

Land Tenure in Africa and the case of Guinea-Bissau

Marina Padrão Temudo

marinatemudo@gmail.com

marinatemudo@isa.ulisboa.pt

Key Concepts in Land Tenure

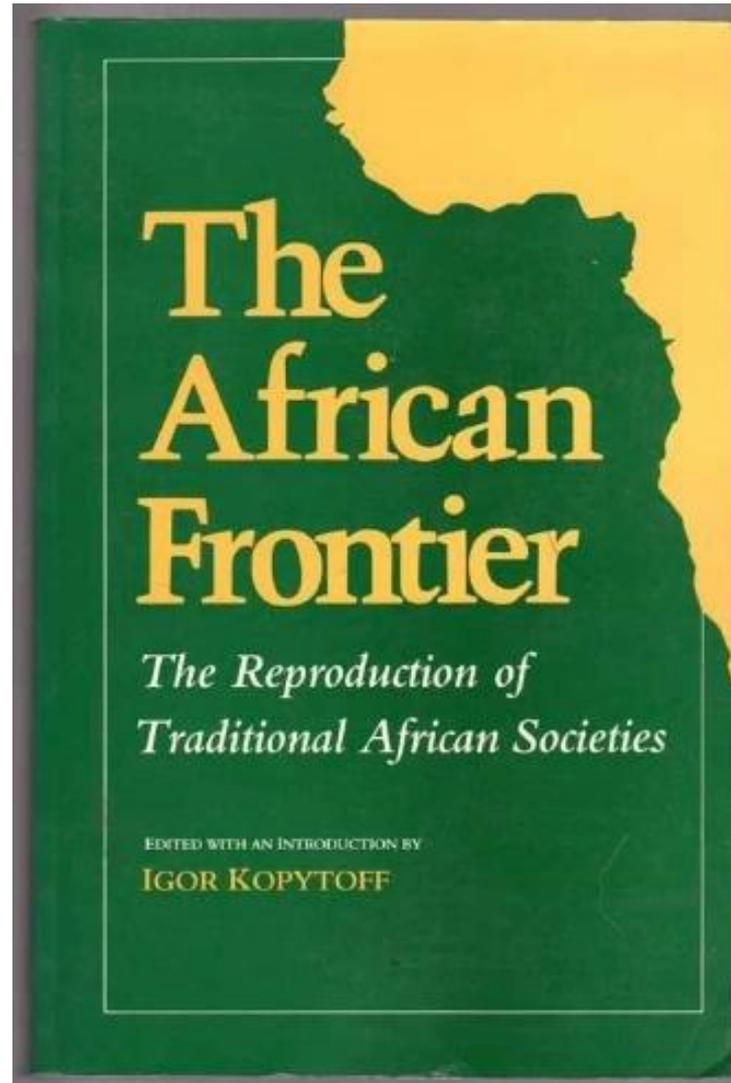
- **Tenure** defines the relationships between individuals and groups of individuals by which rights and obligations are defined with respect to control and use of resources;
- ***Jus utendi, fruendi, abutendi***
- **Freehold** defines the absolute right to control, use, manage and dispose of a property. **Ownership** can be reported, documented, effective;
- **Leasehold**: land by contractual agreement is rented to another entity for a fixed period of time;
- **Sharecropping**: similar, but payment is a share of the harvests

Key Concepts in Land Tenure

- **Customary systems:** tenure rights are controlled and allocated according to “traditional” practice
- **Vernacular land markets:** i.e. informal or extra-legal under customary tenure regimes;
- **Statutory property rights & land markets:** state-recognized and state-enforced rights that are formalized in a written title and transferable through market transactions;

I. Kopytoff and the 'Internal African Frontier'

Kopytoff, I. 1987. 'The Internal African Frontier: The Making of African Political Culture', in *The African Frontier: The Reproduction of Traditional African Societies*



The African Frontier

- Historically under-populated  labor limiting factor of agricultural production
- "Local Frontier" located within the boundaries (i.e., internal or interstitial border) of numerous established societies
- Societies had mechanisms for the organization of rights in persons on a mobile frontier with demographic expansion;

Traditional African societies were characterized by a social dynamic that periodically expelled members of their kinship groups, communities and political units.

