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Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa

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Contemporary discourse on land in Africa is polarized between advocates of tenure reform through state registration of individual titles to land and others who claim that customary or 'communal' tenure is the only check against landlessness among the poor in the African countryside, and that 'pro-poor' land policy should therefore strengthen customary rights to land. This paper draws on a growing body of evidence on the emergence of vernacular rural land sales and rental markets to question assumptions that underlie the non-market 'ideal type' communal tenure model that has historically dominated policy thinking in Africa, and continues to be shared by both sides of the current land tenure reform debate. The paper argues that recognition of the specific characteristics of 'vernacular land markets' – commoditized transfers of land within the framework of customary tenure – is essential if state land policies are to succeed in promoting the interests of the poor.

Keywords: land reform, commoditization, vernacular markets, Africa

INTRODUCTION: LAND POLICY AND CUSTOMARY TENURE

Recent estimates suggest that between 2 and 10 per cent of land in sub-Saharan Africa is held under freehold title (Deininger 2003, 62). Of the remaining 90 per cent, the largest proportion is held under what is commonly termed 'communal' or 'customary' tenure. This means access to land in most of sub-Saharan Africa continues to be determined by indigenous systems of land tenure that have evolved over time under local and colonial influences (Cheater 1990; Bruce 1993; Palmer 2003; Benjaminsen and Lund 2002).

The treatment of customary tenure in land policy has been marked by a dualism between colonial (and post-independence) state and customary authority, and a corresponding dualism between 'statutory' and 'customary' systems of land tenure. The identification of customary tenure with African authority implies a 'pre-colonial' status (and therefore legitimacy) in relation to the statutory

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tenure introduced by European colonial administration. This is despite recent writing that recognizes the evolution of customary systems during and since the colonial period, and that, in consequence, has increasingly abandoned any notion of customary tenure as a code of fixed rules of pre-colonial provenance (Baland and Platteau 1996; Ribot 1999; Lavigne-Delville 2000; Woodhouse et al. 2000a; Benjaminsen and Lund 2002; Woodhouse 2003; Peters 2004). This is most comprehensively argued in Mamdani's (1997) model of the 'bifurcated state' which perceives *all* contemporary African customary authorities as a legacy of the *colonial* experience of indirect rule that constructed for Africans a rural, tribal identity under chiefly authority as a means of political and administrative control.

Despite this understanding of customary authority as integral to state formation in Africa, neo-liberal interpretations of development prevailing in the past two decades, which invariably cast African national governments as culpable for development failures, have encouraged some to present customary authority as a more legitimate 'non-state' alternative that promises equity and security of access to land for the poor. Policy on customary land tenure may be understood in terms of two principal viewpoints. The first of these, espoused for some years by the World Bank (1975) and recently given renewed prominence by de Soto (2000), identifies ambiguity and negotiability of rights under customary tenure as characteristics that lead to low rates of productivity-enhancing investment. To the extent that customary rights in land cannot be used as collateral against loans from the formal banking system, land held under customary tenure is argued to be 'dead capital' (de Soto 2000). This position, underlying many African government plans for tenure reform, usually advocates some form of adjudication to convert customary rights to state-recognized property right. Although the current World Bank position envisages registration of group rights as a possible first step in such a process, it is clear that it expects this will be followed eventually by individualized property right formalized in a written title to physically-demarcated land, transferable through a market, along the lines adopted in Kenya (Deininger 2003, 79).

A second position advocates recognizing and reinforcing customary rights to land (IIED 1999; Toulmin and Quan 2000; Toulmin et al. 2002), and generally opposes land title registration – particularly individualized title – on the grounds that it favours the wealthy, who are best placed to deal with the bureaucratic procedures involved, and generally blocks any registration of land title in a woman's name. Proponents of this position also argue that one justification for registration, that it allows land to be sold and hence to be used as collateral for loans to finance improvements in productivity, is not supported by empirical evidence, which shows no difference in rates of farm productivity across different forms of land tenure (Migot-Adholla et al. 1991). Conversely, they argue that development of a land market opens the possibility of distress-sales by the poor in times of hardship, thus accelerating social differentiation and landlessness among the poor. Finally, this position argues that land titling generally involves registration of only primary (i.e. cultivation) rights and excludes secondary or seasonal rights (e.g. to grazing, firewood and wild food gathering) that are likely

to be important 'safety-net' rights for the poor under customary tenure (Shipton 1992; Toulmin and Quan 2000). As a consequence, land titling is believed to be detrimental to the poor. For advocates of this second position, then, the flexibility (or 'negotiability') of access to land through kinship under customary law offers the possibility of re-allocation of land to poorer community members on the basis of need, and the consequent ambiguity or non-final character of customary rights is thus not a source of insecurity, but a positive feature that ensures continuing access for the poor. Recent work has begun to re-assess the distributive effects of customary land tenure, particularly in relation to women's access to land (Whitehead and Tsikata 2003; Peters 2004; Claassens 2005), to the extent that this can be identified as a key issue in African land tenure policy, and one to which we return in this paper.

However, the two opposing positions outlined have in common an assumption that access to land under customary tenure operates according to non-market principles, differing only in the negative or positive consequences that they identify as following from this. In this paper we argue that market-based access to land has been evident for more than a century within the framework of customary land tenure in Africa, and that it is of growing importance in many parts of Africa today. These processes of *de facto* commoditization of land sit uncomfortably with land policy informed by stereotyped non-market ideals of customary tenure, illustrated in this quote from a school boy from Sobantu in South Africa (Lambert 1999, 1).

> I do not believe people should be allowed to buy and sell land . . . The land is a gift from God to the People. It is not like a house. A house is made by man's effort; land is not. That's why the land should not be for sale. I would not pay even a shilling for it. The land is my blanket. I wear it like my ancestors wore it.

The paper argues that to be effective, land policy in Africa must recognize the nature of these 'vernacular' land markets and their implications for agricultural and social change. The paper first traces the non-market identity attributed to land under customary tenure in Africa, and the historical and contemporary evidence of markets for the sale and rent of land. It then identifies factors that drive the development of vernacular land markets in Africa, and the characteristics that differentiate them from 'formal' or statutory land markets. The paper closes with a discussion of the implications for land policy.

