

Nothing New Under the Sun or a New Battle Joined?

African Land Dispossession in the Global
Land Rush

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3 Arguments

- 1. Key ENABLER of local dispossession is the law**
- 2. While nothing new THE NEW BATTLE JOINED is that failure to respect customary land rights is doubly entrenched (i) by INTERNATIONALISM of capitalism & the global land rush and (ii) by the issue becoming a CLASS issue locally =BATTLE BETWEEN RICH & POOR**
- 3. CHANGING THE LAW remains the right target for action**

1. Bad Law as the key ENABLER

- ❑ Many *drivers* but law makes involuntary dispossession at scale LEGAL
 - Gives the go-ahead
 - Puts lessees on strong footing
 - Useful to state: no need to pay compensation

- ❑ Not the same everywhere: 4 different legal situations among 56 Sub Saharan African states

- ❑ Origins are colonial but greatly heightened post-1960 including especially shift from state trusteeship to outright landlordism and abuse of state privilege

Legal Techniques of Dispossession

1. NATIONALIZATION of root title
2. NATIONALIZATION of key resources other than land
3. The WASTELAND thesis: only rights to farms & houses can deliver property rights to the land
4. Property only recognized through REGISTRATION
5. CENTRALIZATION of State as Land Protector
6. CENTRALIZATION of State as Land Manager
7. PUBLIC PURPOSE made to include private purpose

2. New Battle is that Now a Class Issue

Nothing new since state-making in position of customary tenure

Now not between colonials & Africans but between modern state & citizens

Because of neopatrimonial relations more subtle
– between state-aligned rich and majority poor

- **Biggest evidence of shift in battle lines is seen in the new battle enjoined WITHIN THE CUSTOMARY SECTOR**
- **Between elites & majority rural poor**
 - E.g. In right to withdraw lands from customary sector & sell off
 - E.g. The proportion of reserve community land absorbed by the better off
- **Between chiefs & people**
- The chief as *landowner or land trustee?*
- The chief as *able to sell unfarmed land for own purse?*
- The chief as sole controller & allocator

3. Changing the law remains the right target of change

❑ Political change & agenda is **slow**; meanwhile vast lands lost

❑ **The time is right:**

a. Precedents exist –

➤ Concrete example & encouragement

➤ Helpful to making finding of alternative routes necessary

➤ In showing capitalist enterprise can exist without mass diminishment of land rights

b. Tipping point in **land as human right**

c. African governments are **ambivalent** re customary tenures.

Customary tenure is not formally abolished in most states, just **misinterpreted**

Only changes in domestic law will be heard by international community & investors; forces change

Class will not go away: even in best of circumstances undue privilege needs regulation

Legal Changes Required

Straightforward and sometimes already done

1. Customary rights as **real property** rights
2. Specifically inclusive **of the commons**
3. **Registration not required** to have force & protection
4. Registration to **double-lock** but not conversionary
5. **Devolved & democratic** land administration
6. Require informed consent **by majority** community prior to lease
7. Place new limitations on **'public purpose'**