

# The evolution of land policy in African state building

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## **5 The evolution of land policy in African state-building**

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### **1 Introduction**

There is a broad consensus among the international community that building a functional state is one of the most critical concerns for today's Sub-Saharan Africa.<sup>1</sup> On one hand, researchers as well as practitioners agree that the dysfunctional state (or state failure) has brought about political insecurity and serious armed conflicts (Holsti 1996; Rotberg 2004; Zartman 1995). Therefore, donors regard state-building as “the central objective” in their assistance to overcome fragile situations (OECD 2007). On the other hand, against the backdrop of severe criticism against the “Washington Consensus,” the role of the state in economic development has been widely recognized since the 1990s. This is the reason why the international financial institutions have emphasized the importance of good governance for economic development (World Bank 1989, 1993, 2001). Projects of state-building in Africa have attracted wide

attention, exactly because Africa's predicaments including civil wars and economic crises have been often attributed to the dysfunctional states.

According to recent arguments, a functional state is supposed to be based on a constructive state-society relation (OECD 2007, 2011). The primary role of the state is considered to be the provision of basic services, of which the maintenance of social order is the most important one; the service provisions will determine popular attitudes towards the state. In response to the positive (or negative) attitude of the society, the state may (or may not) change behaviors. If the state is responsive enough to change its behaviors in taking popular aspirations into account, the state-society relation is regarded as constructive, and the process of state-building will be stable in the long run.

If we problematize African states and seek a constructive state-society relationship, it is indispensable to look back at their historical trajectories and understand how the present states as well as the state-society relationship have been formed. On this point, one of the most salient features of the African states is their exogenous origin. Besides a few exceptions, the origins of current African states can be found in the arbitrary territorial demarcations by European colonial forces. For many of them, the Berlin Conference held in 1884-85 was the decisive point for starting their state-building. Since the imposition by the external powers at the beginning of the

colonial period, African states have struggled to control territories as well as to incorporate society.

These efforts have been clearly reflected in the state policies as well as practices with regard to land. Controlling land is by definition inseparable from controlling territory. Moreover, land has close relations with the society, as it is indispensable for people's living. This is particularly true in agrarian societies like those in Africa, where the overwhelming majority of people have critically depended on land for their subsistence. Attempts to control these societies have been, therefore, directly reflected in land policies.

In focusing on land policies, this chapter attempts to shed light on changes in and continuities of state-society relations and examines the challenges of state-building in Africa. This chapter begins by tracing a history of state intervention on land as well as societal reactions against it from the pre-colonial to the post-colonial period. After presenting a rough picture of the historical development of state intervention in land, the chapter focuses on the case of Rwanda. As a country that has actively taken policies securing land tenure, Rwanda tends to be regarded as a showcase for land tenure reform, but detailed examinations on socio-political backgrounds reveal serious challenges for policy objectives.

## **2 State and land in pre-colonial Africa**

In comparison with pre-modern Europe and Japan, land played quite a different role in pre-colonial African states. In the former regions, political domination was deeply connected with the control of land, on which intensive agriculture flourished in densely populated areas. Land was the basis of state-building, because the national revenue depended heavily on agriculture. The relationship between political authority and land was considerably different in pre-colonial Africa. The difference was clearly indicated in the proportion of land to population. In Africa, the population was extremely scarce and land was highly abundant. In 1750, when Japan had 78.3 persons per square kilometer, Europe had 26.9 persons per kilometer, and China had 22.2 persons per square kilometer, Africa had only 2.7 persons per square kilometer (Herbst 2000, 16). This implied the easy availability of land in Africa and, therefore, frequent changes of residence. These conditions greatly affected the meaning of territorial domination. Controlling land was not crucial for establishing political authority in cases where inhabitants could easily flee whenever they were not satisfied with their ruler.

Another important feature was the weight of kinship. While pre-colonial Africa was overwhelmingly rural and agrarian like other pre-modern societies, its conspicuous

feature was a predominance of the principle of kinship. Lineage networks based on familial ties were by far the most important compared with other networks, such as clientship, existing in pre-colonial Africa (Coquery-Vidrovitch 1982, 67). The weight of familial ties logically implied the substantial autonomy of rural communities vis-à-vis the state. In addition, the level of technologies available for political authorities also constrained their territorial control. Rulers in pre-colonial Africa were extremely short of infrastructure to broadcast power. When Fanti leaders in what is now Ghana approved the so-called Mankessim Constitution to formalize their Confederation in 1871, one of its primary goals was “to make good and substantial roads” (Herbst 2000, 42).

