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978-0-521-76571-8 - The Politics of Property Rights Institutions in Africa

Ato Kwamena Onoma

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I

Divergent Attitudes Toward Property Rights Institutions

Kihika Kimani was an ingenious political leader. A small-time businessman and aspiring politician with little actual clout, he lost his 1969 bid to unseat Fred Kubai, the veteran MP (Member of Parliament) for Nakuru¹ East in Kenya. Smarting from the defeat, he decided to harness the abundant possibilities for amassing and deploying political power presented by property rights in land to achieve his ambitions.² He established the Ngwataniro land-buying company and convinced thousands of peasants in Nakuru to buy shares in it. The revenue from sales was supposed to then be used to buy large farms from departing white settlers, which would then be subdivided and distributed to shareholders.³ Registered in 1972, Ngwataniro had grown by 1975 to become a large company of more than 30,000 shareholders with assets ranging from ranches and farms covering tens of thousands of acres to schools.⁴

¹ At the heart of Kenya's Rift Valley, Nakuru District is the country's bread basket. It was the bastion of white settlers before many influential black politicians and bureaucrats bought up the farms of departing settlers.

² "Campaign against JM rumors," *Weekly Review* (Nairobi), May, 5, 1975.

³ Nick Gatheru Wanjohi, "The politics of land, elections, and democratic performance in Kenya: a case study of Nakuru District," *Institute for Development Studies, University of Nairobi Working Paper 412* (1985), p. 13; Kenya, *Report of the Commission of Inquiry into the Land Law System of Kenya on Principles of a National Land Policy Framework, Constitutional Position on Land, and New Institutional Framework for Land Administration* (Nairobi: Republic of Kenya, 2002), p. 38 of Appendix.

⁴ "Ngwataniro at crossroads as internal problems surface," *Weekly Review* (Nairobi), December 12, 1977; "Campaign against JM rumors," *Weekly Review* (Nairobi), May 5, 1975; and "Shocking revelations," *Weekly Review* (Nairobi), March 30, 1979.

Kimani then used Ngwataniro to rise to the heights of local and national power. He used funds from shareholders to conduct his political campaigns, although this led to massive losses for the company and the nonreceipt of land by many shareholders.⁵ He bought political support by giving company lands to many people who had no shares and punished political opponents who had shares by depriving them of land. He continuously forced shareholders to comply with his political demands by threatening their land rights. He even influenced the voting character of constituencies by trucking large numbers of Ngwataniro members around Nakuru District with promises of land and threats to property rights during the revision of the voter rolls in 1977.⁶

Exploiting property rights in these skilled ways, Kihika Kimani was able to achieve a political feat of enormous proportions. In the 1974 elections, he successfully executed an audacious plan that replaced three of four Nakuru MPs and many civic councillors with Ngwataniro members.⁷ The only MP that survived this Ngwataniro tide was Mark Mwithiga, MP for the Nakuru Town constituency. But Mwithiga was later jailed by the Nakuru police for assault. (The police commissioner was a member of Ngwataniro.) Mwithiga then won the by-election held for his seat from jail, but ultimately he was defeated in a second by-election.⁸

The Nakuru mayor, Mburu Gichau, and Rift Valley provincial commissioner, Isaya Mathenge, were also Ngwataniro members.⁹ By the late 1970s, Kihika Kimani had acquired unparalleled power. At the height of this power, he even ventured into national politics. He attempted to prevent Vice President Moi from automatically succeeding President Kenyatta by organizing a movement to change the constitution of Kenya.¹⁰

⁵ “Mr. 100 percent,” *Weekly Review* (Nairobi), January 12, 1979; “Ngwataniro at crossroads as internal problems surface,” *Weekly Review* (Nairobi), December 12, 1977; and “Kimani rule in Ngwataniro ends,” *Weekly Review* (Nairobi), April 27, 1979.

⁶ “Ngwataniro at crossroads as internal problems surface,” *Weekly Review* (Nairobi), December 12, 1977.

