Entrapment or Freedom: Enforcing Customary Property Rights Regimes in Common-Law Africa

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Abstract
This chapter examines customary property rights and the role of customary leaders in enforcing those property rights from an institutionalist perspective. The issue of societal benefit is at the forefront of this chapter, which proceeds in three parts. Subchapter 13.2 discusses the pervasiveness of customary tenure and customary authority structures throughout Sub-Saharan Africa and their genesis in the colonial era. Subchapter 13.3 notes the lack of consistency between statutory law and customary law, which leads to a pluralistic legal setting. This part also identifies the winners and losers within customary legal systems. Subchapter 13.4 discusses how we can evaluate customary land tenure patterns and customary authority. The chapter ends by suggesting ways in which customary property rights and customary authority might persevere with a positive benefit to the society.

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The Future of African Customary Law, Entrapment or Freedom. The Future of African Customary Law, The Future of African Customary Law. Chapter. Chapter. Customary land tenure arrangements in Africa have enlivened and sustained the role of customary leaders and authority patterns in Sub-Saharan Africa long after they would have otherwise faded into disuse. Because the allocation and control of land has meaning that extends beyond the cultural realm and into the economic and political, those who control it are assured an important role in the social and political hierarchy of a community. Firmin-Sellers, KathrynThe Transformation of Property Rights in the Gold CoastCambridge University Press 1996. South Africa has what is known as an uncodified legal system consisting of various sources of law, including the Constitution, legislation (including statutory laws issued by national and provincial legislative bodies and subsidiary legislation), judicial precedent, customary law, common law (Roman-Dutch and English law), and international law.[1]. The doctrine of stare decisis (the principle of judicial precedents) requires that South African courts, in addition to other sources of law indicated above, follow previous court decisions issued on cases with “materially similar facts.”[2] Specifically, a South African court is bound by its own previous rulings on similar cases and rulings issued by higher courts unless the facts of the case.