Professor Joel Ngugi: Good evening. So, welcome for coming for our opening session, our very exciting symposium on environmental justice and governance in Africa. As is customary, before I proceed, it's only fitting that I should invite our dean, who has graced us with his presence, to welcome our guests into our building. So, Dean Hicks, please, welcome.

[applause]

Dean Greg Hicks: Thanks, Professor Ngugi. And I just can't say what a great pleasure it is to be hosting this gathering and to have it occur here at the law school and to have this opportunity to work so closely with the African Studies program and the program on the environment and others who have come together to make this possible.

One of our aspirations here at the law school is to be working increasingly and effectively in cross-disciplinary areas. And there's nothing that is more intensely and necessarily cross-disciplinary than environmental law and the human rights consequences that go along with that.

We are just looking forward to increasingly enriched dialogs with natural scientists, hydrogeologists, the social scientists. We keep learning how much cultural geographers, how much sociologists of natural resources, how much anthropologists have to contribute to give us a real, full, contextual understanding of natural-resource issues, of human-rights issues, and the environmental context.

And we want very much to be there. It's partly just the selfish motive of just intellectual curiosity, of just being fascinated by the work of other disciplines and of the creative, wonderful things that happen at the interface of those disciplines. And part of it is just wanting to be of some assistance, of some value, in not only enriching the discourse but also in improving the prospects of humankind.

We will, later this spring, be having another major conference on environmental law that's focused on human rights questions, our Three Degrees Conference, as it will be called. And it's focusing on the scenarios that are projected, should there be a three degrees centigrade rise in the temperature of the Earth, and wanting to explore, I guess, not so much directly the science of all of that, maybe taking some of that as read, but really focusing on the anticipated impacts on humankind, and especially on vulnerable communities around the world, of such a scenario.

That's going to be on May 28th and May 29th. I hope we are advertising it lavishly enough. So please come. Please participate. Mary Robinson, the former President of Ireland, other worthies will be here. So it's going to be a quite remarkable event. And I can say, with real joy, that it's been our students who have provided much of the energy in making this occur.
So, again, thank you all. Welcome to the law school. We're so glad to have you among us. And I just hope that the conversations of today and tomorrow are as rich and rewarding as can be. Walk around the building and see our library and meet our students. Be with us in every way here for the next couple of days, and we're very glad to have you with us. I'll return the podium to Professor Ngugi.

[applause]

Professor Ngugi: Thank you very much, Dean Hicks, for your wonderful welcoming remarks.

Now, it's my profound honor and pleasure to invite our keynote speaker today, Professor Kidane Mengisteab. Professor Kidane Mengisteab is a highly respected Africanist and African scholar. He's a professor of African Studies and Political Science at Pennsylvania State University and has a bachelor of arts degree from Addis Ababa University in Ethiopia, a Master's of Arts from Carleton University in Canada, another Master's of Arts from the University of Denver, and a PhD from the University of Denver.

His current research interests include the relevance of African traditional institutions of governance to institutional building in contemporary Africa; socioeconomic implications of expansion of extractive industries in Africa; and identity politics, democratization, and state-building in Africa.

Professor Mengisteab has written quite a number of books, articles, and book chapters. For the next two hours, I'm going to be reading them, because there are that many. No, I'm just kidding. I will spare you the list of all the books, articles, and book chapters that Professor Mengisteab has written, and instead I will welcome him to share with us today on the topic, "Institutional Incoherence and Environmental Degradation in Africa: The Case of Horn of Africa." Please join me in welcoming Professor Mengisteab.

[applause]

Professor Kidane Mengisteab: Thanks, Joel, for that nice introduction, although not quite true.

In any case, what I'm trying to do is to see if institutions can serve as an entry point to studying environmental problems in Africa. And the reason is my work, recently, is about institutions.

I'm going to be using this very quickly. The Horn of Africa is very vulnerable. And part of the reason is because a great deal of the area is arid. And it has suffered a great deal of environmental degradation because of climatic changes, but also because of human activities.

I was born in Eritrea, growing up as a peasant, grazing cattle and goats. I remember, in my childhood, following those goats was very difficult because the vegetation cover was very thick. Now, when I go back to Eritrea and look at the same area, you don't see any vegetation coverage. It has been totally degraded. And what I'm looking at is the human aspect, not the climatic changes. And my contention is that there is a relationship, it appears between social injustice and environmental injustice, and institutions will be used to help us understand it.
Well, that's the Horn of Africa. Oftentimes they make it bigger and bigger. I've never seen the Greater Horn including Tanzania or Rwanda and Burundi, but nowadays the Americans keep adding countries to the Greater Horn.

[laughter]

Professor Mengisteab: I don't know why. [laughs]

Originally, the horn was just the Sudan, Ethiopia, Eritrea, and Somalia. Now we have Kenya there, Uganda, and then Tanzania, Rwanda, and Burundi. This one is new.

But in any case, institutional fragmentation, how it relates to social injustice, and how social injustice, of course, leads to the environmental injustice, at least with respect to the human activities, is what I will be talking about.

The origins. My attempt to explain it is, first, let me explain what institutional incoherence is, or what the institutional makeup is in the Horn of Africa countries. Second, I will examine how this institutional situation has created a great deal of social injustice, and how this social injustice, of course, by forcing people to overuse their environment, is leading to environmental injustice. And finally, I will conclude by arguing that, perhaps, if we reconcile the fragmented institutions, we can also mitigate the social and environmental injustice in the area, but first we have to figure out how to reconcile those institutions.

So, institutions. Oftentimes, when people talk about informal institutions, they talk about corruption, with respect to Africa. But they are forgetting corruption is not the only informal institution in Africa. In fact, there is the normal informal institutions, the laws and norms that people do informally. And then, of course, the traditional African systems of governance that still exist. OK? And then, of course, you have the formal state institutions.

Now what we find in Africa is these are clashing. So, when formal and informal institutions are coherent, then of course, people, their behavior becomes predictable. And so, therefore, it is easy to have social stability. But if institutions are clashing then, of course, you don't have predictability, and you have confusion, and you have, also, social instability.

So, what are the institutional makeup in Africa? First, you have the state-sanctioned institutions. That's easy.

The second one is the critical one that's always neglected, and that is the formally formal -- in other words, precolonial systems of governance. OK? After colonialism, they have been relegated to informality, or to the sphere of informality, but they still exist. Government systems still exist. In some cases, these decentralized, village-assembly types of governance. In other cases, you find chieftaincy systems. In other cases, you find a combination of them. But, nevertheless, they do exist.

And then, of course, the informal norms. And they may vary along ethnic lines. They may vary along religious lines. If you are a Muslim, maybe Sharia laws influence your customs and norms. If you are a Christian, maybe Christian religion or the Bible may influence your customs and norms. But nevertheless, there are those in existence.