⁷ “Campaign against JM rumors,” *Weekly Review* (Nairobi), May 5, 1975; and “Mr. 100 percent,” *Weekly Review* (Nairobi), January 12, 1979.

⁸ *Ibid.*

⁹ “Shocking revelations: company allegedly lost millions of shillings,” *Weekly Review* (Nairobi), March 30, 1979; and “Campaign against JM rumors,” *Weekly Review* (Nairobi), May 5, 1975.

¹⁰ “1977 limping to the finish in Kenya,” *Weekly Review* (Nairobi), December 26, 1977.

Kihika Kimani's blatant exploitation of property rights to harness personal power highlights some of the ways in which a number of political leaders in African societies have undermined property rights on the continent. They have arbitrarily enforced and abrogated rights, subversively exploited land documents, and installed themselves as the final arbiters of property claims, avoiding independent courts that would decide on land claims. All of this has taken place while African leaders in other countries have fervently worked toward creating and strengthening institutions such as land tribunals, title registries, land boards, village committees, and the enforcement mechanisms that secure land rights.

Global demand for raw materials, the expansion of commercial agriculture, climate change, population growth, and rapid urbanization have all led to land scarcity, rising land values, and the commercialization of land in many African societies.¹¹ Using national and subnational units of analysis, this book explains why political leaders in Botswana, Ghana, and Kenya have created different institutional environments to reap the potential power and wealth thereby provided.

Why do some leaders create and reinforce institutions that govern property rights in land while others neglect or undermine these same types of institutions? For instance, state officials in Kenya up to 1990 (1963–1990) and the leaders of Botswana strengthened institutions that govern property rights in land in their bid to harness political and economic benefits from rising land values.¹² Colonial and postcolonial Ghanaian state leaders as well as government officials in Kenya since 1990 (1991–2000) have either neglected or further subverted existing property institutions as they have exploited similar benefits.¹³ The divergence across these cases

¹¹ Christian Lund, *Local Politics and the Dynamics of Property in Africa* (New York: Cambridge University Press, 2008), p. 10; and Jon Unruh, "Refugee resettlement on the horn of Africa: the integration of refugee and host land use patterns," *Land Use Policy* 10 (January 1993), p. 65.

¹² Faustin Kalabamu and Siansang Morolong, *Informal Land Delivery Processes and Access to Land for the Poor in Greater Gaborone, Botswana: Informal Land Delivery Processes in African Cities 3* (Birmingham: International Development Department, School of Public Policy, University of Birmingham, 2004), p. 47.

¹³ Internal Displacement Monitoring Center (IDMC), "I am a refugee in my own country: conflict-induced internal displacement in Kenya" (Geneva Switzerland, December 19, 2006), pp. 13–20. [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/AF919E45D789BD0BC125724900350687/\\$file/Kenya%20Special%20Report%20Deco6.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/AF919E45D789BD0BC125724900350687/$file/Kenya%20Special%20Report%20Deco6.pdf). (Accessed June 4, 2007.)

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is all the more interesting because of the long history of advocacy efforts by international institutions such as the World Bank to persuade all three of these countries, among others in Africa, to undertake institutional reforms aimed at securing land rights.¹⁴

Also, once established, how do these institutions change over time? In examining these specific questions, this book reflects on the broader question of uneven political economic development across the African continent. Why have rising land values spurred by various global and local factors coincided with sociopolitical stability and economic growth in some societies, but with sociopolitical instability and lack of economic growth in others?

First, this book argues that the ways in which leaders extract value from land and the extent of their capacity explains variations in their treatment of institutions that govern land rights. Leaders who accrue gains from land indirectly through the productive exploitation of land for agriculture or real estate development, for instance, have a preference for strong institutions that secure rights. Whether or not they create such institutions depends on the extent of their influence. Leaders whose gains from land are accrued directly¹⁵ and are not mediated by the productive use of land have no such interest in securing property rights.