The struggles were fueled by the coexistence of two potentially **contradictory principles**:

- **Hierarchy**: gerontocracy that controlled the collective resources

- **Equality**: individual interests were transcended by corporate interest

Cycle

- Some people leave because of pressures or opportunities and go to the periphery.
- In the institutional vacuum, they create smaller, less complex political units
- When the population increases they change the social organization (solidarity between patrons and subjects)
- Some leave this society and the process begins again

“The African frontier model”

(Kopytoff, 1988)

The Dynamics of African Sacred Groves • 23

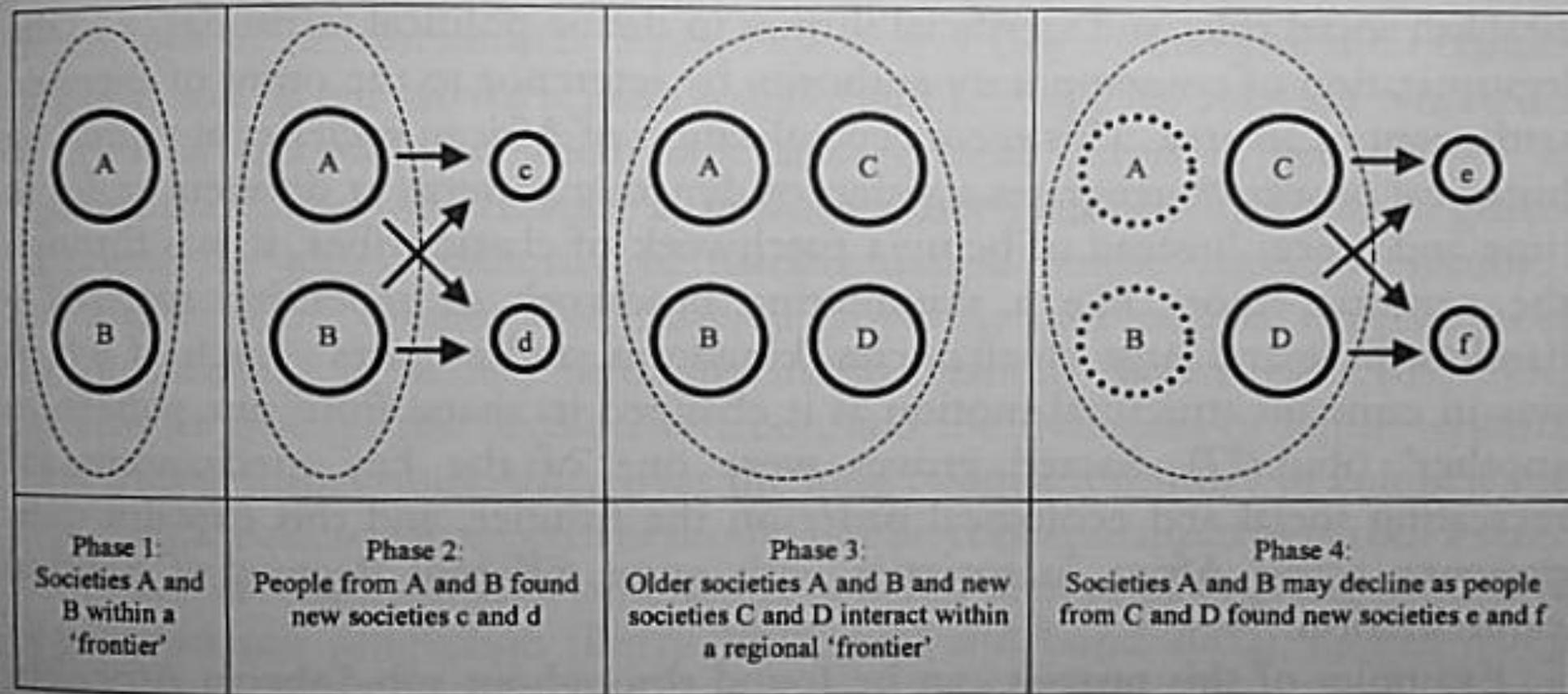


Figure 2.2 Simplified schematic representation of Kopytoff's 'internal African frontier'