IDEALIZED 'COMMUNAL TENURE'

Colonial understanding of customary tenure in Africa drew on descriptions by European explorers, hunters and missionaries and later colonial administrators and commissions of inquiry into 'native' land tenure systems. Berry (1993) has argued that recorded customary laws were often reconstructions mediated by tribal chiefs keen to gain status under colonial administration. In some cases reports were biased to enhance European settlers' claims to land (Cheater 1990;

Chanock 1991; Ranger 1993; Peters 2004). Despite their variable quality, these early accounts profoundly influenced colonial policy and continue to inform contemporary narratives on customary tenure systems. Key features of these narratives are:

- that land rights are vested in current tribal or lineage leadership by virtue of lineage ancestors' claims on land through first clearance and settlement, or conquest;
- that individuals claim usufruct rights to land through membership of lineages, with such rights normally being inherited by sons or nephews;
- that land is inalienable from the lineage, reverting to the control of lineage leaders in the absence of individuals who wished to exercise inheritance rights;
- that inalienability and re-allocation processes within customary tenure protect the access to land for poorer members of lineages in a flexible and efficient way, without need of land registry or cadastral surveys.

This model of customary tenure generated a spatial manifestation of the 'tribe' as a form of social cohesion with its own values and aspirations, identified, particularly in the settler colonies of southern Africa, as 'reserves', 'communal lands' and, ultimately in South Africa, bantustans. Accounts of the governance of these lands vary. A Christian missionary, writing on pre-colonial Zimbabwe, suggested that 'the king . . . being the owner of the country, and also of the people, can dispossess a farmer of his farm, or a man of his corn field, can make a present of it to whomsoever he likes; nor can anyone venture to remonstrate' (Thomas 1873, 248, quoted in Cheater 1990). Other colonial accounts tended to emphasize the collective control of land. An often-quoted phrase attributed variously to a Nigerian or Ghanaian chief declares that: 'land belongs to a vast family of which many are dead, few are living and countless numbers are still unborn' (Chanock 1991, 64). Holleman (1952, 12) writing on the Shona of Zimbabwe declared 'the unity of the tribe and land is a natural conception . . . based economically on the fact that the tribe depends exclusively on its own territory for its subsistence'. Gluckman (1945, 204) regarded land under African tenure as belonging to defined lineages of related households, and entrusted to what he termed 'lineage corporations' in which the tribal chief was viewed as the chief executive.

Whatever the accuracy of these statements as descriptions of pre-colonial tenure systems and practices, Cowen and Shenton (1991) have argued convincingly that they must be understood in the light of British colonial thinking that was heavily influenced by nineteenth-century Liberal concerns to mitigate the growth of urban unemployment as the pace of industrialization declined: 'The attempt to expand rural employment was designed to forestall any further increase in the rate of migration from the countryside and thereby reduce urban unemployment' (Cowen and Shenton 1991, 148). With the election of a Liberal government in Britain in 1906, concerns to avoid migration from rural areas became central to British colonial administration in Africa, and maintenance of 'community' control of land was a principal means to that end:

> Colonial administrators such as Percy Girouard and Charles Temple were convinced that . . . 'land belongs to the community and not to the individual'. As such, no African landholder had the right to transfer land privately, whether to non-African individuals or companies or to other Africans. Temple emphasised 'alienation of African land to the white capitalist is not the greatest danger', reckoning that 'a far greater danger lies in the acquisition of large estates by individual African natives' because the result is the same: the privileged few can live on the product of the labour of the many'. (Cowen and Shenton 1991, 162)

These arguments were consistent with a key element of indirect rule under colonial administration, which, in order to maintain social order (and a means of control over labour supply and tax collection), in many instances suppressed Africans' participation in land markets (see below) and ensured that they were able to obtain land only through allocation from tribal authorities: 'acceleration of progressive individualization may hasten the disintegration of the present social structure and thus weaken the basis on which the institutions of local self government are now being built' (Hailey 1946, xix). Although these arguments are most commonly associated with 'indirect rule' under British colonial administration in Africa, it is also the case that under both French and Portuguese administration, outside government-managed development projects (e.g. the Office du Niger) formal, legally-recognized land titles were largely restricted to owners of land in urban areas and European-owned businesses, while land allocation to Africans in rural areas remained in the hands of local customary authorities.

Concerns about low productivity in African farming, and evidence of poverty and land degradation in many rural areas in the 1930s, brought an increasing challenge from what Cowen and Shenton (1991) have termed 'Fabian Colonialism', which sought to achieve a state trusteeship that could promote commodity production by African 'yeoman' farmers by providing investment, infrastructure and market regulation so as to deliver economic progress without social and political disruption. Within this vision, the 'communal' character ascribed by colonial administration to customary land tenure was seen as an obstacle to development. For example, and anticipating current positions, Lugard (1941, quoted in Meek 1946) argued that individualization of tenure and registration of title over land was needed to promote long-term investment through provision of collateral security for credit. It was also argued that individualization of tenure would facilitate better adoption of technology and encourage a general shift from subsistence to cash cropping. These ideas became central to linear models of agrarian change and social transformation characteristic of modernization thinking that prescribed a general evolution from communal to individual tenure under pressure of markets and population growth (Hailey 1946; World Bank 1975).

In practice, however, little was done to challenge the 'communal' identity ascribed to customary tenure, even in Kenya where, in the aftermath of the Mau

Mau insurrection, the Swynnerton Plan advocating adjudication of individual land titles (or group ranch titles in pastoral areas) was implemented from the late colonial period (1950s) to the 1970s (Okoth-Ogendo 2000). Elsewhere, the significant post-independence shift in land tenure policy was the assertion of the primacy of national state ownership rights over land, and associated government powers to expropriate existing land users in the national interest. A small number of populist regimes (e.g. Mozambique, Tanzania) pursuing a modernization agenda saw customary authority as an obstacle to agrarian reform and sought to replace it with elected local authorities (see also Ranger 1993, in the case of Zimbabwe). With the possible exception of Tanzania (Alden-Wiley 2002), where elected village councils remain the local authority over land allocation (see also Daley 2005a, 2005b), these efforts have been reversed, and most post-independence states have maintained a strategic ambivalence to customary tenure. Calls to preserve 'an African way of life' embodied in customary tenure can serve the politics of nation-building, as well as instrumentalizing 'custom' and 'tradition' to maintain effective control of the countryside. Until the end of the twentieth century, post-independence reform of customary tenure was in many cases negligible. Arguably, this was not only because such reforms carried risks of alienating influential political figures in the countryside[1] (particularly where these had been enlisted as providing a 'pre-colonial' legitimacy to campaigns for independence), but also because government's ability to expropriate land was better served by the maintenance of customary tenure as controlled by tribal authorities than by any reform that provided statutory recognition (and need to negotiate compensation) for individual users' rights (Chanock 1991). As a consequence, post-independence government carried forward the 'bifurcated state' (Mamdani 1997) from the colonial era, with land tenure mostly understood in terms of land users' membership of local kinship structures, except where national government wished to override those rights. Central to this conception of customary land tenure is that it provides a barrier against the emergence of land markets entailing the commoditization of land.