Now, if you want to ascertain what are African traditional systems, they're the formally informal institutions. If you look at African land-tenure systems, they are coming up. That's not in line with the formal institutions that the state follows now. Court systems, dispute-
resolution mechanisms are separate. So, in countries like Kenya, for instance, the large majority -- in fact, it might be some 70 percent of the land-related disputes -- do not go to the formal institutions of the state. They are settled in the informal sector, informal courts.

Well, I don't know how I got there, but...

Now, in any case, let me give you just an example that would highlight this. If a country has different institutional systems -- let's say Sharia laws in northern Nigeria and secular laws in the rest of Nigeria -- it would be extremely difficult to govern that state. That was the case in the Sudan. Southern Sudan, not being a Muslim but having to adapt to Sharia laws, that makes it very ungovernable. In other words, if institutions are in conflict, then of course, you can anticipate social conflicts as well. Those are the most obvious cases.

Now, my interest here is institutions of property rights of land. OK? So, the traditional land-tenure system in Africa is communal. But nowadays, with liberal policies and liberal ideology or perspective, and the need for foreign investments by African countries, there is this land-grabbing taking place. In other words, states are simply appropriating communal land in order to give concessions to extractive industries as well as commercial farming.

Now, there is a property rights violation there. From the point of view of the customary owners, the farmers, this is a violation of property rights. From the states, of course, they argue it is for purposes of development. How do we adjust or reconcile these different views? OK?

And now, the more states take land, the more people are evicted from the customary lands. And the more they are evicted, of course, they are concentrated in smaller areas, and particularly in the dry areas, they expose land to erosion and they have environmental disaster. OK? Not to mention the negative externalities that take place with extractive industries, including soil pollution, water pollution, and air pollution.

But that is not the only problem we have. We have, also, huge political problems. Think of it. If you have a state that operates in institutional systems that are incompatible with the population, then of course, that state lacks legitimacy. And if the state is willing to take land, violating customary rights of the overwhelming majority of its population, then of course, how can such a state implement democratization?

Can we possibly democratize when we have these clashing institutions? Is it possible to build a state? State-building, meaning creating a community of citizens that share common institutions, becomes almost impossible if the institutions are clashing. OK?

So my argument is, with these institutional clashes, we face the problem of state-building, we face the problem of democratization, and we face the problems of environment as well. And of course, as a result of these problems, you have chronic conflicts that are difficult to settle. So, the state becoming illegitimate and, of course, state-society relations become always conflictual and all that follows.

So, if these institutions operate the way they are, incoherently, then of course, state-building, democratization becomes difficult, as I mentioned.

Alright. Now, why we don't have much discussion in the literature on these issues of institutional fragmentation. When we look at the literature, we find some deal with informal institutions, but only with respect to the informal aspects of the state, such as corruption.
OK? The notion of African traditional systems of governance being part of the informal institution is almost nonexistent in that kind of literature.

Another group of literature simply talks about some aspects of African traditional institutions, mostly chieftaincy systems. And they argue whether chieftaincy or chiefs are relevant nowadays or not, instead of dealing with all the institutional mechanisms that support chieftaincies. So the debate is whether chiefs are relevant or not. In many African countries, in order to accommodate chiefs, they create house of chiefs, as a second house of parliament. But, in most cases, they have little power, other than appeasing them and to help them winning elections and that kind of thing. But they are not integrating the property rights issues, the laws the govern society.

There is a third group of the literature, legal food harvesters. These argue whether African customary laws should be recognized and coded or whether they shouldn't. And oftentimes, they argue that these customary laws should be respected and recognized.

But, the limitation of the literature is they don't look at the broader implications of this institutional fragmentation, the social and political implications. They also don't discuss much as to how to reconcile the institutions. It is one thing to say African customary property rights should be respected, but how do you respect them and, at the same time, continue with the development aspects that the states try to bring? We don't have a mechanism. We haven't created a mechanism as to how to reconcile these institutions.

So now let me look at the implications of land-takings. Now, if you look at the Horn of Africa countries, the magnitude of land-taking that is taking place is incredible.

Obviously, land-takings and this institutional fragmentation originated with the colonial state. My point is that the post-colonial state is pretty much following the same institutions. Many African countries, if you read their constitutions or land policies, some argue--or not argue, decide--that all land belongs to the state. So, if you look at constitutions, such as the Eritrean government, for instance, it claims that all land belongs to the state. So people use it, well, when the state is willing to allow them.

In other cases, if you look at Sudan, for instance, all unregistered land can be taken at any time without any compensation because it belongs to the state. Unregistered means the communal land that's held by customary holders of land.

In other words, in the African tradition, you don't have registration of land. It is customary. It belongs to the village. It belongs to the ethnic group. It belongs to the lineage. Whatever the composition of the group is. But there is no registration of land. In other words, people don't have individual certificates of land. So the state, when it says, "All unregistered land belongs to the state and people using it can be evicted," it simply means, "Your customary ownership is not recognized." That's what it means.

The same was the case in Uganda, until 1995. That's when they changed their land policy. Strangely, what they claim in Uganda is: the land belongs to the people, but resources under it belong to the state. So, in other words, if they find any minerals, they can evict you.

Ethiopia's constitution is pretty much like that. Since the 1975 land reform, they have claimed that land belongs to the former tenants, peasants. But, if there are minerals, they can evict you. But now it's not only minerals. They are also leasing a great deal of land to commercial farmers, not only to miners but also commercial farming.
Kenya is a little bit different. In Kenya, the president can take any land and give it to anyone he wants. The president has that power in Kenya. And no wonder why the presidency is such a very critical position to fight for. But, at least in Kenya, maybe because the registration has taken place quite a long time, they give compensation when they engage in land-takings, especially if it is registered land. But nevertheless, the land issue in Kenya is slightly different, because it has also ethnic dimensions that we don't want to go to now.

How much land are these countries appropriating? That's very difficult to say. The only thing we can say, all we have is this anecdotal data. But what we can do is by looking at how many companies are operating in the area, what mining is in operation in those countries. That's one thing that can help us at least get an idea as to how much land is being appropriated.

So, if you look, well, here, what I want is that with the liberalization that started in the 1980s, or the new global system, the demand for oil and the demand for minerals and the prices of these commodities has motivated more and more land-taking. And in some cases, the incentives that countries give pretty much undermines the benefits they get from these concessions to mining companies.

But in any case, the Horn of Africa is not quite well-known in minerals. Extractive industry is not very strong, with the exception of the Sudan. But, nevertheless, Eritrea has, for instance, gold, copper. Ethiopia has explorations left and right for oil, giving concessions, gold. Sudan: oil, gold, silver. Kenya: essentially gold and petroleum, of course. And Uganda has cobalt, columbium, tantalum, gold, iron, and oil explorations near Lake Victoria, Lake Albert and so on. In other words, you would find companies doing all this in those areas.

