

# The Political Economy of Land Ownership Rights: Lessons from Nigeria, South Africa and Zimbabwe

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## Abstract

*The nature of land ownership rights in pre-colonial African countries implies a myriad of customary land holding systems under which families and communities had collective ownership and equitable access to land use. However, colonialism disrupted the customary systems, confined land ownership rights to privileged minority groups, and established dualistic agrarian systems that discriminated against local populations and impoverished their livelihoods. Since the dawn of post-colonialism, there has been an assortment of policies and laws to either redefine or re-assign land ownership rights in African countries with histories of colonial emasculation of pre-existing land rights and expropriation of native lands. However, there is yet to be a fundamental reform of land ownership rights that clearly shifts access to land use in favour of the poor majority. The legacy of colonialism persists and has been perpetuated in post-colonial land laws and policies, and are further entrenched by contemporary economic ideologies of market capitalism and neo-liberal globalisation. This article examines an aspect of the land question in Africa; how to adequately achieve equity in access to land while resolving colonial legacies which suppressed indigenous land ownership rights, displaced communal land administration structures and marginalised the poor majority in access to land. This article recommends a new policy approach that is driven mainly by the broad imperatives of ensuring equitable access to land for the vulnerable majority group of rural poor, and not influenced by politico-economic considerations that yield narrow outcomes for privileged minority groups.*

## Keywords

access to land; land ownership rights; Nigeria land reform; political economy; South Africa land reform; Zimbabwe land reform

## 1. Introduction

Legal and policy frameworks to democratise ownership of land are necessary in post-colonial African states where discriminatory land ownership rights remain an enduring phenomenon. It is now trite that land is central to sustainable livelihoods in Africa, and development initiatives need to take comprehensive account of this reality so as to ensure that land plays its primary role in the development process and, more

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particularly in poverty reduction, enhancing equal economic opportunities, managing the environment and driving agricultural modernisation.<sup>1</sup> Access to land for cultivation, whether subsistence family farms or foreign earning commercial agriculture, including as collateral for credit, depends on secure land ownership rights.

However, a key aspect of the land question in Africa is how to adequately and satisfactorily achieve equity in access to land while resolving colonial legacies that which suppressed indigenous land ownership rights, displaced communal land administration structures and marginalise poor majority in access to land. These legacies have been re-invented in most post-colonial African countries in the forms of nationalisation, class and gender differentiation, as well as elite capture in land ownership.<sup>2</sup> The result is that the privileged minority monopolise land ownership to the exclusion of the poor majority. At the core of the marginalisation of the poor majority in land ownership and access to land, are political considerations that affect the formulation and implementation of land policies in ways that serve minority interests.

Since the dawn of post-colonialism, there has been an assortment of policies and laws either to redefine or re-assign land ownership rights in African countries with histories of colonial emasculation of pre-existing land rights and expropriation of native lands. For example, Zimbabwe and South Africa present a host of land policies, laws and programmes that embrace various land redistribution and tenure reforms, adopting approaches that range from market-led to compulsory acquisition under strong state intervention. However, there is yet to be a fundamental reform of land ownership rights that clearly shifts access to land in favour of the rural poor. The legacy of colonialism persists and has been perpetuated in post-colonial land laws and policies, and are further entrenched by contemporary economic ideologies of market capitalism and neoliberal globalisation<sup>3</sup>. Also, the causes and effects of land reforms are reflected strongly in the political economy of these African countries, and are bound to shape their future policy and legal frameworks in the quest for an equitable land ownership rights.

After decades of land reforms with ambiguous results, it has become even more significant to understand clearly the salient and abiding political and economic considerations that have shaped the patterns and realities of land ownership rights in post-colonial African countries. This article proceeds on the theoretical premise that political forces and economic considerations motivated the displacement of pre-existing customary land rights, expropriation of native lands and the exclusion of the poor majority in access to land during periods of colonialism. These colonial legacies are reincarnated in the regimes of land ownership rights and access to land in post-colonial African countries like Nigeria, South Africa and Zimbabwe.

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1 AUC-ECA-AfDB Consortium, *Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods* (ECA Publications 2010) 7 <<https://bit.ly/3kDGGcr>> accessed 22 June 2021.

2 Bond, P *Elite Transition: From Apartheid to Neoliberalism in South Africa* (University of Natal Press and Pluto Press, Pietermaritzburg and London 2000) 19.

3 Lahiff, E 'The Politics of Land Reform in Southern Africa' (2003) *Research Paper* 19 <<http://www.ids.ac.uk/slsa>> accessed 23 June 2021; Bond, P (n 2) 19.

Unlike existing literature that has examined post-colonial land ownership rights and the impact of land reforms in specific African contexts,<sup>4</sup> this article analyses from a broader perspective the political considerations that affect policy formulation and implementation of land reforms and land redistribution programmes across three countries in two regions of Africa. Despite major differences in colonial histories between West and Southern African countries, this article identifies the commonality in how colonial legacies have led to an enduring pattern of land ownership rights and access to land that marginalises the poor majority. For example, Nigeria was colonised by Britain, but unlike Zimbabwe and South Africa, Nigerians were never subjected to racial segregation in land ownership rights and access to land.

However, this article shows that, like Zimbabwe and South Africa, current problems in Nigerian land ownership rights and land administration share similar roots in the political and economic considerations that influenced colonial land policies and land rights. The article is structured into two parts; colonial and post-colonial periods in land ownership rights and land reforms in the three countries. In the analytical discourse, close references are made to these countries for situational context and to exemplify and ground the article's theoretical proposition. The article's conclusion distils the lessons to be learned for policy objectives and approach to reforming land ownership rights in post-colonial Africa.

## 2. Colonial period: Winner-takes-all in land ownership rights

The nature of land ownership rights in pre-colonial African countries implies a myriad of customary land tenure systems that were firmly established within and across indigenous communities without contestations or adverse claimants. Under the different prevailing customs, land was collectively owned by communities or family members linked together by common ancestry or heritage. Land ownership rights inhered in the native communities and families with the kings and chiefs acting as trustees in the administration of lands for the overall benefits of every member entitled to as much portion as was needed for subsistence agriculture and construction of homesteads.<sup>5</sup> African communities were therefore fully settled with secure collective land ownership rights in the present geographical areas of the respective African countries long before colonialism or the incursions of Western adventurers of fortunes.