In sum, African pre-colonial states lacked the capability to formally establish control over a large territory beyond the center of the polity. Their territory was generally small, as shown, for example, in pre-colonial kingdoms in the Great Lakes region, two of which later became Rwanda and Burundi (Ogot 1984). Even in cases where the claimed territories were considerably large, like the empire of Mali or Songhay, their ability to extract resources under ruled areas was deemed quite limited, as the state revenue depended mainly on the long distance trade rather than agriculture (Cissoko 1984). It was on this basis that Coquery-Vidrovitch (1969, 77) pointed out, in arguing about the

“African mode of production,” the “absence of a true despotism aiming at a direct exploitation of the peasant class”. Although judging whether African pre-colonial states had constructive state-society relations or not is beyond the scope of this chapter, it is safe to say that, in comparison with states in later periods, they had only limited capabilities to seize and extract resources from the society, thereby leaving the latter ample room for autonomy.

### **3 Land in African colonial states**

#### *African colonial state and its change*

In his seminal work, Crawford Young divided the colonial period into two stages according to the nature of African colonial states. The first was the period of constructing “Bula Matari.” Translated as “breaker of rocks,” Bula Matari was originally a nickname for Henry Morton Stanley, an American explorer who brought to light the whole course of the Congo River and, in collaboration with the ambitious Belgian king Leopold II, opened the way to the establishment of the Congo Free State. While the nickname spread over the regions through which Stanley passed, Bula Matari subsequently came to represent the newly established Congo Free State, with connotations of the intrusive, alien, crushing, and ruthless nature of its rule (Young 1994,

1).

Following the conquest of the African continent in the relatively short period between the end of the 19th century and the beginning of the 20th century, European powers set up, in a haste, a shape of the state, with special emphasis on building hegemony and ensuring fiscal self-sufficiency. After crushing African resistances, systems for collecting the revenue through the head tax, requisitioning labor, and punishing those who refused to obey were quickly installed. As the metaphor of Bula Matari described, the rule was harsh and oppressive.

The end of the First World War marked the second stage of the colonial rule in Africa. Being armed with more effective administration and more sophisticated ideology than those in the previous period, the colonial state in this stage came to be rationalized and routinized. An important change, in this context, was that an idea of “development” appeared in the doctrine of the colonial state (Young 1994, 150). Although the independence of African colonies was out of the question for European countries at this stage, the principle of promoting the “well-being and development” of indigenous peoples came to be gradually accepted as an international norm following the conclusion of the Covenant of the League of Nations.<sup>2</sup> Development was also promoted from the viewpoint of fiscal self-sufficiency, as it would contribute to the state

revenue. In this context, African farmers were considered as main actors for development, and their cash crop production was enhanced by the colonial authorities, though white farmers hampered it in the settler colonies such as South Africa and Kenya for fear of the competition (Mosley 1983).

### ***Land Policy under the colonial state***

The evolution of land policy reflected the above-mentioned metamorphosis of African colonial states. During the period of Bula Matari, the land policy was characterized by despoliation, through which vast lands were transferred from Africans to the colonial states, white settlers, and private chartered companies. In the settler colonies, the systematic appropriation of land started in the very early stage. In the colony of Natal, which was proclaimed a British colony in 1843, the colonial government forced Africans to dwell in the native “locations” (i.e., reserves). By 1864, there were forty-two locations with 2 million acres out of the total colonial area of 12.5 million acres. Legally, the rest of the colony was either owned by Whites or held by the government as unassigned Crown lands (Thompson 1990, 97). In those days, Africans numbered at the lowest reckoning more than three hundred thousand, while the Europeans, who numbered less than twenty thousand, owned most of the best land (de Kiewiet 1937,

188). It was in fact a clear precursor of the notorious Native Land Act in 1913, by which all Africans were obliged to reside in the reserves accounting for only 7% of the total national territory. In the case of Kenya, although it was in the inter-war period that the number of European immigrants to the so-called White Highlands markedly increased<sup>3</sup>, huge tracts of lands had been alienated under the Crown Lands Ordinance of 1902 for leases of ninety-nine years (Meek 1968, 79).

While the number of European settlers was limited in the French and Belgian colonies, the spoliation of land was also severe and systematic. The concept of “vacant lands without owner” (“*terres vacantes et sans maître*”) was utilized for this purpose. The model of this policy could be found in the Congo Free State. The Ordinance of 1st July 1885, which was promulgated just after the creation of the country, claimed all “vacant” lands to be the property of the state. Due to this Ordinance, the overwhelming part of the territory was formally transferred to the hand of the colonial government, and then granted to chartered companies for concession. The same system was adopted in the French Equatorial Africa. At the end of the 19th century, almost all the territory of the French Congo (present Republic of Congo, Gabon, and Central African Republic) was divided among 40 big concession companies (Coquery-Vidrovitch 1972). While French West Africa did not see such a massive transfer of land through concession

companies, it was due to the resistance mounted by French merchants, who had already developed their own activities and feared the entry of rival companies into the market.