What we don't know, and we have no data whatsoever, is what is happening to the people, the customary owners of this land? We don't know that. So we can only assume that they are evicted in most cases. And evicted, where are they going?

Farmland concessions is another new development, very recent development. Some of you may have heard a very controversial land grant made by Madagascar. They gave about 1.3 million hectares to a South Korean company. That's almost half of the country. And the South Korean company was to produce food. We don't know what will happen with that because, with the coup, the new government has revoked that agreement, so perhaps they will not go with it. But in the Horn of Africa, a great deal of that is taking place.

There are several reasons for that. One, food prices have been rising. Even with this financial crisis nowadays, food prices and investments in food production hasn't slowed down. And this is driven mostly by Middle Eastern countries. The figures tell us that the Middle East has about 31 billion a year in food market. And they have a great deal of deficit. Countries like Saudi Arabia have been using these greenhouses to produce their own grain. But now, because of shortages of water, their production is declining by about 12.5 percent. And that's by decision. They have decided to cut their production in order to conserve water.

Now, to offset that, they have created funding for leasing land abroad for food production. So, food security in the Middle East and Asian countries is driving land concessions from African countries. Not only African countries, but our interest here is African countries.
Now, how much land have they given? Saudi Arabia, Dubai, United Arab Emirates have all secured farmlands in the Sudan. And in fact, the country is looking for investors for 900,000 additional hectares of land.

Very interestingly, a New York company is also claiming that it has purchased 400,000 hectares in southern Sudan. My reading of southern Sudan tells me that there are civil wars -- or clashes, if you like -- between different ethnic groups over land. So, recently, in fact, the Nuer and Murle ethnic groups near Jonglei were fighting over land. And all of a sudden, you find these 400,000 hectares. Where they got them from and what they are going to do with the local people, I don't understand.

Now, Ethiopia has become favorite of land-leasing. And these leases are normally for 99 years. In other words, once you give this land for leases, you're not anticipating your population to be developing their own farming skills and to become competitors in supplying the food gap that's in the Middle East. In other words, instead of trying to develop your own farmers and fill that gap, actually they are giving the land away.

In Ethiopia, 250,000 hectares were recently given in Gambella and Benishangul. I'm not listing all of them, because it's difficult to list.

Even the president of Djibouti has gotten 7,000 hectares. The minister of energy has pointed out that are 23.3 million hectares available; additionally, 700,000 hectares for sugar production. Even countries like India are investing in this sugar.

My main point is what's happening to the farmers there. When you look at Ethiopia and agriculture in Ethiopia, land area for individual farmers is very small. Now all of a sudden they have all this land available, and somebody must be getting affected.

Alright, so to come to my point. The more you evict these people, the more you are pushing them to smaller lands or more marginalized land. The more you do that, of course the more environmental damage you do, the human aspect of the environmental problems that is characterized in the area.

So we have various problems. Of course we have rebellions by affected marginalized identities against the state. We can think of places like Darfur. It's essentially conflict over land.

There are several inter-communal conflicts, as I mentioned, in southern Sudan over land, several conflicts in Ethiopia, including in Gambella, where they have given large concessions for oil exploration.

Then of course you have conflict between communities, and rebel groups are attacking companies every now and then. Oftentimes these companies have even their own militia for protection purposes.

In other words, they create conflict, and the more conflict you are engaged in, the more damage to the environment - not only to the environment, of course, to economic disruption, and poverty. The more poverty - it becomes a a cycle.

Beyond evictions, of course, the externalities. The externalities are what miners do, how much environmental regulation are they following. Even the commercial farming... In
Ethiopia, at least, they complain about the flower farming polluting drinking water and so on. In the Sudan, the same thing with oil spills, and so on.

There are various externalities that go on in addition to the human activity, the other damage, the evicted or the victims of eviction over-utilizing the plots of land that they are concentrated into.

Alright. Those are the problems. But how can we reconcile institutions? In other words, how do we maintain... Of course, mining is never going to go away, and maybe commercial farming and lease of land may not go away because the revenue governments get is very enticing.

But is there a way where we can make the potential victims of these land-takings to become beneficiaries or partners in the benefit of this mining and commercial farming? Is there a way, for instance, of making them partners? They're contributing land as capital and becoming shareholders in those corporations.

The argument of compensation doesn't work. The reason compensation doesn't work is many of these people, for instance, if they are nomads, how much are you going to compensate them for land?

In other words, it requires transformation of their modes of production. One of the issues that I didn't mention, the institutional incompatibility, is how do you make nomads abide or adopt capitalist-type of institutions?

They can't work. They're not going to be privatizing land or registering land in the first place. They need land to roam around. It is not something like where you can chop pieces of land and give them to nomads. It just is incompatible with their mode of production.

In other words, could it be possible, for instance, if you take lands from nomads, that then if the land is used for mining, then they become shareholders? Then of course it also infringes on the state because - well, on the state as well as on the companies because you are now going to have additional cost or bring into partnership these people.

In a way what I am saying is these nomads and peasants that are evicted are actually subsidizing the companies and the governments that are becoming rich as a result of these resources.

That's the social injustice, but that social injustice is also leading to environmental injustice. In other words, what I have attempted to do is use institutions to show the relationship between the two injustices.

But to me, I think reconciling institutions is possible. At least one time that I attempted to do it, I don't know how successful it will be, is Somaliland. What they have done is they have created this Guurti, this House of Elders, they call it.

But unlike the house of chiefs in other African countries, the Guurti has real power. In other words, the parliament cannot pass any laws unless this House of Elders approves them.

The House of Elders also regulates the power of the presidency. In other words, they have significant power, and they go all the way down. In other words, it's not only at the top level, but also at the local level you still have the House of Elders operating.
They are the ones in charge of dispute resolution in the country. So in Somaliland, if there is an ethnic conflict, it is the House of Guurti that goes to settle it because that's their responsibility. They use African conflict resolution mechanisms to deal with these issues.

Now what I haven't found is that hasn't penetrated down to the land issue, but at least it gives us an indication that reconciling institutions might be possible. That may also help us address all the problems of government as a result of the fragmentation and incoherence of the institutions and so on.

Finally, some research questions that we still need to work, it seems to me, is can the institutional reconciliation serve as a way of mitigating these social and environmental injustices, if we can devise some models of reconciling these institutions?

In what ways can customary owners of land be partners and not mere victims of expansion of extractive industries and commercial farming?

If every land that has been taken and instead of simply evicting the peasants they become partners, that may be one way of reconciling. I don't know how viable that is. We need to explore that possibility.

The relationship between institutional clashes and state-building and democratization, to me, if you start from the institutional problem point of view, it becomes almost impossible to build states, very difficult to create a community of citizens when they have different commitments, different institutions.