4 See, for examples, Moyo, S 'Three decades of agrarian reform in Zimbabwe' (2011) 38(3) *The Journal of Peasant Studies* 493-531; Chaumba, J, Scoones, I and Wolmer, W 'New Politics, New Livelihoods: Changes in the Zimbabwean Lowveld since the Farm Invasions of 2000' (2003) *Research Paper Series* 379 <<http://www.ids.ac.uk/slsa>> accessed 23 June 2021; Cliffe, L 'Land Reform in South Africa' (2000) (27)84 *Review of African Political Economy* 273-286; Lahiff, E 'Land Reform in the Eastern Cape: The On-Going Struggle for Resources and Secure Rights' (2005) 31 *Social Dynamics* 1; Aliber, M *Land Reform and Livelihoods: Trajectories of Change in Northern Limpopo Province South Africa* (Human Sciences Research Council 2013) 56; Alexander, J 'The unsettled land: the politics of land distribution in Matabeleland, 1980-1990' (1991) 19 *Journal of Southern African Studies* 581-610.

5 See Okoth-Ogendo, HWO 'The nature of land rights' in Classens, A and Cousins, B (eds), *Land, Power and Custom: Controversies generated by South Africa's Communal Land Rights Act* (University of Cape Town Press 2008) 35.

Claims that some African communities such as in South Africa were largely uninhabited at the time of the arrival of European settlers are therefore not supportable. Rather, historical records show incidents of confrontation (in some cases violent) between the foreign invaders and the indigenous communities.<sup>6</sup> For example, it is recorded that there was confrontation between the first European settlers at the South African Cape and the indigenous Khoi-khoi communities as early as 1655.<sup>7</sup> In Zimbabwe, the indigenous communities of Shona and Ndebele resisted the white Rhodesians in the 1800s long before the liberation struggles against colonialism, effective from 1890.<sup>8</sup> History now shows that Africans were forcefully subdued or violently conquered and colonised as a result of the superior firepower of the invading Europeans, complimented with deceptive treaties under which indigenous communities unknowingly ceded their lands to the colonisers.<sup>9</sup>

The subterfuge of cession treaties was applied in the case of Nigeria in 1861 when the paramount Yoruba king and his chiefs in the first colonial port of settlement ceded to the British crown the ownership rights to all lands in the territories which extended to the Gold Coast (present day Ghana).<sup>10</sup> The dispossession of African lands through conquests and perfidious treaties was consolidated by colonial legislations that completely stripped indigenous communities of land ownership rights and confined them to marginal and less arable lands that could not sustain their livelihoods. Lack of access to productive lands resulted in hunger and poverty and this perfectly served the economic design of the colonisers as Africans became cheap labourers in colonial commercial agricultural farms.<sup>11</sup>

Colonialism in Africa was deliberately orchestrated for the political and economic benefits of the participating European countries. African colonial territories became commercial outposts and major sources of income which strengthened the international political and economic powers of the colonisers.<sup>12</sup> For example, material and human resources from African colonies made significant contributions to British war efforts during the first and second World Wars. But the dispossession of Africans and their confinement to uncultivable fringe lands had devastating social and economic consequences particularly in South Africa and Zimbabwe. The Natives Land Act of 1913 laid the foundation for apartheid system in South Africa as it introduced racial segregation in land ownership rights and access to land through spatial separation of race groups into white, black and coloured.<sup>13</sup>

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6 Rugege, S 'Land Reform in South Africa: An Overview' (2004) 32 *International Journal of Legal Information* 283.

7 *Ibid* 284.

8 Lebert, T *Background: Land and Agrarian Reform in Zimbabwe* (South Africa National Land Committee 2003) 119.

9 See Rugege, S 'Land Reform in South Africa: An Overview' (n 6) 19.

10 Coker, GBA *Family Property among the Yorubas* (2nd Ed., AUP 1966) 11 <<https://bit.ly/2WcK3Oc>> accessed 30 December 2018.

11 Hall, R and Cliffe, L 'Introduction' in Hall, R (eds), *Another Countryside? Policy Options or Land Agrarian Reform South Africa. Institute for Poverty Land and Agrarian Studies* (UWC 2009) 1-19.

12 See Collins, A and Mitchell, MI 'Revisiting the World Bank's land law reform agenda in Africa: the promise and perils of customary practices' (2017) 18(1) *Journal of Agrarian Change* 113-121.

13 Kloppers, HJ and Pienaar, GJ 'The Historical Context of Land Reform in South Africa and Early Policies' (2014) *PER/PELJ* (17) 2 <<https://doi.org/10.4314/pej.v17i2.03>> accessed 13 January 2020.

The subsequent Native Trust and Land Act of 1936 abolished individual land ownership by black people, and the Group Areas Acts of 1950 and 1960 entrenched the racial segregation laws as black and coloured people were evicted and forcibly removed from lands designated as 'white only'.<sup>14</sup> These oppressive legislations confined Africans to only the areas reserved for them under the legislations and prohibited them from accessing lands in any other areas outside the reserves. The legislations stripped Africans of their right to own land such that the land available for use by Africans was only 13% of the total land mass of South Africa, and much of the land remained in the ownership of the apartheid South African Development Trust, supposedly held in trust for the African people; 80% of South Africa population was confined to 13% of the land while less than 20% that made up the white population owned over 80% of the land.<sup>15</sup>

The economic objectives of the apartheid system and racial legislations were to make more land available to the white settlers for commercial agriculture and to impoverish Africans through dispossession and disablement from engaging in productive agriculture for self-sufficiency. Africans therefore became dependent on employment for survival, thus creating a pool of cheap labour for the white settlers' commercial farms. Produce from the white settlers' farms were exported to European markets and the accrued wealth strengthened the political and economic dominance of the colonial powers.<sup>16</sup>

In Zimbabwe, the white settlers, who constituted only about 5% of the population, appropriated 51% of the entire land that was most suitable for agriculture, reserved 20% as Crown Land and conservation areas and left only less than 30% for the natives.<sup>17</sup> Under the Land Apportionment Act of 1930 and the Land Tenure Act of 1969, the white settlers completely dispossessed native Zimbabweans of land ownership rights and classified the lands along racial lines both in terms of quality and size. The laws prohibited natives from owning or occupying lands in designated white areas, and restricted them to less-productive lands on mountainous escarpments and plateaus on the fringes of the Zambezi Valley.<sup>18</sup> The colonial system forced large numbers of families to leave their unproductive lands in search of work on white owned large farms and factories.<sup>19</sup> As Africans lost their lands through dispossession, evictions and forced removals, they lost their source of livelihoods and lived in poverty.