CUSTOMARY LAND TENURE IN PRACTICE

An important feature of the version of customary land tenure in Africa discussed in the previous section is that its identification, by both supporters and detractors, with enduring qualities of 'African' social organization presents an essentially static social model. Empirical evidence, however, suggests that this ignores processes of change and sources of diversity even in pre-colonial societies that, while subject to varying interpretations, may explain some of the dynamism in land rights regimes apparent in Africa today (see Illife 1982). Leaving aside the broader issue of the relative weight of agriculture in pre-colonial African societies, it is clear that in the nineteenth century and early twentieth century African

[1] As argued in the powerful comparative analysis of Ghana, Senegal and Côte d'Ivoire by Catherine Boone (2003), reviewed by Tom Young in *Journal of Agrarian Change* 5 (1), 2005.

farmers were actively engaged in expanding agricultural output in response to new local and international markets. Two of the more detailed, and most influential, historical accounts – Hill's (1963) study of the origins of cocoa farming in Ghana in the first two decades of the twentieth century, and Bundy's (1979) work on African farming in South Africa before the 1913 Land Act – show quite clearly the rapid evolution of land markets. (Migrant) Ghanaian cocoa farmers formed syndicates to purchase from chiefs tracts of forest which they then cleared for cocoa farms. The South African peasants supplying food to mining towns were able to purchase titles to the land they farmed, titles that subsequently presented significant obstacles to the removal of their descendents from the land (known as 'black spots') by the apartheid regime. Archival research in Zimbabwe has also uncovered the proposals from chiefs to the 1924–25 Land Commission to buy their own reserves in order to secure permanent title to the land (Cheater 1990, 193). In each case African participation in land markets was suppressed by colonial authorities in order to maintain African access to land only through non-market channels controlled by customary, and thus, ultimately, colonial, authorities.

There is therefore evidence that the non-market nature of customary tenure in Africa, to the extent that it exists, is as much a colonial construction as it is rooted in any essentially African value system. Lund (2000) concludes that there is widespread evidence of land markets operating informally, and in some contexts illegally, under present-day customary tenure regimes. Although land sales are often accompanied by procedures to ensure local recognition of the transaction, such as written and witnessed documents (see below), Lund argues that they form part of a continuum of weaker or stronger claims to land that may extend to alienation by sale, and in which the formal (statutory or customary) terms of tenure play a contributory, but not determinant, part. The interplay between market and non-market interpretations of custom has been illustrated in case studies throughout Africa (*inter alios* Woodhouse et al. 2000b; Benjaminsen and Sjaastad 2002; Mathieu et al. 2002; Woodhouse 2003; Daley 2005a, 2005b).

Associated with this, at least partly commoditized, access to land is the evidence for individual rather than 'communal' control of land under customary tenure. Gluckman (1945, 204) objected to the use of the term 'communal tenure' since 'the only aspect of African land tenure that can be called communal is the right of every citizen to a certain minimum use of tribal land'. This view is also supported by Simpson (1954, 52) who maintained that 'when the so called usufructuary can use land for any purpose and his right to do so is both heritable and alienable there seems little to distinguish it from individual tenure in the European sense'. However, the advance of (more) commoditized access to land brings with it an increasing individualization of control of land and in some instances its alienation from any form of customary authority, amounting to effective privatization of land.

The current divergence of realities of land access under customary tenure in Africa from the non-market 'communal' stereotype that informs land policy are such that it may be possible that commoditized access predominates under

customary authority in some areas, as suggested by recent case studies in Benin (Edja 2001) and Ghana (Amanor and Diderutuah 2001). Seventy-five per cent of women in the villages studied in Benin were farming rented land, and for 40 per cent of them all the land they cultivated was rented. In the southern Ghana case, two-thirds of farmers obtained access to land through sharecropping, and for nearly half of all farmers the 'share' rent to the landholder had increased (from one-third to a half) under conditions of increasing land scarcity. Similarly, in a study of a village in Iringa region of southern Tanzania, Daley (2005b) found that, from 1997 to 2000, 54 per cent of land transactions were market transfers (31 per cent rental and 23 per cent sales), which she estimated involved one in every four households in the village. However, despite their prevalence, such commoditized forms of access to land remain encumbered by customary tenure, and the tensions it generates, and land transactions in *de facto* or 'vernacular' land markets have no statutory protection, exemplified in the position of Tanzanian government officials that 'Here in Tanzania we don't sell land' (Daley 2005b, 526). Next we explore further the dynamics and characteristics of vernacular markets in land.

DRIVERS OF VERNACULAR LAND MARKETS

We suggested above that although market-based land transfers have been observed in Africa for more than a century, there is evidence that the commoditization of access to land is now both more common and increasing. A number of authors have made a similar observation, although they do not agree on the causes of this dynamic. Basset and Crummey (1993) argue that scarcity and competition for land has transformed customary tenure in a significant way. Peters (1984) shows that in Botswana competition for grazing land (and water) effectively ended notions of customary lands as governed by a unitary tribal corporation, to be subject to contested customary claims by several competing interest groups of families or individuals (see also Berry 1993; Ranger 1993; Peters 2004). It is common to ascribe increasing scarcity of arable and grazing land to population growth, and a linear process of change in property relationships driven by a rising person–land ratio (Boserup 1965; Hayami and Ruttan 1985; Platteau 1996). While it is undoubtedly true that population in sub-Saharan Africa has grown, and the overall growth of land markets can be attributed to increasing land scarcity, the development of vernacular markets is very uneven and can only be understood in terms of locally specific dynamics of social and economic change. More specifically, commoditization of land can be understood in terms of markets for labour and agricultural output.

