owners. For example, large-scale land acquisitions or rather land grab by foreign investors, which do not respect customary rights of ownership due to the collaboration of greedy political elites is fast emerging as a serious land governance problem in Africa, especially in Ghana, Mozambique, Tanzania, and Zambia (German, Schoneveld and Mwangi, 2013). Clearly, the long-term sustainability of these land leases remains a circumspect. What has, however, become obvious in Africa is that “...the elites and even the middle classes have stronger forms of land tenure, while the poor and vulnerable groups have weaker, more insecure forms of tenure” (Palmer, Friccka and Wehrmann, 2009, p. 2). Beyond the issue of land dispossession and the attendant social and economic conflicts and insecurities suffered by indigenous people, international land grabbing raises questions of land degradation, climate change and loss of biodiversity. Yet, the relationship between climate change and violent conflicts have been well demonstrated by studies (see Ayodele, 2010; Percival, and Homer-Dixon, 1998). Unfortunately, large-scale land grabbing and land commodification go hand in hand and are emerging threats to peace in the continent. The activities of Canada’s wood-chipping companies in DRC and UK’s Sun Biofuels in Tanzania have been inconsistent with traditional strategies of sustainable land and forests management practices (Ayers, 2013). Yet, as Freyfogle (2007) has argued, humanity’s wellbeing is intricately and inseparably linked to landhealth, and therefore land must be used and managed as an ecological whole for the present and future generations.

Land Scarcity and Boundary Issues

Another key issue in land management in Africa is land scarcity, which may arise because of natural or artificial factors. Natural sources of land scarcity may include climate change erosion and demographic pressures. Lake Chad is fast eating up. Erosion, for instance, may eat up available land space used for farming and building of houses. Furthermore, erosion distorts established land boundaries and is emerging as a factor in local boundary-related disputes in Igbo communities in southeastern Nigeria. For example, in Enugu, Abia, Anambra, and Ebonyi states, land scarcity caused by erosion is a fundamental problem, and this has been further compounded by failure of government to tackle it effectively (Ayadiuno, Chinemelu and Ndulue, 2021). On one hand, “artificial scarcity arises when forced migration, often arising from land acquisition, leads to overcrowding and reduction in the lands available for agricultural and settlement purposes” (Alao, 2007, p. 65). Inequitable distribution of land is another major cause of artificial land scarcity. In Rwanda, despite the issue of natural scarcity, most of the lands were held by the political elites. Thus, the intersection of inequitable distribution of land and overpopulation was a factor in the outbreak of the 1994 Rwanda crisis (Prunier, 1995). Again, migration as factor in artificial scarcity manifests in varied forms. It could be intra community, intercommunity and international. People move from conflict-torn communities to peaceful communities as internally displaced persons. Some move from one country to another as refugees as was the case in the 1994 Rwandan genocide where many Rwandans settled in Uganda and Burundi. In some cases indigenous people have been uprooted from their lands in the name of government projects without adequate relocation and compensations. In 1990, residents of the Marako community in Lagos, Nigeria were forcefully evicted from their land by the Lagos State government without any provision for alternative settlements. Pastoralism is another form of migration. All these forms of migration complexly interact, exerting pressures on lands in the host communities and affecting social

relations. For example, when refugees and internally-displaced persons return home, sometimes their land have been encroached upon by other community members. Thus, migration has back and forth challenges with serious implications for land scarcity. Unfortunately, effective solutions remain far-fetched in Africa. Moving away from land scarcity caused by artificial, natural or pastoralism-related factors, I now examine land boundary issues rooted in long-standing inheritance claims to a piece of land among local communities. East Africa has been replete with these forms of border-driven local community conflicts such as the ones involving the Okaria and Karimojong in Uganda, the Turkan and Pokot and Maasai and Kikuyu (Young and Sing'Oei, 2011). Similarly, in Ogoni, contrary to the dominant assumption in the literature, suggesting that oil is the major driver of violent conflicts in the area, land boundary disputes, especially farmlands over unresolved inheritance claims to land, dating back to the precolonial times are at the centre of most of community conflicts in the area. Ownership and boundary contestations were the major issues at stake in the 2013 land-related conflicts between the Tai communities on one hand, and Tai communities and the Rivers State government on the other (See Social Action, 2013). Again, a key factor in land boundary problems in Nigeria is the issue of state creation. When new states or local governments are created in Nigeria, people and natural resources are geographically and politically adjusted. This often results in local heritage claims arising from the boundary adjustments, and more importantly, the politics of indigene/settler dichotomy. State creation thus has socio-political and spatial implications. In the Bamenda region of the North-West Province of Cameroon, British administrative policies demarcated boundaries of village-communities without full consideration of their socio-cultural relationships and these have remained a source of boundary tensions amongst local communities even in the post-colonial era (Mbah, 2008). In Nigeria, boundary adjustments may have political undertones, especially if the land being demarcated contains oil. In 2013, the National Boundary Commission (NBC) adjusted the boundary between Rivers State and Bayelsa state and ceded some oil-bearing Kalabari communities (the Sokuo oil wells) to Bayelsa state. It was alleged that being an indigene of Bayelsa state, President Goodluck Jonathan at the time influenced the NBC to transfer the Sokuo oil wells from Rivers State to Bayelsa state to strategically increase oil revenue flow to his state of origin given the centrality of oil to Nigeria's economy. However, the action of the NBC was challenged in court and it was reversed in 2020. Kenya provides another empirical case where land retention by the Kikuyu ethnic group was a function of the occupation of the Presidency by a Kikuyu indigene from political independence to the Mwai Kibaki administration (Alao, 2007). In other words, land ownership, when contested in Africa, has in some cases, been determined by ethno-political power structures rather than on the basis of historical and established boundaries validated by independent and credible state institutions.