Involved in activities such as the sale of land and the exchange of land for political support, weak institutions for governing rights are what sometimes facilitate the activities of these leaders. The extent to which these leaders subvert institutions is also dependent on the extent of their power and influence.

Second, this book argues that while exogenous changes to the political leadership and the environment that leaders face often cause institutional change, such change can also come from the endogenous working of these institutions. These institutions – by their functioning – can contribute in major ways to their own decline.

As the account of Kihika Kimani's exploits at the beginning of this chapter indicates, property rights are critical to understanding high as well as low politics in many developing countries. Writing in 1949, Meek noted insightfully:

¹⁴ Camilla Toulmin and Julian Quan, "Evolving land rights, tenure, and policy in sub-Saharan Africa," in Camilla Toulmin and Julian Quan, eds. *Evolving Land Rights, Policy, and Tenure in Africa: Issues* (London: IIED: Natural Resources Institute, 2000), p. 2.

¹⁵ I thank Peter Swenson for suggesting the terms "direct" and "indirect" to characterize these modes of exploiting land.

Divergent Attitudes Towards Property Rights Institutions

5

It would be impossible to exaggerate the importance of the subject of land tenure in the [British] colonies. . . . Land is, for the most part, the only form of capital and its exploitation the only means of livelihood. Such manufacturing industries as exist are almost solely concerned with the products of agriculture. Land therefore has something of a sacred character and rights over land are more jealously treasured than any other form of rights.¹⁶

The economic significance of land rights has continued to this day, providing an excellent window into the wider political economy of African countries.¹⁷ The economic implications of property rights institutions have received the lion's share of attention in the growing literature on property rights. Secure rights and related instruments such as titles are thought to encourage and facilitate greater investment in economies. They are said to remove uncertainties over whether investors would be able to hold land long enough to reap the fruits of their investments, reduce the cost of private protection of parcels to free up resources for further investment, and allow the use of land as collateral for loans.¹⁸

The political repercussions of property rights, which have received less attention in the literature, are even more important. Disputes over land rights are some of the biggest sources of intrastate conflicts in African countries. Cote d'Ivoire, the Democratic Republic of Congo, Zimbabwe, Nigeria, Western Sudan, and Kenya, among others, have been plagued by conflicts of varying intensities arising at least partly from disputes over land rights.¹⁹ In Kenya's Rift Valley Province, postelection violence that claimed hundreds of lives in Nakuru, Uasin Gishu, and Kericho

¹⁶ Charles Kingsley Meek, *Land, Law, and Custom in the Colonies*. 2nd ed. (London: Oxford University Press, 1949), p. v.

¹⁷ Christian Lund, *Local Politics*; Camilla Toulmin and Julian Quan, "Evolving land rights," and Sara Berry, *Chiefs Know Their Boundaries: Essays on Property, Power, and the Past in Asante, 1896–1996* (Cape Town: David Philip, 2001).

¹⁸ World Bank, *Building Institutions for Markets: World Development Report, 2002* (New York: Oxford University Press, 2002), pp. 31–35; Markus Goldstein and Christopher Udry, "The profits of power: land rights and agricultural investment in Ghana," *Economic Growth Center Paper* 929 (November 2005); and Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (London: Bantam, 2000), pp. 6–7.

¹⁹ Séverine Autesserre, "Local violence, national peace? Postwar 'settlement' in the Eastern D.R. Congo (2003–2006)," *African Studies Review* 49 (December 2006); Dwayne Woods, "The tragedy of the cocoa pod: rent-seeking, land, and ethnic conflict in Ivory Coast," *Journal of Modern African Studies* 41 (April 2003): 641–655; "Nigeria: lives lost, villagers flee over 50-year conflict," *Vanguard* (Lagos), June 9, 2007, <http://allafrica.com/stories/200706090020.html>. (Accessed June 11, 2007.); IDMC, "I am a refugee;" "Menace of land guards evokes fear in capital," *Africanews* 40–42, July 20, 1999, <http://lists.peacelink.it/afnews/msg00022.html> (Accessed April 18, 2007.);

districts in 2008 was in many ways motivated by historical conflicts over land, even if the proximate cause was the fraudulent election of December 2007.²⁰ Land rights are also at the core of political control and empowerment in these societies. The lure of access to and protection of land rights is one that the powerful and landed often employ to control the political activities of less powerful members of society.²¹