Historically, vernacular land markets have been associated with expanding export markets for agricultural output, such as tree crops like cocoa in West Africa (Hill 1963; Berry 1993), or with expanding food markets due to urban and industrial growth. Strong markets for agricultural commodities remain a key element of recent land markets, for example, the growth in demand for horticultural produce in rapidly urbanizing parts of Africa (Wiggins 2000; Woodhouse

2003). The shift in emphasis from 'traditional' export-oriented agricultural commodities, such as coffee and cocoa, to food commodities for African urban consumption means that commoditization of land is above all driven by the market for labour. This is because intensity of demand and competition for land depends critically on the movement of people into, or out of, a particular area. The mobility of rural population in Africa is at variance with, and consistently underestimated or regarded as aberrant by, persistent stereotypes of a highly stable (not to say static) African rural society constituted by tight-knit communities rooted in their respective 'tribal' homelands. In practice, the nature of labour markets and movements of population are critical in determining the connections between local demand for land, demand for agricultural commodities and investment in raising agricultural productivity.

In some rural areas these processes date back to at least the early decades of the colonial period. One of the first impacts of the engagement of African farmers with wider market systems was their integration into labour markets, and Africans have historically migrated to seek improved income-earning opportunities. Thus, in many parts of southern and West Africa, migration of younger men has for generations been an essential step in acquiring the cash to establish themselves in farming (First 1983; Low 1986). Migration destinations have included both urban and industrial employment and farming zones with higher levels of commodity production. Two consequences followed fairly immediately. The first was the opportunity for younger men to leave the large kinship groups through which agricultural labour was primarily organized (Haswell 1963; Toulmin 1992) in order to set up their own households. Quan (1997) argues that individualization of holdings has been identified alongside a devolution of control from the lineage to small farm households, and an associated fragmentation of the organization of agricultural labour. The second, linked, effect of migration was the provision of a source of cash for investment in farming. Many writers have highlighted the importance of non-farm income for people in rural areas (Reardon 1997, 1998; Barrett et al. 2001; Ellis 2000; Bryceson 2002; Canagarajah et al. 2001). Evidence has accumulated that where financial services are poorly developed, and credit may be scarce, non-farm income is the main source of investment for raising farm productivity (Collier and Lal 1986; Evans and Ngau 1991, Reardon 1998; Lanjouw and Lanjouw 2001), and a key factor determining agricultural surpluses (Wiggins 2000, 638). Thus, growth in opportunities for wage labour increases the availability of cash for investment in land, as shown in Tiffen et al.'s (1994) and Murton's (1999) studies of hillside terracing in Machakos, Kenya. In Lesotho, vernacular markets in rural land rentals and sales have grown largely as a result of cash generated by migrant labour in South Africa rather than the local rural labour market (Selebalo 2001). In cocoa-growing areas of West Africa, where there has long been a significant rural labour market, the emergence of the vernacular market in land rental and in some cases land sales has been linked to a logical progression beyond long-standing sharecropping contract arrangements between owners and farmers of cocoa plantations (Kasanga and Kotey 2001; Amanor and Diderutuah 2001). Some migration patterns were

well-established by the middle of the twentieth century, for example, from the Sahel to the cocoa-growing zones of Ghana and Côte d'Ivoire. Many more have been established since, and are now common throughout the continent, with people seeking better land, or fleeing insecurity or declining land availability in their areas of origin (Peters 2004). Migrants are also increasingly seeking permanent settlement so that 'autochthonous' holders of customary land rights sometimes become a minority among a predominantly immigrant (or 'stranger') population, as reported by Southgate and Hulme (2000) in Kenya's Maasailand, and by Woodhouse et al. (2000b) for Mali.

Much of this literature suggests migration has fuelled growth in land markets, with holders of customary land rights increasingly resorting to rental and sharecropping arrangements with the large numbers of 'strangers' from other nationalities or ethnic groups on the move. Daley (2005a, 2005b) charts the commoditization of land accompanying rapid influx of population in a Tanzanian village as a consequence of the growth of a nearby timber industry and administrative centre. Moore (1998) has shown how Mozambican refugees accessed land in the border regions of Zimbabwe through payments to tribal chiefs. In Zimbabwe, migrants from Zambia and Malawi working on mines and farms in the 1960s helped fuel the commoditization of land transactions. Upon retiring from wage employment in mines and farms most find they cannot return to their home countries and equally find it difficult to access land under state schemes. They therefore often resort to the vernacular market to gain a foothold in rural land holdings, especially in frontier districts (Chimhowu 2002). Vernacular markets are the most direct way for foreign nationals or even 'internally displaced people' (see cases in Uganda documented in UPPAP 2002) to access land in rural Africa. In the absence of formal land markets, and lacking the tribal or 'kinship' entitlement to customary land, vernacular markets offer an initial entry point through land rentals and in some cases land sales.

Conversely, rural–urban migration may also increase the *supply* of land in vernacular markets as migrants leave their land, often in the care of kin who may have insufficient labour to farm it themselves (Sjaastad 2003). Renting land to 'outsiders' provides landholders with a means to retain control of this 'surplus' land against claims on it from other members of the local community (Francis 1984; Woodhouse et al. 2000b).

The continued malaise of productivity in many rural areas has been associated with unprecedented levels of urbanization (Rakodi 2002). To the extent that a statutorily recognized market in land exists in many African countries, it operates primarily in urban areas. However, rapid urbanization means that demand for land for housing in peri-urban areas has prompted markets for land that is often under customary tenure. Since this is often inefficiently regulated by planning authorities, such transactions tend to take place through a vernacular land market (Abudulai 1996; Antwi 2002; Benjaminsen and Sjaastad 2002). Apart from land rentals, households can purchase land on which to build housing structures that may or may not be in line with planning authority regulations (Magni et al. 2002). In a study of Domboshawa Communal Lands near Harare in

Zimbabwe, Saruchera (2000) has shown how the influx of mainly low-paid urban dwellers has encouraged the growth of a vernacular land rental and sales market that has created stiff competition with land used for cultivation. Land under customary authorities in peri-urban areas therefore tends to be subject to the most active vernacular land markets in Africa, offering lucrative opportunities to customary rights holders. This is also the context in which alienation of land from customary control, through land sales, is more likely to be permanent, despite the litigation that community members may mount to contest land deals made by chiefs and other customary leaders, ostensibly on behalf of the community, as documented for Ashanti region in Ghana by Kasanga and Kotey (2001).