Since the inter-war period, on a parallel with the change of colonial policy in general, the protection of African land rights came to be emphasized under the “indigenous policy”. Although arguments for the protection of African rights as well as criticism against the massive land spoliation had not been unknown,<sup>4</sup> the inter-war period saw a systematic change in colonial land policies, in recognizing and formalizing customary laws for managing lands in rural areas.

In French colonies, the move was accelerated due to the total failure of the previous development policy depending heavily on chartered companies. The concept of “vacant land” was abandoned, and attempts were made to activate African customary laws by codifying them. For instance, three volumes of customary codes (“les grands coutumiers”) were published in French West Africa (Comité d'études historiques et scientifiques de l'Afrique occidentale française 1939). In British colonies, customary powers were institutionalized in the colonial governance system. The Native Authorities were organized as a body representing traditional indigenous authorities, and they were officially allowed to exercise a wide range of customary powers (Hailey, 1957, 414). In this system of “indirect rule,” traditional chiefs were considered to be indispensable

elements for the social stability of colonies. They had often to be “found” or “created” in some African societies that did not have a centralized political structure. The policy implied that African “tribes” were supposed to be in an organized state, each with its own territory, customs, and leadership (Mamdani 1996, 81). Although customary laws were not codified in the British colonies, the chiefs’ judgments were respected and backed by the colonial authority, thus considerably reinforcing their personal power in comparison with the pre-colonial period. That was the reason why Mamdani (1996) called the system “decentralized despotism.”

### ***State control over society***

Two characteristics can be identified with regard to the state-society relationship in the colonial period. Coercion and oppression were the first feature. Following the conquest, it was imperative for the colonial state to control the African societies and bring order. For this reason, a coercive system to provide security and to extract resources was rapidly established. The extraction heavily depended on a flat-rate poll tax (or hut tax) and labor requisition, particularly in the early stage of the colonial period. The Bula Matari had the capability to seize individual Africans and force them into paying taxes and providing labor. In this context, Africans were deprived of enormous amounts of

land by force as well as by law. However, unlike pre-capitalist Europe and Japan, where the land tax or tributes of agricultural products was a critical component of the state revenue, colonial authorities in Africa could not directly rob African farmers of their agricultural products. The introduction of a land tax was impossible in a society, where the overwhelming majority of people depended on shifting cultivation.

Secondly, the state-society relationship was indirect and multiple. The colonial state established the relationship with African societies through the intermediation of “tribes”. Under the indirect rule, “tribes” were indispensable means of territorial administration and were reorganized for this purpose. As typically shown in the Native Authorities in British colonies, African chiefs were institutionalized within the colonial governance, and were delegated considerable power from the colonial state. Their function was similar to “agencies for the provision of what are usually described as Local Government services” (Hailey 1957, 416). On the assumption that the group shared a common custom, chiefs of the “agencies” were provided with not only political but also administrative and judicial power over members. The legal pluralism thus became a prerequisite for the system<sup>5</sup> because, in addition to the statutory law, each “tribe” or the Native Authority was provided with its own customary law.

It is also important to note that, as agencies for the local government services,

“tribes” were strictly connected to a territory. The colonial authority delegated the power to each Native Authority to rule over a defined territory. The territory had to be clear for the agencies to control people through such activities as communicating administrative orders, providing technical services, adjudicating conflicts, and so on. The Native Authorities, therefore, connected “tribes” to clearly defined territories, of which people was severely constrained from leaving. As a consequence of the indirect rule, the territorial adherence of each ethnic group was considerably reinforced and the ethnic difference came to be inevitably emphasized (Feder and Noronha 1987).

#### **4 Post-colonial African states and land**

##### *Post-colonial African states*

Independence did not automatically establish constructive state-society relationships in Africa. Rather, post-colonial African states have attracted attention because of the predicaments they face. In other words, Africa’s recent difficulties, such as civil wars and economic crises, have been regarded as the results of the state dysfunction (Sandbrook 1985, Bayart 1993). The arguments can be roughly distinguished into two groups. On the one hand, scholars focused on a sharp contrast between “the empirical and the juridical in statehood” (Jackson and Rosberg 1982a). The independence of

African countries could be attributed to the change of international norms rather than to maturity with regard to political economy as the sovereign state.<sup>6</sup> The emergence of the “quasi-states” (Jackson 1990) was an inevitable consequence of the mass-production of sovereign states. On the other hand, the nature of state governance has particularly attracted academic interest. In this context, the personal and patrimonial characters of governance under the one-party rule have been pointed out (Jackson and Rosberg 1982b; Médard 1982; Chabal and Daloz 1999). These studies stress the continuity of the nature of the state-society relationship in post-colonial African states with those in the pre-colonial and the colonial period.