For these reasons, the politics of property rights are vital to understanding the wider political economies of postcolonial African countries. State- and local-level political struggles are almost always played out in the land arena. National and subnational political order and disorder can often be gauged through the level of order in the land market. The winners and losers in national and local politics are often the same as the winners and losers in the land market. Important national political transformations are also reflected in transformations in land market struggles.

CASE SELECTION AND STUDY DESIGN

To explain variations in how leaders treat institutions that govern land rights and why these institutions change over time, this book blends spatial and temporal comparisons of national and subnational units of analysis to assess alternative explanations and demonstrate the analytic utility of the explanation put forward here. The cases are drawn from Botswana, Ghana, and Kenya. The main period under review ranges from the late 1950s, when Ghana secured independence, to the late 1990s. The need to contextualize analysis, however, requires the discussion to not only look farther back into the colonial histories of these societies, but also to reflect on more recent developments since the late 1990s.

The choice of these three countries to examine was partly influenced by similarities between them that allowed me to control for certain obvious alternative explanations. Each is a relatively successful African country that has largely escaped the protracted postcolonial civil wars that have

and Kenya, *Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya* (Nairobi: The Commission, 1999).

²⁰ “Kenya’s geographical and political rift,” *BBC News*, January 28, 2008. <http://news.bbc.co.uk/2/hi/africa/7213211.stm>. (Accessed February 25, 2008.)

²¹ Jean-Marie Baland and James Robinson, “How does vote buying shape the economy?” in Frederic Schaffer, ed. *Elections for Sale: The Causes and Consequences of Vote Buying* (Boulder, CO: Lynne Rienner, 2007), p. 123.

affected some other African nations. This relative peace has allowed for potential property rights reforms. Further, all three countries have faced pressures for tenure reforms from the World Bank.²² Despite these similarities, there are nonetheless wide variations in the ways leaders have handled property rights institutions across and within these countries, which allows for causal analysis.

Chapter 2 lays out the theoretical arguments in this work. The discussion explores varying institutional choices by leaders and examines how endogenous factors have contributed to change in these institutions once they have been established. Chapters 3, 4, and 5 account for divergent institutional choices. Chapter 3 undertakes a cross-national analysis of responses by state leaders in Botswana and Ghana. Successive Botswana Democratic Party (BDP) governments have invested heavily in creating and strengthening institutions that govern land rights across their country. In Ghana, generations of colonial and postcolonial leaders have refrained from trying to create such institutions in most of the country, concentrating on only a few enclaves where they still have not attained much success in reinforcing institutions.

The selection of these two cases is partly informed by the puzzling nature of the divergence between them, which defies several plausible alternative explanations of political economic outcomes in developing countries that would lead us to expect similar outcomes in the two countries. Both countries were colonized by the British, who employed a similar method of indirect rule and left the administration of land throughout most of the country in the hands of traditional leaders.²³ Because of these similar colonial histories, one might be led to expect similar postcolonial trajectories in the governance of land rights. This is particularly so given

²² Camilla Toulmin and Julian Quan, "Evolving land rights," p. 2; Elisha Atieno-Odhiambo, "Hegemonic enterprises and instrumentalities of survival: ethnicity and democracy in Kenya," *African Studies* 61 (February 2002), p. 240; L. Wily, *Land Allocation and Hunter-Gatherer Land Rights in Botswana: The Impact of the TGLP* (London: Anti-Slavery Society, 1980), p. 16.