The discussion above indicates that different dimensions of labour markets are key to understanding the commoditization of land in specific places. Labour markets (or their absence or collapse) generate both movements of people, registered in the 'pressure' of potential land users in a given location, and flows of cash for investment in buying land or in raising its productivity. It needs to be noted, however, that the value of land, and hence its commoditization, may also be altered by changing circumstances. New infrastructure, such as roads or irrigation which make it possible to produce and sell more agricultural output, is likely to increase commoditization. The same effect can result from new technology, a relaxation of land use rules or relaxation of enforcement. In Zimbabwe the introduction of new farming techniques on natural wetlands (*dambos*) and the subsequent relaxation of wetland conservation regulations has seen increased competition for these valuable patches of land in communal areas (see Bell et al. 1987; Sithole 1999). Similarly, Woodhouse et al. (2000a) and Woodhouse (2003) show how availability of water or changes in water management regimes in parts of West, East and South Africa may spur competition for land as both locals and outsiders attempt to exploit the new opportunities they present.

Having identified the forces driving the commoditization of land we now turn to examine the characteristics of vernacular land markets in Africa.

CHARACTERSTICS OF VERNACULAR LAND MARKETS

A recent World Bank policy paper observed of land policy in Africa that 'the gap between legality and legitimacy has been a major source of friction, something that is illustrated by the fact that often more than 90 per cent of land remains outside the existing legal system' (Deininger 2003, xxiii). The last part of this statement can be questioned on the grounds that, as the same report later acknowledges, customary tenure is recognized as a legal category of land rights in many African countries (Deininger 2003, 63). A more accurate statement is that the 90 per cent of land under customary tenure lies outside state-registered property, and, by implication, the 'legal' land market. This counterposing of legality, or state recognition of property, against legitimacy, derived from 'social embeddedness', of land rights, reproduces the familiar dualism between state/market and customary/non-market in African land policy that we identified at the beginning of the paper, and to which we return in the next section. First,

however, we explore in more detail how participants in vernacular land markets seek to achieve legitimacy and/or legality for their sale, purchase or rental of land.

As far back as the 1940s some writers on communal tenure in Africa reported 'ample evidence to show that the practice of sale has already become common . . . in spite of the fact that earlier custom admitted only of the pledging not of the sale of rights in land' (Hailey 1946, xiv). However, the lack of legitimacy of such rights meant that 'holders of usufructuary rights in land are now endeavouring to convert them into independent titles and are arming themselves with bogus deeds often obtained from bogus lawyers at considerable expense' (Meek 1946, 9). Legitimation of property rights to land acquired in vernacular markets continues to seek ways to mimic the sources of legitimacy of property recognized by the state. In particular this involves the use of written documentation. Mathieu et al. (2002) have shown how buyers and sellers in Burkina Faso sometimes ask government officials to witness a land transaction by placing an official stamp on a document. Although the resulting document has no legal standing, the stamp adds a veneer of officialdom to the transaction and is perceived as aiding enforceability of contract, particularly since disputes are likely to be arbitrated in formal – if customary – courts.

Recourse to documentation reflects the growing interaction between vernacular and formal land markets. Rakodi and Leduka (2004) concluded from a study of six African cities that vernacular markets (which they call informal markets) usually serve as an intermediate step into formal land markets, especially in peri-urban zones where municipal authorities may run 'regularization' schemes. In such schemes residents of informal settlements are issued documents authorizing their occupation of residential plots as part of efforts to register population and organize administrative structures. Such documents may ultimately be converted into full private property rights, albeit through procedures that are often onerous. Moreover, where government policy is ambiguous with respect to private ownership of land purchased under customary tenure, as in the case of Daley's (2005b) study of land transactions in Tanzania, processes of state registration of individual claims to land offer opportunities for rent seeking by the officials concerned.

However, whatever the legal standing of documentary evidence of land ownership, in many cases documentation does not prevent the legitimacy of land purchases being contested by those with prior claims based on kinship or ethnicity, particularly in cases where the purchaser is an immigrant (cf. Gray and Kevane 2001, in Burkina Faso). Mathieu et al. (2002) have shown that both purchaser and seller of land may wish to seek to legitimate the commodity nature of their transaction by disguising it as a 'loan' of land under customary tenure. However, at the heart of these processes lies the question of what is being bought or sold. How far does the sale of land constitute an irrevocable alienation of the land from customary control? This question is difficult to answer, particularly since under customary authority it is generally the case that an occupant's rights to continued use of the land are strengthened by investments to improve the land. Indeed, individuals' strategies to strengthen their claims to

land under customary tenure may involve investments in land improvement, through manuring, tree planting, infrastructure (e.g. wells, irrigation) or buildings. Sjaastad and Bromley (1997, 553) argue that certain types of investment in land are a legitimate way of claiming more secure rights to the land, and that, whatever their formal rights over the land itself, land users have the right to recover those investments, when giving up the land, by selling the improvements they have made.

Two points follow from this argument. Firstly, it undermines the assumption of proponents of land titling schemes, that formal title is needed to provide tenure security that would allow households to mobilize this otherwise 'dead capital' in the form of collateral security for loans to finance investment to increase productivity. Secondly, it suggests that, where the legitimacy of their purchase of land is in question, land users will invest to reinforce their claim to it. Empirical evidence suggests that in many cases building brick houses, irrigation infrastructure, tree-planting and continuous use of land are in reality ways of securing land in many regions of Africa. Migot-Adholla et al. (1991, 269) have shown that in Kenya and Ghana a major consideration for such investment is the ability of the occupant to bequeath the land to offspring, an aspect often guaranteed under communal tenure arrangements. However, a further implication of this pattern of enhancing the legitimacy of claims over land is that, unless land users' investments in land improvements are easily removable from the land itself, the principle of transferability (through sale or rent) that applies to those improvements will inevitably tend to apply to the land itself (Sjaastad 2003), so that investment in improving the quality of land will tend to accelerate the formation of a land market. In summary, therefore, while the legitimacy of land commoditization may be insecure under customary tenure, norms and patterns of investment behaviour consistent with customary tenure will tend to reinforce, rather than weaken, the commodity nature of land.

We argued earlier that the mobility of labour was a principal factor driving commoditization of land in Africa, and the literature suggests three categories of buyers. A first group derives from a new generation of what Berry (1993) calls the 'new big men' of rural Africa. Using income earned from a full-time job and the knowledge and influence gained from bureaucratic and political offices and/or experience, they usually buy land to take advantage of new opportunities in agriculture. Seeking land in communal areas is one way of gaining access to land without the cost of official registration and other procedures of formal land markets (Mamdani 1987). A second group consists mostly of migrants who, lacking any customary land rights in the areas to which they have moved, usually resort to vernacular land markets to buy or rent land (Woodhouse et al. 2000a). The third group usually consists of those with rights to land through kinship but, where land is scarce, have to resort to land purchase or rental, often from a senior male relative with land to spare. Although buying or renting from a relative, they still pay the going market rate (Amanor and Diderutuah 2001).