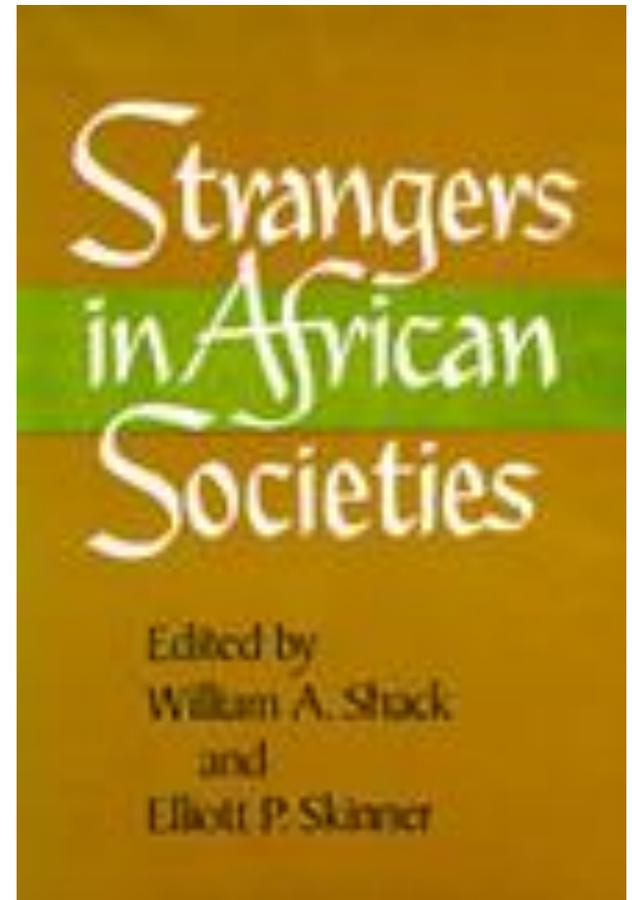
Kopytoff's Frontier Concept

Good points

- Criticism to the tribal model
- Ethnogenesis
- Reversal of political evolutionist theories
- Seniority, firstcomers and strangers
- 'Maroonage'

Strangers and Political Incorporation

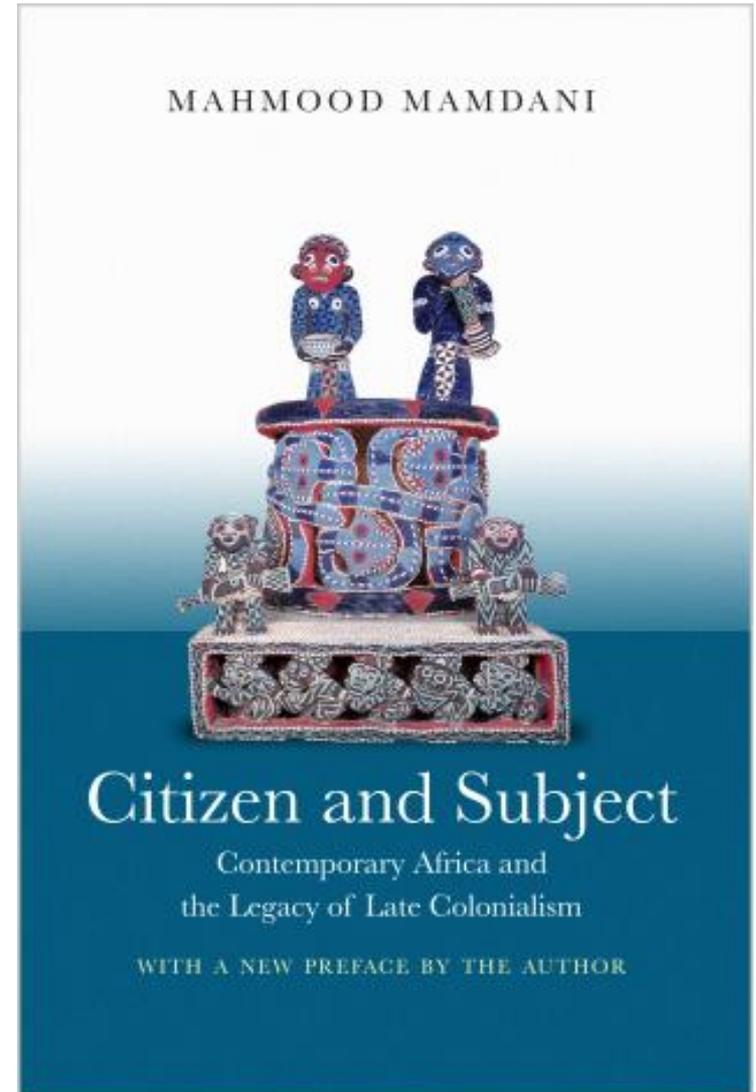
- R. Cohen and J. Middleton. 1975. *From Tribe to Nation in Africa: Studies in Incorporation Processes*
W. Shack and E.P Skinner 1979. *Strangers in African Societies*
Guyer, J. 1995. Wealth in people, wealth in things. *JAH* 36 (1): 83-90



The logics of “wealth in people”