Although the historical continuity has been an important feature characterizing post-colonial African states, huge impacts that the end of the Cold War had on their nature should not be ignored. During the Cold War era, the oppressive and patrimonial nature of African states was tacitly endorsed and protected by the major international powers, as both the Western and the Eastern blocs supported these problematic African countries in favor of their allied politics. While the superpowers were quite eager to hold their allied countries in their own camps, tacit permission was given to the dubious nature of African states. The end of the Cold War induced drastic changes in the attitude of the Western countries. As the Eastern bloc disappeared, the West had no need to take

the Cold War logics into account. Consequently, they instead put forward a new demand for democratization for African countries, which were as a condition of official development assistance. The demand produced dramatic effects on African countries, suffering from serious financial shortage because of protracted economic crises. Although the influence of African social movements for democratization should not be underestimated, it seems safe to say that the conditionality of aid was the main reason why the number of one-party states, which had accounted for two-thirds of all African countries at the end of the 1980s, rapidly decreased and finally disappeared in a few years (Clapham 1996; Bratton and van de Walle 1997).

Needless to say, the abolition of one-party rule did not automatically result in democratization in the true sense of the word. In fact, Africa saw, in the 1990s, the spread of democratic institutions and the frequent outbreak of serious armed conflicts at the same time (Takeuchi 2007). In quite a few among the countries introducing democratic systems, democracy has been fictitious, in the sense that a number of devices invalidating civil liberties have been maintained for the sake of rulers. However, it is also true that there are countries that have positively transformed the state-society relationship in the same period; Ghana and Benin have successfully promoted democracy to date. The end of the Cold War has clearly activated contentious politics in

Africa (Tarrow and Tilly 2007).

### ***Land policy until the 1980s***

While newly independent African countries adopted a variety of land policies, common features were observable among them: the state hegemony over land was legally intact, or even strengthened, after independence. From the legal point of view, lands in African colonies could be categorized into three types: 1) registered lands ensuring private property rights mainly for white settlers, 2) national lands, over which the colonial state had assumed full and direct authority for the disposition, and 3) customary lands, over which reorganized indigenous institutions such as the Native Authorities were delegated the power to control. In settler colonies and South Africa,<sup>7</sup> a relatively small number of settlers occupied vast areas under their private property rights. For many of the newly independent African countries, however, the establishment of private property rights was not the policy priority. For example, in Côte d'Ivoire, although lawmakers adopted a new land law in 1963, which aimed at promoting the establishment of private property rights, the president F. Houphouët-Boigny relied on his prerogatives to suspend the promulgation (Ley 1972, 28). African leaders were generally not eager to rapidly introduce private property rights over customary lands, for fear that it would provoke

social confusion.

The reasons why post-colonial states strengthened their legal control over land were multiple. Firstly, the scope of the state control was enlarged due to the effect of independence. In Burundi, customary lands were simply incorporated into the national land just before independence (Kolhagen 2010), thereby providing the state with the role of trustee of customary lands. Secondly, the resource nationalism had a significant impact particularly in the 1960s and 1970s. The background of the former Zairian land law in 1973 was that the state had the supreme right over the whole national territory as well as the underground mineral resources. Thirdly, the socialist ideology contributed to reinforcing national control over land. Not only the Marxist-Leninist countries like Angola and Ethiopia, but also African socialist regimes like Tanzania, fiercely opposed the promotion of private property rights, which were supposed to exacerbate the economic gap among nationals.

New African states actively intervened in rural societies under the banner of modernization and development, though the results tended to be disappointing. Socialist countries were particularly eager to modernize rural areas. Adopting African socialism under J. Nyerere, Tanzania undertook endeavors to promote rural development. Following the Arusha Declaration in 1967, considerable efforts were made for

villagization. The construction of Ujamaa villages was regarded as the first step to achieve the African socialism. This stage should be succeeded by the formation of collective farms, which finally ought to be the sole agricultural production unit (Nyerere 1968). In reality, however, the construction of collective farms was confronted with strong resistance, and was officially abandoned in the 1980s. Mozambique was another country which sought to implement a radical policy of rural development. In this Marxist-Leninist country, the program of voluntary agricultural collectivization was an important pillar of the socialist policy. The aim of the program has been to gather the dispersed rural population into centralized settlements – known as “communal villages” – and to increase productivity through state farms and cooperatives. Despite advances in the areas of health, education, habitation, and popular political participation, the strategy could not achieve economic success. State farms as well as cooperatives performed poorly, thus leading to the serious decline of agricultural production. Within eight years after independence, the government was obliged to abandon the state-centered rural development strategy (Roesch 1984).