Land sellers in customary areas are generally more difficult to identify than buyers (Daley 2005b), in part due to the possible contestation of land sales by

others, notably kin, able to press competing customary claims to the same land. Key sellers of land are what Berry (1993) has described as 'senior African men' who control customary land in Africa: tribal or lineage heads whose authority over land derives ultimately from prior claims of ancestors through first settlement and cultivation, or through conquest. Typically regarded as gatekeepers in the vernacular land sales market, they are often called upon to sanction sales or to approve named individuals as purchasers, even where land allocation responsibility is vested in other agencies such as the Land Boards in Botswana or village governments in Tanzania.

A key indicator of commoditization of land is the transition from the 'gifts' historically expected as tokens of acknowledgement of customary authority and of anticipated reciprocity, to payments more closely related to exchange values of the land. This is not always easy to define, but Sjaastad (2003) has argued that, although land transfers based on market exchange derive from quite a different set of values from those of reciprocity, it is possible to understand a transition from one to the other. In particular, the increasing weight placed upon cash, relative to symbolic elements of exchange, and an increasing precision in the 'seller's' expectation of what they should receive (e.g. a share of the crop) are indicators of a shift to market exchange. Growing empirical evidence also indicates that explicit sale and alienation of 'communal' land by customary chiefs is more likely to occur in certain circumstances notably in peri-urban areas (Abudulai 1996; Kasanga and Kotey 2001; Benjaminson and Sjaastad 2002). In this they may be responding not only to changing economic constraints and opportunities, but also to political (in the sense of policy) intervention by the state. This is graphically illustrated by a recent study of the rapidly-growing towns of Koutiala and Sikasso, in the 'cotton boom' region of southern Mali, in which Benjaminsen and Sjaastad (2002) concluded that local government pressure for appropriation of customary land for urban housing is a factor prompting customary leaders to 'cut their losses' and sell land rather than wait for lower levels of compensation following state appropriation.

The consequences of the development of vernacular land markets are of concern from two perspectives. First is the general observation that commoditization of land inevitably works to the disadvantage of those with lower purchasing power, thus threatening reduced access to land and potentially further impoverishment for the poorer among existing land users. Second, and amplifying the first, is the concern that vernacular land markets are 'socially embedded' within the social relations of contemporary African rural society, while 'increasing competition and social conflict around land and landed resources across Africa belies the assumption that socially embedded systems of landholding and land use guarantee access' (Peters 2004, 305).[2] The social embeddedness of vernacular land

[2] Peters' view that contestations of such 'socially embedded' rights both reflect and reproduce (intensify) social differentiation, hence unequal outcomes ('winners' and 'losers'), contrasts with Berry's (1993) influential interpretation that such contests encourage indefinite renegotiation and thus generally do not generate unequivocal or fixed outcomes.

markets means that those with greatest influence over land under customary tenure (tribal chiefs and heads of patrilineages) will be best placed to gain from the commoditization of land through sales and rents (Bernstein and Woodhouse 2001; Woodhouse 2003).

The impact of vernacular land markets varies in different parts of Africa. For example, the differences between the colonial economy in West Africa and South Africa meant that the 'non-market' nature of customary tenure was more energetically promoted by governments on the 'communal lands' to which Africans were confined in the southern African colonies. This is not to say that land markets were seen as unproblematic by administrations in West Africa, nor that, despite the widespread operation of land sales and rental markets today, their operation remains uncontested, as Kasanga and Kotey (2001, 17) observe in their study of peri-urban villages of Ashanti region: 'There was hardly any village not engaged in litigation either with a rival village or within the community, where local people are battling with the customary custodians of land for accountability in respect of land disposals.'

However, it is in southern Africa that an accelerating trend towards market-based land allocation by customary leaders marks a radical break with idealized understandings of customary tenure. More specifically, Selebalo (2001) has documented the emergence of vernacular markets for communal land in Lesotho as population increase triggers competition for scarce land. Households with access to remittance income from migrant labour have sought to expand their portfolio of land by either renting extra land or 'purchasing' rights of access to farmland from both traditional leaders and individuals. In Swaziland, an informal market has emerged for the re-allocation by tribal leaders of land formerly farmed by AIDS victims. In South Africa, Magni et al. (2002), in a study of Folweni in Kwazulu Natal, show how the HIV/AIDS epidemic has generated 'distress' land transactions, as afflicted families unable to work their land start by renting it out and then sell it when debts rise or when the (typically male) owner dies. In this new dynamic, disguised commoditization of communal land, spurred on by a new disease epidemic, is working against poor and vulnerable groups, and in particular the widows of AIDS victims (Drimie 2002).

Werner (2001) has shown how *de facto* 'privatization' through fencing of 'communal' grazing land by wealthy and politically-connected cattle owners in Namibia has effectively seen the excision of communally owned land. In South Africa, Claassens (2005) documents how individuals can 'buy' land held under customary tenure from the *indunas* (chiefs) for a fee ranging from R300 to R1500. Benoît and Pienaar (1997) also show how in South Africa's Bapong communal area a local land market evolved out the 'homage' payments of R150 to chiefs before local chiefs gradually lost control and individuals began selling their land for up to three times the homage payment. In a survey of KwaZulu-Natal in 1997, some 30 per cent of respondent families indicated they could sell their land informally if they were to move (Cross 1998, 4). In Malawi, Kishinda (2004, 17) has shown how the arrival of land-hungry migrants (often retrenched factory workers) has seen unprecedented commoditization of communal land as chiefs

allocate land to migrants for maize and rice production in exchange for cash and a share of the harvest. Similar observations have been made in Zimbabwe's communal lands since the early 1980s (Dzingirayi 1995; Derman 1997; Saruchera 2000; Hammar 2001).