The legacy of late colonialism

- The “byfurcated state”
- Citizens vs. Subjects
- Legal dualism
- Decentralized despotism
- Hierarchical vs. Segmentary
- The day-to-day violence of colonialism embedded in T.A.
- Post-colonial state was deracialized but not democratized



Ideal Type of Customary Tenure Systems

- **Land not recognized as property;**
- **Authority of T.A (mostly male) day-to-day decisions (allocation, disputes);**
- **Land administration and record keeping embedded in local memory, informal verbal and/or written agreements.**
- **Indigenous knowledge-based systems;**
- **Group boundaries;**
- **“Free” access based on qualifying rights (birth, blood, kinship); informal payments from migrants;**

- **Limited rights of disposal;**
- **Informal, individual and collective use rights with ability to exclude others;**
- **Locally-embedded grievance and dispute-resolution mechanisms;**
- **Women's access mediated by patriarchy (general)**
- **Informal sales & rental; Land given (to those with rights) based on need, rather than payment**

Source: Chimhowu, A. 2019. The new African customary land tenure. *Land Use Policy* 81:

Costumary Tenure

- Fluidity of rights, normative complexity and legal pluralism
- Space functions are multiple, specialized, interdependent
- Multiple spaces, multiple actors, multiple rights

Traditional Land Tenure Systems
are inclusive, relational, implicit,
imprecise and negotiable

Statutory Land Tenure Systems
exclude, are non-relational, explicit,
accurate and non-negotiable

- **Primacy and seniority** in the occupation of the territory
- **Ethnicity**
- **Political structure**
- **Social structure:** descent & residence
- **Religion**
- **Agriculture vs. pastoralism**
- **Food crops vs. Cash crops**
- **Settler vs. non-settler colonies**
- **Colonial & post-colonial policies & T.A.**

Colonial Laws

- Protection of customary rights and traditional authorities → political stability
- Creation of Crown lands (British) and state lands (French and PT) in “wastelands” → plantation agriculture;
- West Africa: forced production of cash crops by smallholders
- East & South Africa: settlers; creation of labour for plantations

Post-Colonial Laws

- Collectivization *or*
- Continuity in relation to colonial laws:
 - Simple revision of colonial laws;
 - State ownership of the land

Land Tenure & the W.Bank

1960s & 1970s, WB wants to modernize African agriculture. Considers that:

- Traditional tenure systems do not confer security needed to invest  cadastral and titling programs;
- Land titles allow mortgage and credit;

Critiques to neo-liberal views

- State-formalization of customary land rights does not appear to be a prerequisite for poor farmers' investment in land productivity, nor to automatically improve their access to credit;
- State-formalization of customary land rights is deemed to make the poor's rights of access to land less secure;
- In general, customary systems  land security  investment

- Studies show that customary systems are **neither** an obstacle to investment, but **not** always confer security for the poor (namely, appropriation by T.A.)
- **Both perspectives on statutory vs. customary property rights present some problematic assumptions and misinterpretations** of customary and statutory land tenure

Land Tittling in SSA

- Only 10% of the occupied land has titles;
- There is a legal framework to document land rights;
- Accusation that promoted elite capture and exclusion of the poor;
- Expensive individual registration, *but*
- There are low-cost systems for registering communal & villages' lands;

Land Reform Types

- **Consolidation of plots (minifundia);**
- **Registration of land titles;**
- **Expansion of the cultivation area;**
- **Redistribution of land ownership;**
- **Improvement of the legal status of tenants and sharecroppers;**
- **Reduction of rents and of payments in kind;**
- **Collectivization of agriculture;**
- **Decollectivization of agriculture**

1. Market-driven Land Reforms:

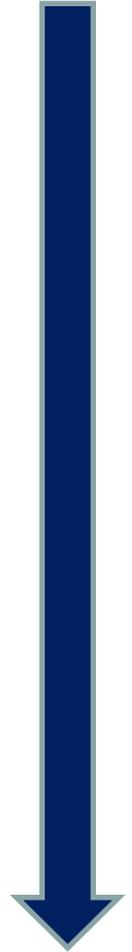
Beneficiaries receive grants / loans to buy;
landowners are willing sellers & receive market price

2. Poverty-reduction Land Reforms:

- **Landowners confiscated**
- **Redistribution of abandoned or underutilized land to the landless and / or poor;**
- **Regularization of the situation of poachers;**
- **Promotion of land rental markets;**
- **Promotion of women's access to land**