The white settlers, on the other hand, grew stronger in political and economic powers, ably aided by their commercial partners. One significant point that is hardly found in the plethora of literature on colonial dispossession of land ownership rights in Africa is an

14 Hall, R 'A Comparative Analysis of Land Reform in South Africa and Zimbabwe' in Margaret, CL and Karen, C (eds), *Unfinished Business: The Land Crisis in Southern Africa* (Africa Institute 2003) 255-285.

15 Kloppers, HJ and Pienaar, GJ 'The Historical Context of Land Reform in South Africa and Early Policies' (n 13) 15.

16 Hall, R 'Land Restitution in South Africa: Rights, Development and the Restrained State' (2004) (38)3 *Canadian Journal of African Studies* 654-671.

17 Chivandi, F Fushai, F and Masaka, J 'Land Ownership and Range Resources Management in Zimbabwe: A Historical Review' (2010) 2(1) *Midlands State University Journal of Science, Agriculture and Technology* 112-123.

18 *Ibid* 115.

19 Machingaidze, EM 'Agrarian Change from Above: The Southern Rhodesian Native Land Husbandry Act and African Response' (1991) 24(3) *International Journal of African Historical Studies* 557-589.

examination of the roles of colonial enterprises and home governments of the European settlers.<sup>20</sup> The colonial enterprises traded in African land and mineral resources on behalf of the white settlers, and bridged the mutual economic interests of the settlers and their home governments. These enterprises generated wealth, international political contacts and influence needed by the white settlers to strengthen their dominance and subjugation of their colonial territories in Africa. When the need arose, the white settlers relied on the importations of redundant and retired soldiers from their home governments to quell violent resistance by Africans. This was how the British South Africa Company played a significant role in the process of land dispossession in Zimbabwe and the economic empowerment and international political influence of the colonial Rhodesian regime.<sup>21</sup>

In colonial Nigeria, the British Royal Niger Company played a leading role. It was granted a Royal Charter by Britain to administer the colonies and protectorates in Nigeria until 1900 when Sir Frederick Lugard was appointed as Governor-General.<sup>22</sup> The change in the administrative guard was both economically and politically motivated as it was to curtail the emerging resistance against the Royal Niger Company's monopoly of trade in West African agricultural and mineral resources, and to protect British colonial territories against incursions from other European countries like France. Under the colonial administration in Nigeria, the English freehold system which allows private or individual land rights, was introduced in the Southern colonies to operate alongside communal and family land ownership systems that were in existence. In addition, vast and choice lands were expropriated and designated as Crown Land while others were compulsorily acquired for colonial Government Reservation Areas.

In the Northern protectorates of Nigeria, the colonial administration through the Ordinance of 1910 placed all lands under the control and disposition of the Governor-General without whose consent no title to occupation and use of land was allowed. For the natives, the Ordinance only designated a maximum of 1200 acres for agricultural grants and 12500 acres for grazing purposes.<sup>23</sup> The resultant dual systems of land ownership rights both within the Southern colonies and between Northern and Southern Nigeria have had far-reaching and long-lasting consequences. It disrupted the established system of land ownership, made land tenure insecure, caused communal infighting over ownership of land, introduced land speculation and made land susceptible to elite capture. An enduring impact is the exclusion of women and the peri-urban poor from access to land and land use, and its attendant pervasive poverty amongst this vulnerable group.<sup>24</sup>

20 For example, see SAHO, 'A Land Dispossession History 1600s-1990s' (2011) 39-41 <<https://bit.ly/3kFMHoQ>> accessed 13 January 2020.

21 Chigora, P 'The Nexus between Equitable Land Distribution and Poverty Reduction: The Zimbabwean Situation' (2010) 12(8) *Journal of Sustainable Development in Africa* 81-92.

22 Elias, TO *The Nature of African Customary Law* (1956) 27 <<https://bit.ly/3CGBvPa>> accessed 30 December 2018.

23 Mabogunje, AL 'Perspective on Urban Land and Urban Management Policies in sub-Saharan Africa' (1992) *The World Bank Technical Paper* (No. 196) 98.

24 This author has comprehensively examined the emergence and effects of legal pluralism in land ownership rights in post-colonial African countries. See Ajala, T 'Legal Pluralism in Land Ownership and Tenure Systems in Post-Colonial Africa: The Nigerian Experience' (2019) 8(1) *Port Harcourt Law Journal* 44-60.

In Zimbabwe and South Africa, colonialism systematically undermined African agricultural production as white farmers, through substantial state subsidies and availability of cheap labour from African peasants, developed a model of large-scale commercial agriculture. This led to a dualistic agriculture system – a subsistence agriculture by natives in unproductive marginal lands and white settlers' commercial agriculture in productive lands.<sup>25</sup> Through the decades, colonialism therefore produced two economies in Africa; one weak and characterised by low income, massive unemployment and pervasive poverty of the majority, while the other strong, well developed and connected to the international market for minority interests.<sup>26</sup> The European colonisers were therefore the winners in the periods of African colonialism and they accordingly took all the spoils of war in furtherance of their political and economic interests, and as justification for their original motives for their crusades and expeditions in Africa. However, of greatest impact are the political and economic considerations that influenced colonial land ownership and access to land which are re-incarnated in post-colonial land reforms in these Africa countries.