And if governments are to take land left and right without respecting property rights of their communities, then they can't claim to be democratic, even if they carry out elections. It would be just sort of hollow democracy, if you like. Because the majority of the African people are peasants. We should not forget that.

And, lastly is, of course, why the academic community is not dealing with this institutional problems is another interesting question. I think I will stop here. Joel, you didn't even have to point...

**Professor:** Yes, you did you very great.

**Professor Mengisteab:** I am stopping here.

**Professor Ngugi:** Oh, you are?

**Professor Mengisteab:** Yes.

**Professor Ngugi:** OK.

[applause]

**Professor Mengisteab:** Thank you.

**Professor Ngugi:** So, thank you very much Professor Mengisteab. I think we will have Professor Bill Rodgers give a rebuttal, so to speak, for maybe 15 minutes, and then we will invite questions comments and so forth.
So I don't know whether we were all in the same room, but when Professor Mengisteab was talking, I can summarize, I think, he is talking one sentence: That law and lawyers are the problem. At least that's what I had from where I was sitting.

So what better way to continue the symposium then to have a lawyer respond. So we are going to have a commentator, and that's Professor Bill Rodgers, to give a presentation for about maybe 10 to 15 minutes.

Professor Bill Rodgers is a much beloved elder scholar statesmen of this law school. He is currently the Stimson Bullitt Professor of Law here at the law school. He received his Bachelor of Arts degree from Harvard University, and his J.D. from Columbia. He specializes in natural resource law, and is widely recognized as one of the founders of environmental law as a discipline within law.

He has produced quite a number of books and articles, and recently has produced a two-volume treatise entitled "Environmental Law in Indian Country," as well as having co-authored "The St'Lailo Way: Salmon, Indians and Law on the Columbia River."

Rather than continue boring you with more of his accomplishments, I would rather have the real man come up and respond to Professor Mengisteab's talk. So please join me in welcoming Professor Rodgers.

[applause]

Professor Bill Rodgers: Thank you, Professor. Never been to Africa, but much of what you said is very familiar to me. We been reading in the newspaper in the last few days about the Horn of Africa, and there seemed to been some disagreement with people there that were described as fishermen and pirates.

Now that raises the issues that you have been talking about, whole question of resource use, exploitation of resources and justice or, not, that may attained the use of resource. If I can pursue...well, you didn't mention...I know many of us are thinking about that case, and I certainly thought about, if you had a choice to be a pirate or a fishermen, what would you do?

And I guess I think you would start as the fishermen. I mean, piracy, that's a young man's job. So I guess when I hear of that scenario, I am thinking, "I bet the fishing turned bad." And then the big question, then, is why did that fishing stop? Then I bet there is a deeper story behind that question of the fishing because to me that's one of the many social conflicts that you made reference to.

I like to agree with you. I think why would we think otherwise about traditional law? It has to be universal. And I believe it is. So these modern states have come along, have been put upon tradition law just about everywhere. And I did bring some props. So I did want you to see the study that I have done on traditional law and its impact or, its lack of impact, on a new state system that came along on top of it.

And one of the great native fisheries in North America took place at Celilo Falls, Columbia River. You can't quite see that picture, but I have got to describe it to you as a classical case of traditional entitlement. That was about 90 miles up the Columbia. It's a fantastic fishing site. And natives fish from platforms, and it was dangerous, slippery. You could fall overboard. But they had traditional rules. And one of the traditional rules is if you fell
overboard, all the other fishermen would drop their nets and, if luck would have it, they would catch you downstream. And this is a photo of somebody being pulled out downstream.

It's a beautiful story about functional traditional law. And I have no doubt, certainly, the theory that I would apply to the community ownerships that you have described in the Horn of Africa is that they were very functional - have no doubt about it; allocation, they would have serious management. They would protect the resources because that's what all they had. And that was a very valuable and environmentally protective scheme.

One of the great documents that we found, I think, on the Columbia, was the will of -- you know, the legal way to pass on your property to your children -- there was a will of one of the fishermen. And what he did, he left his property, the fishing spots, forever and ever and ever to his children. But the thought was that that would always be that way, and that they would have this entitlement that would extend through times. So it's very, very protective.

And then along comes the state. And, unfortunately, I guess I would believe that the newly arrived state and the newly arrived authorities would universally downgrade the existing customary structure that they found. It's cheaper that way. It's easier that way. It hides your ignorance not to know it.

And certainly that was the rule in the United States. We know from Supreme Court decisions what the value of what we called Aboriginal property was - nothing. And the state, therefore, could take it and reallocate it, as they would and, in systems as you have described, perfectly predictable. And, therefore, you would have a diminution by law of the preexisting entitlements, the preexisting entitlements, the preexisting customary system.

And that's what certainly would happen in the United States. It was called non-property. Well, you have been living there for a longtime and your family uses this sorts of things, but you wander around. You are not really stationary in a property sense. So we will just take that property and you will go somewhere else. So that to me is a very widespread phenomenon, and I think you have identified the problem very well.

Of course, how do we fix that? Is there a way to fix that by law? And you made a few references, possibly. But protecting that property is very expensive and it's disadvantageous for a variety of reasons to the new authorities. They don't want to do that. And it hasn't worked that way.

The next system you describe of the reallocation to whether it's mining or these huge farms -- that's amazing. Sell half your country to South Korea for a farm. Again, I guess we wouldn't be expected to predict anything else. This is the behavior of power. And I feel the same way about your point with regard to "the old state looks a lot like the new state."

Again, the momentum of what was and the difficulty of changing it, I always call that the panda's thumb problem, because I really do think in any system that changes over time, there is a tremendous advantage to what it was before, and adjusting that system is very, very difficult.

The reason that it's the panda, what we are talking about: Panda was in an evolutionary system, changing over time. The panda was a very good bear, but got trapped in a radically changed environment, where all it had to eat was bamboo. When you are a bear doing bear
things with bear claws, it's not easy to eat bamboo, and you are not well designed for the bamboo.

And that's how I see these states as they march along. And what we all wonder and, here, maybe, do hope that you can have the revolution through law, is when these new owners come in, you can see the chaos that they create by basically displacement, and the anxieties and the injustices that they dish out, so the people are expected to go somewhere else. But the real question that's so hard to answer is: Why in the exercise of these new property rights are they so destructive?

Now, there is a great body of literature, I think you will love it and I think it's very relevant to your work. It's called "The Resource Curse" and the Nobel Prize-winning economist Joseph Stiglitz has worked on that. The basic story is that when these states acquire this momentary wealth, it turns out to be a disadvantage to virtually all of their social goals. So it's a curse. And the people that are to benefit seem to be disadvantaged as well.

So these are very serious problems. And what we have tried to do as we deal with, you know, why are you inclined in the course of your farming practices to deplete the ground water, or why must you completely engage in activities that will be unsustainable, so that the fishing will be gone for all the people who need it and who rely upon it for their sustenance? We wonder about that and, as you know, we have talked forever about sustainable uses. And I think the picture that you point is exactly the kind of picture you wouldn't expect, that is social disruption of conflict between institutions, rapid changes in expectations and wealth.