Some countries initiated land redistribution policies at the early stage after independence, though the consequences were rather ambiguous. Kenya was one of such country. Following the negotiation for independence, the government purchased

large-scale farms from white farmers willing to sell their properties to redistribute them to African small farmers. The resettlement schemes were implemented mainly from the 1960s to the 70s, and more than 66,000 African families became beneficiaries (Abrams 1979: 19). However, the redistributed areas were only a limited part of the former white farms, of which the majority was transferred to Africans without being dismantled or remained intact in the hands of Europeans (Leys 1974). While the resettlement has arguably contributed to the growth of agricultural production (Green 1987), it brought about antagonism between settlers and original inhabitants, as many agriculturalist Kikuyu gained the lands and settled in the pastoralist Kalenjin area (see Chapter 6).<sup>8</sup>

Ethiopia was another country adopting radical policy reforms. The socialist revolution in 1974 caused considerable changes in rural society. The overlord system was dismantled and their properties were nationalized; the lands were redistributed to small-scale farmers and landless people; and rural modernization policies including villagization and resettlement programs were implemented. The consequences of the radical land reform in the 1970s were, however, disappointing. The general assessment was that the reform had little or no effects on the improvement of productivity. Moreover, it did not change the basic attitude of the Ethiopian state towards rural society, in the sense that “a command and control approach continues to dominate

agricultural policy” (Abegaz 2004, 321). Although traditional leaders were eliminated in the course of the revolution, the hierarchical state-society relations were generally maintained, as they were only replaced by young party cadres under the socialist regime (Clapham 1988).

After independence, African post-colonial states strengthened the legal control over land, and actively intervened in rural communities. This often resulted in marked changes in rural landscapes. However, with regard to state-society relations, independent African states had a clear continuity with their precursors, as they maintained hegemonic control over society. Even if the states were able to impose policies and change the landscape, they did not succeed in getting the expected results of increasing agricultural productivity. In stark contrast to Asian countries with the experience of the “green revolution,” African agriculture has suffered from continuous stagnation. Also, the states did not succeed in extracting resources directly from agricultural producers. In abolishing the poll tax and labor requisition,<sup>9</sup> post-colonial African states reduced their capacity to take resources out of rural society. According to G. Hyden’s well-known term, the state in Africa failed in “capturing” its peasants (Hyden 1980).

### *Land policies and land problems after the 1990s*

Since the end of the Cold War, many African countries have launched land reform. Factors contributing to the wave of land reform are multiple.<sup>10</sup> Political changes were the most important driving force. In former settler colonies in Southern Africa, Zimbabwe and Namibia gained independence in 1980 and 1989, respectively, and the African National Congress took power in 1994 in South Africa and abolished Apartheid. Land reform was one of the top priorities for these countries. Considering grave social injustice due to the massive land appropriation by white settlers and colonial authorities, it was quite natural that the newly established African-led governments stressed the importance of land reform.

With regard to the land distribution programme, many countries have adopted the “willing buyer, willing seller” principle, under which property rights of white settlers are ensured and only the area that was “willingly” sold can be redistributed to Africans. While the principle has contributed to preventing the drastic outflow of white farmers and social confusion, it has made the progress of the land reforms extremely slow, thus making their fruits intangible for the majority of the citizens. It was mainly for this reason that Zimbabwe abandoned the principle and adopted a more radical method of land redistribution (Fast Track Land Reform Programme) in the late 1990s.<sup>11</sup>

Assessments of the policy change have been highly controversial as well as polarized. Supporters have praised its effects on activating small scale African farmers, while opponents have emphasized the incidental violence against white farmers and nepotism regarding the land acquisition (Cliffe et al. 2011; Pilosof 2012). The “willing buyer, willing seller” principle has been severely criticized also in South Africa, in which the prevailing opinion has been that the land reform has failed in producing expected results (James 2007; Republic of South Africa 2012).

Although it is understandable that the Southern African governments have been quite eager to obtain tangible results from the reform, the land redistribution tends to always be controversial. In addition to the simple fact that transforming a socio-economic distortion that has been formed since the colonization requires a long time, the policy assessment itself may be problematic. As the land redistribution may affect social values relating to land in various ways, policy assessments are likely to be polarized according to political stances with regard to which value should be prioritized. In South Africa, serious debates have continued between those who aim at restoring social identity and social justice through the land distribution and those who prioritize economic efficiency and agricultural development (Leyshon 2009).