Gender and Racial Discriminations in Land Acquisition and Ownership

Gender discriminations in land ownership between men and women remains a key issue in land governance in Africa. Women's access to land has been skewed in favour of men due to patriarchal power relations in African societies dating back to the precolonial times. Accordingly, women were and are not accorded a significant place in the sharing of lands among social groups and local communities in Africa. In some communities, women are not entitled to inherit their husband's property including land except through their male children. Interestingly, most national constitutions of African States guarantee equal rights to both men and women. Deliberate policy reforms and laws have been put in place in many African countries to promote gender equity in land acquisition and ownership. For example, "under the Ugandan Land Act of 1998, women are guaranteed equal access to land. Similarly, the "Eritrean Land Proclamation Act of 1994 grants women the right to acquire and own land" (Burchi, n.d. p. 33 and 34). By the Mozambique's Family Law passed in 2005 women are entitled to inherit property. Unfortunately, these laws have been largely ineffective in practice due to the dominant influence of traditional African cultures and customary land tenure system (Burchi, n.d). Thus, the clash between traditional culture and western laws has been strikingly most evident. This is because legality does not automatically translate into social legitimacy and acceptance. Legal reforms are indeed a necessity but are insufficient to guarantee women's accessibility to land in practice. Therefore, land governance must go beyond mere reforms that emphasize legal accessibility to the

transformation of social relations between women and men through sustained reorientation programmes that emphasize behavioural change and social equity at the individual and societal levels. Beyond women, colonial land policies in Zimbabwe, South Africa, Kenya and Namibia resulted in discrimination of land ownership between the Black African populations and the Whites. In South Africa, for instance, the 1913 Land Act divided South Africa into a “white core encompassing 87% of the land and most of the wealth, and a black periphery in the remaining 13%” (Mandela, 1994, p.114). Addressing this issue has been a major problem confronting African countries that suffer racial imbalance in land ownership. For example, in contrast to South Africa, Robert Mugabe adopted a policy of land redistribution that seeks to restore land to black Africans in Zimbabwe (Moyo, 1990). But, this policy has been very controversial, not least because of the difficulty in determining the original owners and how the lands were to be redistributed. Disturbingly, most of the better lands that were seized from the white farmers were distributed to local politicians close to Mugabe rather than the poor indigenous people with weak tenure security (Moyo, 1995). In this way, land governance in Africa tends to entrench and reinforce power relations in which the weak have been made more vulnerable.

The Clash between Religious, Cultural and Political Use of Land

An emerging problematic in the governance of land in Africa is not only the forceful acquisition and use of community land by the state in the name of social development projects without their consent but also the total disregard for the preservation of their cultural and religious artifacts. The construction of the Liquefied Natural Gas plant in Bonny Island in the Niger Delta in 1996 in which the people were forced to leave their land is a typical example (Akintoye et. al. 2016). Similarly, the link with the ancestors and the worship of gods, which were maintained by the preservation of some forests reserved for sacrifice in African communities, are being disrupted. In the context of evangelism, adherents of Christianity are destroying forests preserved for religious and cultural practices in Africa, which also provide habitat for some of the animals that people worship for church planting. This is because these forests are increasingly being perceived as evil forests. Accordingly, spirituality and sustainable land management in traditional African societies, which were so complexly linked and mutually reinforcing in maintaining an ecological balance that makes life in Africa have multiple and more rewarding meanings is being lost to the clash between religious, cultural and political use of land (Maseko and Soko, 2022).

CONCLUSION

A key claim of this article is that land is a natural resource that plays a central role in the political, spiritual, cultural, environmental and economic development of Africa. However, the governance of the complex relationships that develop in the use of land such as the acquisition and ownership of land, including its sustainable management for the overall development of society, has not been effective in Africa to the extent that it has emerged as the major source of violent political conflicts, wars and rebellion. One of the major findings is that customary land laws and post-colonial legislation are contradictory on one hand, and the implementation of these laws and other land reform and regulatory policies have been very poor on the other. Together, these problems reflect a broader issue of weak capacity of African states to manage land as natural resource meant for socio-economic and political development rather than a source of violence and insecurity. It is argued that to improve tenure security in Africa, governments should clearly define and enforce all property rights regimes, including indigenous institutions that insist on communal ownership of lands in some contexts.

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