This is exactly what you don't get when you want sustainable development. You want people with a long time commitment, who will be there tomorrow, who are taking care - if they are taking any care at all - of their own children. But if they are there on a five year lease and time is running out or your support only lasts until the next election, then you step up the degree of damage you inflict on the world.

So to me, you've posed the issue just beautifully. And the question that we often confront is whether there is any regime of law that can turn this around. And I think there is something very, very valuable in the goal of having those people who were there continue to be there doing their traditional things. They are the greatest investment you can have in any resource, and once they are cut loose and moved and transported and redefined and overlooked, then you are guaranteeing the conflict.

Now is there any way in law we can do this other than through internal change? That's what we try to do. And I want to leave you with a case, one of the accidents of U.S. law, it's called the Alien Tort Claims Act, and that is that aliens ensued in U.S. courts for violations of customary international law engaged in by private parties or states. And we are very interested in many of these cases of giant corporations coming in at the beck and call of opportunistic politicians, hiring their own militia, and then engaging in warfare brutality of one kind or another against the local population, and we hope and think that there are some remedies available just for that.

One of the big ones that's ongoing that we are very interested in is the so-called Rio Tinto Case, which is from Papua New Guinea. And in that case, a giant mining company functionally removed thousands of natives, functionally destroyed several watersheds. There was a revolution in opposition to this and a war broke out. And that tremendous social conflict that you see has been framed and presented and argued here in U.S. courts.
So I guess we always want to know: Is there a way to do it through law? And in the U.S. environmental laws - and I will close here - we are so fortunate because we had a stable judiciary. And we had then the authority to demand of government that their actions be accounted for...these are the impact statements under the National Environmental Policy Act, and they apply also to U.S. agencies funding activities abroad - The Export-Import Bank, The World Bank. So this how we reach them by law.

And the environmental movement in the U.S. had a wide variety of ways to petition and initiate and seek relief, and we have won enough of those cases to have some hope outside of armed rebellion.

So, I guess the sad thing is there such a gap between these cultures, you'd know in an instant. I've got a long list of things I can - this works in some courts. In some parts of the world, may not work in this other culture. But, the great thing about law is it doesn't take long to think one up. So, you always get a, if you survive that exercise, you always get a second try and a third try. Sometimes where it works, then a copycat mechanism takes over. So, if you find something that works in country A, maybe it will work in country B.

I thank you very much for raising these questions for us and I wish we had better answers.

[applause]

**Professor Ngugi:** Thank you very much, Professor Rodgers. You've responded in ways only you can. So, now we have an opportunity for members of the audience to contribute, to ask questions, make comments and so forth. We will keep doing this until 5:30 when we will head -- if we raise good enough points, we might have a reception. So, let's have a discussion for the next, maybe, 35-40 minutes. We welcome not only questions but comments and so forth.

For those of you who will be with us tomorrow, I just want to flag on the outset an irony that I think is present in both presentations by Professor Mengisteab and Professor Rodgers. It's this. They seem to suggest that there is a sense in which the modern property regimes are leaving a path of destruction environmentally, which is leading to social injustice. Yet, in most of Africa, in fact, most of the global south, the move and the trend is to institute the so-called modern property regimes.

So, why is it so? Why is it that we haven't yet figured out this irony? Is it necessary? Can it be avoided in any meaningful way? Professor Rodgers says that there is hope in the realization that there can be a revolution through law. There goes the biggest understatement in the century. Revolution through law, which means then it's possible -- and Professor Rodgers would say in his, I think, pathological optimism -- plausible to somewhat modify and/or reform legal regimes for the better so they can usher in a new era of environmental justice and social justice.

That brings us to, for the participants of this conference, to the next question, which would be, can the African new liberal state in its current rendition, in its current iteration, is it amenable to such modification, such tweaking, to usher in the kinds of regimes of property and natural resource governance that Professor Rodgers hopes is possible?

This is some of the questions that I think have come from this session. Let's keep it in mind as we continue discussions tomorrow. And now, the floor is open for discussion, questions, comments and points of disgust, disargument, whatever. I think that we should probably
take a number of comments and/or questions, and then we give you a chance to respond later, alright? OK.

I think Professor Rodgers appropriated your property.

[laughter]

**Maurice:** This is a new property regime.

[laughter]

**Professor Ngugi:** Yes, Maurice?

**Maurice:** Thank you very much for the presenters. This has to do with the origins of the demonization of traditional structures by so-called modern structures or law, so that we have traditional given structure, a view that would seek... My name is Maurice... But, I'm really from Kenya. But this trend that we see in Africa where there's almost a rapid struggle to replace what is traditional by modern or contemporary. But, [inaudible] but I'd rather use the indigenous and maybe western notions and so on...

Why is there this notion that traditional laws and precedents should be replaced by the so-called western or contemporary, or whatever phrase you use there? Because I see these and Kenya, Uganda, Zambia, South Africa where this fascination with modern utilization of infrastructures. I know this fascination with modern or so-called western legal structures. An example is being supplanted and replaced by the modern so-called structures.

The second question is, in your presentation, Professor Mengisteab, you seem to demonize... This might be a misunderstanding of sorts because based on what I know from Kenya, Sudan, Ethiopia Uganda, Africa and basically the Horn of Africa and I [inaudible]. They are given land [inaudible], or at least Africa, are [inaudible] Nairobi. There is even now a ministry for [inaudible] affairs. In Kenya, there's a ministry for [inaudible]. Somalia and so forth [inaudible]

[laughter]

**Professor Ngugi:** Alright. There goes the first of the session. We'll give you the a chance to respond. Yes?

**Man 3:** This is a question. Many are you are familiar with [inaudible]. I am from Uganda.

**Professor Ngugi:** So, maybe you can tell us... [inaudible].

**Man 3:** Right now, the First Lady has just been appointed Venus..., maybe that's less dehumanization. I don't know. But yeah, just a clarification on the need for the decision on fragmentation and for American.

So is it a claim that this league operates through land governance so that, to the extent that land governance has struggled to inform a case. The same goes for environmental governance? Because it seems to me that, I'm trying to situate that claim then and again in context. So why is it true that you're formally form this issue as far as land is concerned.
Environmental governance saves land with reform side. I struggle to think of any sense in which environmental governance will be able to be influencing... Now of course, you're right in how you're talking, if every community has some norms of what we now understand is environmental governance. It just doesn't seem to me that the way that we now feel on environmental governance is something that we threw our weaponry, to make use to assure that we're going to get around... [inaudible]

My question really is, what's the institutional structure for environmental governance? Does it have this clarification that we see in land governance?