### 3. Post-colonial period: The era of land reforms

Motivated by narrow political and economic considerations, colonialism confined land ownership rights to a minority group, disrupted communal tenure system and established dualistic systems that discriminated against local populations and impoverished their livelihoods. Thus, questions around land ownership rights in post-colonial Africa are inextricably connected to political and economic considerations, such as indigenous identity or citizenship, as well as productivity and livelihood.<sup>27</sup> Reclaiming land ownership rights for the people in post-colonial African states therefore means reaffirming their sense of belonging in their home lands and reinstating their source of livelihood. Land reform for the purpose of re-assigning land ownership rights and granting access to land to the majority who were dispossessed and marginalised became an urgent necessity at the dawn of independence. The objective of land reform in the emergent states was to ensure equity in right to land for agricultural productivity and economic well-being of the long-disadvantaged majority.

Depending on a country's colonial history, as well as prevailing political and economic ideologies, land reform may be realised either through redistribution, restitution or tenure reform. However, these variants of land reforms are not mutually exclusive as they may be combined to achieve the ultimate objectives of equity and efficiency in access to land. While Zimbabwe's land reform programmes focused entirely on land redistribution, South Africa presents an instructive example of a land reform programme that has encompassed land redistribution, restitution and tenure reform. Under its Reconstruction and Development Programme (RDP), post-apartheid South Africa embarked on land reform

25 Hall, R and Cliffe, L 'Introduction' in Hall, R (eds), *Another Countryside? Policy Options or Land Agrarian Reform South Africa* (n 11) 15.

26 *Ibid.*

27 Deininger, K Hilhorst, K and Songwe, V 'Identifying and addressing land governance constraints to support intensification and land market operation: Evidence from 10 African countries' (2014) 48 *Food Policy* 76-87.

with three programmes: (1) restitution to restore land ownership rights to those who were dispossessed of them under racially discriminatory laws; (2) redistribution to make land more accessible to those who had previously been denied access to land use and (3) tenure reform to give security of tenure to labour tenants, farm workers and other rural dwellers who lived on land without secure rights.<sup>28</sup> Political and economic considerations in South Africa necessitated a three-prong land reform programmes to ensure significant land transfers and small scale production units, and would not have been enough to tinker at the margin with only land redistribution as in post-independence Zimbabwe.<sup>29</sup>

However, independence in Zimbabwe and democracy in South Africa were ultimately not won through armed struggle but through negotiated settlements which necessitated political compromises on the issue of land ownership rights and land reform. The negotiated settlements left land reform programmes with minimal effects on access to land by the black majority as ownership of land remain largely unchanged due to the constitutional guarantee of the right to property.<sup>30</sup> Thus, while economic considerations necessitated land reform programmes, these were severely constricted by political negotiations on the type, scope and approach to land reform programmes suitable to the divergent and opposing interests of the minority white settlers and the majority black natives. For instance, under the Lancaster House Agreement and the 1979 pre-independence Constitution of Zimbabwe, approach to land redistribution during the first decade after independence in 1980 was market-led or based on willing-buyer willing-seller principle.<sup>31</sup>

This approach favoured the economic and political interests of the minority white commercial farmers as the Constitution circumscribed government power to undertake compulsory acquisition, required 100% parliamentary approval of any amendments to the Constitution, and reserved 20 Parliamentary seats for the white minority for a period of seven years after independence.<sup>32</sup> In South Africa, pre-democracy political negotiations between the African National Congress (ANC) and the National Party (NP) of the apartheid government culminated in the inclusion of property rights in the interim Constitution of 1993.<sup>33</sup> Thus, in both South Africa and Zimbabwe, political and economic considerations led to existing land ownership rights that emanated from generations of apartheid and dispossession of African lands being legitimised and entrenched in the Constitution.

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28 Akinola, AO, Kaseeram, I and Jili, NN 'Expropriation and the Discontent of Land Reform in South Africa: An Introduction' in Akinola, AO, Kaseeram, I and Jili, NN (eds), *The New Political Economy of Land Reform in South Africa* (Palgrave Macmillan 2021) 4; Rugege, S 'Land Reform in South Africa: An Overview' (n 6) 28.

29 Hall, R and Gavin, W 'Land Reform in South Africa: Problems and Prospects' in Baregu, M and Langberg, C (eds), *From Cape to Congo: Southern Africa's Evolving Security Architecture* (Lynne Rienner Publishers 2003) 97-129.

30 Rugege, note 6) 19.

31 *Ibid.*

32 Raftopoulos, B *The Hard Road to Reform: The Politics of Zimbabwe's Global Political Agreement* (Weaver Press) 68.

33 Budlender, G 'The Constitutional Protection of Property Rights' in Budlender, G Latsky, J and Roux, T (eds), *Junta's New Land Law* (UWC 2000) 1-3.

Although the South African post-apartheid Constitution of 1996 retains and protects the right of existing land owners against arbitrary deprivation, unlike in Zimbabwe, it provides for the power of the state to expropriate land for public purposes or in the public interest subject to just and equitable compensation.<sup>34</sup> Public interest is defined in the Constitution to include 'the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources'.<sup>35</sup> However, like Zimbabwe, the South Africa land reform under the RDP proceeded on the willing-buyer willing-seller principle, with expropriation only to 'be used as an instrument of last resort where urgent land needs cannot be met, for various reasons, through voluntary market transactions'.<sup>36</sup> What emerges therefore is that political and economic considerations influenced a common approach of market-led willing-buyer willing-seller principle to post-colonial land reforms in both Zimbabwe and South Africa.