Southern African countries are not the only place where land reform policies

have been implemented. Land tenure reforms without land redistribution have been actively carried out in Africa since the 1990s, as more than 20 countries have revised or newly enacted land laws for this purpose (Alden-Wily 2003). As mentioned above, political liberalization in the same period has formed an important background to this trend. In addition, an ideological change in land and property rights should be pointed out. Through influential studies like those by North (1981) and de Soto (1989), the key role of property rights for economic development has been widely recognized. In this context, against the backdrop of a broad consensus on the importance of customary land rights and that of state intervention for their protection (Ostrom 1990; Platteau 1996), recent land laws tend to officially recognize and protect customary land rights, though the concrete measures taken have considerably varied (Deininger and Binswanger 2001; Alden-Wily 2011). For instance, Tanzania enacted in 1999 the Village Land Act, which was characterized by the cardinal decentralization of land administration. The law designated the Village Council, a local body composed of 25 elected adult members of a village, as a land manager in charge of tasks including managing lands in accordance with the customary law of the area, issuing certificates of customary title, and adjudicating land disputes among villagers. The Tanzanian law has been positively assessed as supportive for ensuring common property rights (Alden-Wily 2011).

The recent wave of land (tenure) reforms, aiming at ensuring small farmers' land rights, has been generated in the context of democratization as well as increasing land shortages due to various reasons including rapid population increase.<sup>12</sup> Can the policies provide land tenure security for the majority of rural inhabitants? Can they consequently promote economic development, as theorists of new institutional economics advocate? Considering the short period since the implementation of new land laws, it may be too early to assess the results of recent land tenure reforms. For a better understanding of the attempts as well as their challenges, an in-depth case study would be helpful.<sup>13</sup> In the next section, recent land policies in Rwanda and their background are analyzed. Rwanda has made serious efforts towards the systematic land registration for several years, and will complete the provision of land certificates for all over its territory. We will explore the background of this first experience in Africa and examine its effects and challenges.

## **5 Rwanda's post-conflict state-building and land**

Rwanda is a tiny country in Central Africa. With 10 million people living in an area smaller than Belgium, it is one of the most densely populated countries in Africa. The population is composed of three ethnic groups: the Hutu comprises the overwhelming

majority (more than 80%), while the Tutsi is a minority, and the Twa is an extremely small group of hunter-gatherers comprising around 1%. The three groups share a language (kinyarwanda) and a religions (Christian and Islam), and live in mixture in the hilly country. While the distinction of and hierarchical relations among the groups can be traced back to the pre-colonial period, they were formalized and considerably strengthened as a consequence of the colonial administration,<sup>14</sup> thereby provoking resentment among the discriminated majority, Hutu, and causing violent ethnic clashes at the last stage of the colonial period. The clashes resulted in the collapse of the Tutsi-led political system and the massive outflow of Tutsi refugees to neighboring countries.<sup>15</sup> It was their second generation who organized a Tutsi-led rebel group, Rwandan Patriotic Front (RPF), and invaded the homeland in 1990. Ethnic antagonism in the civil war finally resulted in mass killing, in which at least 500,000 Tutsis were slaughtered in 1994 (Straus 2006). The war came to an end with the RPF's total victory, and consequently massive number of Tutsi refugees, who had been obliged to stay abroad for decades, returned to the homeland.

Winning the war, the RPF carried out a series of radical interventions in lands. Firstly, the massive number of Tutsi returnees were provided with parcels for dwelling and cultivation. Under the policy called "land sharing" (Musahara and Huggins 2005),

Hutu inhabitants were ordered to give up a half of their lands and provide them to returnees without compensation. Secondly, women's inheritance rights for land were officially recognized in 1999. This was a drastic change from Rwandan customary land tenure, in which women had virtually no rights regarding the inheritance of land. Thirdly, following the adoption of the new land law in 2005, Rwanda has made serious efforts forward land tenure reform (Sagashya 2012). The new land law, emphasizing rational and productive land use, made land registration obligatory.<sup>16</sup> A policy of systematic land registration has been launched since the late 2000s with the help of international donors. As a consequence, the demarcation of land plots has been completed throughout the territory, and certificates had been distributed for about half of the plots as of June 2012.<sup>17</sup> This makes Rwanda the first African country that has completed land registration throughout the territory. Positive effects of the land registration including increases in investment have been reported (Ali et al. 2011).