As suggested by a number of these recent studies, it is the effects on women's access to land that have become both emblematic of the social impacts of vernacular land markets, but also most illuminating in terms of the interaction between commoditization and the political dynamics of 'socially embedded' land tenure. To the extent that markets allocate according to purchasing power, processes of commoditization of land should not discriminate against women, and there is some evidence that land markets may strengthen women's rights to control land and afford more protection against dispossession under customary tenure. For example, in Rwanda, André and Platteau (1998) found that whereas a widow could lose her late husband's land to his relatives where that land had been inherited, she was able to retain control of land that had been purchased. Similarly, Daley (2005b) documents cases of Tanzanian women securing their rights to land by purchasing and registering land in their own name. Her case studies also identify the obstacles of gender discrimination in society, if not in law, that such women need to overcome to buy land. This perception emerges strongly as a concern for Whitehead and Tsikata (2003), who concluded that women are likely to be disadvantaged by an emerging policy convergence advocating greater devolution of authority over rural land to customary authorities in Africa. In particular, they highlighted the role of male resistance and male-dominated institutions in implementing reforms such as registration of land titles to the disadvantage of women, and more generally 'concerted efforts by male members of the patrilineage to protect the local kin-based social order' (Whitehead and Tsikata 2003, 98). Such efforts may not easily accommodate the needs of women in rural areas, such as those in South Africa, where 'The General Household Survey of 2003 indicates that 41 per cent of rural women over 18 are neither the household head, nor married to the household head. In other words, 41 per cent of rural women live in households where other people will be the holders of land rights, to their exclusion' (Claassens 2005, 12). In considering the impacts of vernacular land markets, therefore, the issue is not what commoditization might do to the customary land rights of women as those may have been interpreted historically, but how those rights are socially embedded in contemporary African societies.

CURRENT DEBATES ON AFRICAN LAND TENURE REFORM

In many respects contemporary debates about reform of land tenure in Africa continue to echo those of the colonial period, with contesting arguments for customary rights to be replaced by some form of transferable private ownership rights or for the strengthening of non-transferable land ownership vested in 'tribal' or 'village' authorities. These two positions reflect two different priorities for broader development policy. On the one hand African governments, actively

supported by the International Financial Institutions that fund them, are seeking to raise the productivity of their agricultural sectors. Modernization of farming through capital investment in technology is required to achieve this, and security of land tenure is needed to safeguard the returns that investors can expect to receive from modernized farming, hence the advocacy of individualized land titles to protect investment and profits. It should be said that there is a sizeable constituency in favour of this position among wealthier groups in many African societies. On the other hand, an increasing number of African governments and their international donors have undertaken commitments, through the adoption of internationally-supervised Poverty Reduction Strategies, to ensure that processes of socio-economic change benefit the poorest groups of their population, and believe that one way to achieve this is to maintain access to land by the poor. At issue here are two interpretations of processes of modernization (increased capitalization) of agriculture, and their impacts on poverty. For its proponents, modernization (or capitalist development) increases farm scale and labour demand, thus providing employment for rural people who would prefer to earn wages rather than eke an uncertain living on less productive small farms (e.g. Sender and Johnston 2004). This 'win–win' scenario would thus deliver increasing scale (and therefore efficiency), output and employment, the latter to the benefit of the rural poor. For its opponents, modernization increases average farm size but without absorbing labour displaced from small-scale farms, hence (as for nineteenth-century Liberals, cf. Cowen and Shenton 1991) the importance of maintaining access to land for the poor to provide a safety net of 'subsistence' livelihood. A detailed discussion of agricultural development trajectories in Africa is beyond the scope of this paper, but the tensions – which some (notably Sender and Johnston 2004) would deny are 'tensions' – between 'pro-poor' and productivity-enhancing goals within agricultural modernization strategies have been explored by Bahiigwa et al. (2005) for Uganda's Plan for Modernisation of Agriculture.

These divergent views on the effects of agricultural modernization mean that, while there is wide consensus on the need for increased security of land rights as a part of poverty reduction policy (Deininger 2003), there remains a polarized debate on what kinds of land rights should be secured, by what means, and for whom. This debate was sharpened by the formation in 2005 of a High-level Commission on Empowerment of the Poor, hosted by the United Nations Development Programme. The well-publicized and influential arguments of one of the Commission's co-chairs, Hernan de Soto, in favour of formalizing poor people's property rights (de Soto 2000) have prompted critical comment (Cousins et al. 2005), indicating that reform of customary land rights could become a prominent issue in poverty reduction policy in Africa. A positive aspect of this debate is the stimulus it may provide to policy-makers to engage with the empirical realities of customary land rights. A disadvantage is that positions are already so polarized that critical exploration of empirical and theoretical argument is liable to be subordinated to promoting idealized models of society and economy. It is arguable, for example, that de Soto shares with his critics the view that national land titling programmes have often disadvantaged the poor as

a consequence of exploitation of bureaucratic procedure by 'the well-connected and their lawyers' – an outcome de Soto refers to as the failure of 'mandatory law' (2000, 167) to secure property rights for the poor. There is also unlikely to be disagreement with de Soto's strong emphasis that *legality* – providing formal legal recognition for existing informal or 'extralegal' property rights – must be built on principles that currently underlie the local *legitimacy* (or 'social contract') of those rights (2000, 172), although, as we noted in the previous section, where communities are characterized by unequal social relations this begs the question of who defines what is locally legitimate.

Where de Soto more clearly parts company with his critics is in the purpose he attributes to legal recognition of property rights for the poor. This, he states, is not to protect the ownership by the poor of assets such as land in order to safeguard their continued access to, and use of, those resources. Rather, the primary purpose is to enable the capitalization of the property of the poor, to allow its exchange value to be realized in the form of credit. Although much less emphasized, this purpose also involves assets such as land becoming fungible (e.g. by sale) and forfeit: 'A great part of the potential value of legal property is derived from the possibility of forfeiture' (de Soto 2000, 55). If land under customary tenure were to be considered 'extra-legal' property, in the sense that individual land user's rights are recognized by customary authority but not in the statutory legal system, then it is not clear that in Africa formalizing such property rights would generate capital in the manner de Soto predicts. Shipton's (1992) work in rural Kenya suggests that, under risky dry land farming conditions, land is rarely used to secure loans even if it is held under freehold. Among reasons given for this is risk-averse behaviour of landowners aware that credit can lead to debt that may result in loss of land. Formal financial organizations are also reluctant to secure loans on land where disposal of repossessed land can be difficult because of local social inhibitions against exploiting close kin's misfortunes. Finally, as we observed earlier, formalization of customary land rights does not appear a prerequisite for investment in improving land productivity, although investment in land improvements typically both strengthen a land user's claim on the land and fuel the development of a land market.