### 3.1 Market-led approach to land reform

A model of land reform programme to redistribute land through a market-led approach was recommended by the World Bank in 1993 to the South African ANC Policy Document for land reform.<sup>37</sup> However, more than a decade earlier, in 1979, the Lancaster House Constitutional arrangement for an independent Zimbabwe negotiated a willing-buyer willing-seller approach to redistribute land from the minority white commercial farmers to the majority of land-deprived ordinary Zimbabweans.<sup>38</sup> In a perfect market, the principle of willing-buyer willing-seller implies that resources are optimally allocated through the market forces of demand and supply as buyers and sellers voluntarily meet to haggle prices and settle transactions. Yet, in both Zimbabwe and South Africa, the political causes and contexts of land reform, as well as the economic objectives of land redistribution, did not make for a perfect market therefore the willing-buyer willing-seller process was closely guided by the visible hand of the state.<sup>39</sup>

In Zimbabwe, the process involved the government purchasing land from commercial white farmers who were willing to sell portions of their land. The government thereby acquired farms, mostly consisting of small plots of a hectare or less, to resettle the poor and marginalised families from the congested native reserves. The government was therefore the buyer for the purpose of resettling and distributing to the ultimate beneficiaries, the poor citizens who had been dispossessed of land during colonialism. However, within the ten-year period (1980-1990) for the land redistribution to be carried out through this process, no meaningful land redistribution could be achieved for various reasons that had political and economic undertones on both sides of the supposed seller and buyer.<sup>40</sup>

34 Section 25.

35 Section 25(4).

36 African National Congress, *Reconstruction and Development Programme (RDP): A Policy Framework* (Johannesburg 1994) 93.

37 Hall, R 'The Shifting Terrain of Land Reform in South Africa: The National Land Summit, July 2005' (2005) 32(106) *Review of African Political Economy* 621-627.

38 Raftopoulos (n 32 above) 81.

39 *Ibid.*

40 Moyo, S 'The land occupation movement and democratisation in Zimbabwe: Contradictions of Neoliberalism' (2001) 30(2) *Millennium: Journal of International Studies* 401-415.

The white commercial farmers eventually became unwilling sellers while the government became a compelled buyer and later, an incapable buyer. The white commercial farmers were unwilling to sell portions of their large farms at reasonable prices to government, and began to offer land at prices far higher than the market value of the land they were willing to sell. This led to inflated land values which made it impossible for the government to sustain funding of land purchases for redistribution and resettlement.<sup>41</sup> Under the Lancaster House Agreement, the British government was to co-fund the land purchases with the Zimbabwean government. But the British government reneged, accusing the Zimbabwean government of corruption. The British government alleged that previous funds were diverted and misused by the Zimbabwean government to purchase land for ZANU-PF political elites, their cronies and supporters, instead of the intended beneficiaries – the rural poor.<sup>42</sup> These were mere ostensible reasons as Britain's withdrawal of funding were actually due to complex political and economic considerations relating to Britain's national interest both at home and in Zimbabwe.<sup>43</sup>

Through the decade after independence, land redistribution according to the willing-seller willing-buyer principle was unduly slow and later completely stalled while the communal areas still remained congested with poor people as it was during colonialism. The net effect of the market-led approach to land redistribution in Zimbabwe was that land supply was grossly inadequate to match demand for land for resettlement and redistribution to millions of poor Zimbabweans who expected that independence of the nation and the resultant land reform would adequately address their land demands. By 1990, the majority of high quality agricultural land, and control of key agricultural markets, especially export markets, remained in the hands of a small number of white owners as it was during the colonial period.<sup>44</sup>

In South Africa, the three-prong land reform programmes of land redistribution, restitution and tenure reform necessitated a multi-faceted approach, but all required the state to provide grants or funds to beneficiaries to acquire land. For example, under the land restitution process, victims of colonial and apartheid dispossession were required to make claims and prove their validity, while the state was responsible for availing the claim settlement funds. However, under the Settlement/Land Acquisition Grant (SLAG) and the Land Redistribution for Agricultural Development (LRAD), beneficiaries were responsible for land identification and making applications, while the state was responsible for provision of funds. The process under the Proactive Land Acquisition Strategy (PLAS) made the state responsible for identifying and buying land while the beneficiaries had to apply for access to and use of the land.<sup>45</sup>

41 *Ibid* 411.

42 Moyo S 'Land Concentration and Accumulation after Redistributive Reform in Post-settler Zimbabwe' (2011) 38(128) *Review of African Political Economy* 257-276.

43 For example, the new Conservative Party-led government of John Major, in 1990, bulked on the funding due to budgetary constraints. Change in government to Labour Party headed by Tony Blair rejected the agreement because; it was contracted by opposition party, not in Britain's national interest, while the new Parliament gave fresh socio-economic conditions for funding, conditions President Mugabe rejected.

44 Lahiff (n 3) 21.

45 Netshipale, AJ 'Land reform in South Africa: Beneficiary participation and impact on land use in the Waterberg District' (2017) 83 *NJAS – Wageningen Journal of Life Sciences* 57-66.

A distinguishing feature of the South African land reform under the LRAD was that it did not mandate redistribution of land from large commercial farmers to land-deprived peasants like the Zimbabwe model, rather it operated more on a willing-buyer willing-seller basis by making land purchase grants to landless farm workers and labour tenants.<sup>46</sup> The programme required beneficiaries to make contributions in addition to the state's grant and priority was given 'to the marginalised and the needs of women in particular'.<sup>47</sup> In reality though, benefits were claimed more by those with 'literacy, money, political contacts and the ability to submit and continue pressing their claims'.<sup>48</sup> The voluntary nature of acquisition of land and the methods of beneficiary selection as influenced by the market-led approach also served to discriminate against the vulnerable group like women and the very poor.

The original model of market-led land reform proposed by the World Bank had political and economic liberalisation as its guiding principle, and it recognised the central tension between the desire to address welfare objectives through the redistribution of land and the need to promote the productive use of agricultural land.<sup>49</sup> However, as a result of political considerations such as the proposed model – 'a highly centralised and fragmented bureaucracy' riven by 'poor race relations' and a 'high black staff turnover' – the reviewed model shifted away from alleviating the plight of the rural poor to a new concern to promote agricultural production and commercial farming by establishing a class of black commercial farmers.<sup>50</sup>

Subsequent reviews of the land reform programmes advocated a reversal of policy from a market-led to a supply-side approach where the state could purchase or release land which could be made available in the form of defined projects for the beneficiaries who qualify for them. Land reform with stronger state's intervention was expected to unlock the economic potential of rural communities while simultaneously addressing inequalities in access to commercial agriculture by black farmers.<sup>51</sup> However, what emerges from the market-led land reform programmes in Zimbabwe and South Africa is that political and economic considerations undermined the ultimate objectives of land redistribution – access to land for the poor majority. In the context of post-colonialism, market-led approach to land reform has perpetuated the interests of the fortunate minority instead of redressing colonial injustice of discriminatory land ownership rights and access to land against the majority of native Africans.