²³ Ross Molosiwa, *Botswana: An Official Handbook*, 5th ed. (Gaborone: Publicity Unit the Department, 1999), p. 40; A. Adu Boahen, *Ghana: Evolution and Change in the Nineteenth and Twentieth Centuries* (London: Longman, 1975); Kathryn Firmin-Sellers, *The Transformation of Property Rights in the Gold Coast* (New York: Cambridge University Press, 1996), p. 21; Faustin Kalabamu and Siamsang Morolong, *Informal Land Delivery*, p. 43; and Charles Ilegbune, "Concessions scramble and land alienation in British Southern Ghana, 1885–1915," *African Studies Review* (December 1976), p. 19.

the literature that has often sought to explain postcolonial outcomes in countries in terms of their colonial masters and modes of colonial governance.²⁴ It is important, therefore, to understand the divergence.

There are good demand-side as well as supply-side reasons to expect Ghanaian leaders to have done more to create and propagate institutions that secure land rights around their country than the leaders of Botswana. Pressure on land and calls for legal reforms have been far more intense in Ghana than in Botswana because of population density. Ghana, which has an area of 228,000 square kilometers (about half the size of Botswana), has about twelve times Botswana's 1.7 million people.²⁵ Further, the nature of the resource bases of these two states suggest that Ghanaian leaders should be more willing to supply these demanded institutions.

Botswana is heavily dependent for its revenues on diamonds mined from a few locations in the country such as Orapa, Letlhakane, and Jwaneng.²⁶ The gold, diamonds, and cocoa on which Ghanaian state revenues heavily depend are far more dispersed throughout the southern half of the country. Given this difference, one would expect Botswana leaders to focus on the enclaves from which the state draws resources and to be less enthusiastic about building institutions across their country. Ghanaian elites should be more eager to reinforce institutions across the country since the state draws revenue from a greater part of the country. So, why is the opposite true?

Given the longstanding unwillingness of the Ghanaian government to establish strong institutions that govern land rights in most of the country, Chapter 4 explores how subnational leaders operating within this relatively laissez-faire environment have handled institutions. This is not an excuse to exclude the Ghanaian state from analysis. It is only an attempt to explain why local land institutions within the larger political institutional context of the state vary.

²⁴ Kathryn Firmin-Sellers, "The reconstruction of society: understanding the indigenous response to French and British rule in Cameroon," *Comparative Politics* 34 (October 2001); Michael Crowder, "Indirect rule: French and British style," in M. Klein and G. Wesley Johnson, eds. *Perspectives on the African Past* (Boston: Little, Brown, 1972); and Kathryn Firmin-Sellers, "Institutions, context, and outcomes: explaining French and British rule in West Africa," *Comparative Politics* 32 (April 2000).

²⁵ Ross Molosiwa, *Botswana*, 13; and World Bank, *African Development Indicators, 2004* (Washington DC: World Bank, 2004), pp. 5–6.

²⁶ See the Government of Botswana site, http://www.gov.bw/index.php?option=com_content&task=view&id=63&Itemid=74 (Accessed June 27, 2007).

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9

This book studies two traditional areas: Akyem Abuakwa and the Ga Traditional Area. In Ghana traditional areas are entities under the leadership of traditional hereditary paramount chiefs, also often called kings, who are not part of the state bureaucracy. The boundaries of these entities are not strictly determined by state officials, but they can often be traced to precolonial kingdoms. While most of the powers of these chiefs have been usurped by the state, the power to allocate land in around 75 percent of Ghana's territory is one of chiefs' powers that are still recognized by the Ghanaian constitution.²⁷ Chiefs in the Ga Traditional Area have consistently undermined property rights institutions, in stark contrast to Akyem Abuakwa chiefs' efforts at strengthening institutions since the 1920s. Explaining this subnational variation allows us to capture and examine the more variegated character of institutional responses to similar economic and political opportunities within a single country.²⁸

The particular cases of Akyem Abuakwa and the Ga Traditional Area were chosen because they allow use of a dynamic comparison design that utilizes both temporal and spatial frames of comparison to increase the internal validity of causal analysis. As explained by Gerring and McDermott,²⁹ dynamic comparison exploits one case (the largely urban Ga Traditional Area), where the key independent variable (how chiefs exploit land) is held constant over time, and another case (the predominantly rural Akyem Abuakwa), where the key independent variable changes over time. The discussion then compares and accounts for outcomes before and after the change in the key explanatory variable.