Professor Ngugi: Excellent. Yes, please.

Woman 1: First off I want to say thank you. It was a great presentation and thank you for the rebuttal. I grew up in Eritrea, so I feel like I have some ownership in talking about our customs and what not. I'm in favor of upholding the traditional law.

But as a female, I don't really have any ownership in the traditional sense. I was denied land for centuries. Now, I appreciate that the government, the new government, having instated, "you know you should have every right to own land as the next man." So, in that respect, I actually amount to some existence, for which I'm grateful.

Now, how do you keep the community land ownership intact, but at the same time validate everyone in the community? How do you reconcile those?

Professor Ngugi: Good question. I hope you are writing this down for me, sir.

Professor Mengisteab: I am writing this down.

Professor Ngugi: They are coming down fast and furious. Yes?

Shao: My name is Shao and I am from Tanzania. And also, of course, also attending Harvard Law School. Mister, I think I support the whole idea that we need to redirect and explore because someone loses in these countries. It's so fast. The more about movement than it is about time.

Shao: This is the same type of issues that we have in Tanzania. In the sense that there is little you can't escape, you can get away with giving some of the land away. But more important is about the issue of what type of resources that should be given and handed over to the state. That I know, but now I must ask why.

The creation of Serengeti National Park and the Ngorongoro was a big fight between the Society for the Prevention of Foreign Foul of the Empire that is an NGO in the U.K. and the fascists. And what was happening in Tanzania at that time, the British government, the royal British government was listening but not playing.

So then the [inaudible] king and the developing... the queen, so to get the National Park would be out of the question. And back then we find out that the new independent states, and those saying that "No, the state, the new state couldn't truly keep those kind of votes."

And put that into a big attitude of conservation and the water out of the Ngorongoro government is blue and water of the independent states where you are going to move. So at
the very center of Tanzania started with one national park. Now there are 16 national parks. 
And lots of government reserved enforcements out.

And almost now 75 percent of Tanzania exhibits one in four more foreign adults per day. 
And for the number of violences is declining each and every passing day. In 1970 Tanzania 
added over 300 [inaudible]. Although now they always end [inaudible]. But the size of our 
protection has increase. And the way of find out for to blame. Just because we find out the 
state, the institution in charge of protecting wild land, have failed.

But for them the original time resolution fees increases the size of the wild land we're 
supposed to be protecting. And the people are being chased left, right and center.

And then you ask us, what about if we go back to the people that we used to oversee the 
daily threat. Because when the community, when the people are leaving out in those areas, 
where the population was in, was so high. Let's say the [inaudible]. The Masai don't hunt, or 
go hunting highland. It's all the doing the initiation process, all the passing out cage. Man 
haven't got a good kill to be alive.

And we used to talk about fair case. The fair case involved a spear, and the kill when 
confronting lioness. But the sports hunt data is the reinforce these kinds of ... SPHD was 
declined to protect to take that. Where it appears hunt, wild life, hidachi, they go away. 
There this sport is so contact you know? They come with their guns, going to hunt with 
their laser and so people are doing it. But the Masai who are doing that right now, they don't 
hunt. Now all the Tanzanians, they have moved to Central Tanzania. Even after the end of 
slaughter.

In another dispute, you find out that they are conflicts that now have ensued between the 
pastoralists and their countries. Because for sure the pastoralists they go more peace of 
mind. More peace of mind because they fancy what they call consumers. And consumers...
[inaudible] But this is bureaucrats. So in Tanzania, they say the bureaucrats to an assistant 
guy sponsored by the whole process that is formal, formal, a formal celebration. [inaudible]

But I think that, you are still making... you are still making the same type of mistake. 
Because if you have the people, there's ten bureaucrats standing on top of them to be 
actually and this one makes them feel.

So in the case and one of them is the elevation of consumer land rights, to be of formal land 
ownership in Africa. Then you lose again, see with our concerns. The rights of the males 
and the females will be the same. Because of their concern, their guarantee, for the common 
things that we share.

That is, whatever a formal protection that a man enjoys the same should be enjoyed by 
women. And there if there is a bit of sustenance, a bit of difficult and forward[inaudible]. 
And so with us, the evidence for people to feel good.

In Tanzania, we are presenting more than 400,000 people that were moved to the 
Ngorongoro next to the Arusha. Eh? You just move four thousand people from their mining 
sites. We just want the people and if you give it, you get social comfort.

And this social comfort, feels good. Three thousand years old. Three thousand years old To 
get rid of who - the Maasi from their land. Of course, there is an induction that we should
move these people. There is always, there is an induction is simply there. People are kicked out.

This company is a huge multinational company. They are coming to stake their claim. Stake their claim and then you go to Canada. There is a huge multinational company. This is all they have. Mining views, for sure. Alright. How much? Three hundred and fourteen million dollars?

OK. You pay? Another thing there isn't anything you can do about the transaction. Nothing, because it's a transfer between companies. It is a lot of transfer free of money payments. That's it.

So that is the kind of suffering in the Ngorongoro. That has been happening.

People are feeling moved from their land. So that's what I want to say. I will support the commission in these kinds of decisions, but I'd like them to talk about the motivation of land rights- the land of the Ngorongoro.

There are three or four people trying to create because it idolizes the same kind of mindset we see pervasive in Tanzania.

If you're talking about the relation of some of them to land rights, [inaudible] who try to mediate, because [inaudible]

Professor: So tomorrow, our second priority is going to be dealing head on with the question of indigenous institutions and whether it's possible to equate indigenous institutions and to use them to deal with the problem of environmental justice and social justice. So, it seems like we'll have plenty to talk about tomorrow. Yes?

Speaker 1: I would be very, very shocked that none of these people who we have been discussing [inaudible] so-called nationalization. These people, the governments of, the provisional governments under the guise of transitional governance, they nationalize the lands. And for women's rights or female rights, nothing. It is for [inaudible] given the rights. It's not good. The government has nationalized. No one has the right, except the government, and that's what is [inaudible]. Ethiopia, Eritrea, all of these people, under the guise of provisional governance, and transitional governance, they are still [inaudible] free. Thank you.

Professor Ngugi: Excellent. Yes, you had your hand up at some point.

Woman: [inaudible] is there a way for them to come together and to recognize [inaudible]

Professor Ngugi: So, can we come together to form a beautiful mosaic? So that there is no [inaudible] any more?

Speaker 3: Why did you call me?

Professor Ngugi: No, I was just. You were asking.

Speaker 4: I just have a question specifically about close conflict situations. In the [inaudible] area they're counting the number of conflicts, and it has to do with the idea of how often we witness disagreements on these kinds of incidents are resolved. You see the
exclusion of things like [inaudible] projects or land registration that are sort of mandated. And I'm just curious about how that relates to the neo-liberal [inaudible] project of privatization of the land so that, by privatizing, or by recognizing claims to the land, it's easier to appropriate in certain ways, and whether you think something that's happening?