46 Kessel, M and Carter, MR 'Poverty and land redistribution' (2014) 110 *Journal of Development Economics* 250-261.

47 Department of Land Affairs (DLA). *White Paper on South African Land Policy* (1997) <<https://bit.ly/2XWZbjx>> accessed 31 December 2018.

48 Hall (n 37) 623.

49 World Bank 'Options for Land Reform and Rural Restructuring in South Africa' (Land and Agricultural Policy Centre Conference 1993) 41.

50 McIntosh, A 'Review of the Land Reform Pilot Programme (Draft Report)'. Associates for the Department of Land Affairs (1999) *The European Union Department for International Development* 6-38.

51 Hall (n 37) 621.

### 3.2 State-led approach to land reform

The struggle for liberation from colonial and apartheid domination envisaged that independence and democracy would usher in a new era of equal rights and equitable access to land. Therefore, land reform that ensures equitable redistribution of land resource without class differentiation is a legitimate expectation of citizens of post-colonial African states. The citizens expect the state to utilise the newly found political power to act in their best interest and are inclined to withdraw support, even allegiance, if the state is not perceived to act accordingly. On the other hand, the state is mindful of its legitimacy and conscious of its erosion by inaction or prevarication on such a fundamental resource as land. Thus, as Hammar notes,<sup>52</sup> land is both a pre-eminent political and economic resource and the stage upon which competing assertions of legitimate rule and territoriality are played out.

It is this context of political pressure that calls for a more interventionist state-led approach towards the ultimate objectives of land reform that guarantees equitable redistribution of land and ensures access to land for the poor majority. State-led approach to land reform may involve a pragmatic intervention in the land market whereby the state acquires land for equitable distribution, or the state, exercising its power of eminent domain, undertakes compulsory acquisition from the minority with excess land and redistributes to the majority with limited access. Historical and prevailing contexts of different nations need to determine the most effective means of active state's intervention in land reform. However, as a necessity, the ultimate objective of equitable land redistribution in the interest of the poor majority, has to be the guiding principle so that the end would justify the means. This is not to suggest that the state may employ any means that defy justice in its narrow and broad connotations comparable with colonial acquisition and dispossession, but one with the utilitarian result of serving the interest of the greater number of people.

State-led approach to land reform can avoid the problems with a market-led process and achieve the goal of equitable land redistribution if the most suitable policy and legal frameworks are emplaced and honestly implemented. However, no matter how the state's intervention is initiated it would fail to achieve the expected objectives if its implementation is dictated or influenced by populist political exigencies and parochial economic considerations. Populist considerations dictated Zimbabwe's land reform programmes from the 1990s when veterans of the liberation struggle and rural peasants, frustrated at the slow pace of land redistribution since 1980, invaded and occupied white owned commercial farms. For political expedencies, the government allowed the land invasions and occupations to fester until it gained momentum amongst the ordinary populace.<sup>53</sup>

The ten-year period for the willing-buyer willing-seller principle under the Lancaster House Constitution elapsed in 1990 and it provided an opportunity for the state to review

52 Hammar, A 'The Unsettled Land: State-making and the Politics of Land in Zimbabwe 1983-2003' (2007) 7(3) *Journal of Agrarian Change* 405-423.

53 Raftopoulos, B 'The 2013 Elections in Zimbabwe: The End of an Era' (2013) 39(4) *Journal of Southern African Studies* 971-988.

its land reform policies and laws for a more effective and meaningful land redistribution programme. Rather, the state assumed a radical and populist approach by allowing the land invasions and enacting the Land Acquisition Act in 1992 under which it acquired white owned commercial farms without compensation.<sup>54</sup> The state's acquisition complimented the violent invasions and occupations by the war veterans, and under the 2000 Fast Track Land Reform Programme and subsequent legislations, including amendments to the constitution, the rule of law was set aside in the process of state's land acquisition. The chaotic land invasions and occupations by war veterans and the militant members of the ruling party (ZANU-PF) were touted as the Third Chimurenga (the final liberation struggle), and the state capitalised on it for political mileage.<sup>55</sup>

In spite of any justifications for the post-1990s state-led approach to land redistribution in Zimbabwe, such as the slow and ineffective willing-seller willing-buyer process caused by the sabotage of the white commercial farmers, the chaotic and lawless 'land redistribution' could not have achieved any different result; it was politically instigated and thus compromised the objectives of land redistribution *ab initio*. For instance, there was no clear-cut policy for the equitable and efficient redistribution of land forcibly acquired by the state and invaded by the war veterans and their cohorts. Rather, acquired and seized lands only went to political actors, cronies and the invaders while the majority of poor men and women, not politically active, were marginalised and denied access to land for agricultural productivity. The lack of a systematic and procedural land redistribution policy also compromised the efficient use of land as most of the beneficiaries did not possess the capacity and expertise for productive utilisation of the land they received.<sup>56</sup>

Thus, the aftermath left little or no positive impact on rural livelihoods or the rural economy, rather it triggered monumental socio-economic problems for the national economy. Cliffe has asserted that land redistribution may not merely be constrained by the constitutional settlement and protection of private property, nor the market-led approach to land reform (like in Zimbabwe and South Africa), but more profoundly by the manner in which redistribution process is 'constricted by old-fashioned and often implicitly colonial orthodoxies'.<sup>57</sup> This assertion fits into the point made earlier that state-led approach to land reform should not be comparable with the process of colonial acquisition and dispossession of African lands, rather it should serve the utilitarian purpose – the interest of the greater number of people. Colonial orthodoxies were steeped in political and economic considerations of the interest of the minority and at the expense of the majority. It is this author's submission that, though with different political and economic considerations, land reforms in post-colonial Africa has continued to yield marginalisation and exclusion of the majority of the rural poor.