This design permits control for various alternative explanations, including the causal effects of a rural versus urban environment. The rural character of Akyem Abuakwa has been constant, but the way in which traditional elites have exploited land and handled property rights institutions has varied over time, casting serious doubts on whether the rural nature of Akyem Abuakwa is responsible for recent outcomes.

²⁷ Michael Roth, Jeffrey Cochrane, and R.K. Kasanga, *Land Markets and Legal Contradictions in the Peri-Urban Area of Accra Ghana: Informant Interviews and Secondary Data Investigations*, LTC Research Paper, 127 (Madison, WI: Land Tenure Center University of Wisconsin-Madison, 1996), pp. 5–6.

²⁸ For more on the benefits of subnational analysis, see Richard Snyder, "Scaling Down: The Subnational Comparative Method," *Studies in Comparative International Development*, 36 (Spring 2001), 93–110.

²⁹ John Gerring and Rose McDermott, "Internal validity: an experimental template," in John Gerring, ed. *Case Study Research: Principles and Practice* (New York: Cambridge University Press, 2007).

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Both traditional areas have been incorporated into the global political economy for a long time, ensuring similar rising land values, the commercialization of land, and the proliferation of distributive conflicts over land.³⁰ Also, at least 70 percent of the land in both areas is customary land legally controlled by traditional chiefs and lineage heads who, by law, are supposed to only be custodians that grant user rights.³¹ Further, the capacity of chiefs in both areas has been similarly curtailed by the creation of the Ghanaian state. These similarities allow us to hold rising land values, distributive conflicts, types of formal land tenure arrangements, and the capacity of political leaders constant across cases.

In Chapter 5, Kenya is studied because it provides a very interesting case of path switching that allows temporal comparison of two periods in the country's postcolonial history. In the first period, which we call Early Kenya (1963–1990), senior state officials of the Kenya African National Union (KANU), which ruled the country from independence in 1963 to the multiparty elections of 2002, reinforced property rights institutions. Interestingly, the same group of leaders in a second period (1991–2000), which we call Late Kenya, switched and significantly subverted the very institutions that they had created.

The case of path switching by Kenyan leaders from reinforcing to subverting institutions is excellent for causal analysis. It offers controls for many potential explanations that remain constant before and after the switch, allowing me to focus on the causal weight of changing factors. The KANU party dominated national politics in Early and Late Kenya.³² National ruling elites owned vast tracts of land in both Early and Late Kenya.³³ Kenya's heavy dependence on land-intensive agriculture and tourism sectors remained constant in both periods. Given so many continuities between the two periods, why did national ruling elites in Kenya switch to subverting property rights institutions that they had earlier invested in creating and reinforcing? The explicitly temporal nature of the analysis here also allows us to demonstrate the causal significance of some of the relationships laid out in other chapters that are more involved in spatial comparison.

³⁰ Claire Robertson, *Sharing The Same Bowl? A Socioeconomic History of Women and Class in Accra, Ghana* (Bloomington: Indiana University Press, 1984), pp. 27, 49–50; and Charles Kingsley Meek, *Land, Law and Custom*, p. v.

³¹ 1992 Constitutions of the Republic of Ghana, p. 267.

³² Frank Holmquist, Frederick S. Weaver, and Michael D. Ford, "The Structural Development of Kenya's Political Economy," *African Studies Review* 37 (January 1994).

³³ "Who owns what in Kenya," *Weekly Review* (Nairobi), March 8, 1991.