With the policy providing lands for returnees, guaranteeing women's land rights, and promoting the land registration, will Rwanda successfully establish land tenure security and reduce land conflicts? The effects of the land registration should be deliberately examined taking the whole background information into account. Three points are particularly important in this regard. The first one is related to the

arrangement of registration. In Rwanda, registering a land plot under the name of an extended family member is officially recognized. Such a system of registration has enabled the postponement of dealing with the problem of inheritance among family members that is yet to be completed or they have disputes over the division. Without this arrangement, it is certain that an innumerable number of land conflicts would have erupted, as contention about inheritance among family members is the most frequent pattern of Rwandan land dispute (Lankhorst and Veldman 2009). However, this arrangement may exert an unintended effect in combination with another regulation, namely that prohibiting dividing land that is equivalent to or less than 1ha.<sup>18</sup> This regulation makes the official division of land very difficult because the majority of land parcels are already less than 1ha.<sup>19</sup> As it is virtually impossible to ban farmers from dividing their lands for inheritance, the division will surely continue informally. Consequently, the gap between the registered records and the reality of land tenure will be widened. Over time, the informally divided land plots may turn into something similar to the previous customary lands, in which land conflicts among right holders would be quite likely to break out. It may be unlikely that land registration contributes to reducing land disputes among family members.

Secondly, the hegemonic nature of the state-society relationship did not change

in comparison with the previous regime. The victory of the RPF in 1994 led to the collapse of the Hutu-led regime and the establishment of the Tutsi-led regime. Although the RPF government introduced democratic political institutions, their rule has been generally considered as authoritarian.<sup>20</sup> With regard to land, such a characteristic is well reflected in the policy of land consolidation, which is defined as ‘a procedure of putting together small lots of land in order to manage the land and use it in an efficient uniform manner so that the land may give more productivity (sic),’<sup>21</sup> Under this policy, farmers are requested to plant the same crops, such as maize and rice, in designated areas. Although the policy may be advantageous for farmers possessing relatively large plots, those who have only a tiny plot tend to prefer to cultivate a variety of products for subsistence. However, their demands to plant crops that they want have always been rejected. Despite the official statement that it is local farmers who choose the crops to be planted, agricultural officers in the local administration determine them and give no other choice to farmers.

The third point is connected to the Rwandan political stability. While the “land sharing” policy was radical and coercive, it has not triggered massive resistances to date. The fundamental reason that Hutu inhabitants have accepted the policy is that the RPF’s rule has been strong enough to enforce it. Based on military might, the former rebel

group has maintained a virtual monopoly of the state power in the post-conflict period and has so far succeeded in suppressing the discontents (Reyntjens 2011; Beswick 2010). Although the returnees' land rights were officially recognized by the 2005 land law and through the process of registration, they are essentially fragile in the sense that they are basically underpinned by the RPF's coercive power. It is foreseeable that resentment of the Hutu farmers will erupt in the future whenever the RPF rule is destabilized. Property rights guaranteed by enforcement are fundamentally fragile.

Rwanda's post-conflict land policies such as the provision of land for returnees and the land registration agree with the international trends. Securing land rights for returnees has been strongly emphasized in the recent literature on peace-building.<sup>22</sup> There is also no doubt that land registration is one of the most effective tools to ensure land rights. However, historical backgrounds should be taken into account for the deep understanding of a policy. The case study clearly shows that Rwanda's recent land policies have been considerably framed following the historical path. The policy of "land sharing" was adopted exactly because the RPF has the same ethnic affiliation with the Tutsi returnees and it won the war. In this context, one may speculate that the RPF took advantage of the new land law and the land registration to formalize returnees' land rights. While it is difficult to prove such a speculation, the political context is easily

readable in Rwanda's post-conflict land policies.

Rwanda is not a special case. As political philosophers including Hobbes and Locke have argued, property rights need to be endorsed and protected by political authorities, which is, in the contemporary world, the state. It is, therefore, not surprising that property rights tend to be fragile when political order is unstable and that they tend to be biased in favor of state power holders.<sup>23</sup> In other words, the stability of property rights depends essentially on the nature of the state-society relationship. Post-conflict Rwanda has so far ensured land rights in building a strong state capable of imposing rules on society. What is unclear, however, is how far such a rule, based on military power and enforcement, will be sustainable. The long-term stability of property rights would require a sustainable state-society relationship, in which political actors share the rule in order that political power struggles would not turn into serious political violence. The real challenge for Rwanda, therefore, will be to transform the nature of the state-society relationship so as to ensure long-term political stability.