This enduring colonial legacy is latent in the implementation process and evident in the results of apparently well-managed, more civil and procedural state-led approach to

54 *Ibid* 972.

55 Hammar (n 52) 415.

56 Marongwe, N 'Who was Allocated Fast Track Land, and What Did They Do With It? Selection of A2 Farmers in Goromonzi District, Zimbabwe and its Impacts on Agricultural Production' (2011) 38(5) *Journal of Peasant Studies* 1069-1092.

57 Cliffe, L 'Land Reform in South Africa' (2000) 27(84) *Review of African Political Economy* 273-286.

land reform like that of South Africa. From the year 2000, land redistribution programmes in South Africa shifted away from state-assisted land purchase through grants to a policy which promoted black capitalist farmers, providing larger land purchase subsidies to those with their own means to engage in commercial production.<sup>58</sup> After the Land Summit of 2005 and a host of policies, stronger state interventionist land redistribution policies have, since 2011, conduced to a process where the state purchases land and distributes to black farming households and communities for a lease period of 30 years, renewable for a further 20 years, before the state will consider transferring ownership to beneficiaries.<sup>59</sup>

Under a Recapitalisation and Development Programme, qualification for on-farm infrastructure and production support requires that beneficiaries must have either a strategic partner (to operate the farm on their behalf) or a mentor (to advise them how to do so).<sup>60</sup> However, Hall and Kepe's<sup>61</sup> recent findings have raised questions about the political and economic implications of this incarnation of land reform policy in South Africa. According to the researchers, in the absence of land reform grants, there is huge disparity in who gets what. In some cases, a sizeable community may get a small farm, while in other cases government buys a large farm with substantial infrastructure and even livestock and gives it to a single family. The result is that some beneficiaries receive nothing other than occupation of farms, some of which are dilapidated, while others receive valuable farms as going concerns with infrastructure, equipment and livestock.<sup>62</sup>

In other cases, the state conclude leases with the strategic partners (established farmers or representatives of large agribusinesses who are mostly whites) rather than with beneficiaries themselves, who therefore neither own the land nor lease it, but remain workers on the farms, working for the strategic partners and paid below minimum wage. These cases comprehensively draw into question whether state funds for land redistribution are being used to provide (white) agribusinesses with cheap or free access to land in the name of redistributing land to (black) rural people. When beneficiaries clearly cannot invest in and operate commercial farms, they are to be sidelined in favour of agribusinesses that can do so. The result, as Hall and Kepe's field research found, is a two-tiered land reform in which some (white owned) agribusinesses garner handouts from the state, while poor families and communities who have accessed state land are left with insecure tenure and livelihoods.<sup>63</sup> This has also given rise to two distinctive realities: 'farms without farmers', and 'farmers without farms'.<sup>64</sup>

58 Hall, R 'Who, What, Where, How, Why? The Many Disagreements about Land Redistribution in South Africa' in Cousins, B (eds), *Land Divided, Land Restored: Prospects for Land Reform in 21st Century South Africa* (Jacana 2015) 130-148.

59 Department of Rural Development and Land Reform, *Draft Policy Paper: Communal Property Associations and the Rural Economy Transformation Model* (2013) 207 <<https://bit.ly/3CPxpvh>> accessed 2 January 2019.

60 *Ibid* 209.

61 Hall, R and Kepe, T 'Elite capture and state neglect: New evidence on South Africa's land reform' (2017) 44(151) *Review of African Political Economy* 122-130.

62 *Ibid* 127.

63 *Ibid* 129.

64 Akinola, AO, Kaseeram, I. and Jili, NN 'Globalization of South African Land Reform Scheme: An Interrogation' in Akinola, AO, Kaseeram, I and Jili, NN (eds), *The New Political Economy of Land Reform in South Africa* (Palgrave Macmillan 2021) 37.

State-led land reform may thus have profound threats of official manipulation and elite capture in land ownership and access to land. Indeed, state-led land reform in post-colonial African countries has effectively meant the nationalisation of land with the consequence of elite capture and the marginalisation of the poor majority. For example, land reform in Nigeria to address the problems bequeathed by colonialism in land ownership and access to land led to the enactment of the Land Use Act in 1978. The law effectively nationalised land in the country by vesting title to all land situated in the territory of each state in the Governor of the state.<sup>65</sup> The law thus extinguished all forms of land ownership rights and tenure systems previously enjoyed by Nigerians, particularly family and communal land ownership under which the poor majority had access to land.

However, the provisions of the law that have mostly thrived on political and economic considerations that are not in the interest of the poor majority is the requirement of Governors' consent for the transfer of a statutory right of occupancy through either mortgage or assignment<sup>66</sup> and the power of Governors to revoke any right of occupancy for overriding public interest.<sup>67</sup> Process for obtaining Governor's consent is cumbersome and expensive (has become states' revenue source) except for the elites, middle class and politically connected. Also, Governors' power of compulsory acquisition for public purpose is more often used as a cloak for expropriation of lands for purposes that are less of public and more of private interests of elites, politicians and their patrons. The consequence is that the poor majority particularly in rural and peri-urban settlements do not have land ownership rights or secure access to land.

In comparative terms, one significant theme provides a common context across Nigeria, Zimbabwe and South Africa; the persistence of diverse political and economic considerations that skew land ownership rights and access to land in favour of the minority since colonial period and now in post-colonial land reforms. To almost the same degree, post-colonial land redistribution policies and programmes in Zimbabwe and South Africa have not adequately corrected age-long deprivation and exclusion of majority poor black Africans from land ownership rights and access to land.<sup>68</sup> Also, in Nigeria, land reform necessitated by the negative impact of colonialism has rather ensured and strengthened minority rights to land ownership at the expense of the poor majority.