It seems possible, therefore, that (assuming an effective legal and administrative procedure can be identified) the consequences of following de Soto's injunctions to reform extra-legal property such as customary land rights will be less to generate capital in the form of credit, but to accelerate market-based land transfers, with potentially negative consequences for poorer holders of land rights more prone to distress sales. To the extent that the 'winners' in such a process are thereby enabled to invest further in raising productivity and providing employment to the landless, this outcome should not be regarded as a failure from de Soto's viewpoint, since his unambiguous objective is to 'make capitalism work' in developing countries.

For de Soto's critics, seeking legal protection for the land rights of the poor, the avenues for reform are more complex. In the case of South Africa, Cousins et al. (2005) argue that changes in property regimes need to be incremental,

drawing on characteristics of property regimes in existing informal settlements and communal areas, particularly in terms of their social embeddedness, their multilayered nature and flexibility of boundaries. There is little reference, however, to the operation of land markets within the descriptions of such property regimes. Similarly, the published proceedings of a recent international conference titled 'Land in Africa. Market Asset or Secure Livelihood' omitted any reference to land markets in its summary of conclusions (Quan et al. 2004), a notable lacuna in light of the evidence of vernacular land markets reviewed in this paper. Failure to understand the nature and extent of land markets under customary tenure regimes risks obscuring the processes through which the poor have access to land and disabling efforts to maintain or improve that access. Thus, the interesting observation that 'Informal property systems currently support a robust rental market that is well suited to the poor' (Cousins et al. 2005, 4) raises a number of important questions about the extent of individualized control over the land being rented, and how this relates to notions of communal or tribal ownership.

The complexity and fluidity of governance of land in many customary jurisdictions in Africa pose a challenge to empirical research. There are typically very limited records of (commoditized) land exchanges due to the official view of such transactions as 'illegal'. Further, as Shipton (1989, 58) noted: 'terms like market tend to become cognitive straitjackets for analysts. Across the continent, local people do engage in land deals whether by sale or not; and frequently these fail to show up in survey results because the researchers are not asking the questions in the right way or in enough different ways'. This view is also supported by Lund (2000, 7), who argues that land markets on communal lands tend to be disguised and the transactions are 'often not through organised and well-prepared actions, but through the daily pursuit of individuals and a common sense negotiation of their situation'. Careful empirical analysis is needed, therefore, to establish the myriad, complex and contradictory ways in which vernacular land markets are shaped by commodity relations but also might constrain (further) commoditization, and to counter the idealized models of customary tenure that continue to dominate the discourses of African land policy. Whitehead and Tsikata (2003, 101) suggest that such idealized versions of the 'customary' risk being absorbed within a more general discourse of 'African/traditional/good versus Western/new/bad' which they judge to be 'discursive resources of considerable power within many national cultures, particularly associated with bolstering the power of contemporary political elites, part of whose power base lies in so-called traditional offices'.

The significance of this is illustrated by recent efforts to reform customary land rights in South Africa, where public discontent with customary authorities (Adams et al. 1999; Ntsebeza 1999) built pressure for reform culminating in the 1999 Land Rights Bill. This was controversially abandoned when a new Minister of Agriculture and Land Affairs was appointed. It was replaced by the Communal Land Rights Bill, passed into law in 2004 (Cousins and Claassens 2004; Claassens 2005). The 1999 Land Rights Bill specified rights to occupy and use land vested in individual members of groups, not in institutions such as customary

chiefs or Tribal Authorities. Individuals' rights to occupy, use, bequeath, transact and mortgage land were to be governed by a series of nested institutions, with decisions following a form of subsidiarity, and groups of rights-holders were to have the right to choose which type of institution (customary, elected local government, civil society) they wished to govern their land rights. In contrast, the Communal Land Rights Bill (CLRB) would transfer land titles to 'tribes', with a key role in land administration given to traditional leaders. Intensive lobbying by civil society and community organizations focused on ensuring that: constitutional rights of existing occupants of land, particularly those of women, to equality of treatment would be safeguarded in the CLRB; the local Land Administration Committees empowered to manage 'communal land' should not be dominated by customary authorities; and decisions such as transfer of title of community land should require majority approval by land users. The association within CLRB of land ownership with tribal authority was regarded as particularly problematic:

> One key flaw in the bill was the underlying paradigm of a transfer of freehold title, requiring clear boundaries between communities to be drawn. This could open up and exacerbate boundary disputes and ethnic differences. In addition, community representatives, and in particular elected councillors, feared that transferring title would effectively 'privatise' communal land. (Cousins and Claassens 2004, 15)

The CLRB passed into law shortly before the general election in 2004, amid controversy when it emerged that a separate piece of legislation, the Traditional Leadership and Governance Framework Bill (TLGFB) provided for existing tribal authorities (constituted during the apartheid era) to become recognized as 'traditional councils' provided that they met certain composition requirements (40 per cent of the membership to be elected and 30 per cent [subsequently lowered] to be women). Under the terms of the separate CLRB: 'If a community has a recognised traditional council, the powers and duties of the land administration committee of such community may be exercised and performed by such council.' Although the administration of land by tribal authorities had not been explicitly legislated in either bill, the combined effect of both was to ensure precisely that result (Claassens 2005). Despite provisions within the CLRB to register individual land rights for the estimated 18 million people in South Africa's ex-homelands, the enormous scale of the undertaking makes it unlikely this will ever be achieved: 'There is a real danger that the main impact of the Act will be to legitimise . . . an expanded role for traditional leaders in land administration, without the potential balancing factor of registered individual rights' (Claassens 2005, 33).

CONCLUSIONS

This paper has presented growing evidence of active vernacular land markets whose existence, if acknowledged in the contemporary research literature on

tenure reforms in Africa, is still not reflected in official land tenure reform agendas. The increasing influence of de Soto's (2000) advocacy of legalizing informal property rights has sharpened the debate between those seeking poverty reduction through land markets and those who seek to protect the poor from losing their land to the market. However, both sides of this debate are insufficiently grounded in empirical observation of vernacular land markets, and in theoretical understanding of processes of commoditization and social differentiation, in part due to the persistent dominance of what we have termed the 'idealized communal tenure' model in land policy discourse. We have identified some characteristics of vernacular land markets, reflecting on their implications for local-level agrarian change and social transformation. A key question linked to the regulation and reform of such markets relates to their impact on the poor. Lessons from the current wave of land tenure reform in Africa suggest that, while registration of individual title as part of a national cadastral scheme is likely to be unworkable and will disadvantage the poor, ownership vested in customary authority can leave the poor vulnerable to being squeezed out of vernacular land markets.

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