Professor Ngugi: Right. That's a good question. I think that the central big theme relates to the connection between the demands for the modern institution including land use registration, and the prejudice for this institution and the scale over time and how are they correlated with environmental government, environmental justice, on the other hand.

The claim that is indirectly made, is usually that if you have modern institutions, that means modern institutions of registration, then it directly correlates good environmental governance. That's the claim because if you give people title deeds, you give them tenure security, then that tenure security makes them want to protect their land and the environment more, because of that tenure security. They have more incentives to invest in technology to practice sustainable agricultural practices, and so forth.

So the argument is more registration, better environment. But it seems that the presentation by Professor Mengisteab is questioning that result. And we will continue questioning that wisdom and we will continue questioning that wisdom tomorrow, I guess.

Professor Mengisteab: People forget the government [inaudible]

[laughter]

Professor Ngugi: OK, let's address now and then we will proceed. Because we're trying to do the exact opposite of the governments that you're talking about. So we are really democratically.

Professor Mengisteab: OK, I will address only the ones that I can. If I don't address them that means I don't know the answer. [laughter] The easiest one, demonizing nomads, I think I may not have made my point clear but I wasn't. I grew up a peasant and partly nomad, so to me there are the victims of the most egregious injustice in the Horn of Africa region. If there is land taken, it usually starts from nomadic areas. So, what I was trying to point out was they live in a different mode of production. Their norms are very different. You can't apply capitalist norms, land privatization, land registration, and so on, on nomads. It simply is incompatible with their mode of production.

It's also incompatible, you can't solve the problem by compensating them with money because what do they do with... They're nomads. Unless you transform them out of their nomadic life, it is simply very difficult to do. Some governments simply say this mode of production cannot continue, so we have to eradicate nomadism. But how do you do it without destroying them?

I wasn't by any means trying to demonize nomads. In fact, I was attempting to point out that they are the victims of the most egregious kinds of...

Another question you asked was "why the traditional system is not recognized?" I don't quite know but I can tell you some hypotheses. One issue is, of course, right from the time of decolonization, many of Africa's new leaders did not want to deal with traditional institutions. One reason may be poor relations. How would traditional leaders like the
Asantehene of Ghana cope with Nkrumah who doesn't have that kind of background but all of a sudden he is the president of the state?

So, if you look at what happened immediately after decolonization, many African countries banned chieftaincy systems, in particular. They don't have to ban the decentralized systems because they're not a threat. But chieftaincy systems could be a threat. So one reason is possibly poor relations.

And, by the way, African chiefs nowadays are trying to regain some of their lost power. In fact, the Asantehene and some monarchs from South Africa and so on, even Uganda, they go to the African Union and they are trying to get representation and so on. So there is an issue of poor relationship.

Then there is also the other issue, particularly if you go with the decentralized systems that are democratic in the sense they make decisions in a consensual manner. That is incompatible with the autocratic dictatorial systems that the post-colonial state represents.

As I said earlier, I grew up in Eritrea. In the villages five miles from Asmara, people make decisions in the village bital or village assembly and it is a consensual system. Everybody has to agree before they make a decision. Well, if you go to Asmara, the system of the state, there is no relationship between these two systems. One is extremely autocratic and the other is extremely consensual and it's just incompatible. So, therefore, some of the African traditional institutions do not allow autocratic systems and so the best thing to do is repress them or suppress them.

Tanzania, you mentioned. Tanzania is one of the few countries -- by the way, once African presidents started implementing elections and so on, they found the chiefs to be useful in winning elections. So therefore they had to create the house of chiefs and so on to appease them. But not the institutions, but just the chiefs. Tanzania is one of the few countries where chieftaincy is banned and hasn't been reinstated yet. It's a very interesting case.

Now the women in Eritrea has been given right to land with the present regime. I think that's a misunderstanding, to me. Let me explain why. The land in Eritrea, particularly in the highlands -- the desa system, the communal system -- the way it works is you give land to a household. In other words, when you have a new couple married and starting a family, they get a land in the village.

Now the house is not given to the man, I mean the land is not given to the man or the woman, it is given to the household. If there is a divorce and the woman is still staying in the village, what they do is they divide the land into half. The woman gets half and the man gets half, until they remarry or have children. And then they can claim a full share.

So, in other words, in I think in some provinces in the South in Seraye where there was the root system instead of the desa system, the inheritance and even the rest is not uniform, but some inheritances are anti-woman, OK. But that is not the same with the desa system.

In fact, what the land reform in Eritrea that was proposed in 1994 did was, if you give land to an 18-year-old even unmarried and then the woman marries, for instance, let's say goes to another village, what happens to the land? The system, the proclamation itself was unworkable. I saw the proclamation before it was proclaimed. My point was I said to the people, "this is not workable." And even I wrote a couple of articles later on saying that the Land Reform Proclamation was not workable.
The issue that woman's rights is respected with the proclamation I think is misunderstanding. Because if you understand that the land is given to the household and not the man or woman, then of course the system was not discriminatory to start with.

Now there was a question and I'm keeping this one till later, till I understand it fully; link between institutions and environment governance the question he asked. Now I'm not quite sure if I understood you, but what I was trying to point out is, if there is the institutional incompatibility that I attempted to describe, it makes state building very difficult. It makes governance very difficult because the state does not get legitimacy. There is no synergy between state and society. It makes environmental protection very difficult because, one, if you're removing people, not respecting their rights, you are also destroying their conservation mechanisms.

The land tenure system, not in Eritrea in Africa, is not simply about holding land. It's also an administrative and governance system. Once you take the land away the unit of governance, the unit of administration, is also destroyed. In other words, you can't have conservation measures that were traditionally practiced, for instance, if their land is taken, and if you're moving to some smaller marginal land. Because then the issue of survival takes precedence over conservation.

And so what I was trying to point out was if we could find a mechanism of reconciling these two institutions, perhaps we could address the issues of chronic conflicts about state building, different ethnic groups rebelling against the state, because they have problems with the terms of their incorporation into the state. We can have the issues of democracy addressed because at least the state will not be creating victims out of it's own largest inhabitants, the villagers and the nomads and so on. And environmental protection measures or the conservation measures could also be addressed with those issues.

So that was what I was trying to point out. And to me it is an entry point to many of the different, it's not an only entry point, it's just one entry point. You pointed out the nationalization of land. Well, they don't call it nationalization, they simply declare all land belongs to the State. Is it nationalization? Maybe. It's a different form of...In a way it is. I mean what's the difference. You could argue that.

But all African countries -- this is the problem even South Africa with it's restitution, land restitution program -- Africans in their culture in their land tenure system they're not accustomed to having land rights, I mean what you call title to land. And even proving that the land was yours is not that easy. And so the court system in South Africa dealing with restitution of land, particularly since it belongs to the community, it is not an individual who can claim, it's a community, it's extremely difficult.