#### 4. Recommendations

The demands for land and the struggles for rural livelihood in African countries have not fundamentally changed since the periods of colonialism.<sup>69</sup> The system of colonialism in Africa originated from the existence of political forces that were motivated by economic benefits which Africa's land and mineral resources offered. Africa's colonial history, and

65 Section 1.

66 Section 5.

67 Section 28.

68 With particular respect to South Africa, this position is echoed and re-echoed in one latest work; Akinola, AO, Kaseeram, I and Jili, NN (eds), *The New Political Economy of Land Reform in South Africa* (Palgrave Macmillan 2021) 1, 11, 35, 55, 79, 121.

69 This includes political struggles by native Africans to build a nation-state out of the colonial state imposed by white settlers. See Mamdani, M *Neither Settler nor Native: The Making and Unmaking of Permanent Minorities* (Harvard University Press 2020) 145-147.

with it, the dispossession and impoverishment of rural people, therefore necessitates suitable land reform towards ensuring equitable land ownership rights and access to land for agricultural and commercial productivity. To different degrees though, post-colonial land reform laws, policies and programmes in Nigeria, South Africa and Zimbabwe have not successfully fulfilled the objectives of democratising land ownership rights, ensuring access to land, alleviating poverty and revitalising the rural economy.

In a reincarnation of colonialism, a variety of political considerations have affected choices and implementation of land reform policies and programmes in these countries in ways that perpetuate racial and class differentiations, elite capture and minority dominance, including the rise of local powers, in land ownership and access to land.<sup>70</sup> One significant lesson that emerges is that almost always the poor majority are the victims of the influence of political forces on the choice of economic policies and programmes. While the motivations and objectives of colonialism (political power and economic benefits) are now clear, post-colonial laws, policies and programmes towards addressing its effects are ensnared in a complex web of political considerations and contestations of public policy choices. The result, as evident in both market and state-led approaches to land reform, is a circle of land redistribution that begins from a privileged minority and end with the same class of minority.

Market-led approach to land reform, as prescribed by Western countries and institutions in the last two decades of the last century, led to the deregulation of the land markets, the withdrawal of state support to agriculture and the reliance on the private sector as the principal agent of development.<sup>71</sup> The consequence was economic crisis in Zimbabwe, accompanied by an equally profound crisis of political legitimacy in the face of popular dissatisfaction of ordinary citizens, and the adoption of a radical state-led approach to land redistribution that excluded the poor majority. In South Africa the market-led approach marginalised the very poor majority and consolidated the impoverishment of this vulnerable group as social class and economic status determined who got what, when and how in land ownership and access to land.

In contemporary time, there is a growing impact of neoliberal globalisation on land laws and policies being promoted by national governments and international agencies. Current policies, such as privatisation of former state agricultural enterprises and the granting of concessions to large scale commercial farmers, continue to place much of the best land in the hands of elite groups, both national and foreign, within a framework of market capitalism.<sup>72</sup> This is the position in the three countries of focus where the governments are now granting transnational investors vast lands for large scale agricultural production.<sup>73</sup> While this is justified as foreign direct investment to create

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70 In Mamdani's opinion, colonialism's legacy has also produced a bifurcated power that mediated racial domination through tribally organised local authorities, reproducing racial identity in citizens and ethnic identity in subjects. Mamdani, M *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton University Press 2018) 9.

71 Lahiff (n 3) 21.

72 Lahiff (n 3) 21.

73 Chamberlain, W and Rogerson, CM 'Agricultural land grabs in Africa: Scope, patterns and Investors' (2009) 7(48) *African Journal of Agricultural Research* 64-88.

employment and grow the economy, it however prevents pro-poor land policies and the availability of arable land for rural communities.

Arguably, a slow progress has been made in redressing colonial injustices in land ownership and access to land for the poor majority, but it has not fundamentally changed the highly unequal and dualistic nature of property relations, and has not also delivered significant material benefits to the rural population in these African states. Unfortunately, in this era of neoliberal globalisation, there is a strong tendency for African states to ensure or preserve (as the case may be) the fundamental structure of a capitalist economy, including commercial agriculture that is based on large-scale, capital-intensive production, with high export potential. In the years ahead, political pressures on government from players and agents of market capitalism (the minority) would serve to reinforce neo-liberal preferences that are now expressed in macro-economic policies, including in the agriculture sector.

Such policies are likely to leave the structure of the rural economy largely intact and, in the case of liberalisation of agricultural markets and cuts in agricultural support services, contribute to conditions that would remain hostile to the rural poor. In order to ensure equitable land ownership rights and access to land for the majority poor, this article recommends that there is an urgent need to evolve a new policy approach. As noted earlier, the failure of the willing-seller willing-buyer principle in Zimbabwe was not entirely due to the 'unwillingness' of land owners to sell portions of their large holding. It was, as a result of political expediencies, the failure of the state to offer adequate assistance to the landless majority and to actively engage in the land market in order to secure outcomes favourable to the rural poor. Even under active state's intervention in South Africa, the state also failed to secure favourable outcomes due to a top-down implementation process while in Nigeria the land reform places ownership of land at the top of the political class – far removed from the rural poor.

Consequently, this article recommends a new policy approach that has to place the landless majority at the core of land reform policies and programmes; where the rural poor is the focal point with which to closely monitor and evaluate outcomes at every stage of the implementation process. Whether market or state-led, the recommended new policy approach has to be driven mainly by the broad imperatives of ensuring equitable access to land for the vulnerable majority group of rural poor, and not influenced by political considerations that yield narrow outcomes for privileged minority groups.

## 5. Conclusion

The slow progress in re-assigning land ownership rights and ensuring equitable access to land many decades after colonialism have been due to the existence of diverse political forces that affect policy choices in land redistribution programmes. Under such approach, politicians and bureaucrats act mainly for selfish and narrow interests. This article's recommended approach calls for a new policy shift to where the state and its officials act to maximise access to land resource as a function of social welfare, economic productivity and quality of life for the majority of its vulnerable citizens. Useful details on the new policy approach herein envisaged and advocated may be gleaned from the African Union's

Framework and Guidelines on Land Policy;<sup>74</sup> it provides a process for the development of land policy and land reform in Africa towards strengthening land rights, enhancing productivity and securing livelihoods for the majority of the continent's rural and vulnerable populations.

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74 AUC-ECA-AfDB Consortium (n 1) 9-15.