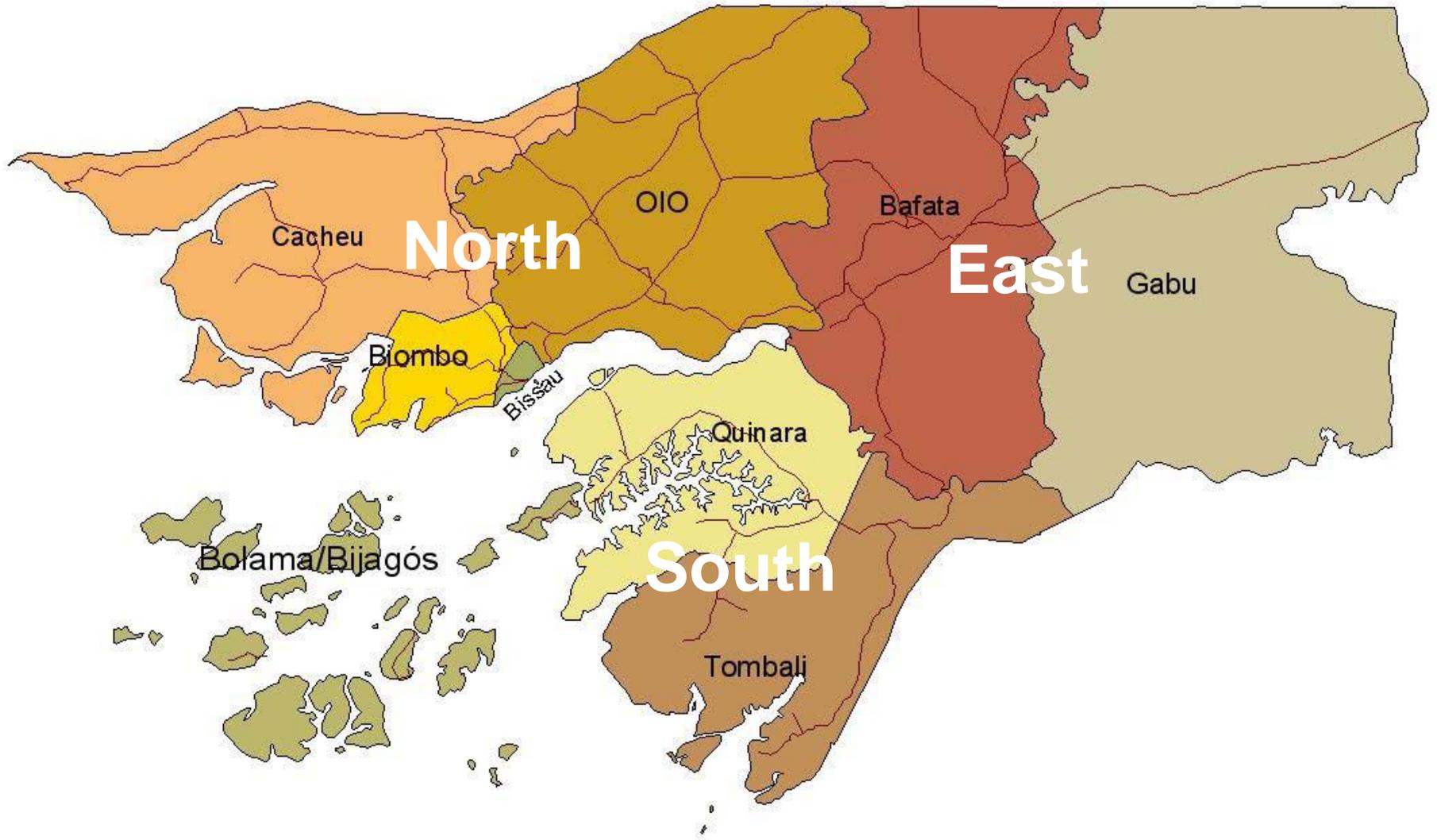
End of the “African Frontier”

- **Cash crops;**
- **Hunting & Forest Reserves;**
- **Population growth + Mobility;**
- **Green Grabbing;**
- **Land Grabbing + Local Elites**



Land value increase → Land Conflicts

O caso da Guiné-Bissau



Land Tenure & Land Use Histories

- **Population** (settlement, growth, migrations);
- **Ecological conditions** (different potentials & uses);
- **Local Systems of NRM;**
- **Politics** (land, agricultural, market, infrastructures, transports)
- **External interventions** (dev. & environ.);
- **Production systems;**
- **Social change;**
- **Wars** (anti-colonial, civil)