## **6 For the land tenure security in Africa**

Since the end of 19th century, when modern states were established in Africa by European powers, Africans have made tremendous efforts to transform the imposed

states into their own states, with which they can enter into the social contract. After more than one hundred years since then, both African states and the societies have considerably changed. On the one hand, independence and democratization after the end of the Cold War have made African states more responsive to societies. As a result, official land policies have shifted from spoliation to the protection of Africans' rights. On the other hand, in stark contrast with the African societies one hundred years ago, it is totally impossible today to generalize about them being land abundant. Due to various reasons including rapid population growth, frequent outbreaks of armed conflict, and the rising market pressure caused by the heightened demand for foods and bio-energies, African land has become increasingly scarce.

While independence and democratization have contributed to the normalization of the African state-society relationship, land tenure security has not been ensured for many Africans, particularly for small-scale farmers. Rather, because of the eruption of land conflicts and enormous land grabs in rural areas (Anseeuw and Alden 2010; Deininger and Byerlee 2011), their land tenure security tends to be more jeopardized than ever. To tackle the crises, it is of course important to take legal and institutional measures including the enactment of appropriate land laws and the promotion of land registration, for which the international community should provide assistance. However,

it should be reminded that, as this chapter shows, the long-term security of land and property rights requires a sustainable state-society relationship. Considering Africa's turbulent past, which is filled with severe experiences such as colonization, dictatorship, and a series of armed conflicts, a long period of time might be needed before political actors agree to prevent internal violence, and until people really feel that their land rights are secured.

## Notes

- 1 The focus of this chapter is on Sub-Saharan Africa. Hereinafter, "Africa" refers substantially to Sub-Saharan Africa.
- 2 Article 22 of the Covenant stressed this point, in stipulating, "there should be applied the principle that the well-being and development of such peoples (indigenous people in colonies, by the author) form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant."
- 3 The term White Highlands refers to an area located in the uplands in central Kenya. Because of good soil and temperate weather conditions, the British East Africa colony, founded in 1905, encouraged British immigration into the area.
- 4 King Leopold's atrocity in the Congo was fiercely denounced in the UK and the

US in the beginning of the 20th Century (Morel 1906).

- 5 On legal pluralism, see for example Moore (1973) and Griffiths (1986).
- 6 One of the landmarks was the “Declaration on the granting of independence to colonial countries and peoples,” a resolution adopted by the United Nation’s General Assembly at its 15th Session on 14th December 1960 (A/RES/1514(XV)).
- 7 South Africa’s independence in 1910 exerted no influence on the colonial nature of the country. It rather accelerated the racial segregation and thus resulted in the enactment of the Native Land Act in 1913. It was only after the abolition of the Apartheid policy that the country initiated the land reform.
- 8 On this point, see for example Africa Watch (1993) and Hornsby (2012).
- 9 As a symbol of oppression, African new leaders were eager to deny, at least verbally, the colonial state and its administration system.
- 10 The recent surge of land right reform has been marked not only in Africa; rather, it is a world-wide phenomenon (Boras Jr. et al. 2007, Lipton 2009).
- 11 It should also be noticed that the UK government’s virtual refusal of assistance for land reform was an important background of this policy change.
- 12 In 2008, the average population density in 48 African countries was 33.8 persons per square kilometer, while the figures considerably vary from Mauritius (622

persons) to Namibia (2.6 persons). The number might be considered to be modest, as it is not far from that in Europe in 18<sup>th</sup> century. The average ratio of population to arable land in the same African countries in the same year was, however, considerably high, as it amounted to 395.4 persons per square kilometer (calculated from data in World Bank 2011). Africa can no longer be generalized as a land-abundant continent.

13 As a recent attempt of this kind, see Holden et al. (2013).

14 As to the Rwandan ethnic groups and their transformation, see Newbury (1988).

15 This political process has been referred to as the “social revolution”. See Lemarchand (1970) for details.

16 Organic Law No.08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda, article 30. See Pottier (2006) for an assessment of the law.

17 Interview with the Deputy Director-General of the Rwanda National Resource Authority on 1st October 2012.

18 Article 20 of the 2005 land law.

19 According to official statistics, the average farmland per household was 0.76ha; the average number of farm fields per household was four; and the proportion of farm households owning more than 1ha accounted for 20% (Republic of Rwanda 2010:

36).

- 20 International assessments such as the “Freedom in the World” and the “Worldwide Governance Indicators” have continuously pointed out that political rights and civil liberties have been tightly restricted in Rwanda. See their website for details.
- 21 Article 2 of the 2005 land law.
- 22 See the Pinheiro Principles (UN 2005) as well as Leckie (2008).
- 23 This is what Hobbes described in his classical work, *Leviathan*, particularly in chapters 15 and 24. On this point, see also Fitzpatrick (2006).

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