So, yes people do not have titles, written papers. But they have, I don't know what you call it in law, customary ownership, customary right to the land because they've been there for a long time. So if you take that away maybe you can then call it nationalization I guess.

There was another one; post-conflict privatization and land taking in Kenya. Kenya is a very interesting case. Kenya has been doing this, what you call land registration. You can tell us more about it, but as far as my limited knowledge, it is a very corrupt system. In the first place what happens is you can get registration of land through whatever means. Once you register the land, sometimes you may even want it to be the government wanting that land. Because then you can get hefty compensation for it.
And the thing is, whatever means you use to get land registered in Kenya, my understanding is once it is registered it is not challengeable. So you can bribe people to get title to your land. Once you get title to the land no one can challenge you.

The process I think in Kenya has a lot of problems. And then of course you bring particularly the ethnic dimension and the rift valley to all that process, it's a big mess. But, at least in Kenya even the trust land, if there is taking of trust land, you can get compensation. The compensations are not that meaningful but at least nevertheless the Kenyan government, unlike the Sudanese or Eritrea or Ethiopian, it recognizes compensation.

But the compensation is not...to my amazement, for instance, I'll give you an example. Newmont is a gold company, U.S. gold company, and they took large land in Ghana. The compensation they gave was equivalent to seven dollars per cocoa tree. Seven dollars, imagine. So if you have 100 cocoa trees, you get what, and you are kicked out of the land. It's almost unbelievable. And when I read that in the annual report of the company they were actually proud that they gave compensation.

OK, thank you. If I forgot some of the questions.

[applause]

**Professor Ngugi:** It's now 5:30, should we head towards the wine or should we take more comments?

**Man 2:** Yes, I just wanted to make a comment about the way we have just opposed the traditional institutions in the [inaudible] world is take on creating in a very static manner. I'm wondering if the so called traditional institutional committees are not reacting to the liberal segustas or the property regime system that are now being announced legislatively. Because if I take Ghana for example, it is not as doomed mistake as this powerful entity that contest come in. But you do have long confidence in managing to form within the community themselves.

**Professor Ngugi:** Yes.

**Man 2:** And so you can have the traditional leader, a chief who says, who lays claim to a particular land. He's dealing with his kinsman, his brother and they would just wait wanting to sell out this land to anybody. And whoever pursue go ahead at the same law. And the case would end up in court. A long drawn case, a drawn out court case. So what I'm saying is that is a ruler also neglecting an aspect; the fact that the so called traditional committee are reacting to business as usual.

**Professor Ngugi:** Yes.

**Man 4:** And then actually I do see demonizing... [inaudible] The two examples I gave actually entitles me to the discussions already. Because I think the examples is Ghana where there is a Minister for pastoralists. That's demonizing it. It's like our own part of the country. So they think we're all gangster and they give example for Ghana with this minister from Cambodia [inaudible] is like you're out there. That's what I heard and I wanted to speak about. I didn't think you were demonizing them. I didn't think personally that cannot work. I just said are you... process in your discussion or what you talking about?
**Professor Ngugi:** Yeah.

**Man 4:** And the answer is no. The other thing is [inaudible].

[laughter]

**Joel:** Yes, Jen?

**Jen:** I was wondering if these governments were open to [inaudible] government's work [inaudible] it seems to me that that really hasn't been very successful and I'm just wondering if you have a sense of why not?

**Joel:** OK. Yes?

**Jen:** This is a fascinating conversation and I just want to bring it together. [inaudible] ...and you might say you have a...I think like, do you have the traditional and modern dances spectrum? And I am not really sure that the traditional could not by itself move towards the modern, and the modern influence of the traditional. There is a growing spectrum of roots of play.

Therefore, what you might have dreamed of as kind of movies, looking at two very incoherent systems. That the traditional and modern rather than the traditional and the modern have an institutional conflict, because they have all the conflicts if they are coherent themselves. If they are coherent, then you can just pluck them out in this trust full of works, and bring together something completely different. That the present uncertainty between the traditional component and the modern component. I totally agree with you on this. [inaudible]

**Professor Ngugi:** Excellent. I think that's an incredibly complex first event.

[laughter]

**Professor Ngugi:** Do you want to respond outside. I'm going to reset these for the sake of tomorrow because I think this is a question that should occupy our minds tomorrow, for the events that will be coming tomorrow. I think Isador and Silvia are raising the question, "What are we running the risk of identifying two categories and then, in dealing them with sudden static characteristics, and would they become stereotypical of how we are thinking about the categories? Because we've given them certain characteristics rather than in fact seeing them, both systems, for what they are, as incredibly incoherent systems, for which you can make very many different arguments and so forth."

So in law, we teach law students that legal categories are never certain, that they are always filled with ambiguities and facts and in combinations and so forth. You will always make many kinds of legal arguments even when the legal categories themselves seem to be very closed, but they are in fact incoherent. The same argument has been made by the authorities about customs. Even when customs seems to be very determinant, very coherent, in fact they are not.

And for every segment you can say this is X, you can make the exact opposite argument when you can say that the exception of Y is not very clear.
So if we make this into political arguments, then we are running with of constructing false violence, which then makes it impossible for us to resolve the problem that we are trying to tackle.

The question of UNESCO is I think an imperfect one, which I think you should respond to before moving on.

[laughter]

**Professor Ngugi:** Do you know the answer?

[laughter]

**Professor Mengisteab:** I do.

**Professor Ngugi:** Actually, he does know the answer.

**Professor Mengisteab:** Yeah, I think UNESCO tries to provide those kinds of assistance, the possibility of assistance. And I think that the little board shops and social organizations possesses various pieces of legislation in various countries. They've been supported there. I think the people that do it the most like the World Bank and the others, they are doing that. Then you have USAID supports to the Dutch, and whoever sends money to try to basically help.

But, at the end of the day, the various institutions have some things that are not key at basically cleaning up the money and so forth. Because the various laws have been enacted. And they've got new pieces of legislation. You could go insane.

Are they bothered by this? Are they enforcing this law? Is this an environmental movement that we have here? Even here in the U.S. Therefore are they enforced? And it seems like all these people from the environmental organizations were caught. And they are getting themselves caught! Those guys caught.

So the charge is enough trying to see where they are waiting for, how these inner governmental organizations that are in part of the environmental movement, and are of tactile use, that are also used in the [inaudible]. Are they suitable, suitable for enforcing the law? And that's the way that goes. Yep.

**Professor Ngugi:** So I sense that the property. There is another class coming in now. And by the way, this is last thing for the evening. So we need to sit up as quickly as we can and head to room 115 where we have the reception. And tomorrow we begin our session at 9:00 sharp, so please come in by 8:45, 8:30. Thank you. We're in room 115 where we are having the reception.