Colonial Laws

- Land reserved for the exclusive use of “indigenous population” (**1938-**) regulated by their use & customs
- Ambiguity about fallows and forest reserves
- Land concessions in order to secure the monopoly in cash crops’ purchase

Post-colonial Laws

- Land is nacionalized;
- Customary law implicitly recognized;
- N^o concessions stable until mid-80;
- S.A.P. and credit availability for “modern” agriculture → concessions → land conflicts;
- New Land Law in 1998;
- Regulated only 2008;
- Cashew trees’ expansion;
- Parks & protected areas

Tenure insecurity & Land market

Complexity & plurality of customary law

- Differences among ethnic groups and religions
- Firstcomers and guests;
- All are entitled to food provision;
- Access mediated through rituals and/or brokers;
- Free access to land is rare;
- Investments confer permanent rights of use and transmission by inheritance;
- Full property rights conferred by infrastructures and trees;

- Gender differences in access to land
- Land could not be sold;
- Forest reserves (all groups) and chieftaincy lands (Manjacos and Pepeis);
- Access to land to migrants;
- Rental only between Manjacos and Pepeis;
- Mortgage of orchards and mangrove rice fields;
- Land conflicts locally settled (memory of transfers by elders)

After the 80s

- Race to land by foreign investors and local elites;
 - Parks & protected areas: + 20% territory;
 - Cashew expansion: use as land markers & source of income and food
- 
- Civil and the value of land and the rural
 - Land market & changes in access to land
 - Changes in land structure → inequalities (class?)
 - Land scarcity
 - Increase in conflicts of difficult resolution

Some References

- Basset, T. e Crummey, D. 1993. Land in African agrarian systems. Wiscosin: The university of Wiscosin press.
- Berry, S. 2002. Debating the land question in Africa. *Comparative Studies in Society and History* 44: 638-668.
- Bruce, J., A. Moura, and C. Tanner. 1992. *Uma Nova Lei da Terra para a Guiné-Bissau: Necessidades e Oportunidades. Um Relatório Preparado para a USAID-Guiné-Bissau*. Madison: University of Wisconsin, Land Tenure Center.
- Chauveau, J.P. and Richards, P. 2008. "West African Insurgencies in Agrarian Perspective: Côte d'Ivoire and Sierra Leone Compared". *Journal of Agrarian Change*, 8: 515-552.
- Cotula L. (ed). 2007. *Changes in "customary" land tenure systems in Africa*. ISBN: 978-1-84369-657-5.
- ECA (UN Economic Commission for Africa). 2004. *Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa*. ECA REPORT.
- Espinosa, M. 1994. Ponteiros na Guiné-Bissau: o processo de concessão de terras, 1879-1991. *Soronda* 18: 15-38.
- Kopytoff, I 1987. 'The Internal African Frontier: The making of African Political Culture' in *The African Frontier: The Reproduction of Traditional African Societies*. Bloomington & Indianapolis; Indiana University Press.
- Journal of Peasant Studies*, 2012. vol. 39, Issues 1 and 2.
- Lentz, C. 2013. *Land, Mobily and Belonging in West Africa* (Indiana University press)
- Lifton, C. 1991. *Social soundness and wild analyses for USAID legal reform project paper*. Bissau : USAID.
- Mathieu, P. 1996. "La sécurisation foncière entre compromis et conflits: un processus politique? ", in Mathieu, P. et al. (ed.), *Démocratie, enjeux fonciers et pratiques locales en Afrique*. Paris: Harmattan, p.26-44.
- Mokuwa, E, M. Voors, E. Bulte and P. Richards. 2011. "Peasant Grievance and Insurgency in Sierra Leone: Judicial Serfdom as a Driver of Conflict". *African Affairs* 110: 339-366.
- Peters, P. 2013. Conflicts over land and threats to customary tenure in Africa. *African Affairs* 112: 543-562.
- Simo, J. 2011. "Land grabbing, governance and social peace-building issues in Cameroon". Paper presented at the *International Conference on Global Land Grabbing*, organized by LDPI, Sussex, 6-8 April 2011.
- Tanner, C. 1991. *Relations between Ponteiros and Tabancas: Implications for a New Land Law in Guinea-Bissau*. Cambridge: SEPR Associates.
- World Bank. 2006. Guinea-Bissau Land Tenure Issues and Policy Study (P095319). Available at <https://openknowledge.worldbank.org/bitstream/handle/10986/12465/689840ESW0P0950re0Issues000Policies.txt?sequence=2>, accessed 22/08/2013.